



Report of the Inquiry into the City of Perth

1

An Inquiry under Part 8, Division 2
Local Government Act 1995



Acknowledgment of Country

The Western Australian Government proudly acknowledges the Traditional Owners and recognises their continuing connection to their lands, families and communities.

We pay our respects to Aboriginal and Torres Strait Islander cultures and to Elders past, present and emerging.

The first step in living alongside and working with the Aboriginal community is built upon establishing respectful relationships. Crucial to these respectful relationships is acknowledging the history of Aboriginal people and recognising the importance of connection to family, culture and country.

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Volume 1

The Inquiry

Volume 1 At a glance	5
1.1 Overview	6
1.1.1 About local government	7
1.1.2 About the City of Perth	21
1.1.3 About the Inquiry	33
1.1.4 Procedural fairness	52
1.1.5 Good government	69
1.1.6 Universal application	83
1.2 About this Report	85



The Inquiry into the City of Perth is the largest, most complex and extensive inquiry so far conducted in Western Australia under the *Local Government Act 1995* or its predecessors.

Mr Anthony (Tony) Power
Inquiry Panel



Volume 1

This Volume sets the scene for the rest of the Report. It provides context for the investigations undertaken by the Inquiry Panel (Inquiry) and explains the methods used.

1.1 Overview



1.2 About this Report

1.1.1 About local government

This Chapter explains the role and functions of local government and provides demographic, legal and financial information about local governments in Western Australia. It explains the services local governments provide, how they are structured, and examines issues currently affecting local governments.

1.1.2 About the City of Perth

This Chapter provides information about the City of Perth including its history, geography and demographics; its role, functions, finances and workforce; services the City provides to the community; and how the City of Perth Council and Administration operate.

1.1.3 About the Inquiry

This Chapter explains how the Inquiry went about its work. It describes the suspension of the City of Perth Council and appointment of the Inquiry Panel; the powers of the Inquiry, phases of the Inquiry's investigation and hearings, and witnesses who gave evidence at public hearings.

1.1.4 Procedural fairness

This Chapter explains how the Inquiry provided procedural fairness to people who were potentially the subject of adverse findings in this Report. It covers some specific issues related to affording procedural fairness. The Chapter also explains the Inquiry's Practice Directions, the hearings process, representation of witnesses, and decisions to hold some hearings in private.

1.1.5 Good government

The Terms of Reference for the Inquiry required it to consider whether the "*aspects, operations and affairs of the City of Perth*" examined by the Inquiry constituted a failure to provide 'good government'. This Chapter examines the concept of 'good government' and 'good governance', a significant element of good government.

1.1.6 Universal application

This Chapter considers the wider applicability of the Report.

About this Part

This Part contains the Inquiry's acknowledgments, details of the Report structure, legislation, policies and procedures referred to in the Report, and a glossary of terms used.

1.1

Overview





1.1.1 About local government

The City of Perth (City) is one of 537 local governments in Australia and 137 in Western Australia.

Local governments are one of the three tiers of government in Australia. These are:

- Australian Government;
- State and Territory Government; and
- Local government.

Each form of government has its own decision-making body consisting of elected representatives. For the Australian Government and State and Territory Governments these are Parliaments. For local governments, the decision-making bodies are councils.

Each form of government also has an Administration, made up of employees, who implement the decisions of the Parliament or council and provide services to the community.

Australia's Constitution does not refer to local government, and the Australian Government has no jurisdiction over local government. The six States and the Northern Territory each have their own local government legislation. For Western Australia and the Indian Ocean Territories, this is the *Local Government Act 1995* (LG Act) and its associated regulations.

The Australian Capital Territory does not have a system of local government.

Local government in Western Australia

The system of local government in Western Australia is currently overseen by the Minister for Local Government; Heritage; Culture and the Arts (Minister).

The Minister is assisted by the Department of Local Government, Sport and Cultural Industries (Department) which “*partners with local government to deliver good governance to the community*”.¹

Section 3.1(1) of the LG Act states that the general function of local government in Western Australia is “*to provide for the good government of persons in its district*”.



The work of Local Government is varied, but it touches almost all areas of our day to day life as citizens – whether we live in cities, towns or country areas.²

The Western Australian Local Government Association (WALGA)

Local governments operate in a local geographical area. The 137 local governments in Western Australia vary widely in geographical size.³



1 km²
Shire of Peppermint Grove



371,244 km²
Shire of East Pilbara

The population of Western Australia is approximately 2.6 million people.⁴ The majority of these people live in the Perth metropolitan region.

There are 30 local government areas in the greater Perth metropolitan area. Those local governments have a combined population of over 1.9 million people.

This leads to an imbalance in the populations served by many regional local governments compared to Perth metropolitan local governments. Most local governments in the metropolitan area have populations in the tens or hundreds of thousands. Many local governments in regional areas have a population of less than less than 1,000.

Shire of Sandstone

87
People

57
Electors

City of Stirling

219,975
People

143,852
Electors

Services provided by local government

Local governments are vital to the functioning of local communities. They provide necessary services for residents, businesses and visitors.

The Department, on its website, states:

“In Western Australia councils employ around 15,000 people and manage more than \$40 billion of community assets.

*Your local council provides a range of services to you every day, such as roads and footpaths, rubbish collection services, libraries, parks and playgrounds, community services and events, infrastructure and recreation facilities”.*⁵

The services local governments provide to the community are of two types:



Statutory services

Local governments are required by law to provide.



Discretionary services

Local governments can choose to provide.

The Department explains it this way:⁶

Local government must provide:	<ul style="list-style-type: none"> • town planning and building controls; • residential waste collection; • fire control; • cat and dog management; • swimming pool inspections; and • food and public health inspections.
Local government can provide:	<ul style="list-style-type: none"> • sport and recreation facilities; • home and community care; • local roads and footpaths; • community safety and amenity; • cultural activities and community events; • public libraries; • seniors and child care services; • local environmental management and protection; • tourism initiatives; and • fostering economic development.

Changing functions of local government

The role and functions of local government in Western Australia have changed, and are changing, to adapt to conditions in society. Examples of the changes which affect the City include the following.

Development Assessment Panels

The transfer of responsibility for some planning decisions has gone from local governments to Development Assessment Panels (DAP) administered by the Department of Planning, Lands and Heritage. These DAPs consider development applications which meet certain monetary thresholds.^a DAP members are appointed by the State Minister for Planning and include two local government members and three specialist members.⁷ There is a DAP for planning decisions affecting the City. There are currently five DAPs in Western Australia – four Joint DAPs that serve two or more local governments and one Local DAP that only serves the City.

Growing expectations and responsibilities

The expectations of communities change with changing social conditions. Local governments are no longer seen as being primarily responsible only for ‘roads and rubbish’. There is an increasing community expectation that the City has a role in relation to social issues such as homelessness, substance abuse, mental health and violence.

This trend was observed by the Productivity Commission in its *“Shifting the Dial: 5 year Productivity Review, Supporting Paper No. 16”*:

“There is no set ‘list’ as to the type, mix or level of services that all Australians can expect from Local Government. Previous reviews, for example, Performance Benchmarking of Australian Business Regulation: The Role of Local Government as a Regulator (PC 2012), have suggested that Local Governments are often caught in a tug-of-war between local preferences and a growing list of responsibilities and requirements delegated to them by their respective State Government.

Participants in this review raised concerns that while the role of Local Governments has expanded, they do not always have the financial capacity or required level of skills to efficiently undertake these roles.”⁸

^a \$20 million or more for the City of Perth, *Planning and Development (Development Assessment Panels) Regulations 2011*, s 5(a).

The Commonwealth Grants Commission, in its report on “*Review of the Operation of the Local Government (Financial Assistance) Act 1995*” found that the increasing functions of local governments are due to five factors:⁹

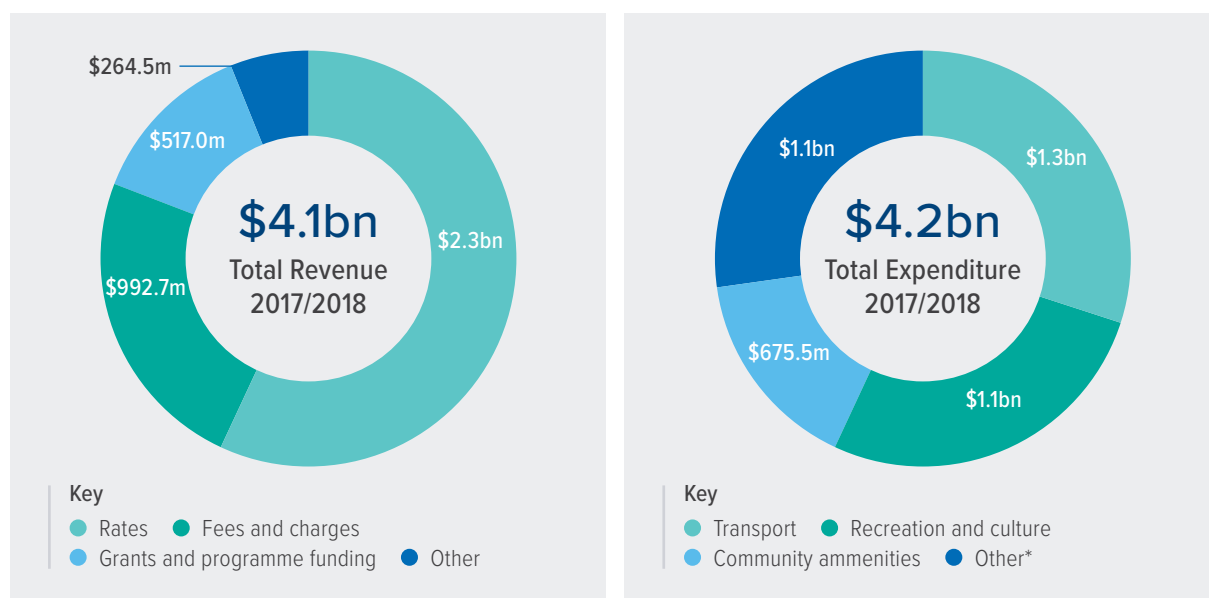
1. Devolution	Where another sphere of government gives local government responsibility for new functions.
2. Raising the bar	Where another sphere of government, through legislative or other changes, increases the complexity of or standard at which a local government service must be provided.
3. Cost shifting	Where there were two types of behaviour. The first is where local government agrees to provide a service on behalf of another sphere of government but funding is subsequently reduced or stopped, and local government is unable to withdraw because of community demand for the service. The second is where, for whatever reason, another sphere of government ceases to provide a service and local government steps in.
4. Increased community expectations	Where the community demands improvements in existing local government services.
5. Policy choice	Where individual local governments choose to expand their service provision.



Local government finances

Revenue and Expenses

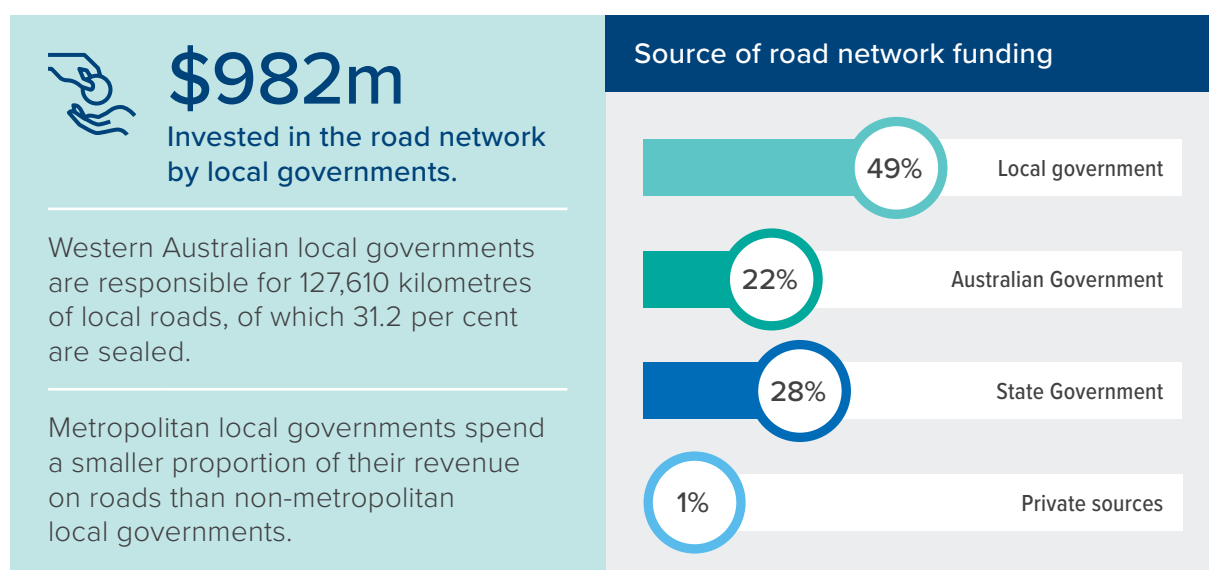
The Department's 'My Council' website provides details of finances and financial health for each local government in Western Australia. In the 2017/2018 financial year, the local government in Western Australian raised revenue of approximately \$4.1 billion and spent nearly \$4.2 billion.¹⁰



* Other includes: Governance (\$268m), Law, order and public safety (\$160m), Education and welfare (\$191m), Other property services (\$185m), Economic services (\$182m), General purpose funding (\$77m), Health (\$73m) and Housing (\$30m).

Roads

One of local government's primary responsibilities is to maintain roads. In its 2017/2018 annual "Report on Local Government Road Assets & Expenditure" Western Australian Local Government Association (WALGA) provided the following information:



Legal framework

Local Government Act 1995 and regulations

The LG Act and its associated regulations are Western Australian laws which describe the way local governments should operate in Western Australia.

The LG Act describes the roles of councils, council members, council committees and Chief Executive Officers (CEO). It governs the financial management of local governments, enforcement and legal proceedings, and the processes and rules for local government elections.

The LG Act states at section 1.3:

“(2) This Act is intended to result in –

- (a) better decision-making by local governments; and*
- (b) greater community participation in the decisions and affairs of local governments; and*
- (c) greater accountability of local governments to their communities; and*
- (d) more efficient and effective local government”.*

The LG Act and regulations also contain restrictions on the way in which council members can behave. This includes requirements for council members to disclose their private interests which may affect their official decisions, including financial interests, proximity interests, and gifts and contributions to travel they have received.

The *Local Government (Rules of Conduct) Regulations 2007*, provide “General principles to guide the behaviour of council members”, and specific rules of conduct. These prohibit a council member from:

- disclosing confidential information;
- improperly using his or her position to gain an advantage for himself or herself or another person;
- misusing local government resources;
- involvement in the administration of the local government; and
- directing or influencing a local government employee.

Breaches of these regulations are dealt with under Part 5, Division 9 of the LG Act. A complaint that a council member has committed a breach of these regulations must be referred to the Local Government Standards Panel (LGSP).

Other legislation which gives powers and responsibilities to local governments in Western Australian include the:

- *Public Health Act 2016*.
- *Planning and Development Act 2005*.
- *Health (Miscellaneous Provisions) Act 1911*.
- *Food Act 2008*.
- *Bush Fires Act 1954*.
- *Cemeteries Act 1986*.
- *Dog Act 1976*.
- *Cat Act 2011*.
- *Heritage Act 2018* (which replaced *Heritage of Western Australia Act 1990*).
- *Environmental Protection Act 1986*.

City of Perth Act 2016

The *City of Perth Act 2016* brought the City in line with other Australian capital cities and acknowledged its central role in tourism, business and economic development.

Section 8 of that Act sets out the 10 objects of the City. These include to provide for good government, and to represent the community and encourage community participation in decision-making. These objects are to be applied to decision-making within the City.

The structure of local government

Local governments are created as “*bodies corporate*” under Part 2, Division 2, section 2.5 of the LG Act.

Councils vary in size. In Western Australia, local governments are classified into four “*Bands*”. The larger and more complex local governments are classified “*Band 1*”. Smaller and less complex ones are classified “*Band 4*”. This classification is also reflected in the role of a CEO. “*Band 1*” CEOs are required to perform more strategic work, while a “*Band 4*” CEO is more likely to perform more operational work.

The “*Bands*” are formed from a broad range of factors, including major growth and development, significant social, economic and environmental issues, diversity of services, total expenditure, population and staffing levels.¹¹

These bands are used for remuneration and allowance levels for CEOs and council members, as well as other specified expenses. They are set annually by the Western Australian Salaries and Allowances Tribunal.

Local governments consist of a council, composed of elected council members, and an Administration staffed by employees.

Council members and employees are all public officers under the definition in section 1 of the *Criminal Code*. They are also bound by the local government’s code of conduct.¹²

Council members

For Western Australia, section 2.17 of the LG Act prescribes that a council should consist of a Mayor or President and between five and 14 councillors, one of whom is to hold the office of deputy mayor or deputy president.

A local government which is a 'City' or a 'Town' has a Mayor. A local government which is a 'Shire' has a President.

Section 9 of the *City of Perth Act 2016* states that the City of Perth Council consists of a mayor, who is called the Lord Mayor, and eight councillors.

The roles of the Lord Mayor and councillors are set out in sections 10 and 11 of the *City of Perth Act*. Section 11(2) sets out the role of a councillor. The first four duties are:

- “(a) to represent the interests of electors, ratepayers and residents of the City of Perth;*
- (b) to serve the current and future interests of the community in the City of Perth;*
- (c) to provide leadership and guidance to the community in the City of Perth;*
- (d) to facilitate communication between the community and the City of Perth Council ...”.*

A Council is the decision-making body for a local government. Councils make decisions through formal meeting processes. The members in attendance consider recommendations and vote on motions. The majority of members must vote in support of a motion for it to be adopted as a decision of council.

The authority to act and make decisions belongs to council as a whole. Individual council members do not generally have authority as individuals. They must work cohesively for council to be effective.

The Mayor or President's responsibilities are set out in section 2.8 of the LG Act and include presiding over meetings, providing leadership and guidance and liaising with the CEO.

Council members are entitled to receive payment for attending prescribed meetings and reimbursements of appropriate expenses from the local government. Council determines whether the payment is made on a meeting-by-meeting basis or as an annual allowance. Mayors and presidents are entitled to receive higher payment amounts, including a specific mayor's or president's allowance. These payments are governed by section 5.98 of the LG Act, Part 8 of the *Local Government (Administration) Regulations 1996*, the *Salaries and Allowances Act 1975* and Salaries and Allowances Tribunal.

Chief Executive Officer

All local governments in Western Australia have a CEO.

The employment, functions and powers of the CEO are set out in the LG Act and other legislation. These include, the CEO is:

- employed by the council (section 5.36 of the LG Act);
- “responsible for the employment, management supervision, direction and dismissal of other employees” (section 5.41), subject to the requirement that for “senior employees” the CEO must make a recommendation to the council which may accept or reject the recommendation (section 5.37(2));
- to “cause council decisions to be implemented” (section 5.41(c));
- to “manage the day to day operations of the local government” (section 5.41(d)); and
- also the complaints officer for reporting complaints about council members to the LGSP (unless this is delegated to another officer) and the principal officer for reporting allegations of misconduct to the Corruption and Crime Commission (CCC) and the Public Sector Commission.

During the period of the Inquiry’s Terms of Reference, being 1 October 2015 to 1 March 2018 (Inquiry period), the City had two CEOs, Mr Gary Stevenson until 20 January 2016, followed by Mr Martin Mileham.

Conflicting roles of a Chief Executive Officer

One of the issues that the Inquiry has noted, and will become evident in this Report, is that the multiple roles of a CEO can bring the CEO into conflict with council members. The CEO is appointed by the council but may then have to report the conduct of council members to external bodies such as the CCC or the LGSP.

In addition, where council members wish to become actively involved in the activities of the Administration of a local government, then it is the CEO who is, or should be, the gatekeeper, and must control and prevent interference by council members. Yet the same council members may then be responsible for conducting performance reviews of the CEO.

These issues have been noted in research. For example:

“... the clear and unrestricted authority of the Mayor/Shire President and the Council being directly and solely responsible for all aspects of CEO employment and role has the potential for the role and power of the CEO to be fettered and appears to challenge the neutrality ethic, whereby public servants are to remain non-partisan in their dealings with elected officials”.¹³

And in relation to appointment of a CEO:

“In a recent study into gender diversity in senior management in Western Australian metropolitan local governments Hutchinson and Walker (2011) found that interviewees believed that the competence and power tensions between the elected members and Council management often meant that elected members were more likely to appoint someone with whom they felt ‘comfortable’ and could ‘trust’ and would not challenge the status quo”.¹⁴

The research also noted that there was frequently a difference in the way that CEOs saw their own role, and the way that this role was viewed by the council leader:

“On the one hand, the majority of CEOs and a minority of Mayors/Shire Presidents clearly saw the role of the CEO as a significant leader within local government who not only had to have the managerial skills to maintain efficient and probative services on a day to day basis, but also needed to be strategically future focussed and to understand how to maximise partnerships and opportunities to meet the changing needs of the community. A much stronger view amongst Mayors/Shire Presidents was that the CEO was an operational manager that acted at the behest of council as an operational functionary”.¹⁵

Employees

The roles of employees are determined by the CEO. They typically carry out the daily operations of the local government, deliver services and implement decisions of council as directed by the CEO.

Councils in Western Australia often use contractors as well as having their own employees. This can make it difficult to determine how many employees, or full-time equivalent positions, a local government has, and therefore the true expenditure on labour.

Country local governments with smaller populations have a correspondingly smaller number of employees. The number of full-time equivalent employee positions in local governments in Western Australia can vary from eight to 878.¹⁶

During the Inquiry period, the City had between 720 and 765 employees.

Section 5.40 of the LG Act requires that *“employees are to be selected and promoted in accordance with the principles of merit and equity”*. This section also prohibits the use of nepotism, patronage or discrimination in relation to employees and states that *“employees are to be treated fairly and consistently”*.

Issues affecting local government in Western Australia

Amalgamation

Amalgamation of some local governments, particularly in the metropolitan area, has been under consideration since at least 2005 when the then Minister for Local Government and Regional Development announced a review of structural and electoral reform by the Local Government Advisory Board.

In July 2011, the State Government established a Metropolitan Local Government Review Panel which reported in December 2012, recommending that 30 metropolitan local governments should be amalgamated to form 12.

In September 2013, the Minister submitted the Government's proposals to the Local Government Advisory Board. In October 2014, the Board recommended a series of boundary adjustments and five amalgamations which would have resulted in 17 local governments. This included a proposed amalgamation of the City of Perth with the City of Vincent.

The Minister accepted all but two of those recommendations. The amalgamation of the City of Perth and the City of Vincent was one of those rejected.

In February 2015, polls conducted in the community defeated the three remaining proposed amalgamations and the State Government halted the process and revoked boundary adjustments already gazetted.

Complaints and allegations

Under the *Corruption Crime and Misconduct Act 2003*, the CCC has jurisdiction to investigate allegations of serious misconduct by public officers, including council members and employees.

The Public Sector Commissioner has jurisdiction under the same Act to investigate allegations of minor misconduct by public officers, including employees of a local government, but not including council members.

The LGSP deals with complaints of breaches of the *Local Government (Rules of Conduct) Regulations 2007*, by council members. The Panel does not deal with complaints about local government employees.

Over the five years before the suspension of the City of Perth Council on 2 March 2018, there was an increase in numbers of complaints to the LGSP¹⁷ (Figure 1.1) and allegations about local government members or employees to the CCC¹⁸ (Figure 1.2).

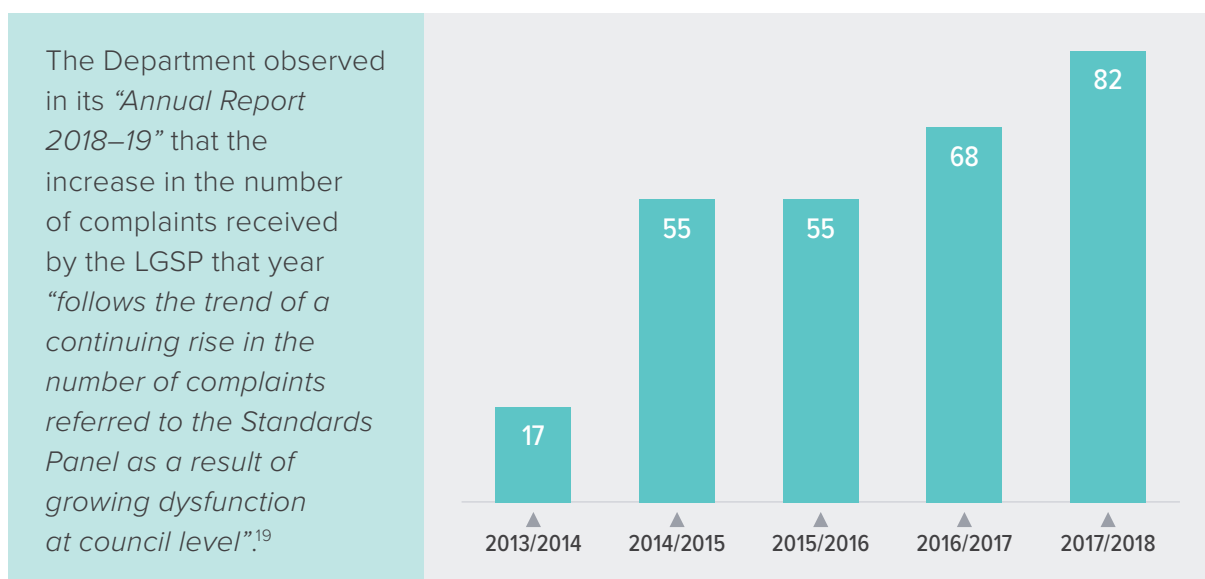


Figure 1.1: Minor breach complaints received related to local government in Western Australia, Local Government Standards Panel, financial year 2014/2015 to 2017/2018.

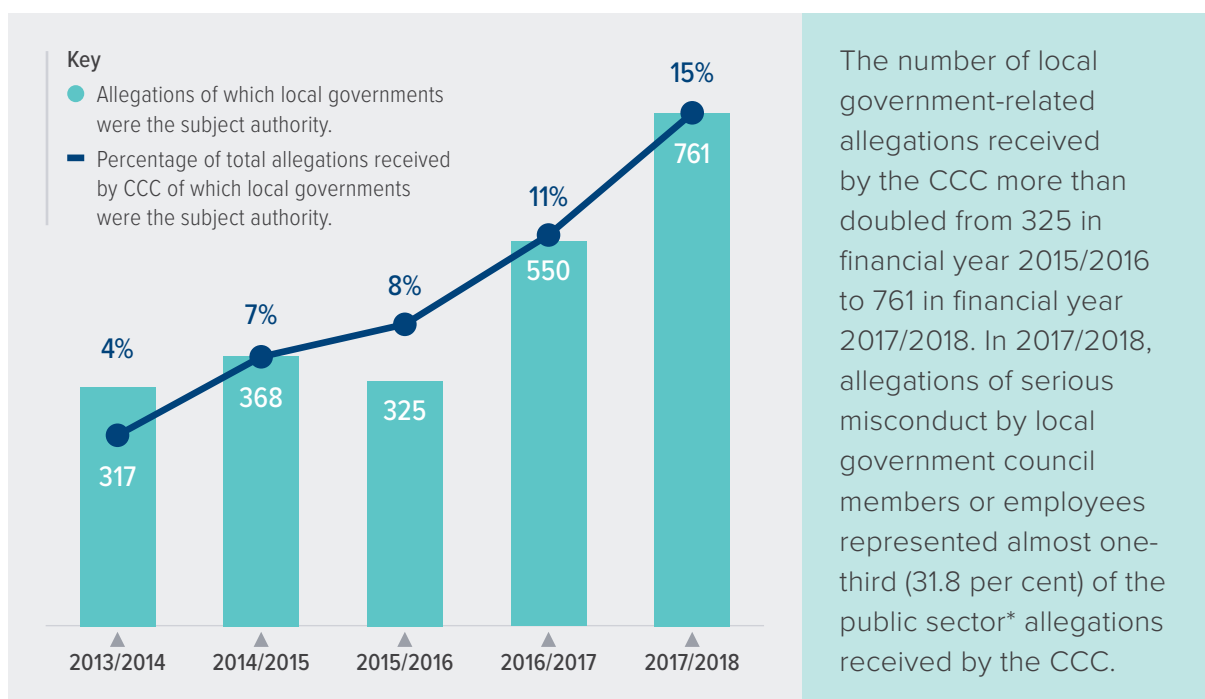


Figure 1.2: Allegations received related to local government in Western Australia and the Corruption and Crime Commission, financial year 2014/2015 to 2017/2018.

There are many factors which can cause an increase in complaints and allegations of misconduct, including increased awareness of what might constitute misconduct, and better methods for reporting suspected misconduct. However, the increases recorded by the LGSP and the CCC certainly indicate an increased level of concern about the conduct of council members and employees in local governments in Western Australia.

* Figures stated by the CCC do not include allegations related to WA Police Force.

Authorised Inquiries and Inquiry Panels

Part 8 of the LG Act is headed “*Scrutiny of the affairs of local governments*”.

Among other things, this Part permits the Minister to suspend a council or members of a council and “*to inquire into and report on any aspect of a local government or its operations or affairs*”.²⁰

There are two ways a local government can be inquired into – an Authorised Inquiry and a Panel Inquiry.

The first one is authorised by the Director General of the Department to inquire into the operations and/or affairs of a local government. It is undertaken by departmental staff and/or other suitably qualified people who are authorised to conduct such an inquiry and to exercise powers and responsibilities provided under this Part of the LG Act.

An Inquiry Panel may comprise of one or three members and is to provide a report to the Minister. A number of Inquiry Panels have been appointed in the last 20 years. These, with their date of appointment, include:

- Inquiry into the City of Canning, December 2012.
- Inquiry into the City of Joondalup, May 2004.
- Inquiry into the South Perth City Council, October 2001.
- Inquiry into the City of Cockburn, May 1999.

This Inquiry is an Inquiry Panel into the local government of the City of Perth.

1.1.2 About the City of Perth

The City of Perth (City) is the local government for the capital city of Western Australia. It is a statutory entity constituted under the *Local Government Act 1995* (LG Act) and the *City of Perth Act 2016* (CoP Act).

The City exists to provide services and facilities to a broad range of stakeholders, including residents, commercial and retail businesses, workers, and local, national and international visitors.²¹

Section 8(1)(a) of the CoP Act states that one of the objects of the City is “to provide for the good government of persons in the City of Perth, including residents, ratepayers and visitors”.

Perth City area

The City of Perth covers a geographical area of 26.93km² (Perth City area).²² It includes the suburb of Northbridge, and parts of the suburbs of Perth, East Perth, West Perth, Crawley, Subiaco and Nedlands.

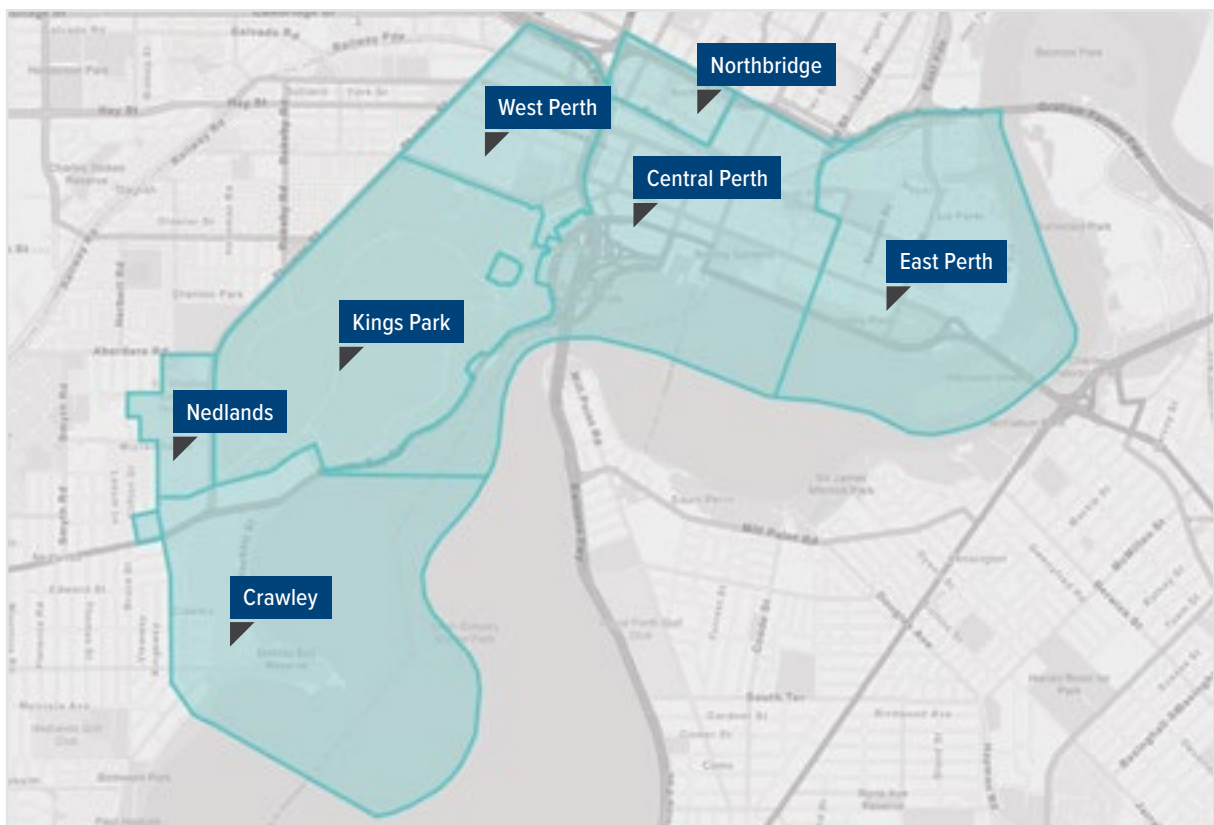


Figure 1.3: City of Perth geographical area and electoral boundaries.

On 1 July 2016, pursuant to section 18 and schedule 1 of the CoP Act, the boundaries of the Perth City area were expanded to incorporate significant sites. The City gained 1,508 ratepayers as a result.²³ From that date, it included:

- The University of Western Australia;
- Kings Park;
- Queen Elizabeth II Medical Centre;
- Perth Children's Hospital²⁴; and
- parts of the suburbs of Subiaco and Nedlands.

There are a wide variety of significant sites in the Perth City area, including:

- State buildings such as Parliament House, Government House and the Supreme Court.
- Royal Perth Hospital.
- The Perth Cultural Centre precinct, including the State Library, the Western Australian Museum, the Perth Institute of Contemporary Arts, the Art Gallery of WA and the State Theatre Centre of WA.
- Entertainment and sports venues such as His Majesty's Theatre, Elizabeth Quay, RAC Arena, the Western Australian Cricket Association Ground and the Perth Convention and Exhibition Centre.
- Perth Central Business District, which contains the Western Australian head offices for many businesses and corporations and most State and Federal Government agencies.
- The retail, dining, and entertainment precincts of Northbridge, Perth and East Perth.

Many of the key transit routes for the Perth metropolitan area run through the Perth City area, which incorporates six train stations and two bus ports.

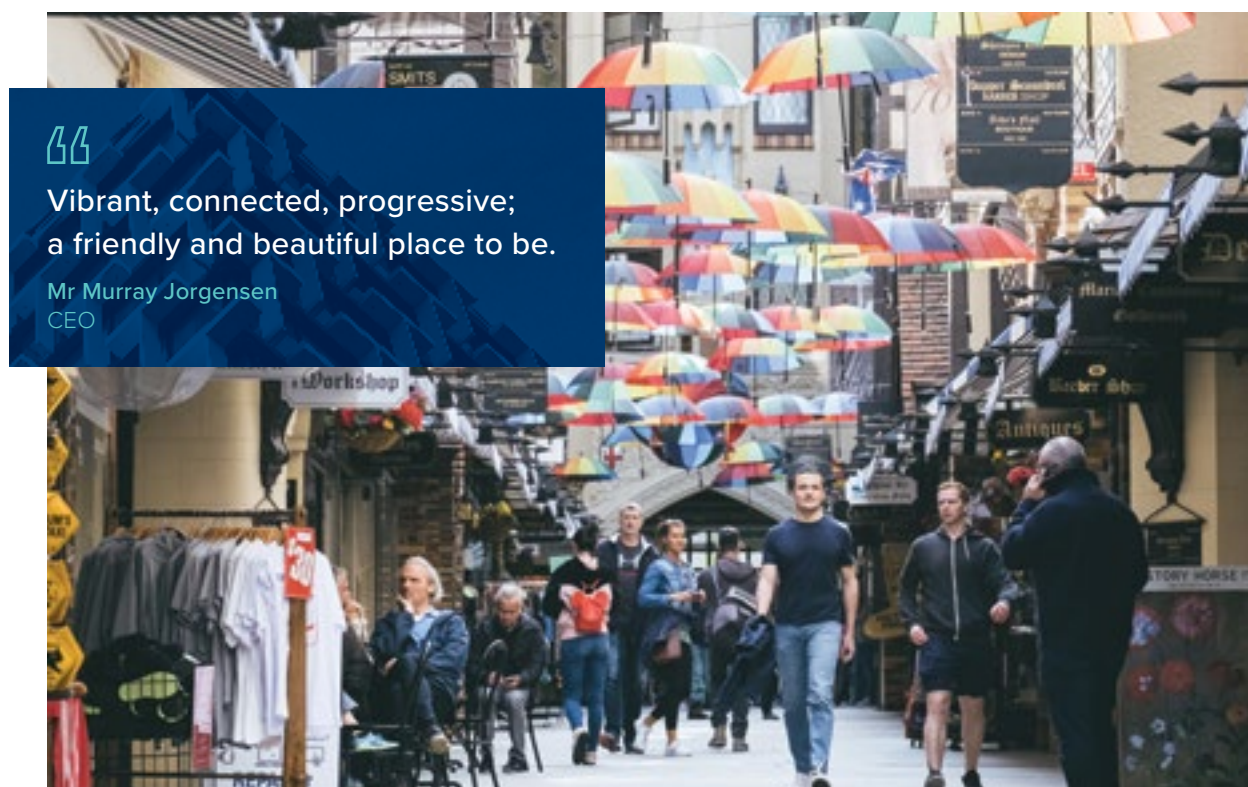


Photo: 2WinG2/Shutterstock.com

Special features of the City

The City is unusual among local governments in Western Australia in several respects. The bulk of the people it serves do not live in the City and are not electors. They include people who work in the City but live elsewhere, business operators and visitors.



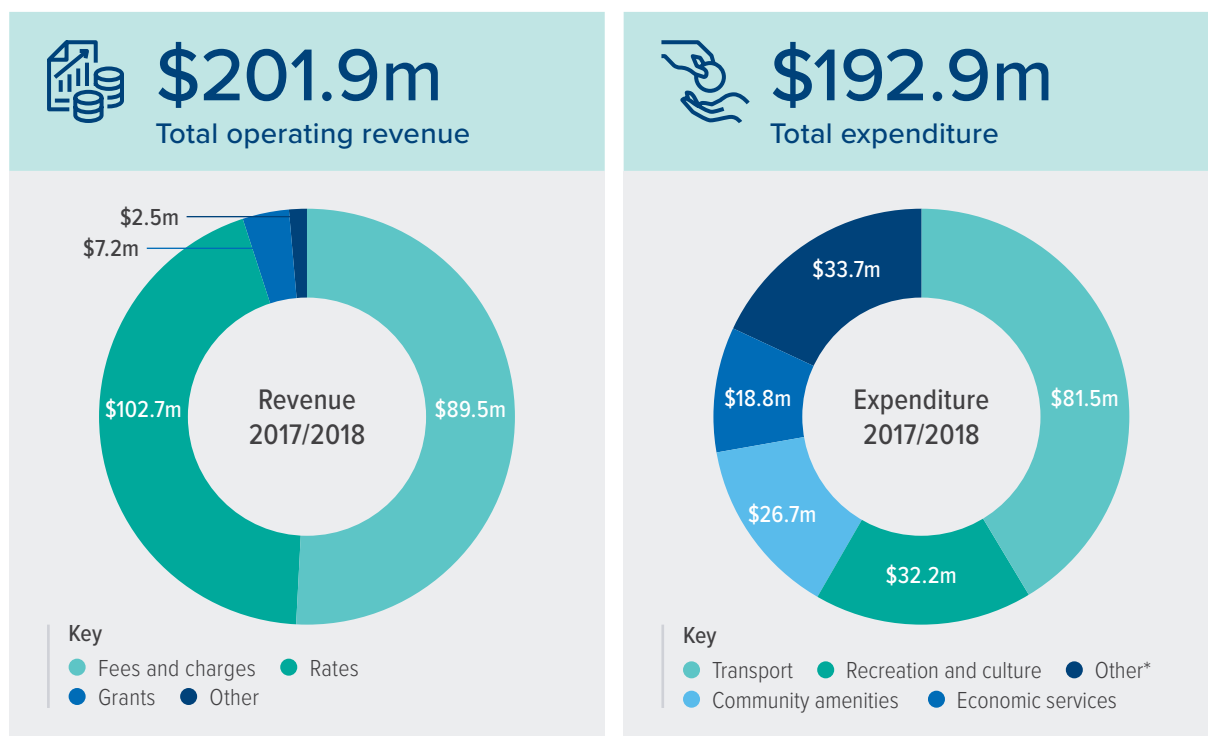
In 2018, over 12,000 businesses were located within the City.²⁵ These ranged from small family businesses to multi-national corporations. As illustrated by the statistics above, the daytime population is approximately seven and a half times the size of the resident population and 14 times the number of electors.

There are several other respects in which the City is unique among local governments in Western Australia, including:

- It has its own Act of Parliament, the CoP Act, which:
 - recognises the special role and responsibilities the City has as a capital city local government (preamble and section 4);
 - sets out 10 “objects” for the City (section 8);
 - states that the City of Perth Council (Council) will consist of a mayor who will be called the Lord Mayor and eight councillors (section 9); and
 - sets out the role of the Lord Mayor (section 10).
- It has a major source of its revenue from its own business, City of Perth Parking (CPP). As a result, the City raises more revenue from fees and charges than it does from rates.
- It is the only local government in Western Australia which receives enough high-value development applications to have its own Local Development Assessment Panel, administered by the Department of Planning, Lands and Heritage. This Panel assesses all development applications for the Perth City area that are valued over \$20 million. It may also assess applications valued between \$2 million and \$20 million.
- The majority of the services the City provides are discretionary, rather than prescribed by legislation.²⁶

Finances and workforce

In the 2017/2018 financial year, the City had the second highest operating revenue and third highest operating expenditure of any local government in the State. Of the aggregate operating revenue and expenditure reported by local governments in Western Australia that year, the City accounted for approximately five per cent.²⁷ The City's revenue and expenditure are further examined in **Chapter 2.3.3 – Financial management and planning**.



The City raised more revenue from fees and charges than any other Western Australian local government during the 2017/2018 financial year. It accounted for over 10 per cent of the aggregate fees and charges revenue raised by local governments in the State. This was due to the substantial income generated from parking fees through the CPP.

The City also had the highest employee costs of any local government in the State and the third highest number of Full Time Equivalent (FTE) positions. In comparison, the City of Stirling, a similarly classified “*Band 1*” local government, had the highest number of FTE positions but had the third highest employee costs. The City of Stirling had a total population of 220,249 residents, which was larger than the City's daytime and workforce populations, providing services to more than eight times as many residents and 12 times as many electors than the City did.

Employees

735

Employees

74.7m

Employee costs

Assets and cash reserves

\$100m

Cash reserves

\$1.2bn

Total assets

Services provided by the City of Perth

In 2017, Deloitte undertook an independent “*Organisational Capability and Compliance Assessment*” (Deloitte Report) of the City. The Deloitte Report identified 76 different services provided by the City, of which some are statutory services required by legislation and others are discretionary. (Table 1.1)²⁸:

Table 1.1: Services provided by the City of Perth.



 17 Statutory services	 59 Discretionary services
<p>The City is subject to the same legislative requirements as other local governments in Western Australia to provide certain services. These are under the LG Act and other legislation. However, the City must also provide services in accordance with legislation that specifically applies to the City and the Perth City area, such as the <i>Perth Parking Management Act 1999</i>.</p> <p>Examples of the City’s statutory services include:</p> <ul style="list-style-type: none"> • street cleaning; • pest control; • residential kerbside waste collections; • inspections of public buildings and lodging houses; and • enforcement of planning and building controls. 	<p>The CoP Act prescribes the objects of the City, but not the services it should provide to fulfil them.</p> <p>Examples of the City’s discretionary services include:</p> <ul style="list-style-type: none"> • community amenities – street seats, memorials and rest centres; • recreational services – parks, donations and Christmas decorations; • transport services – footpaths, street lighting and traffic surveys; • economic services – tourism and promotions; • education and welfare services – childcare centres and aged and disabled welfare administration; • law, order, public and safety services; and • property services.²⁹



Photo: [istockphoto.com/au/portfolio/eagiven](https://www.istockphoto.com/au/portfolio/eagiven)

Some of the discretionary services provided by the City are in response to community needs. Examples of these are services relating to homelessness, or to the provision of cycle paths. Other discretionary services, such as the City's annual Skyworks event may be beneficial to the wider community, but also have associated costs if the City is allocating its resources away from other functions.

Specific examples of discretionary services provided by the City during the Inquiry period include:

- Sponsorships and partnerships for events such as the Perth Fashion Festival and the CowParade.
- Delivery of major public events such as Skyworks.
- Business support services and grants.
- Social media accounts and campaigns.
- Homeless Connect Perth.
- Twilight Hawkers Markets.
- Northbridge Piazza.
- City of Perth Library.
- Citiplace community centre and Citiplace rest centre.
- Childcare centre.

Serving as the capital city local government

Local governments are established to serve local communities. As the capital city of Western Australia, the City has the responsibility for providing services for all people in its district, and, to some extent, for the wider population of Western Australia.

The stakeholders of the City expect it to provide discretionary services and facilities which are at least equal to those of other Perth metropolitan local governments and other capital cities. Services and facilities are expected to be designed and maintained to a standard which reflects its status and effectively meet the demands of the citizens of, and visitors to, the State.

The City is required to fulfil its statutory duties with respect to the large volume of social and economic activities which occur in it. For example, the City is responsible for enforcing the *Public Health Act 2016* and *Food Act 2008* across several of the Perth metropolitan area's largest nightlife and dining precincts.

History of the City of Perth

In 1842, an Act established the Perth Town Trust. This became the Perth City Council in 1858. The first meeting of the Council was held on 10 December 1858.

The title of Mayor was first conferred on 8 September 1880. In 1929, the status of that position was changed to Lord Mayor.

In October 1993, the State Government announced the split of the City of Perth and the creation of three other towns. As part of this process, the State Government passed the *City of Perth Restructuring Act 1993*.

The restructure divided the then City of Perth into four local government areas:

- the City of Perth, as a new Central Business District based capital city local government; and
- the Town of Cambridge, the Town of Victoria Park and the Town (now City) of Vincent, as new local governments for the residential communities.

1995 restructure report

The restructure was overseen by a Commission and, in May 1995, two consultants, Mr R F Barfus and Mr R G Bowe, prepared a report on the restructuring process and the work of the Commission.³⁰

In their report the consultants said “... we are aware that one of the Government’s major objectives in restructuring the City of Perth was to bring local government closer to the people in acknowledgement of its social and political role”.



As part of their report, the consultants discussed a review (by DMR Group) of the functions of the City of Perth before it was divided. The consultants summarised some of the findings of the review and said “... *DMR’s operational assessment of the City of Perth highlighted a number of significant deficiencies and inefficiencies*”. These included.

“significant physical and logical demarcation between departments and work areas leading to a disjointed structure ...”;

“the use of technology to support business processes and the management of information within the organisation was ineffective”;

“little or no forward planning and only minimal focus on performance measurement”;

“the system of determining the costs of services was ineffective and misleading”;

“processes and service provision were not based around outcomes or end results”; and

“serious efficiency shortcomings in administrative practices ... bottlenecks and inefficiencies due to artificial departmental boundaries, poor communication mechanisms and lack of appropriate technological support ... Major internal processes such as procurement, preparation and management of the budget were found to be unwieldy, driven by out of date business rules and lacking in co-ordination”.

The consultants drew the following conclusions about how things could be improved:

“Transformation can only occur when there is a dramatic change in attitude across the whole organisation. ... Everyone from managers to labourers must participate in the change of culture”. ...

Cultural change must be continuous and supported by:

- written and oral articulation;*
- training for all new employees entering the workforce;*
- ongoing training for all employees; and*
- relevant training for elected councillors”.*

The Inquiry notes that many of the shortcomings in the functioning of the City identified by Mr Barfus and Mr Bowe in their report in 1995 are similar to some of the shortcomings identified more recently by the Inquiry.

Legislation and structure of the City of Perth

The CoP Act establishes the City as the capital of Western Australia.³¹ It acknowledges and enhances the significant roles and responsibilities the City has in fulfilling this role.

The City's functions are extended by the CoP Act beyond those mandated by the LG Act and other legislation which is common to all local governments. The City is bound by the LG Act and its regulations, except to the extent of any inconsistency with the CoP Act.

Section 8 of the CoP Act sets out the ten objects of the City. Council is required to consider these objects when making decisions, although the Act does not specify how the City is to fulfil them, other than in saying that the role of a council member includes:

*“to have due regard to the objects of the City of Perth in informing the City of Perth Council’s work and in the making of decisions by the Council”.*³²

The objects include a wide range of functions and services that are not required or generally expected of other local governments. For example:

*“to maintain and strengthen the local, national and international reputation of the Perth metropolitan area as an innovative, sustainable and vibrant global city that attracts and welcomes everyone”.*³³

The Council

The CoP Act prescribes that the Council will consist of a Lord Mayor and eight councillors, and that the Lord Mayor must be directly elected by electors, rather than by the councillors.³⁴ The Council elects one of its members to hold the position of Deputy Lord Mayor.³⁵

It prescribes, in sections 10 and 11, the special additional roles and responsibilities that the Lord Mayor and the councillors have.

Section 11(2) sets out the role of all council members. The first four roles are:

- “(a) to represent the interests of electors, ratepayers and residents of the City of Perth;*
- (b) to serve the current and future interests of the community in the City of Perth;*
- (c) to provide leadership and guidance to the community in the City of Perth;*
- (d) to facilitate communication between the community and the City of Perth Council; ...”.*

Council and committee meetings

Ordinary council meetings are held every month except January. Council meetings are held in the Council Chambers located on level nine of the City's administration building, known as Council House.

During the Inquiry period the Council was supported by committees, each of which operated according to its terms of reference. These were:

- Audit and Risk Committee;
- CEO Performance Review Committee;
- Design Advisory Committee;
- Finance and Administration Committee;
- Marketing, Sponsorship and International Engagement Committee;
- Planning Committee; and
- Works and Urban Development Committee.

Council members were appointed to these committees at a Special Council Meeting held soon after each local government election. During the Inquiry period these meetings were held on:

- 22 October 2015; and
- 24 October 2017.

Each committee had three council members as full members and two council members as deputies, with the following exceptions:

- All council members were appointed to the CEO Performance Review Committee on 24 October 2017.
- The Design Advisory Committee did not include council members.

The primary role of the committees was to consider matters relevant to their functions and make recommendations to the Council. Committees could make decisions on Council's behalf with delegated authority.

Council elections

Ordinary elections for councillors took place in October every two years. At each biennial election, half the City councillors were elected for terms of four years. Election of the Lord Mayor took place in October every four years. Elections were typically held by postal vote.

Once elected, each councillor made a declaration that they *"will duly, faithfully, honestly and with integrity, fulfil the duties of the office"*.³⁶

Eligible voters consist of residents in the City and people who, or companies which, own or occupy property within the City. This includes leaseholders.

Voter eligibility is not as simple as one person one vote. For example, where a company owns or leases property, two people can be nominated by an authorised officer of the company to vote on the company's behalf. Provided they are on the State or Commonwealth electoral roll, those two nominees do not have to be affiliated with or connected to the company. Nor do they have to reside or work in Perth.

Unlike Federal and State Government elections, it is not compulsory to vote in local government elections, and voter turnout is often low.

Details of Council elections during the Inquiry period are given in **Chapter 2.2.1: Local government elections** of this Report.

Council member entitlements

Allowances for the Lord Mayor and councillors are legislated under the LG Act,³⁷ and are determined by the Salaries and Allowances Tribunal.

The Lord Mayor receives an annual allowance for fulfilling the duties of the position. Councillors and the Lord Mayor, receive attendance fees for Council and committee meetings and an allowance for a variety of expenses related to their official role. This can include attendance at relevant conferences and forums and clothing and dry-cleaning.

During the period examined by this Inquiry, there was also an additional allowance of up to \$12,000.00 that permitted councillors, and their guests, to use the Council dining room without charge. Council policies limited the use of this facility to official functions and to enable council members “... to meet their unique civic responsibilities”.³⁸

The Administration

The Administration of the City consisted of between 720 employees at 30 June 2015 and 765 employees at 30 June 2018.³⁹ It also relied on volunteers and contractors. The organisation was headed by a CEO and, during the period considered by this Inquiry, five directors. Together, the CEO and directors were known as the Executive Leadership Group.

The directorates consisted of a number of smaller business units. Each was led by a manager who reported to their Director.

Organisational restructure 2015

On 30 April 2015, Council endorsed ‘*The New City of Perth Organisational Structure*’. The restructuring process was initiated by Mr Gary Stevenson, CEO at that time. It was continued by Mr Martin Mileham as the Acting CEO, following the termination of Mr Stevenson's employment on 20 January 2016.

The restructure increased the City's directorates from four to five with the addition of the Economic Development and Activation Directorate.

The City's business units increased from 20 to 30. During the restructure, managers were in some cases left responsible for determining the structures and roles of their business units. This resulted in duplication of services and confusion as to who was responsible for what.

The City experienced high staff turnover following the restructure.

Between April 2015 and February 2017, there were 152 employee departures, and 158 permanent and fixed-term employees were appointed. In July 2017, the Executive Support Office was replaced by the Office of the Chief Executive.

The structure of the Administration at the end of the Inquiry's period is contained in Figure 1.4.

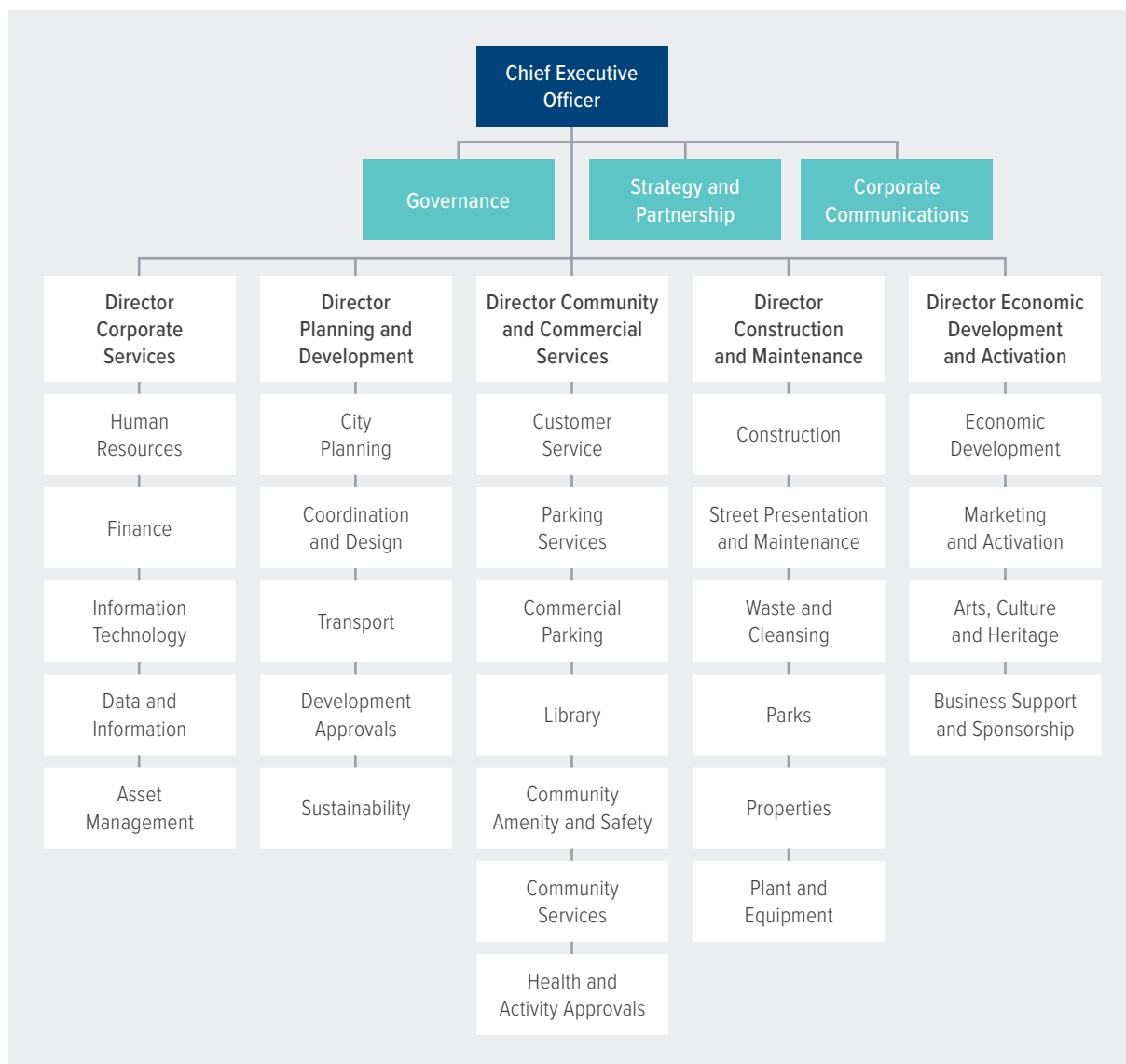


Figure 1.4: City of Perth organisational chart as at 5 June 2018.

1.1.3 About the Inquiry

On 2 March 2018, the Minister for Local Government; Heritage; Culture and the Arts, Hon David Templeman MLA (Minister) announced the suspension of the Council of the City of Perth (City).

An Inquiry into the City of Perth was established in response to concerns by the Minister, subsequent to the suspension of the City of Perth Council (Council).

At the announcement of the suspension of the Council, three Commissioners were appointed to manage the affairs of the City, Mr Eric Lumsden AM, Ms Gaye McMath and Mr Andrew Hammond^b (pictured left to right).



On that occasion the Minister stated that:



The situation at the City of Perth has become untenable and I have formed a view that if I do not intervene I am failing in my responsibilities as Minister and not fulfilling my obligations under the Local Government Act ... I am seeking to restore confidence in the people of Perth of the City's ability to provide good governance for its community.⁴⁰

Appointment of an Inquiry Panel

On 24 April 2018, pursuant to section 8.16 of the *Local Government Act 1995* (LG Act), the Minister appointed “an Inquiry Panel consisting of one person, Anthony Power, Legal Practitioner, to inquire into and report on the aspects, operations and affairs of the City of Perth”. The appointment of the Inquiry Panel (Inquiry), which had the powers of a State Royal Commission under the *Royal Commissions Act 1968* (RC Act), took effect on 1 May 2018.^c



The powers of an inquiry, pursuant to the *Royal Commissions Act 1968*, are set out in **Chapter 1.1.4: Procedural fairness**.

^b In accordance with section 2.38(1) of the *Local Government Act 1995*, the role of a Commissioner is “... to exercise the powers and discharge the duties of the council of the local government and its [Lord Mayor] ...”.

^c The powers of an inquiry, pursuant to the *Royal Commissions Act 1968*, are set out in Chapter 1.1.4: Procedural Fairness of this Report.

Section 8.17 of the LG Act provides that the Notice of Appointment is to set out the nature of the inquiry to be conducted, the functions of the Inquiry and any limit imposed on the duration of the Inquiry. In other words, the Notice of Appointment, in effect, served as the Inquiry's Terms of Reference, and informed the work of the Inquiry, including procedural fairness obligations and how those obligations were discharged.^d For the purpose of this Report, the Notice of Appointment will be referred to as the *Terms of Reference*.

In the case of this Inquiry, the Terms of Reference set out the nature of the Inquiry to be conducted (part A), the functions of the Inquiry Panel (part B) and the duration of the Inquiry (part C) (Figure 1.5).⁴¹

In recognition of the complexity, and extensive number and importance of issues being investigated by the Inquiry, the duration of the Inquiry was extended on two occasions. The Inquiry commenced on 1 May 2018 and was initially due to report to the Minister by 2 May 2019. On 5 December 2018, the Minister announced an extension to the reporting date for the Inquiry to 20 January 2020. On 10 December 2019, the Minister announced an extension until 30 April 2020.⁴² On 30 April 2020, the Minister announced a further extension until 30 June 2020 due to delays caused by the COVID-19 pandemic.⁴³ At that time, the Minister stated:

"... an extension to the Inquiry ... [has been granted] ... following delays caused by COVID 19. Since its appointment on April 24, 2018 the inquiry has undertaken a significant number of public and private hearings into serious matters of governance and administration ... [the Inquiry] has been extensive with more than 100 witnesses examined and more than 20 different lines of enquiry [investigations] pursued".⁴⁴

The Terms of Reference at Part A.1 provide that the Inquiry has the responsibility for inquiring into and reporting on those aspects, operations and affairs of the City (that is, of both the Council and the Administration) during the period 1 October 2015 to 1 March 2018 inclusive (Inquiry period).

In doing so, this Report provides the Minister with an opinion as to whether there was a failure to provide "*good government*" for the persons of the City during the Inquiry period and the prospect of it in the future.

However, it should be noted that on 30 January 2020, the Governor ordered that the four "*remaining offices of elected members of the council of the City of Perth*" be declared vacant and that the three Commissioners would hold office until 17 October 2020, the date for a local government election to fill the vacant offices.^e

^d The duty to afford procedural fairness was an extremely complex, comprehensive and lengthy undertaking. The Inquiry has been cognisant of its procedural fairness obligations since the commencement of the Inquiry on 1 May 2018 and has taken steps throughout the period of the Inquiry to discharge those obligations.

^e The four "*remaining offices*" were those held by suspended Councillors Barton, Harley, Hasluck and Limnios.

Local Government Act 1995

Notice of Appointment of an Inquiry Panel (Section 8.16)

Pursuant to Section 8.16 of the *Local Government Act 1995 (the Act)*, I hereby appoint an Inquiry Panel consisting of one person, Anthony Power, Legal Practitioner, to inquire into and report on the aspects, operations and affairs of the City of Perth in accordance with the terms as to the scope and duration of that inquiry set out hereunder:

A Nature of the Inquiry to be Conducted

1. The Inquiry Panel is to inquire into and report on those aspects, operations and affairs of the City of Perth (including of the Council and the Administration) during the period between 1 October 2015 and 1 March 2018 inclusive, which may be necessary, in order to determine:

- (i) whether there has been a failure to provide for the good government of persons in the City of Perth's district;
- (ii) the prospect of such good government being provided in the future (including by reference to whether the Council and Administration has the ability to, and is likely to, do so); and
- (iii) any steps which may need to be taken to ensure that such good government does happen in the future.

2. The Inquiry Panel may inquire into and report on a period, or periods, before 1 October 2015, if it considers that to be necessary, or that it may be necessary, for the purpose of properly discharging its function under paragraph 1 above, and placing the matters inquired into within a relevant context in the circumstances.

3. The Inquiry Panel is (and without limiting the generality of paragraph 1 above) to give due consideration to, and inquire into and report on, the following matters:

- i. whether there was improper or undue influence by any member, as defined by section 1.4 of the Act (**member**) of the Council of the City of Perth in administrative tasks, such as recruitment, employee management and grants administration;
- ii. whether any member engaged in improper or unlawful conduct in relation to the performance by the Council or the members of any of their functions and obligations;
- iii. the relationships between the Council, members, the Chief Executive Officer and other employees of the City and the effect of those relationships on the performance of the City's functions and obligations;

Figure 1.5: Notice of Appointment of an Inquiry Panel, 24 April 2018.

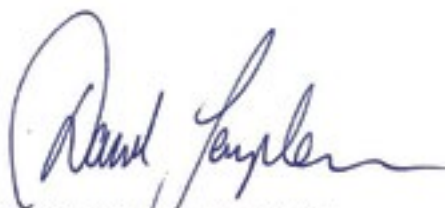
- iv. sponsorship arrangements between organisations and the City and the acceptance of gifts in the form of tickets to events by members from those organisations;
- v. governance practices, including adherence to the financial interest provisions of the *Local Government Act 1995*;
- vi. adequacy and competency of Council decision making.

B. Functions of the Inquiry Panel

The functions of the Inquiry Panel are as set out in A. above, and for the avoidance of doubt, include to inquire into, report on, and then make the recommendations in relation to the matters the subject of the Inquiry that it considers appropriate (in accordance with its duty under section 8.22 of the *Local Government Act 1995*).

C. Duration of Inquiry

The Inquiry is to commence on 1 May 2018 and shall present its report and recommendations no later than 2 May 2019.



HON DAVID TEMPLEMAN MLA
MINISTER FOR LOCAL GOVERNMENT;
HERITAGE; CULTURE AND THE ARTS

DATE: 24 APR 2018

Events leading to the suspension of Council

This Report examines, in detail, events affecting the Council and the Administration of the City during the Inquiry period. Those events led to the City becoming dysfunctional and, ultimately, to the suspension of the Council.

Some of the factors which contributed to that dysfunction were as follows:

- The Council was factionalised. The Lord Mayor, Ms Lisa Scaffidi, led a majority “*Team*” until the Council election in October 2017.
- A lack of harmony and co-operation developed within the Executive Leadership Group (ELG), which included the Chief Executive Officer (CEO) and five directors.^f
- Some council members used their positions to advance their own personal interests, or those of family and associates.
- Some council members misused their official entitlements.
- Some council members failed to make proper declarations of conflicts of interest, gifts and/or sources of income.
- Some council members became involved in City administrative matters, which were not legitimately their concern, including human resources matters.
- The CEO was unable to prevent council members interfering in administrative matters.
 - Some council members manipulated election processes.
 - Some procurements were not properly handled by City employees.
 - Some complaints and allegations were not properly dealt with by the City.



^f The five directors were: Director, Community and Commercial Services; Director, Construction and Maintenance; Director, Corporate Services; Director, Economic Development and Activation; and Director, Planning and Development.

Key events

On 2 March 2018, the Minister for Local Government; Heritage; Culture and the Arts, Hon David Templeman MLA announced the suspension of the Council of the City of Perth. This timeline sets out the key events leading to the suspension of the Council.

2015



30 April

Council endorsed an organisational restructure programme called *The New City of Perth* initiated by the Chief Executive Officer (CEO), Mr Gary Stevenson.



26 August

The CEO, Mr Stevenson referred a *Report on Gifted Travel* to the Corruption and Crime Commission (CCC).



5 October

The CCC issued a *Report on an Investigation into Acceptance and Disclosure of Gifts and Travel Contributions by the Lord Mayor of the City of Perth*.



17 October

Ordinary Local Government election.



Elected Lord Mayor

Ms Lisa Scaffidi

Elected Councillors



Mr Jim
Adamos



Ms Janet
Davidson



Ms Lily
Chen



Dr Jemma
Green



22 October

Ordinary Council Meeting.



Elected Deputy Lord Mayor

Mr James Limnios

2016



14 January

Mr Stevenson provided Ms Scaffidi with his *Report on Gifted Travel*.



20 January

Special Council Meeting.



CEO employment terminated

Mr Gary Stevenson



Appointed Acting CEO

Mr Martin Mileham



4 March

The *City of Perth Act 2016* came into operation.



11 May

A report by the Department of Local Government, Sport and Cultural Industries (Department) into receipt of gifts and travel by Ms Scaffidi found that she had committed 44 breaches of the LG Act for failing to disclose gifts and contributions to travel, and one breach for failing to lodge an annual return by the required date.



3 October

Mr Mileham commenced as CEO of the City on a five-year contract.



31 October

The Local Government Standards Panel (LGSP) found that council members Ms Scaffidi, Ms Davidson and Ms Judy McEvoy breached regulations relating to a vote of no confidence against the Deputy Lord Mayor, Mr Limnios, at a Council Meeting on 17 May 2016.



It is now untenable for the council to continue. This is a serious matter and the recent events including those over the last eight days has confirmed to me that a line needs to be drawn in the sand.

Hon David Templeman MLA

2017



9 May

State Administrative Tribunal (SAT) found that Ms Scaffidi “committed 45 serious breaches of her reporting obligations under the Local Government Act 1995”.



4–7 September

SAT disqualified Ms Scaffidi from office for 18 months from midnight 7 September 2017. Ms Scaffidi appealed to the Supreme Court. The Court of Appeal stayed the SAT disqualification of Ms Scaffidi until the determination of her appeal. Ms Scaffidi stood aside as Lord Mayor pending the decision.



21 October

Ordinary Local Government election.

Elected Councillors



Mr Steve Hasluck



Ms Lexi Barton



Mr James Limnios



Mr Reece Harley



24 October

Ordinary Council Meeting.



Elected Deputy Lord Mayor
Dr Jemma Green



9 November and 28 November

Dr Green met with representatives from Herbert Smith Freehills Lawyers (HSF) and provided information containing allegations that Mr Mileham and Ms Scaffidi had offered an inducement to Mr Adrian Fini, a property developer. The HSF investigation was called ‘Project Percy’.



1 December

The Court of Appeal dismissed 26 of the 45 breaches alleged against Ms Scaffidi, and found that 19 breaches were established.

2018



8 January

Ms Scaffidi resumed the duties of Lord Mayor.



An Authorised Inquiry was commenced by the Department into gifts and benefits received by council members at the City.



29 January

HSF provided its investigation report on ‘Project Percy’ to the City.



12 February

The CEO, Mr Mileham, supported by the Executive Leadership Group (Group), wrote to the Director General of the Department, expressing concerns about dysfunction in the City, including council members’ involvement in administration of the City.



16 February

Mr Mileham took personal leave, citing health issues caused by the Council.



Appointed Acting CEO
Mr Robert Mianich



22 February

Mr Mianich sent complaints about council members, Dr Green and Mr Harley to the LGSP alleging interference in the administration of the City.



24 February

Mr Mianich was requested by a group of council members to convene a Special Council Meeting on 27 February 2018 for the purpose of changing Council policy so that the Council could appoint an Acting CEO.



26 February

Mr Mianich took personal leave for health reasons and also said “... the environment at work is not safe at present”.



27 February

Three directors activated the City’s Crisis Management Plan.



Special Council Meeting.
Appointed Acting CEO
Ms Annaliese Battista

Good government

The Terms of Reference at Part A.1 for this Inquiry require it to determine, among other things:

- “i. whether there has been a failure to **provide for the good government** of persons in the City of Perth’s district;*
- ii the **prospect of such good government** being provided in the future (including by reference to whether the Council and Administration has the ability to, and is likely to, do so); and*
- iii any steps which may need to be taken to **ensure that such good government does happen** in the future”. [emphasis added]*

The LG Act, at section 3.1(1) states:

*“The general function of a local government is to provide for the **good government** of persons in its district”.*

Section 8 of the CoP Act states:

“1. The objects of the City of Perth are as follows –
*a) to provide for the **good government** of persons in the City of Perth, including residents, ratepayers and visitors”. [emphasis added]*

Clearly, good government is a primary responsibility of the City.

“Good government” requires that government bodies meet their legitimate objectives in a manner that is honest, fair, accountable and transparent.

This means that for decisions taken by the Council, and actions taken by the Administration of the City, the overriding interest must be the public interest and the public good, and not personal benefit or allegiance, fear or favour.

Some processes undertaken by local governments can hold a risk to good government. These include electoral processes; procurement processes, especially those involving tenders and contracts; recruitment of employees; allocations of public money through sponsorships and grants; and planning and development decisions. This Report will include examples of these and other processes where the decisions and actions of the Council and employees of the City did not provide good government for the City.

Nature of this Inquiry

The nature of this Inquiry, as set out in the Terms of Reference, informed the proper construction of the statutory powers invested in it. In broad terms, those powers are available when their exercise is consistent with the nature of the Inquiry to be conducted.

An Inquiry conducted under sections 8.16 and 8.17 of the LG Act, like a Royal Commission, is quintessentially in the nature of a “*fishing expedition*”.⁴⁵ An Inquiry conducts a thorough investigation into the matters in its Terms of Reference and unlike a court, does not determine issues between parties.⁴⁶ It is broader than and different to an authorised departmental inquiry under section 8.3 of the LG Act.⁴⁷

In this context, the concept of relevance is much broader than that which is applicable in litigation between parties.⁴⁸ This means that an Inquiry of this type is likely to be wide ranging in its investigation. An Inquiry is entitled to exercise its good sense and judgement to determine what avenues of inquiry, within the Terms of Reference, it believes in good faith will be of assistance to it.⁴⁹

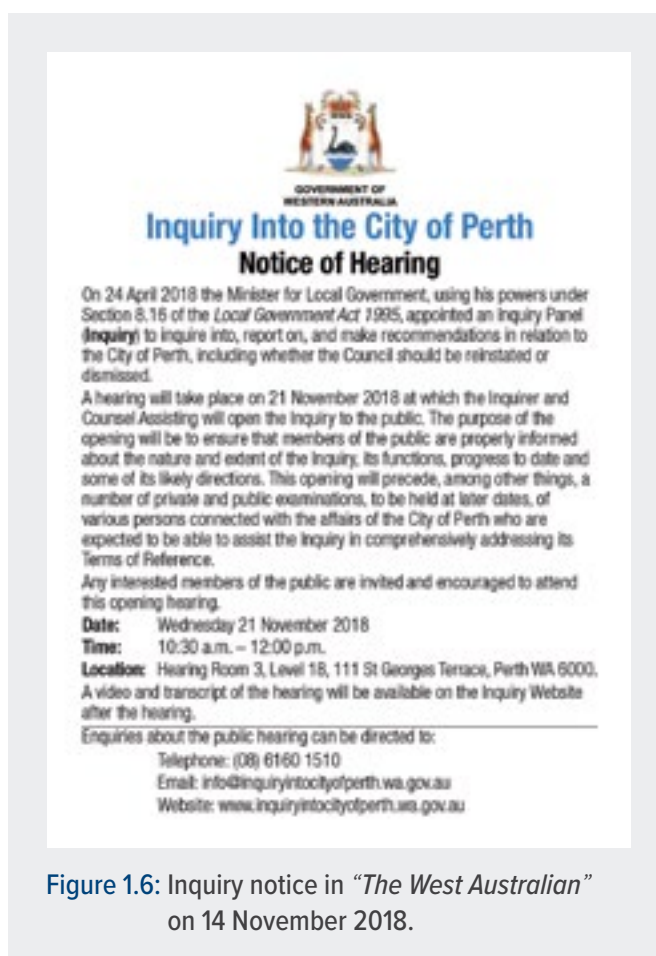
Section 8.20 extends the parallels with Royal Commissions. It provides that for the purposes of an inquiry and report, an Inquiry has the powers of a Royal Commission and that if the Inquiry consists of one person, that person has the powers of the chairman of a Royal Commission, whether under the RC Act or otherwise. The section also provides that the provisions of the RC Act have effect as if enacted in the LG Act, modified as required and in terms applicable to the inquiry and report by the Inquiry.⁵⁰

Actions taken by the Inquiry

The Inquiry was appointed on 24 April 2018, with the appointment taking effect on 1 May 2018.

On 29 June 2018, the Inquiry issued a media release inviting submissions and advising that all submissions would be considered and treated confidentially.

On 14 November 2018, the Inquiry published a notice (Figure 1.46) in “*The West Australian*” newspaper inviting interested members of the public to attend the opening hearing of the Inquiry on 21 November 2018. The notice stated that “*the Inquirer and Counsel Assisting will open the Inquiry to the public ... to ensure that members of the public are properly informed about the nature and extent of the Inquiry, its functions, progress to date and some of its likely directions*”.



On 21 November 2018, the Inquiry was opened at a public hearing held by the Inquiry Panel, Mr Anthony (Tony) Power, and Counsel Assisting to the Inquiry. At that hearing, the Inquiry further “*invited anyone who believes they have insights or information about the City relevant to its Terms of Reference*” to make submissions. On that day, the Inquiry also issued a media release which was followed by a notice in the newspaper on 24 November 2018 in “*The Weekend West*” newspaper.

Over the period 21 November 2018 to 30 June 2020, the Inquiry sat for 125 hearing days, the majority of which occurred between December 2018 and October 2019. The Inquiry conducted private hearings during the period to 9 March 2020, a total of 86.5 days. Public hearings were conducted on 21 November 2018 (opening), 5 August 2019 to 10 October 2019 (block hearings), and 30 June 2020 (closing). A total of 38.5 days.

The inquiry heard evidence in private where it considered it was necessary and appropriate to do so.

During the period 22 November 2019 to 3 April 2020, the Inquiry conducted a process to ensure that procedural fairness was afforded to everyone entitled to it. Inspections of documents and transcripts by persons who faced potential adverse findings and their legal representatives commenced on 4 December 2019 and continued until 3 April 2020.⁵¹

Powers of the Inquiry

The Inquiry exercised the powers under the RC Act. In particular, it had the power to:

- compel public authorities or public officers to produce statements of information (section 8A);
- serve a written notice on a person requiring that person to produce documents, books, writings or things specified in the notice (section 8B); and
- summons a person and require that person to give evidence or produce any documents, writings or things in his or her custody or control (section 9).

Further details of the actions taken under these sections of the RC Act are provided in **Chapter 1.1.4: Procedural fairness** and **Part 4.1: The Inquiry**.

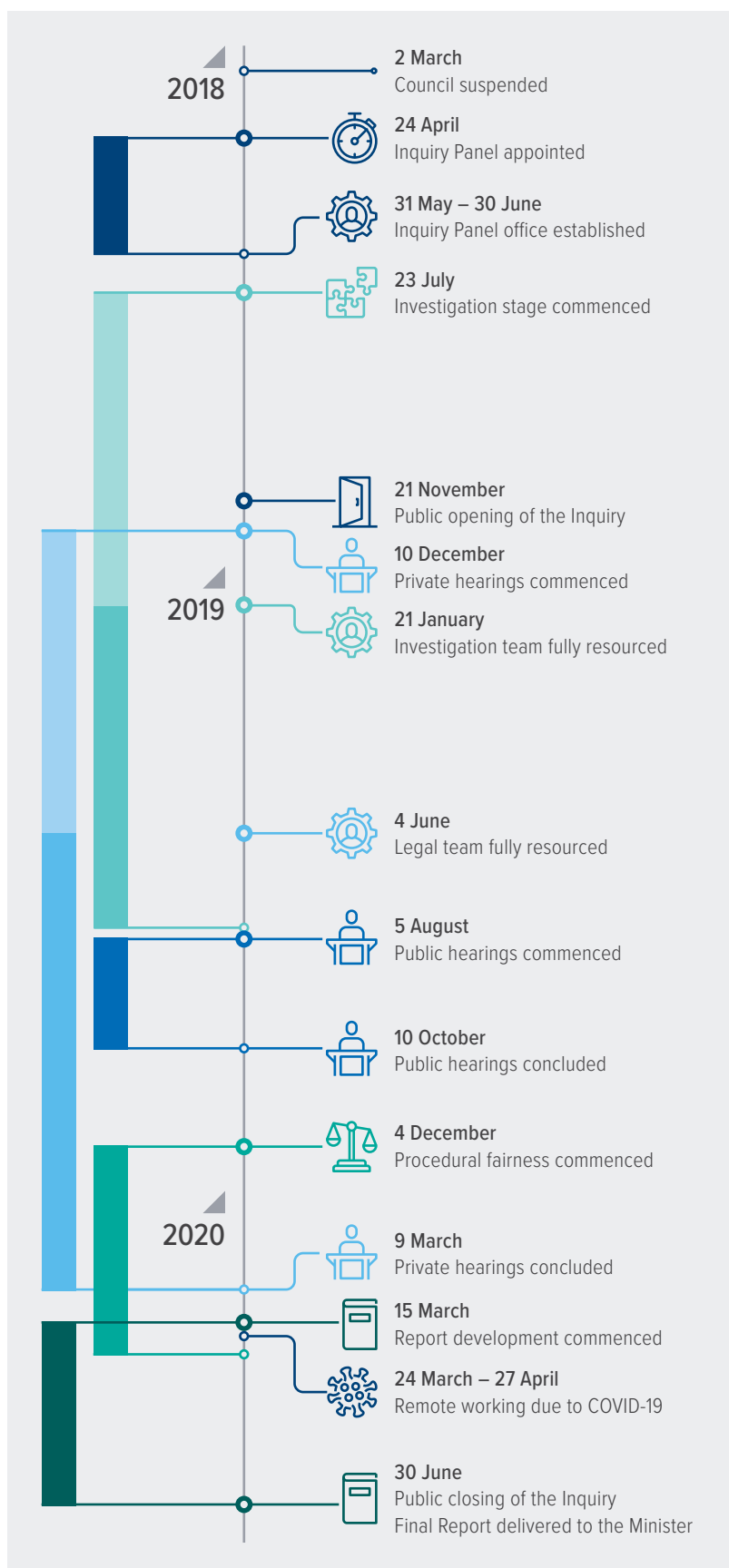
Inquiry phases

The Inquiry was divided into four phases. Each phase supports and informs the next. A number of phases ran concurrently, for example, the Investigation Phase and the Hearing Phase.



Inquiry timeline

Between 24 April 2018 and 30 June 2020, the Inquiry investigated, heard and reported on the governance of the City of Perth.



As an inquiry into what many would regard as the flagship local government in this State, it is not surprising that it has been the largest, most complex and most significant Inquiry of its kind.

Mr Anthony (Tony) Power
Inquiry Panel



Administrative Phase

The first phase included the recruitment of core executive administrative and investigative officers and the establishment of record-keeping procedures.

Investigation Phase

The investigation by the Inquiry can be divided into two stages:

- **Discovery**
(including discovery interviews); and
- **Investigation**
(initial and full investigations).

It became apparent to the Inquiry during the Discovery stage that there were issues relating to all parts of the City which required investigation, not simply the actions of some council members, as appears to have been the case for many previous local government inquiries.

Consequently, the Inquiry collected a large amount of information about a wide range of issues. This in turn meant that during the Investigation stage, it was necessary to prioritise the issues which would be investigated in greater depth in the next stage. In order to do this, at

the end of the Discovery and Investigation stages, reports were produced by investigation officers which analysed the issues which had emerged and the evidence obtained. These were then used by the Inquiry, assisted by legal and investigation officers, to determine which issues should proceed to the next phase, given the time and resources available.

The Terms of Reference make it clear that the Inquiry had a wide range of issues to examine, ranging from individual misconduct to systemic failings. This was a much wider role than given to specific statutory bodies, such as the CCC or Public Sector Commission (PSC).

The Inquiry had to remain flexible, in the sense that if at any stage new evidence emerged relating to issues which were not being investigated, that evidence was considered, taken into account and acted on, where necessary.

Discovery

The purpose of the Discovery was to enable the Inquiry to identify relevant issues and evidence. During this time submissions from the public were received and assessed. This process ran for three months from June 2018 to August 2018.

49

Preliminary
investigations



60+

Submissions
received



121

Notices
served



4.3m

Records
collected



37

Discovery
interviews



30

Investigations
prepared for
hearings



Notices to Produce

One investigative tool employed throughout the Inquiry were notices under section 8B of the RC Act, requiring a person to produce documents or other things to the Inquiry. These notices were used to obtain documents, electronic records and electronic devices, including mobile telephones and computers.

During the Discovery stage, Notices to Produce documents were served on:

- the City;
- the Department;
- the PSC;
- council members;
- the CEO of the City and other members of the ELG; and
- certain former employees of the City who wished to provide information to the Inquiry, but were unable to do so because of confidentiality clauses in their termination agreement.

Documents were also obtained from the CCC by way of voluntary disclosure under section 152 of the *Corruption, Crime and Misconduct Act 2003*.

Council members and members of the ELG were initially given an opportunity to provide documents and other items voluntarily. Only when this avenue was exhausted, were they served with a Notice.

The Inquiry examined the material received, including the following significant holdings provided by the City:

- email accounts;
- financial and non-financial interest disclosure registers;
- gift registers;
- the sponsorship, grants and donations database;
- the sponsorship ticket allocation register;
- the heritage grants register;
- training registers;
- Audit and Risk Committee reports;
- business plans;
- consultants' reports;
- cultural survey reports;
- customer satisfaction survey reports; and
- complaints files.

Deloitte was engaged by the Inquiry to provide forensic technology services for information contained on electronic devices obtained by Notices to Produce.

Discovery interviews

Council members, members of the ELG and selected managers from the City were offered an opportunity to participate voluntarily in a discovery interview with Inquiry investigators. Although these were audio-recorded, they were deliberately unstructured to allow the participants an opportunity to raise issues of concern in a conversational manner.

The Inquiry undertook 37 discovery interviews. Three council members participated in discovery interviews and two more provided a written summary. All members of the ELG participated in interviews. A number of management level former and current employees participated in discovery interviews. These provided the Inquiry with a considerable amount of useful information.

Assessment

Based on the information obtained in the Discovery stage, significant issues or topics were identified. Some of these had several individual issues with a common theme. After close assessment and prioritisation, investigation into some issues ceased and other issues were added.

Investigation

Notices to Produce

The Investigation stage commenced in September 2018. At that time, the Inquiry decided to obtain electronic devices, which had been used by council members, members of the ELG and the Manager, Governance, for City business, at any time during the period of the Terms of Reference. The Inquiry issued, in total during both stages, 100 Notices to Produce documents and obtained 95 electronic devices, including smart phones, iPads, tablets, desktop computers and removable storage devices. The Inquiry also issued Notices to Produce a Statement of Information, with the first of more than 21 Statements of Information issued in October 2018 and the last in February 2020. Additional information on the notices served is contained in **Part 4.1: The Inquiry**.

The Inquiry also obtained access to City records, including:

- the City's records information system, known as HPE Content Manager, which contained the City's official record-keeping documents;
- the finance system;
- the customer interfacing system (customer service, registrations, rates, payments, etc);
- the human resources systems (including the system holding recruitment records);
- the City's electronic local computer drives; and
- additional email accounts.

The data from the devices and City email accounts was hosted by Deloitte, which provided access to the Inquiry through its Relativity software. This database stored over 4.3 million items, which were available for investigation purposes.

At this stage, the Inquiry noted that the City's record-keeping processes were poor. It had substantial records holdings outside the official records management database and records were often difficult to find. Although the City co-operated with the Inquiry to the best of its ability, accessing complete records was challenging and time consuming.

External service providers

The Inquiry engaged external service providers to provide expert advice on aspects of its investigations, particularly relating to the financial management of the City.

The Inquiry engaged professional services company Crowe (formerly Crowe Horwath) to provide expert advice on:

- the appropriateness of the City's governance practices for budgeting and financial reporting, and the oversight by Council and the Administration;
- the maturity, appropriateness and effectiveness of the City's internal audit programme; and
- the City's financial budgeting and expenditure practices, to identify areas of risk.⁵²

The Inquiry also engaged consulting firm ACIL Allen Consulting to provide expert advice on the:

- adequacy of the City's strategic planning, financial planning and management business models;
- City's financial position and the underlying drivers of its financial position over time;
- City's parking business (CPP); and
- City's rates model for residential and commercial properties, and the extent to which there was any cross-subsidisation and/or subsidisation arising from the parking business.⁵³

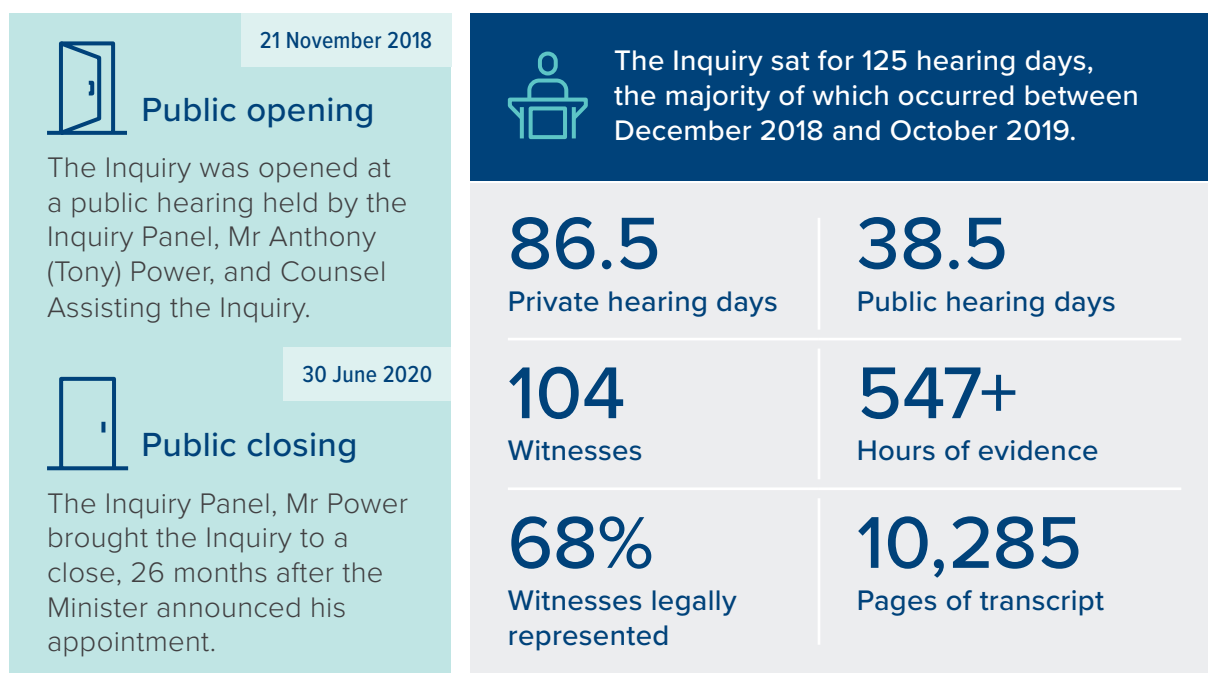
Assessment

At the end of the initial Investigation stage, a report was prepared by investigation officers. A prioritisation process then determined which issues should proceed to full investigation, including examination in public hearings. Some significant issues had multiple matters. For example, procurement and contracting was defined as one issue, but within it there were several individual procurement exercises by the City which were investigated by the Inquiry.

Briefs of evidence

Full briefs of evidence for hearings were prepared by investigation officers for 32 individual matters were investigated during this stage. The briefs were frequently in excess of 1,000 pages and included a briefing paper and relevant evidence. In total, more than 39,000 pages containing over 4,500 documents and records were contained in the Inquiry's briefs and considered by the Inquiry during the hearing programme.

These briefs of evidence were used by the Inquiry Panel to determine who would be called as a witness by the Inquiry and whether that evidence would be taken in private and/or public hearings.



Hearing Phase

Private hearings

The private hearings were part of a formal investigation process. Witnesses were summonsed and were represented by legal counsel, where the witness chose to be so represented. The hearings were held before the Inquiry Panel and witnesses gave evidence in response to questions asked by Counsels Assisting the Inquiry. Private hearings were closed to the public, but were audio-recorded and transcripts of proceedings were produced. Although those transcripts were not publicly available, this Report does contain quotes from those transcripts and the transcripts were also available to persons who were the subject of potential adverse findings to allow them an opportunity to directly address those potential adverse findings prior to the publication of this Report.

A list of witnesses before the Inquiry is provided in **Part 4.1: The Inquiry**.

Public hearings

The Inquiry held public hearings on specific matters between 5 August and 10 October 2019. Twenty-three witnesses gave evidence during those public hearings, with 18 of the 23 witnesses giving evidence in both private and public hearings (Table 1.2 and **4.1: The Inquiry**).

Table 1.2: Persons who gave evidence before the Inquiry Panel at a public hearing (section 9 of the *Royal Commissions Act 1968*).

No.	Witness	Position	Organisation
1.	Mr Jim Adamos	Councillor	City of Perth
2.	Ms Erica Barrenger	Director, Planning and Development	City of Perth
3.	Ms Lexi Barton	Councillor	City of Perth
4.	Ms Lily Chen	Councillor	City of Perth
5.	Mr Martin Copeman	Manager Parks	City of Perth
6.	Mr Paul Crosetta	Director, Construction and Maintenance	City of Perth
7.	Ms Janet Davidson	Councillor	City of Perth
8.	Dr Jemma Green	Deputy Lord Mayor	City of Perth
9.	Mr Andrew Hammond	Chair Commissioner	City of Perth
10.	Mr Reece Harley	Councillor	City of Perth
11.	Mr Steven Hasluck	Councillor	City of Perth
12.	Mr Murray Jorgensen	Chief Executive Officer	City of Perth
13.	Mr James Limnios	Councillor	City of Perth
14.	Ms Judith McEvoy	Councillor	City of Perth
15.	Mr Robert Mianich	Director, Corporate Services	City of Perth
16.	Mr Martin Mileham	Chief Executive Officer	City of Perth
17.	Ms Barbara Moyser	Senior Employee Relations Adviser	City of Perth
18.	Mr John Nicolaou	Executive Director	ACIL Allen Consulting
19.	Mr Mark Ridgwell	Manager, Governance	City of Perth
20.	Ms Lisa Scaffidi	Lord Mayor	City of Perth
21.	Ms Angie (Yit-Choo) Yong	Sister of Mr Keith (Yit-Kee) Yong (City of Perth Councillor).	Not Applicable
22.	Mr Keith (Yit Kee) Yong	Councillor	City of Perth
23.	Ms Lilly Yong	Mother of Mr Keith (Yit-Kee) Yong (City of Perth Councillor).	Not Applicable

Report Phase

Referrals and notifications

The LG Act empowers an Inquiry Panel to refer any matter arising out of an inquiry to a State, the Commonwealth, another State or a Territory authority that has power under a law to investigate or take action in relation to a matter of that nature. During the course of the Inquiry, referrals were made to a number of authorities for matters within the Inquiry's Terms of Reference.

Referrals made by the Inquiry Panel under this section of the LG Act is provided in **Part 3.3: Matters referred to other authorities**.

135+

Matters referred



17

Commonwealth, State and other authorities



23

Persons referred



1

Organisation referred



Report

The comprehensive and extensive nature of this Report is testament to the complexity, and the vast number and importance of issues investigated by the Inquiry during the period 1 May 2018 to 30 June 2020. The issues examined in detail in this Report include:

- culture and governance;
- local government elections;
- decision-making;
- disclosures, personal interest and entitlements;
- grants and sponsorships;
- administrative leadership (including, people management, financial management and planning, and procurement and contracting);
- the final days leading to the suspension of the Council (namely, the enactment of the Crisis Management Plan and Project Percy); and
- restoring good government (namely, the future, conclusions and recommendations).

The Report is organised in four volumes. They deal with some core concepts, the matters examined, the opinions formed about whether good government was provided and recommendations for the future. The Report was delivered to the Minister following the Inquiry's close on 30 June 2020.



320+

Recommendations for the future

250+

Findings



1,900+

Pages across four Volumes



Inquiry governance

Inquiry administration

The Inquiry Panel was supported by officers, engaged through the Department of Local Government, Sport and Cultural Industries or with the assistance of the State Solicitor. Where specialist knowledge or skills were not within the Inquiry team or additional temporary resources were required, external service providers were engaged in accordance with State Government procurement practices. A list of the Inquiry's staff is provided at **Part 4.1: The Inquiry**.

Record-keeping

The Recordkeeping Plan (Plan) for the Inquiry into the City of Perth was approved by the State Records Commission (SRC) on 7 December 2018. The SRC considered that the Plan demonstrated the Inquiry's compliance with the minimum requirements of "SRC Standard 2: Recordkeeping Plans" and "SRC Standard 6: Outsourcing".

The SRC acknowledged *"that once the Inquiry has concluded the records will be transferred to the Department of Local Government, Sport and Cultural Industries (DLGSC) to be managed in accordance with the DLGSC Plan, until all records have either been archived at the State Records Office or legally destroyed in accordance with the 'Sector Disposal Authority for Reviews, Investigations and Special Inquiries, SD 2017004'".*⁵⁴

1.1.4 Procedural fairness

The Inquiry Panel (Inquiry) has been cognisant of its procedural fairness obligations since commencement of the Inquiry on 1 May 2018 and has taken steps throughout the period of the Inquiry to discharge those obligations. This Chapter of the Inquiry Report sets out what procedural fairness obligations attended the work of the Inquiry and how those obligations were discharged.

To understand the requirements of procedural fairness as they applied to the Inquiry, and how the Inquiry ensured that it complied with those requirements, it is necessary to understand the nature and powers of an Inquiry under the *Local Government Act 1995* (LG Act).

Powers of the Inquiry

By virtue of the *Royal Commissions Act 1968* (RC Act), the powers of an Inquiry include, among other things, the power to:

- compel public authorities or public officers to produce to the Inquiry statements of information;⁵⁵
- require, by notice, a person to produce to the Inquiry documents, books, writings or things specified in the notice;⁵⁶
- summons a person and require them to give evidence or to produce any documents, writings or things in their custody or control;⁵⁷ and
- hear evidence in private and authorise who can be present during private hearings.⁵⁸

An Inquiry is also expressly authorised to do all things as are necessary or incidental to the exercise of its function as an Inquiry and to the performance of its terms of appointment.⁵⁹ Those powers are significant, and there is limited constraint on their use, provided their exercise is consistent with the nature of the inquiry specified in the Notice of Appointment (Terms of Reference). The coercive nature of the exercise in which the Inquiry is involved affects the application and construction of the requirements of procedural fairness.

A person who fails to comply with a notice or summons of an Inquiry without reasonable excuse will be in contempt of it.⁶⁰ Furthermore, a person who, after being served with a summons, fails to answer any question that is relevant to the Inquiry's investigation will be in contempt of it.⁶¹ A person must produce documents or answer a question even if that document or answer might incriminate or tend to incriminate him or her or render him or her liable to a penalty.⁶² Giving false testimony to the Inquiry is an offence.⁶³

Inquiry's report and recommendations

An Inquiry must provide a report to the Minister on the matters in its terms of reference.⁶⁴ An Inquiry's findings are not binding. It is not the role of the Inquiry to determine the rights and liabilities (including any criminal guilt) of people mentioned in its report. An Inquiry does not have the power to make a finding in its report that a person has or may have committed a criminal offence under the LG Act or other legislation.⁶⁵

However, it is open to an Inquiry to make a finding that a council member has breached the *Local Government (Rules of Conduct) Regulations 2007*. This is because a failure to comply with the Regulations is not a criminal offence, does not attract criminal sanctions and is dealt with by administrative decision-makers, not by courts exercising criminal jurisdiction.⁶⁶

Furthermore, an Inquiry may report on the results of its investigations and the evidence it has heard even if doing so may ultimately implicate a person in criminal conduct.⁶⁷

The report may contain any recommendations that an Inquiry considers appropriate, including a recommendation that a Council be dismissed or that a Council member be dismissed.^{68,(g)} While in the present case all Council positions have been declared vacant, the effect of its Report and recommendations on former council members is nonetheless a matter which the Inquiry considers, and has considered throughout, as something which informs and sets the requirements of procedural fairness.

An Inquiry may make broader recommendations to the Minister. If those recommendations are adopted (which is a matter for the Minister), the Minister may order the local government, or any of its council members (if any are holding office) or any of its employees, to give effect to any one or more of the recommendations of the Inquiry in a manner and within a time ordered by the Minister.⁶⁹ Again, these matters inform and set the requirements of procedural fairness.

An Inquiry may also recommend other actions be taken which are not within the power of the Minister or the Governor to undertake, including, for example, legislative reform.

While an Inquiry's report does not contain binding decisions, the Inquiry recognises that the contents of its Report can still have very real impacts on the people who feature in the Report in other ways, including on their personal, business and commercial reputation. These reputational interests can attract the safeguards of the rules of procedural fairness,⁷⁰ and are matters to which the Inquiry has paid close regard.

As a consequence, an Inquiry is required to provide, and (as described below) this Inquiry has provided, an opportunity for a person to answer or explain matters which might give rise to an adverse finding in its Report.⁷¹

g A Council or council member can only be dismissed if the Minister subsequently recommends dismissal of the Council or the council member to the Governor and the Governor orders dismissal: *Local Government Act 1995*, s 8.24(3), (4A), 8.25.

Inquiry duty to afford procedural fairness

As an administrative inquiry, there were a number of matters which the Inquiry observed (and applied) during the process of affording procedural fairness.

First, the Inquiry had to, and did, act within the powers available to it.

Secondly, the Inquiry was required to make decisions based on the evidence before it.⁷² Although it was not bound by the rules of evidence, the Inquiry adhered to the *Briginshaw* principles in coming to its findings of fact. The *Briginshaw* principles are:

“when the law requires the proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence before it can be found ... it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding ... [as] considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the Tribunal. In such matters ‘reasonable satisfaction’ should not be produced by inexact proofs, indefinite testimony, or indirect inferences.”⁷³

Thirdly, the rules of procedural fairness applied to the exercise of the Inquiry’s powers. Procedural fairness can be understood as *“a flexible obligation to adopt fair procedures which are appropriate and adapted to the circumstances of the particular case”*.⁷⁴ It is concerned with avoiding practical injustice.⁷⁵ Where a decision-making process involves different steps or stages before a final decision is made, the requirements of procedural fairness are satisfied if the decision-making process, viewed in its entirety, entails procedural fairness.⁷⁶

There are two elements to procedural fairness:

- The rule against bias, which requires the Inquiry not be biased or be seen by an informed observer to be biased.
- The hearing rule, which requires the Inquiry to afford a person an opportunity to be heard before making a decision that affects his or her interests.

The hearing rule means the Inquiry *“cannot lawfully make any finding adverse to the interests of [a person in its final Report] without first giving [that person] the opportunity to make submissions against the making of such a finding”*. A person making submissions is entitled to put every rational argument open on the evidence and where necessary, to refer to and analyse the evidence to support that argument.⁷⁷

However, procedural fairness does not give a person the right to make submissions on the general subject-matter of the Inquiry.⁷⁸ Furthermore, procedural fairness does not require that a person whose interests are likely to be affected be given an opportunity to comment on every adverse piece of information, irrespective of its credibility, relevance or significance.⁷⁹

In *Edwardes v Kyle*, the Supreme Court considered the requirements of procedural fairness as they applied to an Inquiry under the *Local Government Act 1960* (WA). Owen J. stated seven general propositions which guided his Honour's decision, the most relevant of which are set out below:

- “4. The court should recognise the public policy considerations that require the conclusion giving the investigator a relatively free hand. Nonetheless, the court must also recognise the potential for adverse consequences flowing from the report of inquiries of this kind. The court is obliged to intervene where there has been a departure from the minimum requirements of procedural fairness.
- ...
6. The need to act with fairness will almost inevitably involve the investigator, at some stage before the publication of the report, advising the affected party of what has been put against him and giving that party a real opportunity to be heard. The party must be given sufficient particulars of contentious matters to allow it to respond by way of correcting or contradicting the adverse material.
7. The investigator must decide what is required so as to afford to the affected party a real and meaningful opportunity to be heard. The particularity with which the adverse material is to be identified, whether the party is entitled to adduce further evidence and whether he or she can insist on cross-examining witnesses are all decisions to be taken in the context of the particular fact situation. No general rule can be enunciated but the gravity of the possible consequences for the party may well dictate the extent of the duty in a particular case”.⁸⁰

It must also be noted that the Inquiry was an investigation into the matters in its Terms of Reference, not a trial. Although its processes at some stages (in particular, its private and public hearings) bore a superficial resemblance to court processes, its procedures did not mirror court proceedings. Procedural fairness does not and did not require the Inquiry to adopt the procedures of adversarial litigation.⁸¹

In *Kioa v West* Brennan J. of the High Court of Australia noted that “Administrative decisions are not necessarily to be held invalid because the procedures of adversary litigation are not fully observed”.⁸² Likewise, “It is not in doubt that, where a decision-making process involves different steps or stages before a final decision is made, the requirements of natural justice are satisfied if ‘the decision-making process, viewed in its entirety, entails procedural fairness’”.⁸³

In ensuring that the Inquiry did operate fairly in relation to all persons whose conduct is the subject of adverse findings, a number of procedures were implemented. By following these, the Inquiry operated without bias, made findings on the evidence and allowed persons appearing before the Inquiry, or who were subject to its powers, to fully appreciate any potential findings which might affect that person's interests and the basis of those findings so that they could respond to them.

Practice Directions, procedures of the Inquiry and how procedural fairness was afforded

Inquiry Practice Directions

The Inquiry's Practice Directions (Practice Directions) have been available on the Inquiry website since 22 November 2018. These were revised, as required, through the different stages of the Inquiry. The most recent version is dated 1 November 2019 and is provided at **Part 4.1: The Inquiry**.⁸⁴

The Practice Directions provided guidance to those people who attended as witnesses before the Inquiry, were summonsed or issued with a Notice to Produce documents or a Statement of Information, as well as other interested persons.

They provided information for people who sought to view the public hearings of the Inquiry, including the location of the hearing rooms and the sitting days and usual hearing hours of the Inquiry.⁸⁵ The Practice Directions also explained that the Inquiry's programme of public hearings would be published on its website and that the transcripts of all public hearings would be made available on the Inquiry's website as soon as practicable, subject to any order of the Inquiry.⁸⁶ The Practice Directions also stated:

"The Inquiry's proceedings will be as orderly as possible. The Inquiry will endeavour to ensure that those persons whose interests may be adversely affected by the evidence before the Inquiry are treated fairly and in accordance with the requirements of procedural fairness, where applicable, while protecting confidentiality where that is deemed appropriate".⁸⁷

The Inquiry also published template application forms on its website to assist parties to make applications under the Practice Directions and in relation to other procedural issues.

Whether hearings were held in private

The Practice Directions also provided that the Inquiry could take evidence in private where it considered it was necessary and appropriate to do so.⁸⁸ Only the witness, Counsel Assisting the Inquiry, the Solicitor Assisting the Inquiry, the witness's legal representative or representatives and other officers or representatives of the Inquiry were permitted to be present. This was consistent with the Practice Directions and the Inquiry's powers under the RC Act.⁸⁹

The Inquiry also made directions of non-disclosure at the commencement of private hearings, prohibiting the disclosure of any evidence given at the hearing, whether directly or indirectly, to any other person without the express written authorisation of the Inquiry.⁹⁰ Those directions remained in effect until the conclusion of the Inquiry.

There were a number of reasons why the Inquiry held hearings in private and made directions of non-disclosure.

First, many of the hearings were investigative in nature. They were undertaken to help gather information, rather than test evidence and potential conclusions.

Secondly, a number of the witnesses who attended before the Inquiry were not employed in roles which came with an expectation of the type of public scrutiny a public hearing can create. Additionally, some witnesses had personal considerations which meant that it was fairer and more effective for their evidence to be heard in private.

Thirdly, while some inquiries into local government are given relatively narrow terms of reference, the scope of this Inquiry's Terms of Reference was broad. This meant that it was not appropriate, nor productive, for the evidence of many witnesses and their personal information to be heard in public where it may not have been relied on to support adverse findings in the Inquiry's final Report.

Fourthly, it was also the case that on some occasions, hearings were conducted in private so as not to alert other persons to a particular line of inquiry prior to the testimony being given or where such a person might potentially take steps to frustrate any investigation. The Inquiry was not required to make known to any person the content or nature of any evidence taken in private during the course of its investigations.⁹¹ As Mason, Wilson and Dawson JJ of the High Court of Australia explained in *National Companies and Securities Commission v News Corporation Ltd*:

*"It is of the very nature of an investigation that the investigator proceeds to gather relevant information from as wide a range of sources as possible without the suspect looking over his shoulder all the time to see how the inquiry is going. For an investigator to disclose his hand prematurely will not only alert the suspect to the progress of the investigation but may well close off other sources of inquiry".*⁹²

That is not to say that evidence obtained in private was kept from people who were the subject of it. As the Practice Directions explained, where evidence was given in a private hearing, the Inquiry would not in the ordinary course, rely on that evidence *"to make an adverse finding against a party without that party having an opportunity to address any such evidence"*.⁹³

This was done, in many cases, by Counsel Assisting putting the substance of that evidence to that person when that person was giving evidence and, in all cases, by that person having the opportunity to review that private hearing transcript to enable him or her to make submissions on any potential adverse finding.

Appearing before the Inquiry

The Practice Directions provided that anyone who sought to appear before the Inquiry was required to make an application seeking leave to appear and that the Inquiry would generally grant leave where the applicant:

- was the subject of an inquiry to be undertaken; and/or
- had a direct or substantial interest in the hearing or the subject of inquiry (such as if the person's legal rights, financial interests, personal reputation, status or livelihood may be prejudiced by the evidence heard during the hearing or the findings that may be made based on the evidence heard during the hearing); and/or
- may be the subject of an adverse finding by the Inquiry.⁹⁴

The procedure to be followed by the applicant was also set out.⁹⁵ Where leave was granted, the applicant or his or her legal practitioner enjoyed a number of rights such as the ability to participate at the hearing of the Inquiry the subject of his or her application, and subject to and in accordance with the Practice Directions that person could:

- apply to put on evidence;
- apply to examine a witness;
- object to evidence;
- raise legal or procedural matters; or
- make submissions about the findings open to the Inquiry.⁹⁶

Representation of witnesses

Witnesses who appeared before the Inquiry could apply for leave to be represented.⁹⁷ Every witness before the Inquiry who made such an application was granted leave to be represented.

Some witnesses appearing before the Inquiry were represented by firms engaged by multiple witnesses. To preserve the integrity of its private hearings, the Inquiry sought information from practitioners on the measures in place to ensure the evidence given at private hearings remained confidential and was not inadvertently disclosed to another practitioner at the same firm.

Furthermore, some practitioners at those firms represented a number of clients. Where the Inquiry identified that practitioners may be placed in a position of conflict by acting for multiple witnesses, the Solicitor Assisting the Inquiry brought that to the attention of the practitioner as early as practicable to enable alternative arrangements to be made. No witness who wished to be legally represented was denied the opportunity to be so represented, because of any potential for conflict.

There were also a number of other procedures in place involving witnesses and their representation, such as the ability to and manner of applying to produce documents to the Inquiry.⁹⁸

There were two applications to put additional documents before the Inquiry. They were made by Mr Martin Mileham and Ms Lisa Scaffidi, respectively. Both applications were granted by the Inquiry.

Furthermore, there were instances where legal representatives raised with the Inquiry's solicitors that the Inquiry was likely to have specific documents (such as emails) in its holdings that were relevant to its investigations and that the Inquiry should find and consider those documents. On those occasions, the Inquiry's investigators searched the Inquiry's holdings and where such documents existed and could be found, enabled legal representatives to inspect those documents.

Although Counsel Assisting, subject to the control of the Inquiry, determined whether a person would be called to give evidence at a hearing and the order in which evidence would be adduced, parties before the Inquiry were able to apply to have the evidence of another person put before the Inquiry.⁹⁹ No applications of this kind were made.

There were also circumstances where a person engaged a new legal representative and that representative made an application to review the client's previous private hearing transcript. The Inquiry, where appropriate, allowed that witness's new representative to attend the Inquiry, review the transcript and make notes for the purpose of advising the client.

Hearing process

For witnesses who did appear before the Inquiry the Practice Directions offered guidance as to how the examination would proceed. This included that a person or his or her legal representative could apply, at the end of Counsel Assisting's examination, for leave to examine that witness. The directions set out how such an application would be made and determined¹⁰⁰ and how such an examination would proceed.¹⁰¹ When making an application for leave to examine, legal representatives were required to identify the matters on which they proposed to examine the witness and how that would advance the purposes of the Inquiry.¹⁰² In this way, no witness could properly say that he or she was not given an opportunity to put his or her side of the story on matters relevant to the Inquiry.

The Practice Directions made it clear that procedural fairness did not require, in all cases, that legal representatives be afforded the opportunity to examine a witness and that the Inquiry could limit the matters on which examination may occur.¹⁰³

To leave examination unrestricted would be highly likely to result in large amounts of evidence of little or no assistance to the Inquiry being given and would also take up far more time than an inquiry subject to time constraints could afford. By providing appropriate constraints on the ability of a person to examine a witness, the Inquiry allowed that person to efficiently explore evidence which could assist the Inquiry. In most cases where such an application was made, the Inquiry granted leave to examine.

Special provisions were also set down for unrepresented persons at a hearing.¹⁰⁴ In those cases, the Inquiry was very careful to ensure those persons were treated fairly.

The Practice Directions also provided for a way in which a person could apply to recall a witness for examination where the significance of the witness's evidence could not have been appreciated at the time, or where there were other extraordinary circumstances justifying the recalling of that witness.¹⁰⁵ This was to ensure that a person did not lose the opportunity to examine a witness in circumstances where he or she could not earlier have understood the import of the witness's evidence.

The Inquiry received one application to recall a witness for examination, which was made by Mr Robert Mianich. The Inquiry heard the application, but in the end, it was not pressed by Mr Mianich and it was not necessary for the Inquiry to determine it.

In October 2019, Mr Mileham's representatives raised with the Solicitor Assisting the Inquiry that Mr Mileham intended to make an application to inspect the transcript of Ms Annaliese Battista's private hearings and recall Ms Battista for examination. Mr Mileham's representatives also indicated the areas on which Mr Mileham's legal representatives intended to examine Ms Battista. That application was ultimately not made. Nonetheless and out of an abundance of caution and fairness, Counsel Assisting the Inquiry examined Ms Battista on those matters in a private hearing.

While it was open for a witness, a person given leave to appear, or his or her legal representatives, to object to evidence adduced before the Inquiry, the Practice Directions noted that the Inquiry was not bound by the rules of evidence, and that the concept of relevance in civil and criminal proceedings did not apply to the Inquiry. The Practice Directions noted evidence would be relevant to the Inquiry if there was a real possibility that it may directly or indirectly inform the Inquiry's deliberations on the Terms of Reference.¹⁰⁶ Given the inquisitorial aspects of the Inquiry, and the evolving nature of its investigation, relevance was necessarily construed widely.

The Inquiry also, to the extent possible and where appropriate to do so, informed witnesses and their legal representatives of the topics which were to be addressed at upcoming hearings and provided copies of documents about which Counsel Assisting might ask questions.

These procedures allowed witnesses and their legal representatives to know in advance some of the matters which would be the subject of their evidence. This was not done in every case or with every document. It was sometimes important for a witness being examined to not be aware of all documents before the Inquiry, to ensure the hearing was effective. It should be noted procedural fairness does not require that a witness, before he or she gives evidence, be informed of the questions the Inquiry proposes to ask or for the Inquiry to disclose all information known to it.¹⁰⁷

These procedures ensured that hearings were run in an organised and time efficient way and that witnesses had an opportunity to engage in a meaningful way, subject to some necessary restrictions.

Documents required to be produced

The fact that documents or information were confidential was not a basis for refusing to produce documents or provide information to the Inquiry.¹⁰⁸ However, the Practice Directions provided that a person could make an application that the documents produced to the Inquiry not be published and the Practice Directions set out how such an application could be made.¹⁰⁹ The Inquiry received one application to protect the confidentiality of documents produced to it, but as matters transpired it was not necessary to determine the application.

The Practice Directions also provided for applications to be made in relation to claims of legal professional privilege and how they were to be made.¹¹⁰

In the course of its investigations, the Inquiry required current and former council members and members of the Executive Leadership Group to produce electronic devices that they used in connection with their office or employment or to communicate with council members or employees. The Inquiry copied forensic images of devices produced to it before returning the devices. Some council members and employees made applications to withhold from the Inquiry documents stored on the devices on the basis that those documents were subject to legal professional privilege. The Inquiry did not access communications over which claims for legal professional privilege were made until it determined such claims and then only where it upheld them.

The Practice Directions also provided for applications to be made to suppress documents or evidence given to the Inquiry where there were exceptional circumstances justifying suppression.¹¹¹ No applications for suppression orders were made.

Extensions of time and procedural matters

Provision was also made for applications to extend time to produce a statement of information or documents to the Inquiry.¹¹² This helped ensure that the Inquiry's powers to obtain a statement of information or documents did not impose any unreasonable demands on the recipient of such a notice.

The Practice Directions also set out how a person called as a witness or granted leave to appear or given leave to be represented before the Inquiry who wished to raise a procedural or legal matter that was not directly addressed by the Practice Directions could do so.¹¹³

A number of witnesses who were summonsed to give evidence before the Inquiry made applications to be released from their summons before the Inquiry on the grounds of ill-health. The Inquiry heard those applications and made appropriate arrangements to accommodate those witnesses so they could give evidence.

The Inquiry received three applications to put further evidence before the Inquiry by way of affidavit. These applications were made by Mr Mileham, Mr Steve Hasluck and Ms Battista. Mr Mileham did not press his application. Mr Hasluck and Ms Battista made their respective applications after receiving, and in response to, extracts from draft report sections. The Inquiry granted Mr Hasluck's and Ms Battista's applications.

The Inquiry also allowed Mr Jim Adamos to put on further evidence by affidavit, following his evidence before the Inquiry on 8 August 2019.

Public hearings

On 29 June 2019, prior to the commencement of public hearings, the Inquiry put on its website a media release giving notice that it would begin public hearings in early August 2019.

As provided for under Practice Direction 4.3, the Inquiry set out on its website a programme of the witnesses appearing at those public hearings, showing the names of the witnesses appearing at the next day's hearing.

The public hearings were separated into a number of blocks, each of which related to a group of topics (Block). At the commencement of each Block, Counsel Assisting provided an opening address which identified, to the extent necessary, practicable and possible, the main topics which the hearings in that Block would cover.

Prior to and during the public hearings the Inquiry also endeavoured, to the extent necessary, practicable and possible, to identify and give notice to persons who could be affected by the evidence that was to be given at the upcoming public hearings. This was done so that they could, among other things, seek leave to appear or have a representative appear on their behalf and be able to exercise the rights of a person appearing before the Inquiry.

On 27 August 2019, Mr James Limnios's representatives raised concerns that they had not been notified that there would be evidence given by Ms Scaffidi in the public hearings that may relate to Mr Limnios. Those concerns were resolved by Mr Limnios's representatives reviewing the transcript of Ms Scaffidi's evidence and relevant parts of documents shown to Ms Scaffidi.

In line with Practice Direction 4.4, public hearing transcripts were published on the Inquiry's website as soon as practicable. Before publication, those transcripts were checked and verified by a member of the Inquiry's staff so that even if a person or their representative were not able to attend the hearing of another person, they could rely on the transcript and would have an accurate record of the evidence heard by the Inquiry. It was also a way of ensuring that errors were not publicly released and erroneously relied upon by the public or media.

Opportunity to respond to draft adverse findings

The Inquiry implemented a process so that those persons who faced potential adverse findings had sufficient opportunity and materials to make responsive submissions in accordance with Practice Direction 18.2.

As previously mentioned, at the conclusion of the hearings the Inquiry produced draft report sections on each matter investigated by the Inquiry to prepare this Report – based on the evidence before the Inquiry.

As each draft section was completed, the Solicitor Assisting the Inquiry wrote separately to each person against whom the Inquiry proposed to make adverse findings in that section and provided an extract from that draft section. Providing draft potential adverse findings in this way has been described as an *"impeccably fair"* practice and there was no duty requiring the Inquiry to disclose its findings or invite comments on them.¹¹⁴

Those extracts referred to all witnesses from whom the Inquiry heard evidence on that matter and the documents and evidence on which the Inquiry intended to rely to make potential adverse findings against that person. This gave the person concerned a fair and reasonable opportunity to make a meaningful response to each potential adverse finding, namely, to make submissions on why the Inquiry should not or could not make such a finding.

The Inquiry very deliberately (and out of an abundance of fairness) took a broad view of what might be said to be an adverse finding against a person. This meant that the Inquiry provided extracts of draft sections to persons where there may have been some express or implied criticism of them, even if no particular express adverse finding was made against them. This was done notwithstanding that it may not have been necessary to give such a person the opportunity to make submissions. For example, where a draft section might contain a criticism of that person or expose evidence or material which might reflect badly on that person.¹¹⁵

During this process, Ms Scaffidi's legal representative raised concerns with the Inquiry that Ms Scaffidi had not been given the opportunity to make submissions on the section about the enactment of the Crisis Management Plan, when there may have been potential adverse findings against her. The Inquiry was not satisfied that the draft section made any adverse findings against Ms Scaffidi, but nevertheless (and out of an abundance of fairness) provided an extract from that section to enable her to make submissions.

The extracts provided to persons in this way were redacted to remove those parts of the draft section that did not relate to the proposed adverse findings against that person. The Inquiry also made an order prohibiting the wider disclosure of the contents of the extracts other than for the purposes of preparing submissions. This was done, because the Inquiry was mindful that the draft sections often contained potential adverse findings against other persons. To reduce the potential for any damage to a person's reputation before that person had the opportunity to make submissions on that potential finding, it was considered appropriate that only persons with a sufficient interest in those potential adverse findings would be informed of them.

Persons who received extracts could also apply to inspect documents or private hearing transcripts held by the Inquiry to assist them to make submissions.^h Those applications were granted to the extent it could properly be said that the requested documents and transcripts may be necessary to enable the person to respond to the potential adverse findings.¹¹⁶ Applications were accompanied by undertakings that the person permitted to inspect documents would not copy, remove or disclose the contents of those documents.

The Inquiry allowed parties to inspect documents under supervision at its premises, rather than provide them with copies of documents, to ensure the Inquiry maintained an appropriate level of control over documents. In many cases, the documents contained confidential or sensitive information or were provided by other authorities on the basis that they would only be used strictly for the purposes of the Inquiry.

^h As provided for in the Inquiry into the City of Perth, Practice Directions (as at 1 November 2019), Practice Direction 18.3.

During the COVID-19 pandemic, when the health risks of a physical inspection were unacceptably high, the Inquiry moderated its procedure and provided electronic copies of documents directly to Ms Scaffidi and Mr Mileham’s legal representatives on the basis that each person who inspected the documents would in addition undertake to destroy any copies of the documents after responsive submissions were filed. Similar accommodations were invoked earlier in the Inquiry where the circumstances demanded it.

On some occasions, persons provided with extracts from the draft sections made requests for extensions of time to file submissions or to inspect documents. The Inquiry considered those applications and balanced the merits of the applications against the prejudice to the Inquiry if an extension was granted. A total of 97 responsive submissions were filed (**Part 4.1: The Inquiry**).

Submissions

Each responsive submission received was carefully considered by the Inquiry. Given the number of submissions the Inquiry received, it is not appropriate nor feasible to detail each and every submission received.

Submissions predominantly went to the substance of the Inquiry’s proposed findings and the evidence before it. In other words, a submission to the effect that the Inquiry should not or was not able to make a proposed finding, because it was not justified by the evidence or for some other reason.

Some submissions also proposed that changes should be made to the Report to provide relevant context to the evidence or to clarify the Inquiry’s proposed findings.

On occasion, the Inquiry considered some of these submissions to have sufficient merit and made appropriate changes to the content and findings of this Report.

There were a number of submissions to the effect that it was not open for the Inquiry to make the proposed adverse findings, because the Inquiry had denied that person procedural fairness in relation to that finding. In those instances, the unfairness complained of related to the processes followed by the Inquiry. Those submissions are summarised below.

There was no submission that the Inquiry had any actual or perceived bias.



Failure to put matters to witnesses

Some persons made submissions to the effect that it was not open for the Inquiry to make adverse findings where those matters, or the factual findings underpinning them, were not put or not put in sufficient detail to them when they were giving evidence.

Similar submissions were made to and considered (but not accepted) by the Royal Commission into the Building and Construction Industry,¹¹⁷ the Inquiry into the City of Canning,¹¹⁸ and the Royal Commission into Trade Union Governance and Corruption.¹¹⁹ The Inquiry's analysis has been assisted by this previous consideration of the issue.

First, it was not practicable, or in some cases possible, to put each and every matter to a witness that may later form the basis for a potential adverse finding. The Inquiry was an investigation into very broad matters in its Terms of Reference. It was required to carry out wide-ranging investigations across different issues within a limited amount of time. It held a substantial volume of documents and heard evidence from a very large number of witnesses. New facts or matters often came to light as Counsel Assisting was examining a witness, as is often the case in an inquisitorial proceeding. Many witnesses (in particular, current or former council members and senior employees of the City) were necessarily examined on multiple topics at anyone hearing.

Consequently, there was not the time nor any need for Counsel Assisting the Inquiry to exhaustively put every matter to a witness.

Moreover, it was not possible or practicable for Counsel Assisting to be cognisant of all of the evidence and issues at the time of examining a witness.

Secondly, witnesses were given notice of any proposed adverse findings and the opportunity to address or answer those findings through written submissions, by being provided with extracts and any relevant documents or transcripts of evidence.

Witnesses could also apply to put new documents or evidence before the Inquiry to contradict the other evidence before it.

In these circumstances, it was not necessary for Counsel Assisting to put each and every matter to a witness.

For these reasons, the Inquiry does not accept that there was any denial of procedural fairness to make an adverse finding against a person, where those potential adverse findings or the factual findings underpinning them, were said to be not put or not put in sufficient detail to them when they were giving evidence.

In any event, it should be noted that Counsel Assisting the Inquiry in the overwhelming majority of cases did put the substance of adverse evidence to a witness for the witness to comment on.

Furthermore, the Inquiry has not made any findings against persons who did not give evidence before the Inquiry.

No opportunity to examine witnesses who gave evidence in private

Some submissions were also made on behalf of some witnesses that it was a denial of procedural fairness to make adverse findings based on evidence that it heard from witnesses in private hearings, when that person's legal representatives did not have the opportunity to cross-examine that witness.

The right to cross-examine a witness is not a necessary element of procedural fairness,¹²⁰ even where a witness gives evidence that is adverse to the person who wishes to cross-examine the witness.¹²¹ Whether cross-examination is a requirement of procedural fairness will always depend on the circumstances of the individual case.

It is relevant that the Inquiry had a discretion to allow additional examination (as it is more properly described) so far as it considered it proper.¹²²

Furthermore, the Inquiry also had the power to determine who would be present during a private hearing and it was not required to make known to any person the content or nature of any evidence taken in private during the course of its investigations.¹²³

In *National Companies and Securities Commission v News Corporation Ltd*,¹²⁴ the High Court of Australia considered whether a company that was the subject of an investigation by the Commission was entitled, as a matter of procedural fairness, to be present during private hearings of witnesses called during the investigation and to cross-examine those witnesses.

Gibbs CJ. considered that question had to be answered in light of the Commission's legislation which, among other things, gave the Commission the power to determine who may attend and who may intervene in a hearing. His Honour said:

"If the Commission were to accord to all the persons whose reputation might possibly be affected by the hearing a right to cross-examine the witnesses and call evidence as though they were in a court of law, the hearing might become so protracted as to render it practically futile. In these circumstances, with all respect, I find it quite impossible to say that the rules of natural justice require the Commission to proceed as though it were conducting a trial. It seems to me in no way unfair that, at a hearing of the kind which I have described, the respondents should not be entitled to cross examine such witnesses as the Commission may call".¹²⁵

In their joint judgement, Mason, Wilson and Dawson JJ. placed significant weight on the need for the Commission to hear evidence in private without any persons that might be suspects present to avoid prejudicing its investigations. Their Honours concluded:

*“In our opinion the Commission will comply with the statutory mandate to observe the rules of natural justice in the present case if it proceeds to allow each witness who is called to give evidence to be legally represented, with freedom for that representative to participate in the examination of the witness, and for the provision of a transcript of his evidence. The conduct of an investigation in such a manner is fair and nothing more is required.”*¹²⁶

The Inquiry considers the reasoning in this decision to be both relevant and applicable.

It is noteworthy that submissions received by the Inquiry on this point did not refer to any authorities. Furthermore, many of the submissions did not articulate why, in the circumstances, the opportunity to examine a particular witness was a requirement of procedural fairness.

Consequently, the Inquiry has not been greatly assisted by the submissions it received on this point. The Inquiry is not satisfied that it cannot rely on evidence taken in private hearings to make adverse findings when persons affected by that evidence did not have the opportunity to examine that witness.

In any event, it was open for any party to make an application to recall a witness for examination. Save and except for Mr Mianich, no applications of this kind were made.

Failure to provide private hearing transcript and documents

In submissions filed on behalf of Ms Judy McEvoy in relation to the sponsorship proposal to rejuvenate the Piccadilly Theatre (**Chapter 2.2.2: Decision-making**), the appointment of Ms Battista and workforce management (**Chapter 2.3.2: People management**), Ms McEvoy asserted that she had been denied procedural fairness, because:

- Prior to the Inquiry’s public hearings, Ms McEvoy’s legal representatives requested the Inquiry provide the transcript of her evidence in private hearings and copies of some of the documents that she was shown at her private hearings.
- The Inquiry, through its solicitors, declined these requests and informed Ms McEvoy’s solicitors that the public hearings would not address matters on which Ms McEvoy had given evidence in private, which included the sponsorship proposal to rejuvenate the Piccadilly Theatre, the appointment of Ms Battista and workforce management.
- On the basis of those assurances, Ms McEvoy’s legal representatives did not press their requests for that transcript and those documents.

Ms McEvoy submitted this issue could not be cured retrospectively but was “*an issue that entirely infects all aspects of the purported findings of the Draft Report in relation to [Ms] McEvoy*”. Ms McEvoy did not repeat this assertion in submissions she made to the Inquiry on other matters.

With respect to Ms McEvoy and her legal representatives, it is difficult to understand these submissions. There was no examination by Counsel Assisting the Inquiry, or any evidence led on the sponsorship proposal to rejuvenate the Piccadilly Theatre, the appointment of Ms Battista and workforce management in the Inquiry’s public hearings. The assurances given by the Inquiry’s solicitors were accurate.

Furthermore, the provision of that transcript and those documents could not have prejudiced the ability of Ms McEvoy’s legal representatives to represent her at the public hearings, because the evidence Ms McEvoy gave and the documents she was shown at her private hearings were not relevant to the evidence led at the public hearings.

In any event, Ms McEvoy and her legal representatives had the opportunity under the Practice Directions to apply to inspect any transcript of private hearings or documents that they required to respond to the adverse findings that the Inquiry proposed to make against Ms McEvoy in relation to the sponsorship proposal to rejuvenate the Piccadilly Theatre, the appointment of Ms Battista and workforce management. Ms McEvoy and her legal representatives did not take up this opportunity.

In these circumstances, the Inquiry was not assisted by the submissions made on behalf of Ms McEvoy in identifying what, if any, practical injustice Ms McEvoy can be said to have suffered and was not satisfied she had been denied procedural fairness.

Process viewed as a whole

The processes of the Inquiry, viewed in full and set out above, ensured that at every stage of the Inquiry process, the powers of the Inquiry were exercised in a manner which was fair to those persons subject to them.

Whether it was a person required to produce documents, or a person facing potential adverse findings, fairness was respected, and processes were put in place so that the person concerned was not adversely affected by the exercise of the Inquiry’s power.

At all times, the Inquiry was free from bias and a person subject to adverse findings was able to engage with the Inquiry from the discovery stage up until the finalisation of this Report. Persons who were subject to an adverse finding were provided with a meaningful ability to respond to any such finding and have that response considered by the Inquiry before the final Report was provided to the Minister. In these ways all of the requirements of procedural fairness were properly observed by the Inquiry.

1.1.5 Good government

The Terms of Reference for the Inquiry refer to “*good government*”.

This Chapter will explain what the Inquiry understands by “*good government*”, and by the term “*governance*”, a significant element of good government.

The reason for explaining these concepts in some detail is so that they can be used as a yardstick, a way of measuring whether the individual “*aspects, operations and affairs of the City of Perth*” which are examined in this Report constitute a failure to provide good government.

Inquiry’s Terms of Reference

Part A.1 of the Inquiry’s Terms of Reference states:

- “1. The Inquiry Panel is to inquire into and report on those aspects, operations and affairs of the City of Perth (including of the Council and the Administration) during the period between 1 October 2015 and 1 March 2018 inclusive, which may be necessary, in order to determine:*
- i) whether there has been a failure to provide for the **good government** of persons in the City of Perth’s district;*
 - ii) the prospect of such **good government** being provided in the future (including by reference to whether the Council and Administration has the ability to, and is likely to, do so); and*
 - iii) any steps which may need to be taken to ensure that such **good government** does happen in the future”. [Emphasis added]*

Legislation

The *Local Government Act 1995* (LG Act) states, at section 3.1(1):

“The general function of a local government is to provide for the good government of persons in its district.”

The *City of Perth Act 2016* (CoP Act) states, at section 8(1):

“The objects of the City of Perth are as follows –

- (a) to provide for the good government of persons in the City of Perth, including residents, ratepayers and visitors.”*

The term “*good government*” is not defined in either Act.

What is government?

The term “*government*” refers to:

- the system or machinery by which a community is governed;
- the act or means of governing; and
- the people who are doing the governing.

The word “*govern*” includes aspects of organising, leading, directing, regulation and control.

In Australia, there are three levels of government, the Federal Government for the nation, State and Territory Governments, and local governments for each local area. The three levels of government have different jurisdictions.

Government includes:

- The people who make the decisions and laws, either members of Parliament for Federal Government and State Government, or council members for local governments. In Australia, these people are elected. This is often known as the “*Executive*” function.
- The people who implement the decisions, generally are employed. This is commonly known as the “*Administrative*” function of government. It reports to the “*Executive*” function.

Local governments are not specifically mentioned in the *Australian Constitution*, although each State and Territory has legislation which provides the rules for the creation and operation of local government.¹²⁷ In Western Australia, the principal legislation is the LG Act. It establishes local governments, how they are elected and their powers to make and enforce local laws.

The City of Perth is a local government.

Local government plays an important role in community governance and leadership. It is the “*grass roots*” level of government in Australia. As a forum for local decision-making, it helps deliver locally and regionally based programmes and services. Local governments make decisions about a wide range of matters affecting the daily lives of residents, ratepayers, businesses, and visitors in their geographic area.

Further information is available in **Chapter 1.1.1: About local government** and **Chapter 1.1.2: About the City of Perth**.

Government of the City of Perth

The Council of the City of Perth (City) (or the Commissioners when the Council is suspended) *“governs the local government’s affairs; and is responsible for the performance of the local government’s functions”*.¹²⁸ The Council is responsible for setting policy, planning and making-decisions about matters within the jurisdiction of the City.

In carrying out its functions, the Council must act in accordance with the law, most of which is codified in the LG Act and its regulations.

The Administration of the City is responsible for carrying out the decisions of the Council. The Administration is headed by a Chief Executive Officer (CEO), who is appointed by the Council. The CEO is responsible for employing other staff required to carry out the functions of the City. The City employs more than 700 staff and uses private contractors to deliver initiatives, services and programmes.

The City is unusual among Western Australian local governments in several respects. One is that it has its own Act of Parliament and a Lord Mayor. Another is that it has a higher ratio of businesses, workers and visitors when compared to permanent residents. Another is that it has a major source of income derived from its commercial parking business.

What is good government?

In his report into the City of Canning, the Inquirer, Dr Christopher Kendall, examined the provisions of the LG Act in order to understand the term *“good government”*. He wrote:

“Section 1.3, subsection (2) then provides that:

This Act is intended to result in:

- (a) better decision-making by local governments;*
- (b) greater community participation in the decisions and affairs of local governments;*
- (c) greater accountability of local governments to their communities; and*
- (d) more efficient and effective local government”.*

As summarised by Greg McIntyre SC, the Inquirer for the Inquiry into the City of South Perth (2002):

“... it can be inferred from that subsection that the legislature intended that the good government of a local government might be measured by the quality of (a) its decision-making, (b) community participation in its decisions and affairs, (c) its accountability to its community, and (d) its efficiency and effectiveness.

*I agree with that conclusion”.*¹²⁹

Section 8(1) of the CoP Act expresses good government in similar terms, namely:

- “(a) to provide for the good government of persons in the City of Perth, including residents, ratepayers and visitors;*
- (b) to represent the community and encourage community participation in decision-making;*
- ...*
- (j) in achieving its objects, to use its best endeavours to strike an appropriate balance among the complementary and competing civic, economic, social, cultural and environmental considerations, including considerations relating to visitors and tourists.*

The State’s capital city local government should be the benchmark for local government governance and leadership standards. It should be an exemplar organisation. This was anticipated in the creation of the CoP Act, as the Minister for Local Government at the time, the Hon. Anthony Simpson, MLA, said during the second reading of the Bill into Parliament:

“This bill, once enacted, will give Perth the special status it deserves as Western Australia’s capital and will highlight the special roles and responsibilities of the City of Perth that flow from this”.¹³⁰

He also stated:

“The bill sets out 10 objects of the City of Perth. These objects outline the responsibilities that should guide the City of Perth in its actions and decision-making”.

His concluding statement reinforces this role:

“This bill not only gives Perth the recognition it deserves, but also provides an important mechanism for the state and the City of Perth to work together to support the growth and development of this great capital city of Western Australia”.

In addition, the CoP Act identified “*enhanced roles and responsibilities*” and “*unique roles and responsibilities*”¹³¹ of the Lord Mayor and councillors. These are found in section 11(2) of the CoP Act. Some of these roles are relevant to the Inquiry’s assessment of good governance at the City.

This Inquiry takes the view that all council members and employees of the City, when they are purporting to act in their official capacity, are part of the government. If what they do is in accordance with the law and their delegated authority, advances the objectives of the City, and is beneficial to the community, then it is good government.

When council members or employees do not act in accord with the objectives of the City or to the benefit of the community; if they act from self-interest, with bias, with a conflict of interest, or outside their authority, then their actions are not good government.

Qualities of a local government displaying the principles of good government

Based on the Inquiry's investigations and examinations, there are qualities and actions which demonstrate when a local government is displaying good government. When good government is not displayed, there are risks for the local government relating to reputation, financial and non-financial loss (including productivity and quality of decision-making) as well as reduced community and government confidence (Table 1.4).

This Report provides examples of where these qualities were not obvious and as a result, good government was not being provided to the people of the City.

Table 1.4: Qualities of a local government displaying good government.

Roles and responsibilities	
Good government	<ul style="list-style-type: none"> • Clear, mutual understanding of roles and responsibilities, including an understanding of the separation between the Council and the Administration. • Respectful relationship. • Leaders who inspire and govern to deliver quality outcomes for the community, while accountable for decisions and performance. • Strong and principled leaders, exemplifying the importance of and practising good governance. • Leaders lead by example and are inclusive. • Fair democratic election of persons to represent the community.
Poor government	<ul style="list-style-type: none"> • Interference by council members in the Administration, including recruitment and termination of employment of employees. • Inappropriate behaviours, where power and control drives actions. • Poor and ineffective leaders, where appropriate behaviours are not modelled by those who should. • Acting in a manner that is contrary to the rules of conduct. • Creating division between council members. • Abuse of position. • Inadequate and unfair reviews of a CEOs performance. • Manipulation of elections processes.

Decision-making	
Good government	<ul style="list-style-type: none"> • Integrity in decision-making including transparency and fairness. • Accountability for decisions and personal actions. • Serving the best interest of the City and the community. • Appropriate allocation and use of ratepayer funds or resources.
Poor government	<ul style="list-style-type: none"> • Self-interest or bias in decision-making. • Lack of transparency and decisions not being capable of review. • Lack of accountability for decisions. • Misuse of entitlements. • Favouritism in the allocation of funds by sponsorships and grants. • Misconduct or corruption in procurement processes. • Spending of funds outside the legislation or an employee's delegated authority.
Integrity and ethics	
Good government	<ul style="list-style-type: none"> • Acting with integrity and high ethical standards. • Abiding by the law and understanding it. • Displaying good judgement and appropriate behaviours aligned to values. • Timely declarations of interests to enable sound decision-making. • Appropriate management conflicts of interest to maintain community confidence. • Risk aware culture that manages misconduct risks and effectively investigates complaints and allegations.
Poor government	<ul style="list-style-type: none"> • Being dishonest, lacking in integrity, and acting unethically. • Lack of trust and respect. • Failure to comply with legislative requirements. • Culture of self-entitlement. • Failure to comply with City policy. • Failure to declare income and financial interests. • Failure to declare gifts. • Failure to declare conflicts of interest. • Failure to properly investigate complaints and allegations. • Failure to identify potential misconduct or corruption.

The Inquiry has identified numerous instances of conduct which does not constitute good government. This Report provides many examples.

Participants in government

People involved with the City have different roles, and different governance functions and responsibilities. The principal roles are as follows:

The community

The LG Act and the CoP Act both contemplate the notion of “*community*”, but it is not defined. Communities can be defined by geographical or administrative boundaries (such as local government areas or post codes) and vary in size. They can also be defined as a set of relationships or connections between people (such as community or interest groups).¹³²

In the CoP Act, the meaning of the term of community is significantly broadened. The term “*community*”, for the purpose of this Report, may include ratepayers, residents, owners and occupiers of land or property, businesses, people who work in the City, visitors (local, state and international) and tourists.

Lord Mayor

The Lord Mayor is the leader of the councillors and has certain representative, civic and ceremonial duties, which are set out at section 10 of the CoP Act. The Lord Mayor is required to preside at Council meetings and provide leadership and guidance to the Council.

Councillors

The role of a councillor is set out in section 11 of the CoP Act. It includes providing leadership and guidance, ensuring that the City discharges its legal responsibilities, and:

- “(e) to participate in the City of Perth Council’s decision-making processes at council and committee meetings;*
- (f) to participate in the determination, oversight and regular review of the following matters, as required by the Local Government Act 1995 or any other written law –*
 - (i) the City of Perth Council’s policies, goals, finances, resource allocation, expenditure and corporate strategies;*
 - (ii) the efficiency and effectiveness of the City of Perth Council’s service delivery, the performance standards for that service delivery and the monitoring of those performance standards”.*

Chief Executive Officer

The functions of the CEO are set out at section 5.41 of the LG Act:

“The CEO’s functions are to –

- (a) advise the council in relation to the functions of a local government under this Act and other written laws; and*
- (b) ensure that advice and information is available to the council so that informed decisions can be made; and*
- (c) cause council decisions to be implemented; and*
- (d) manage the day to day operations of the local government; and*
- (e) liaise with the mayor or president on the local government’s affairs and the performance of the local government’s functions; and*
- (f) speak on behalf of the local government if the mayor or president agrees; and*
- (g) be responsible for the employment, management supervision, direction and dismissal of other employees (subject to section 5.37(2) in relation to senior employees); and*
- (h) ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law; and*
- (i) perform any other function specified or delegated by the local government or imposed under this Act or any other written law as a function to be performed by the CEO”.*

The Administration

The Administration consists of the employees of the City. They are appointed by the CEO. The role of the Administration is to advise and support the Council, implement the Council’s decisions, and manage the delivery of the City’s services to ratepayers, businesses and visitors.

The role of the Administration is not set out specifically in legislation, although some functions undertaken may be covered by legislation in areas such as environmental health or planning.

What underpins good government?

Local government has two core aspects to its role: a policy setting function (ie. the setting of law and policies under statute and ensuring compliance with law) and a governing function (ie. a process which ensures the effective and efficient delivery of an organisation’s resources). This is characteristic of all government organisations which are entrusted with public funds to deliver outcomes and objectives on behalf of the public.

The Inquiry has focused on identifying key organisational governance, accountability and cultural factors which may contribute to any failure to provide good government.

The Inquiry identified two core themes:

- **Governance:** The legislation, policies, processes and systems established for the making and implementing of decisions. It is also the way in which the Council, the CEO and City employees, individually and collectively, fulfilled their responsibilities and were accountable for decisions.
- **Culture:** The norms of behaviour for individuals and groups that affected the functioning of the City, relationships, and ultimately, decision-making.

These themes have assisted the Inquiry to understand:

- the adequacy of governance arrangements at the City;
- the prevailing culture of the Council and the Administration (ie. the CEO, the Executive Leadership Group and the staff) including interactions between the groups and within them;
- the interface and impact of culture on the governance practices at the City; and
- the impact of deficiencies in governance and/or culture on the Council and the Administration's ability to make decisions (including community participation in decision-making), be accountable to the community, and have responsibility for the City's efficiency and effectiveness.

Governance

Governance is the single most significant element of good government. It is essential to a thriving and successful organisation.

Governance makes up the structures, rules and processes which direct and control an organisation. It helps the organisation to set its objectives and future direction, make decisions, grant powers to get things done, drive and monitor performance and hold people accountable. It is the framework by which what needs to be done is spelled out and then determines how things should be done.

Governance is not unique to government. The Organisation for Economic Co-operation and Development (OECD)¹³³ and Australian Stock Exchange (ASX) Corporate Governance Council¹³⁴ both produce guidance for companies on governance. For companies, it encompasses the mechanisms by which companies, and those in control, are held to account.

Local government is unique, in that the Council as the governing body, is made up of elected members of the local community, not employees or directors. They have governing roles like directors of private companies and make their own autonomous decisions. However, there is a key difference. They are responsible for public funds and are part of the government, with all the expectations which arise from being public officers, including being accountable for public money.

Confidence in a local government is underpinned by the actions of elected council members and administrative staff. Decisions should be fair and based on all of the relevant information and considerations. Individuals who make those decisions are expected to be accountable for them. Accountability is a core element underpinning impartial, ethical, efficient and effective government.

Good governance requires that the processes operate fairly and equitably, in accordance with the law and the objectives of the City, and without bias or being affected by any self-interest of council members or employees.

Good governance also requires good leadership, clear and timely decision-making, a strong vision, a sound strategy and an appropriate system of checks and balances.¹³⁵ The structures, systems and policies which underpin each of these needs to be in place, respected and followed, to make sure the organisation runs efficiently and effectively.

Definitions of “*governance*” in local government can vary, but there are consistent elements. The Queensland Treasury Corporation articulates:

*“Governance is the development and management of policy for the benefit of the community. It consists of the processes and systems that the council employs to ensure the ‘good rule and government’ of its local area. Good governance provides an environment where political, economic and social development occurs with positive outcomes.”*¹³⁶

Furthermore, the Corporation explains that “*council members are accountable to their community, which expects that the council will apply good governance through its decision-making processes and systems*”.

The Inquiry notes that in most States of Australia there is either a governance guide for all local governments or individual local governments have published their own guides.

Examples of States which have published guides for all local governments are Victoria and Tasmania.¹³⁷ Examples of local governments which have published their own guides are the City of Sydney¹³⁸ and the City of Joondalup.¹³⁹

All governance guides for local governments, State Government and for other organisations, set out similar components of governance, although there are some variations. As a basis for discussion in this Report, the Inquiry has considered the “*Good Governance Guide*” produced for Victorian local governments, in 2012, by the Municipal Association of Victoria, the Victorian Local Government Association, Local Government Victoria and Local Government Professionals (Victorian Guide).¹⁴⁰

The Victorian Guide asks, “*What is good governance?*”, and provides this answer:

“Good governance is about the processes for making and implementing decisions. It’s not about making ‘correct’ decisions, but about the best possible process for making those decisions.

Good decision-making processes, and therefore good governance, share several characteristics. All have a positive effect on various aspects of local government including consultation policies and practices, meeting procedures, service quality protocols, councillor and officer conduct, role clarification and good working relationships”.

The Victorian Guide then sets out the main characteristics of good governance:

Good governance is accountable

Accountability is a fundamental requirement of good governance. Local government has an obligation to report, explain and be answerable for the consequences of decisions it has made on behalf of the community it represents.

Good governance is transparent

People should be able to follow and understand the decision-making process. This means that they will be able to clearly see how and why a decision was made – what information, advice and consultation council considered, and which legislative requirements (when relevant) council followed.

Good governance follows the rule of law

This means that decisions are consistent with relevant legislation or common law and are within the powers of council.

Good governance is responsive

Local government should always try to serve the needs of the entire community while balancing competing interests in a timely, appropriate and responsive manner.

Good governance is equitable and inclusive

A community's wellbeing results from all of its members feeling their interests have been considered by council in the decision-making process. This means that all groups, particularly the most vulnerable, should have opportunities to participate in the process.

Good governance is effective and efficient

Local government should implement decisions and follow processes that make the best use of the available people, resources and time to ensure the best possible results for their community.

Good governance is participatory

Anyone affected by or interested in a decision should have the opportunity to participate in the process for making that decision. This can happen in several ways – community members may be provided with information, asked for their opinion, given the opportunity to make recommendations or, in some cases, be part of the actual decision-making process.¹⁴¹

Five benefits of good governance were also identified:

- community confidence;
- improved efficiency;
- better decisions;
- compliance with legislative responsibilities; and
- ethical decision making.¹⁴²

In Western Australia, the approach to governance is often evidenced by defining core elements of a corporate governance framework. Many of the elements have supporting legislative or better practice requirements. These include:

- integrity, ethics and conduct
- roles and responsibilities;
- leadership;
- culture and relationships;
- decision-making;
- strategy, planning, performance and risk;
- compliance with legislation and policy; and
- accountability and transparency.

This Report explores, to some degree, all of these elements at the City.

One important element, that is not contained in detail elsewhere in the Report, is accountability. This refers to the mechanisms which help ensure that a local government which uses public money and makes decisions which affect people's lives can be held responsible for its actions. It generates incentives for responsible individuals to act in the interests of the community through:

- rewarding good performance;
- sanctions for poor performance (including corruption or misconduct);
- opportunity for learning, process and system improvement; and
- support for individuals to develop through improving knowledge and capability.

Accountability can also identify gaps in governance practices, clarify community, stakeholder or government expectation and promote improvements in how a local government works. External audits, reviews and inquiries are some of the mechanisms that provide government organisations, including local governments, with independent views on system and organisational capability and where improvements can be made.

All of the aspects contained in this section form part of good governance for a local government including the City. Further information on the City's governance is provided in **Chapter 2.1.2: Culture and governance** of this Report.

Culture

Good government for a local government also requires the right culture with appropriate behaviours, sound leadership and good communications. Culture is expressed and evidenced through the “*behaviours, customs and practices*” that are collectively displayed. The custodians of organisational culture are the leaders, the employees, the community and other stakeholders, who all have a role in shaping culture.¹⁴³ Put simply, it is “*the shared values and beliefs that guide how members of that organisation approach their work and interact with each other*”.¹⁴⁴

The culture of an organisation is also often viewed as “*the expression of its values in action*”.¹⁴⁵

The term “*culture*” in relation to local government includes the relationships between and among council members and employees, and the methods of operating which become acceptable and passed on as the way things are done.

Local governments have a Code of Conduct, which council members and the Administration are required to follow. The Code of Conduct is endorsed by Council and, among other things, articulates the conduct, behaviour, values and ethics of an organisation. Principles governing the behaviour of council members are also set out in regulation 3 of the *Local Government (Rules of Conduct) Regulations 2007*.

It is common in local governments for council members to want to become involved in administration matters and contact the CEO or other employees and ask questions or request actions. This may be because council members have constituents who want them to press their case, or because the council members themselves have businesses or associations or interests they wish to promote. Council members may also try to become involved in recruitment and other staffing matters.

The legislative framework for local government not only requires principled and ethical behaviour from council members and employees in the Administration, it also requires a separation of functions and powers between them.¹⁴⁶ There were and are good reasons for this demarcation of roles and responsibilities.

Council members are elected to office to represent the interests of the local community as a whole.¹⁴⁷ It is not necessary for them to have the experience, or the expertise, to do all of those things which the City, as a local government, must do. The experience and expertise to undertake those functions of the City is held by its employees.

The potential danger in council members becoming involved in the day-to-day operations of the Administration of the City is that, lacking the relevant experience or expertise, they may act on wrong considerations or act inappropriately, resulting in the administration not properly discharging its roles and functions.¹⁴⁸

It is the CEO’s role to prevent a council member from overstepping the mark and, if necessary, report them to the Local Government Standards Panel or the Corruption and Crime Commission. However, the CEO is in a difficult position because it is the Council which appoints and employs the CEO, and also has the power to terminate the CEO’s employment.

Council members have the right to ask questions of, and about, the administration of the City, but not to direct what staff members should do, or how they should do it. The CEO is responsible for doing that.

The Inquiry realises that it can be difficult for a CEO, and for other employees responsible for governance, compliance or human resources, to tell a council member to “*back off*”. Although it is easier for an external body, such as this Inquiry, to be critical of employees for not preventing unwarranted intervention by council members, the Inquiry is conscious of the practical difficulties which may arise for the employees in doing this. It is possible that an employee who resists a council member may have his or her employment prejudiced in some way.

Further information on the City’s culture is provided in **Chapter 2.1.2: Culture and governance** of this Report.

Inquiry’s Report

The Terms of Reference for the Inquiry require it to determine whether there has been a failure to provide good government for the City of Perth; the prospect of such good government being provided in the future; and any steps which may be necessary to ensure this in the future.

To do this the Inquiry has conducted extensive investigations. These have included numerous hearings, private and public, with people connected to the City.

The Inquiry’s investigations have obtained evidence of many instances of poor governance. This Report describes a number of these. In doing this, and in reaching its findings and recommendations, the Inquiry has kept in mind the principles of good government and good governance set out in this Chapter.

1.1.6 Universal application

The City of Perth (City) is the most prominent local government in Western Australia. As the capital city, it does and should have a higher profile than other local governments.

This Inquiry's broad Terms of Reference¹⁴⁹ encouraged a comprehensive examination of the City's government.

In many respects, the City is no different to many other local governments. In other respects, it is deliberately set apart (that is, *City of Perth Act 2016*).

This Inquiry is not the first local government inquiry of its kind. Far from it. Many others have preceded it.ⁱ Although their terms of reference were different, it is obvious that many of the failings in government which were identified in those previous inquiries resonate strongly with the findings of this Inquiry. In short, the same types of failings seem to recur with unnecessary regularity.

Inevitably, the failure to find meaningful and lasting solutions invites the question: *what is needed to fix the many ongoing problems with local government?* The nature and scope of this Inquiry and its ability to critically examine many of the root causes of the ongoing problems with local government mean that it presents a unique and overdue opportunity to use what should be, but was not, an exemplar local government to answer this question and hopefully provide meaningful and enduring solutions addressing the root causes of so much local government dysfunction.

The State Government has understandably and quite rightly devoted a significant amount of time and resources to amending the *Local Government Act 1995* and its regulations, and intends to continue to do so, to address some of these longstanding problems. It is hoped that this Report and its recommendations will complement some of those advances.

As this Report demonstrates, many of the problems which existed at the City were rooted in its poor, longstanding and widespread culture and lack of good governance. Poor decision-making and poor behaviour were at the heart of many of these problems. Solutions to problems of this kind require a proper understanding of their root causes and an acceptance of a better way of doing things. In some cases, a very different way of doing things.

The focus needs to be on meaningful and lasting outcomes, not compliance driven and reactive solutions. Unless this paradigm shift takes place, many of the problems which have for too long beset the City, and other local governments, will continue.

Consequently, it is hoped that many of the recommendations in this Report, will be seen as having a broader and local government-wide application. The opportunity should not, in this Inquiry's respectful opinion, be wasted.

ⁱ In Western Australia, since 1995, there have been five inquiries under Part 8, Division 2, of the *Local Government Act 1995*: Inquiry Into City of Canning (2014); Inquiry Into City of Joondalup (2005); Inquiry Into the City of South Perth (2002); Inquiry Into the City of Perth (2020); and Inquiry Into the City of Cockburn (2000).

1.2

About this Report



Acknowledgements

Although the Inquiry is an independent investigative body, the co-operation and support of many people and agencies has enabled it to successfully complete its work.

The Inquiry received many submissions from the public following the Inquiry's call for information. These were insightful, and a valuable aid to the Inquiry's investigations. I thank all those who took the time to share with the Inquiry their experiences with the City of Perth (City).

The Inquiry would like to thank the Commissioners of the City, Mr Andrew Hammond, the late Mr Eric Lumsden AM, Ms Gaye McMath, and Mr Len Kosova for the assistance they have provided and their positive attitude to the work of Inquiry. In particular the Inquiry would like to thank the Chair Commissioner, Mr Hammond, for his assistance and for encouraging staff of the City to assist the Inquiry.

The Inquiry is grateful to Mr Murray Jorgensen, Chief Executive Officer (CEO) at the City from November 2018. He provided very useful information to the Inquiry about the situation at the time he became CEO, and the initiatives introduced since that time to overcome shortcomings in governance. He also encouraged staff of the City to assist the Inquiry.

The Inquiry has served many notices under the *Royal Commissions Act 1968* on the City and has made numerous additional requests to the City for information. The City and its officers have by and large co-operated with the Inquiry, and a number of staff at the City, particularly in the Governance Unit and Information Technology Unit, have gone to great lengths to find and provide documents, statements of information, devices and other things that the Inquiry required.

The Inquiry is also grateful to the current and former employees of the City who voluntarily participated in interviews with Inquiry officers and provided detailed information about events, incidents and experiences at the City. These enabled the Inquiry to focus its investigations appropriately. Many of these people wish to remain anonymous, but they know who they are and the Inquiry thanks them for their assistance.

The Inquiry would like to acknowledge the Minister for Local Government, for his understanding in relation to the Inquiry's work and the reasons why it was necessary that the Inquiry's term be extended.

The Inquiry has been well supported in its work by the Department for Local Government, Sport and Cultural Industries. The Inquiry would like to thank the Director General, Mr Duncan Ord, and Mr Michael Connolly, Deputy Director General and his local government team for all their support and assistance. I would also like to acknowledge the support from the Department's corporate services officers, who enabled the Inquiry to establish its office, employ staff and use the equipment and programmes necessary for it to complete its work.

The Inquiry also acknowledges the support and assistance of the State Solicitor in meeting its goals.

The Inquiry has also been assisted by a number of other government authorities and private sector organisations who provided documents, answered questions or provided information. These include the Corruption and Crime Commission and the Public Sector Commission.

The Inquiry would like to acknowledge the accommodation and support services provided by the Western Australian Industrial Relations Commission at 111 St Georges Terrace, Perth and employees of that Commission for facilitating the work of the Inquiry.

In relation to its public and private hearings, the Inquiry would like to thank the recording services and transcribers who faithfully turned more than 500 hours of audio evidence into written transcripts.

The Inquiry also acknowledges the contribution and co-operation of the legal representatives of various witnesses before the Inquiry who assisted the Inquiry in its work, while fiercely protecting the rights and interests of those whom they represented.

The Inquiry has also been supported by a number of professional organisations who provided expert advice and assistance, including Mills Wilson (communications), Deloitte Risk Advisory (forensics), Crowe (audit and financial) and ACIL Allen Consulting (financial).

Finally, I would like to express my deepest personal appreciation to the whole Inquiry team.

The legal team was led by the Counsels Assisting the Inquiry. Each of them demonstrated great skill and commitment in dealing with the demanding work required of them. Counsel was capably supported by the Solicitor Assisting the Inquiry and the other solicitors to the Inquiry. The skilful work in the hearing room could not have been done as well as it was without the skill and hard work done in the background, away from the public glare.

Significant work was undertaken by the investigation team over the course of the Inquiry. Led by those in the Principal Investigator role and supported by investigators and intelligence officers, an extensive investigative process across a broad range of more than 20 matters was conducted to inform the hearing programme. Without this work, which was of an exceptional quality, the work of the Inquiry would simply not have been possible.

The Inquiry would not have not run efficiently without the support of the executive support team led by the Executive Manager. This team has supported the operations of the hearing room, the internal operations of the Inquiry, records management functions and graphic design of the Report. It was all done well and very much appreciated.

Over the course of the past two years, I have had the privilege of working alongside a dedicated team of highly skilled, professional and hard-working officers, who have worked within the resource limitations and deadlines imposed for the delivery of the Inquiry. I thank them for their diligence, commitment and professionalism. Without them, the successful completion of this Report would not have been possible.

Report Structure

The Inquiry into the City of Perth (Inquiry) was established:

“... to inquire into and report on those aspects, operations and affairs of the City of Perth (including of the Council and the Administration) during the period between 1 October 2015 and 1 March 2018 inclusive, which may be necessary, in order to determine:

- i. whether there has been a failure to provide for the good government of persons in the City of Perth’s district;*
- ii. the prospect of such good government being provided in the future (including by reference to whether the Council and Administration has the ability to, and is likely to, do so); and*
- iii. any steps which may need to be taken to ensure that such good government does happen in the future”.*

The Inquiry had the powers of a State Royal Commission under the *Royal Commissions Act 1968*. Using these powers, the Inquiry conducted an extensive investigation into these “aspects, operations and affairs of the City” during the Inquiry period.

This Report describes what the Inquiry did, what it found and how similar issues might be prevented from arising in the future. The Report of the Inquiry into the City of Perth consists of four volumes.



The Inquiry

This Volume sets the scene for the rest of the Report. It provides context for the Inquiry's investigation and explains the methods used.

1.1 Overview



1.1.1 About local government

This Chapter provides an overview of the local government sector and legislation framework in Western Australia.

1.1.2 About the City of Perth

This Chapter provides an overview of the City of Perth, Western Australia's capital city local government.

1.1.3 About the Inquiry

This Chapter contains information about the suspension of the Council, the appointment of the Inquiry, the powers of the Inquiry and the phases of the Inquiry's investigation and hearings.

1.1.4 Procedural fairness

This Chapter explains how the Inquiry provided procedural fairness to people who were potentially the subject of adverse findings in this Report. Procedural fairness means that those people, and their legal representatives, were given access to relevant evidence and an opportunity to make a submission to the Inquiry.

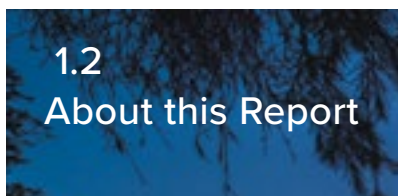
1.1.5 Good government

This Chapter provides an explanation of the concepts of 'good government' and 'good governance'.

1.1.6 Universal application

This Chapter considers the possible broader applications of the Report and recommendations.

1.2 About this Report



About this Part

This Part provides the structure of the Report, acknowledgements, relevant legislation, policies and procedures and a glossary of key terms used in the Report.

Case Studies

This Volume provides information which gives context to the investigation, findings and recommendations of the Inquiry.

2.1 Overview



2.2 Community Leadership



2.1.1 Key events and people

This Chapter identifies the key people, and their roles, at the City during the Inquiry period, as well as the significant events between 2015 and 2018. These people included council members and senior City officers.

2.1.2 Culture and governance

This Chapter explains the culture and governance of the City and how this affected the way the City operated.

2.2.1 Local government elections

This Chapter examines in depth how some candidates interfered with election processes for the position of councillor and subverted the democratic process.

2.2.2 Decision-making

The sections in this Chapter examine decision-making by the Council in relation to three situations in which information obtained by the Inquiry suggests that decisions may have been made for the wrong reasons, including to advance the personal interests of council members.

2.2.3 Disclosure, personal interest and entitlements

The sections in this Chapter examine:

- failure by some council members to disclose their financial or other interests;
- misuse by some council members of entitlements which were available to assist them in their official role, including use of the Council dining room and reimbursement for costs associated with restaurants, clothes and dry cleaning; and
- misuse by a council member of her official title, office, business cards, email and the dining room for private business purposes.

2.2.4 Grants and sponsorship

The sections in this Chapter examine:

- council members received gifts, including tickets to events, from sponsored organisations and then made decisions about funding for those organisations; and
- council members attempted to ensure the City allocated money to organisations and events with which they had a personal connection.

2.3 Administrative Leadership



2.3.1 Chief Executive

This Chapter examines the role of the CEO, through events surrounding the termination of the employment of a CEO by the Council, and the appointment of the subsequent CEO.

2.3.2 People management

This Chapter considers aspects of human resources and workforce management by the City. The sections in this Chapter examine examples of recruitment, probation and performance and termination of employment, which may not have been properly conducted, or where there may have been inappropriate interference by council members. The City's investigation of complaints and grievances is also examined.

2.3.3 Financial management and planning

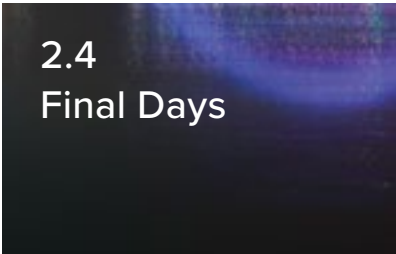
This Chapter identifies weaknesses in systems, capability and processes, and how these are being, and can be, addressed. It also examines:

- the City's integrated planning and reporting framework,
- the City's financial position and its financial management practices; and
- a partnership arrangement between the City and a not-for-profit organisation, involving significant funding.

2.3.4 Procurement and contracting

The sections in this Chapter examine five specific procurement exercises conducted by the City in which the consequences of failing to follow appropriate procedures ranged from unauthorised expenditure and undeclared conflicts of interest to manipulation of tender documents to the detriment of a tenderer. This Chapter also provides examples of allegations about serious misconduct by employees which were not appropriately dealt with by the City.

2.4 Final Days



2.4.1 Events leading to the suspension of the Council

This Chapter describes events within the Council and Administration of the City at the end of 2017, and the beginning of 2018, which led to calls from council members, the CEO and senior officers for intervention. The level of dysfunction and lack of good government within the City caused the Minister for Local Government to suspend the Council on 2 March 2018.

Restoring Good Government

This Volume concludes with the opinion of the Inquiry Panel regarding whether there has been good government at the City of Perth as well as whether there is any prospect of good government being provided in the future.

3.1 Opinion of the Inquiry Panel

About this Part

This Part contains the Inquiry's conclusions, as required by its Terms of Reference, about whether the Council and Administration of the City provided 'good government' during the Inquiry period.

3.2 The Future

About this Part

This Part looks to the present and the future. The focus is on what has happened since 2 March 2018, when the Council was suspended. It addresses what steps have been taken, and what steps are planned for the future, to restore good government at the City.

3.3 Matters Referred to Other Authorities

About this Part

This Part relates to the power of an Inquiry Panel to refer matters to Commonwealth, State and other authorities.

3.4 Recommendations

About this Part

This Part contains the recommendations of the Inquiry Panel. They have been separated into two categories: local government and the City of Perth. A number of the City of Perth recommendations also have a broader universal, local government-wide application.

Appendices

This Volume contains supporting information relevant to this Report.

4.1 The Inquiry

About this Part

This Part includes details of the witnesses and their representation, notices served, staff of the inquiry and Practice Directions of the inquiry.

4.2 Inquiry Commissioned Reports

About this Part

This Part includes the two reports commissioned by the Inquiry.

4.3 City of Perth Declarations by Council Members

About this Part

This Part includes the declarations made by council members at the time they took office.

4.4 City of Perth Commissioned Reports

About this Part

This Part includes five independent reports commissioned by the City of Perth into aspects of the functioning and processes of the City.

Legislation, policies and procedures

Legislation

The following details describe the legislation referred to in this Report. The principal piece of legislation is the *Local Government Act 1995* and its associated regulations.

<i>Associations Incorporation Act 1987</i>	
<i>Associations Incorporation Act 2015</i>	
<i>Building Act 2011</i>	(Building Act)
<i>City of Perth Act 2016</i>	(CoP Act)
<i>Corruption, Crime and Misconduct Act 2003</i>	(CCM Act)
<i>The Criminal Code</i>	(Criminal Code)
<i>Equal Opportunity Act 1984</i>	
<i>Fair Work Act 2009 (Cth)</i>	(Fair Work Act)
<i>Heritage Act 2018</i>	
<i>Heritage Act of Western Australia 1990</i>	
<i>Income Tax Assessment Act 1936</i>	
<i>Legal Profession Act 2008</i>	(Legal Profession Act)
<i>Local Government Act 1995</i>	(LG Act)
<i>Local Government (Administration) Regulations 1996</i>	(Administration Regulations)
<i>Local Government (Audit) Regulations 1996</i>	(Audit Regulations)
<i>Local Government (Constitution) Regulations 1998</i>	(Constitution Regulations)
<i>Local Government (Elections) Regulations 1997</i>	(Election Regulations)
<i>Local Government (Financial Management) Regulations 1996</i>	(Financial Management Regulations)
<i>Local Government (Functions and General) Regulations 1996</i>	(Functions and General Regulations)
<i>Local Government (Rules of Conduct) Regulations 2007</i>	(Conduct Regulations)
<i>Occupational Safety and Health Act 1984</i>	
<i>Parliamentary Commissioner Act 1971</i>	
<i>Perth Parking Management Act 1999</i>	
<i>Planning and Development Act 2005</i>	(PD Act)
<i>Planning and Development (Local Planning Schemes) Regulations 2015</i>	
<i>Planning and Development (Development Assessment Panels) Regulations 2011</i>	(DAP Regulations)
<i>Public Works Act 1902</i>	
<i>Royal Commissions Act 1968</i>	(RC Act)
<i>Salaries and Allowances Act 1975</i>	
<i>State Records Act 2000</i>	

Legislative changes

During the period of the Inquiry's Terms of Reference, there have been five amendments to the *Local Government Act 1995* (Table 1.5). These included changes to provisions relating to council administration, financial reporting and declaration of gifts received by councillors.

The version of the *Local Government Act 1995* applicable to this Inquiry is Reprint 6, as at 3 August 2012. For a list of all amendments made to the *Local Government Act 1995*, including amendments affecting this Inquiry, refer to the State Law Publisher's website. Under the *Local Government Act 1995* is a heading 'History of This Act'.

Table 1.5: Amendments to the *Local Government Act 1995* since the announcement of the Inquiry.

Name of Amending Legislation	Date of Assent
<i>City of Perth Act 2016</i> , Part 4, Division 4.	03/03/2016
<i>Graffiti Vandalism Act 2016</i> , Part 6, Division 2.	11/07/2016
<i>Public Health (Consequential Provisions) Act 2016</i> , Part 3, Division 18.	25/07/2016
<i>Local Government Amendment Act 2016</i> , Part 2.	21/09/2016
<i>Local Government Amendment (Auditing) Act 2017</i> .	01/09/2017
<i>Strata Titles Amendment Act 2018</i> , Part 3, Division 12.	19/11/2018
<i>Local Government Amendment (Suspension and Dismissal) Act 2018</i> .	19/11/2018
<i>Local Government Legislation Amendment Act 2019</i> , Part 2.	05/07/2019

City of Perth policies and procedures

The City of Perth (City) has two types of policy, being Council Policy and Organisational Policy. The City's Administration also has corporate procedures established to provide a framework and guidance to the corporate directors in their decision-making.

Council Policy

The Council Policy is adopted by the City of Perth Council to provide the CEO with direction in respect to particular matters requiring action. Council Policy guides the City's actions and decision-making. There are two types of policies:

- General Council Policy: A policy adopted by Council that is not legislative in nature. This includes Council 'directives' on general matters not specifically originating from legislation.
- Legislative Policy: A policy that is either required by law or created to supplement the City's Local Planning Scheme or a City Local Law.

The City's *Council Policy Manual* contains and consolidates policy decisions made by Council. It provides the Council, Council committees, the CEO and staff with guidelines.

The Council Policy Manual includes “CP10.1 - Code of Conduct” (Code) applicable to all employees of the City of Perth. Breach of the Code may constitute minor misconduct under the *Local Government Act 1995* and the *Local Government (Rules of Conduct) Regulations 2007* (Conduct Regulations).

A breach by a council member of the Conduct Regulations may be reported to the City’s Complaints officer, and be the subject of a complaint to the Local Government Standards Panel. If so, it is dealt with under Part 5, Division 9 of the *Local Government Act 1995*.

This Report refers to thirteen Council policies. Each Chapter will reference the version or date of the policy used for that matter.

Table 1.6 provides a summary of Council policies referred to in this Report, including the relevant policy number, its title, its objectives and the date it was last updated.

Table 1.6: City of Perth Council policies referenced in this Report.

	Title	Objective ¹⁵⁰	Amendments ^j
CP9.7	Purchasing	The City is committed to setting up efficient, effective, economical and sustainable procedures in all purchasing activities.	Revised 30/04/2015 15/12/2015 15/03/2016
CP9.8	Contract Variations— Authority to Incur a Liability	To determine the circumstances in which a contract for the procurement of goods or services may be varied.	Revised 06/06/2017
CP10.1	Code of Conduct	The primary objective of the Code of Conduct is to set out the standards of ethical and professional behaviour expected of the City’s Elected Members, External Members and Employees.	Revised 06/6/2017 Administrative amendment 03/09/2018
CP10.5	Council Member Allowance and Meeting Attendance Fees	To set the Council Member Allowance and Meeting Attendance Fees for the City of Perth in accordance with sections 5.98 and 5.98A of the <i>Local Government Act 1995</i> .	Latest revision 30/04/2015
CP10.6	Elected Members Reimbursement of Expenses	To provide for the reimbursement of expenses incurred by an Elected Member while performing his or her duties.	Revised 21/11/2017
CP10.8	Office Accommodation – Elected Members	To determine the nature and extent of office accommodation provided to Elected Members.	Revised 28/04/1998

j Amendments made during the Inquiry’s TOR.

	Title	Objective ¹⁵⁰	Amendments ^j
CP10.9	Common Seal and Document Signing Authority	To establish, in accordance with the LG Act 1995- <ol style="list-style-type: none"> 1. Protocols for affixing and administration of the City of Perth Common Seal; and 2. Authority for the Chief Executive Officer and other nominated officers to sign (execute) documents on behalf of the City of Perth. 	Revised 23/03/2015
CP10.12	Provision of Hospitality	To determine the nature and extent of catering services for civic functions and official meetings.	Revised 22/02/2011
CP12.4	Payments under section 5.50 of the <i>Local Government Act 1995</i>	To determine the circumstances in which the City of Perth will pay an employee, who is leaving, an amount (severance payment) in addition to any amount the employee is entitled to under the contract of employment, award, industrial agreement, or order by a Court or Tribunal.	Revised 05/01/2011
CP12.6	Staff – Local Government Employees – Senior Employees	Policy objective is to: <ol style="list-style-type: none"> 1. determine those employees that are considered to be suitably qualified to act in the position of Chief Executive Officer (Section 5.36(2)(b) of the <i>Local Government Act 1995</i>); 2. determine how the position of Chief Executive Officer will be filled on an acting basis as required; and 3. determine those employees that are designated as senior employees for the purposes of Section 5.37(1) of the <i>Local Government Act 1995</i>. 	Revised 19/12/2017
CP18.13	Provision of Sponsorship and Grants	The objectives of the policy are: <ol style="list-style-type: none"> a) Provision of a consistent, equitable, transparent and efficient framework for administration of all sponsorship and grant programs; b) To support a range of projects and initiatives that meet the diverse needs of the City of Perth community; and c) To clearly identify the eligibility and accountability requirements of organisations that applies for and receives funding. 	Revised 19/12/2017

	Title	Objective ¹⁵⁰	Amendments ^j
CP18.14	Donations	To provide the framework for determining eligibility for the provision of donations from the City of Perth, which provide philanthropic support to community groups and not for profit organisations.	Revised 19/12/2017
CP18.15	Grants	<p>The objectives of the policy are:</p> <ul style="list-style-type: none"> a) provision of a consistent, equitable, transparent and efficient framework for administration of all grant streams; b) to support a range of projects and initiatives that meet the diverse needs of the City of Perth community; c) to optimise the outcomes of the grants programme through improved access, a transparent and supported approach to promoting and allocation; and d) to clearly identify the accountability requirements of organisations or individuals that receive funding. 	Created 13/12/2016

Organisational policy

An organisational policy governs the day-to-day operations of the City and does not require Council approval. Organisational policies are internally focussed in nature, with employees being required to consider the relevant policy when making decisions.

The Organisational Policy Manual contains policy statements relevant to corporate administration and operational management of the City of Perth. The Organisational Policy Manual provides the scope and procedures for dealing with specific issues within the organisation.

Table 1.7 shows organisational policies referred to in this Report including the relevant policy number, title, its objectives and the date it was last updated.

Table 1.7: City of Perth organisational policies referenced in this Report.

	Title	Objective¹⁵¹	Amendments^k
OP01	Decision Making Framework	To describe the decision-making framework and integrity principles to be applied when making decisions on the City of Perth's operations.	08/07/2013 Latest revision 10/10/2016
OP04	Equal Employment Opportunity	Employees and prospective employees of the City of Perth are entitled to a workplace which is free from discrimination and harassment, where employees are treated fairly and where employment decisions are based on the individual merit of the employee and prospective employees. The City of Perth must also comply with equal opportunity legislation.	Created 04/2003 Revised ELG 01/2014
OP06	Prevention and Management of Workplace Bullying	To prevent incidents of bullying in the workplace. To ensure that any instances of workplace bullying are managed promptly and effectively.	Created 25/03/2013
OP10	Record Keeping	To establish a framework for the creation and management of City records, in accordance with legislative requirements and best practice standards.	Created 18/11/2003 Latest revision 28/11/2016

^k Amendments made during the Inquiry's TOR.

Corporate procedures

The City's corporate procedures are formalised processes to be used by specific staff for the governance, management and administration of corporate units within the City. Procedures may be business area specific or apply across the City.

Table 1.8 shows the seven corporate procedures referred to in this Report including the relevant procedure number, title, objectives and the date it was last updated.

Table 1.8: City of Perth corporate procedures referenced in this Report.

	Title	Objective	Amendments ^I
PR0660	Evaluation panels for assessing tenders, expressions of interest and quotations	To ensure that the assessments of <ul style="list-style-type: none"> Tender, Expression of Interest and Quotation submissions are undertaken fairly and according to a pre-determined weighted selection criteria. Ensure adherence to probity procedures and relevant policies. Ensure that the requirements specified in the Tender, Expression of Interest or Quotation document are evaluated in a way that can be measured and documented. 	Created 08/01/2004 09/02/2017
PR0024	Higher Duties Salaried Officers	Guidelines to ensure that Higher Duties within the City of Perth are applied in an equitable and effective manner.	Created September 2002 Revision 09/2012
PR0559	Construction and Maintenance (CMD) – Preparation of Parks workforce maintenance budget	To ensure complete and timely preparation of the Parks operational budget.	Created 01/12/2005 Updated 13/12/2018
PR0007	Recruitment and Selection	<ul style="list-style-type: none"> To ensure the City recruits talented employees. To provide an overview of the City's approach towards recruitment. To ensure the recruitment process complies with relevant legislation and other City of Perth Human Resource procedures and guidelines. 	20/05/2013 05/02/2019 (Revoked)

^I Amendments made during the Inquiry's TOR.

	Title	Objective	Amendments ¹
PR0439	Disciplinary Guidance Notes	<ul style="list-style-type: none"> To provide supervisors and managers with a model process for managing employees with unsatisfactory work performance, behaviour and/or conduct. This includes misconduct or serious misconduct in the workplace. It provides scope for decision-making and flexibility of action to suit different individual situations. To provide employees with an overview of the process that may be used when addressing unsatisfactory work performance, behaviour and/or conduct. It must be noted that each process may differ depending on the circumstances. However, the principles of procedural fairness and natural justice will underpin any process that is followed. For situations where an employee's work performance, behaviour and/or conduct does not meet a satisfactory standard, the supervisor or manager should in the first instance discuss the issues with the employee. The employee may benefit from the development of a Performance Plan. Matters relating to misconduct may need to be referred to the CEO and consequently the Corruption and Crime Commission (CCC) or the Public Sector Commission (PSC). 	Created 24/02/2003 (Current)
PR0965	Sole Supplier Justification and Approval	<ul style="list-style-type: none"> To establish a formal process where there may be a valid reason for nominating a supplier as a 'sole supplier'. Maintain accountability in purchasing and comply with Regulation 11(2)(f) of the <i>Local Government (Functions and General) Regulations 1996</i>. 	Created 17/06/2010 Reviewed 17/11/2013
PR0442	Workplace Grievance Management Procedure	<ul style="list-style-type: none"> To provide employees and supervisors with an effective means of resolving workplace grievances. To provide an avenue for handling complaints in a dignified, consistent, fair and timely manner to prevent grievances from escalating. To promote consultation, co-operation and discussion as the basis for resolution of grievances. To ensure that the City of Perth complies with its legal and moral responsibilities to take all reasonable and practicable steps to resolve complaints; especially discrimination, bullying and harassment issues. 	Created 06/05/2003 Reviewed July 2017

Glossary of terms

Term	Definition	Legislation
Absolute majority	<p>(a) in relation to a Council, means a majority comprising enough of the members for the time being of the Council for their number to be more than 50 per cent of the number of offices (whether vacant or not) of members of the Council.</p> <p>(b) in relation to any other body, means a majority comprising enough of the persons for the time being constituting the body for their number to be more than 50 per cent of the number of offices (whether vacant or not) of the body.</p>	<i>Local Government Act 1995</i> (LG Act), s 1.4.
Administration	A general term used to describe employees of the City, including the CEO.	
Candidate	<p>A person is eligible to nominate as a candidate for a local government election if the person is an elector of the district (residential owner or occupier) and over 18 years of age.</p> <p>A candidate includes any person who, within 3 months before the day of election, offers himself for election as a member of the Council or Assembly.¹⁵²</p>	LG Act, s 2.19, 4.48.
Central Business District (CBD)	The Central Business District of the City of Perth.	
Chief Executive Officer (CEO)	<p>The Chief Executive Officer of a local government or a person acting in the role of CEO from time to time.</p> <p>The CEO is appointed by Council. Council also has the power to review the CEO's performance and terminate his or her employment.</p>	LG Act, s 1.4, 5.36, 5.41.
City	The local government of the City of Perth, including the Council and employees, as well as the electoral boundary area.	<i>City of Perth Act 2016</i> (CoP Act) s 6.
Committee	A committee of the Council.	LG Act, s 5.1, 5.8; 5.9.

Term	Definition	Legislation
Committees of the City of Perth Council¹⁵³		
Audit and Risk Committee	A committee established to provide guidance and assistance in relation to risk management, internal controls, legislative compliance and internal and external audit planning and reporting. It comprised three council members.	
Chief Executive Officer (CEO) Performance Review Committee	A committee established to undertake the annual review of the performance of the CEO, establish annual performance objectives for the CEO and report on the outcome of the review of the CEO's performance. It comprised three council members.	
Design Advisory Committee	A committee established to provide independent technical advice and recommendations to the Council in respect of Bonus Plot Ratio and design issues. Membership comprised of two architects, two town planners, one landscape architect, a State Government architect and the Director, Planning and Development at the City of Perth.	
Finance and Administration Committee	A committee established to make recommendations on matters related to financial and property management, business proposals and fees and charges levied by the City. It comprised three council members.	
Marketing, Sponsorship and International Engagement Committee¹⁵⁴	A committee established to oversee and make recommendations to Council on marketing, grants, sponsorship, donations, events and festivals, and either approve or decline applications for small amounts of funding or make a recommendation to the Council. It comprised three council members.	
Planning Committee	A committee established by the Council to oversee and make recommendations on development planning policies, strategic town planning initiatives, transport and traffic planning, heritage listings, environmental improvements, liquor licensing, land administration and applications for events. It comprised three council members	
Works and Urban Development Committee	A committee established to oversee and make recommendations to Council on matters related to building upgrades, design, lighting, and waste management. It comprised three council members.	

Term	Definition	Legislation
Committee member	A person/s appointed by a Council (by absolute majority) to a committee. They can be council members, employees, other persons or a combination of both of them.	LG Act, s 5.9, 5.10.
Community	Ratepayers, residents, property owners, visitors and businesses within the City's district. ¹⁵⁵	
Corporate nominee	An Elector who is eligible to vote in local government elections by virtue of being the nominee of a body corporate that owns or occupies rateable property within the local government's district.	LG Act, s 4.32 (1G), (1H).
Corruption and Crime Commission (CCC)	A Western Australia State Government agency established under the <i>Corruption, Crime and Misconduct Act 2003</i> (CCM Act) to assess, investigate and expose serious misconduct in the Western Australian public sector, including local government.	<i>Corruption, Crime and Misconduct Act 2003</i> .
Council	The Council of the local government, being the City of Perth. It comprises the Lord Mayor and eight council members who are elected by electors eligible to vote in City of Perth elections.	CoP Act, s 9; LG Act, s 2.6, 2.7.
Council meeting	A formal meeting of Council conducted in accordance with the LG Act and the Standing Orders Local Law 2009. ¹⁵⁶	
Council member/s	An elected mayor or president or a councillor of a local government. Used in this Report as a term including the Lord Mayor and councillors of the City of Perth. May also be referred to as an " <i>elected member</i> ".	CoP Act, s 9, 11; LG Act, s 1.4, 2.10
Council Policy (CP)	Directions given by the City of Perth Council on a range of governing matters. It directs the actions and behaviours of council members, the CEO, employees and others. City of Perth Council Policy Manuals are found on the City of Perth website. Council Policy Manuals are referred to in this Report as, for example, CP 12.1.	
Councillor	A person who holds the office of Councillor of the City of Perth Council. May also be referenced as a " <i>council member</i> " or " <i>elected member</i> ".	CoP Act, s 9, 11; LG Act, s 1.4, 2.10.

Term	Definition	Legislation
Counsel Assisting the Inquiry Panel	An advocate appointed to assist the Inquiry Panel by, among other things, examining witnesses during the inquiry.	
Crisis Management Plan (CMP)	A plan of the City that sets out a process that facilitates organised decision-making in the event of a major incident and/or crisis <i>“to reduce the risk and impact of a disruption that may have an effect on the life, safety or reputation of the City of Perth and its employees using effective communication, teamwork, coordination, assessment and decision making”</i> .	
Culture	The norms of behaviour for individuals and groups that affected the functioning of an organisation, relationships, and ultimately, decision-making. ¹⁵⁷	
Department of Local Government, Sport and Cultural Industries (DLGSCI) Department of Local Government and Communities (DLGC)	The State Government department responsible for local government matters. Note: Government changes on 1 July 2017 transferred the local government function from the former Department of Local Government and Communities (DLGC) to the newly created Department of Local Government, Sport and Cultural Industries (DLGSCI). This entity may also be referred to as the <i>“Department”</i> in this Report.	
Deputy Lord Mayor	The Deputy Lord Mayor is elected by Council from among the councillors, every two years, following a local government election. The Deputy Lord Mayor may perform the functions of the Lord Mayor if the: <ul style="list-style-type: none"> • office of the Lord Mayor is vacant. • the Lord Mayor is not available or is unable or unwilling to perform the functions of Lord Mayor. 	LG Act, s 2.9, 5.34.
Designated employee	Defined to mean: <ul style="list-style-type: none"> • the CEO; • employees with delegated powers and duties under Part 5, Division 4 of the LG Act; • employees who are members of committees comprising elected members and employees; and • other employees nominated by the local government. 	LG Act, s 5.74.

Term	Definition	Legislation
Director	<p>The title of a senior position within the City of Perth Administration who is directly responsible to the CEO.</p> <p>There were five Directors at the City.</p> <ul style="list-style-type: none"> • Director, Community and Commercial Services (DCCS) • Director, Construction and Maintenance (DCM) • Director, Corporate Services (DSC) • Director, Economic Development and Activation (DEDA) • Director, Planning and Development (DPD) <p>The directors and the CEO formed the Executive Leadership Group.</p>	
Donations	Money allocated by the Council to improve the wellbeing of the community. No other benefit is required in return.	
Election	Elections for a local government take place every 2 years. Council members hold office for terms of 4 years.	LG Act, s 2.28, 4.5.
Elector	<p>A person who is eligible to be enrolled to vote at elections for a local government.</p> <p>Electors are residents within the district of the local government or owners or occupiers of property in the district (including bodies corporate and their nominees) who do not reside in the district.</p>	LG Act, s 4.29, 4.30, 4.31.
Employee	A person employed by the City of Perth.	LG Act, s 5.36.
Entitlements	<p>Entitlements are amounts paid or benefits available to assist council members in their official role. They include use of the Council dining room and reimbursement for certain costs.</p> <p>Limitations of individual entitlements are established in the <i>Local Government Act 1995</i>, by City of Perth Council Policy Manuals¹⁵⁸ and by the <i>Local Government (Administration) Regulations 1996</i>.¹⁵⁹</p>	LG Act, Part 5, Division 8.
Executive Leadership Group (ELG)	The group of senior officers of the City comprising the CEO and the directors (including those acting in these roles from time to time).	
Gift	<p>A conferral of a financial benefit (including a disposition of property) made by one person in favour of another person unless adequate consideration in money or money's worth passes from the person in whose favour the conferral is made to the person who makes the conferral. It includes any contributions to travel.</p> <p>Since 18 October 2019, the definition of a gift includes a travel contribution: <i>Local Government Act 1995</i>, s 5.57(b).</p>	LG Act, s 5.57, 5.82, 5.87A, 5.87B, 5.87C and 5.89A.

Term	Definition	Legislation
Good government	The <i>Local Government Act 1995</i> contains the elements which make up good government in a local government. It can be measured by: “the quality of (a) its decision-making, (b) community participation in its decisions and affairs, (c) its accountability to its community, and (d) its efficiency and effectiveness”. ¹⁶⁰	
Governance	The structures, rules and processes which direct and control an organisation. ¹⁶¹	
Grants	Money or in-kind contributions allocated by the Council to a recipient for an eligible purpose as part of an approved programme with an outcome which benefits the public.	
Heritage List	There is a State Register of Heritage Places, managed by the Heritage Council of WA, and a City of Perth Heritage List managed by the City.	
Inquiry Panel	An Inquiry Panel constituted under section 8.16 of the <i>Local Government Act 1995</i> . The Inquiry Panel has the powers of a Royal Commission under the State’s <i>Royal Commissions Act 1968</i> . This entity may also be referred to as the Inquiry in this Report.	LG Act, Part 8, Division 2.
Interests		
Interest	A person has an <i>interest</i> in a matter if they have, or if a person with whom they are “ <i>closely associated</i> ” has, a direct or indirect financial interest or proximity interest in the matter Council members and employees of the Council are required to disclose an interest when a relevant matter is to be discussed at a Council or committee meeting. With some exceptions, a council member making a disclosure of a financial or proximity interest is not permitted to remain in a meeting and vote. ¹⁶²	LG Act, s 5.60, 5.63, 5.65, 5.67, 5.68, 5.69.

Term	Definition	Legislation
Interests (contd)		
Closely associated person	<p>A person will be <i>closely associated</i> with a council member or employee if the person:</p> <ul style="list-style-type: none"> • is in partnership with the council member or employee; • is an employer of the council member or employee; • is a body corporate and the council member or employee: <ul style="list-style-type: none"> – is a director or secretary of the body corporate; or – holds shares in the body corporate exceeding a certain amount; • is the spouse, de facto partner or child of the council member or employee; • gave the council member a gift or made a contribution to the council member's travel that the council member was required to disclose. 	LG Act, s 5.62.
Financial interest	A person has a <i>financial interest</i> in a matter if it is reasonable to expect that the matter will result in a financial gain, loss, benefit or detriment for the person.	LG Act, s 5.60A.
Indirect financial interest	An " <i>indirect financial interest</i> " includes a financial relationship between that person and another person who requires a local government decision in relation to the matter.	LG Act, s 5.61.
Proximity interest	<p>A person has a <i>proximity interest</i> in a matter if the matter concerns:</p> <ul style="list-style-type: none"> • a proposed change to a planning scheme affecting land that adjoins the person's land; or • a proposed change to the zoning or use of land that adjoins the person's land; or • a proposed development of land that adjoins the person's land. 	LG Act, s 5.60B.
Impartiality interest	<p><i>Impartiality interest</i> is an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.</p> <p>Council members are required to disclose an impartiality interest when a relevant matter is to be discussed at a Council or committee meeting.</p> <p>A council member making a disclosure of an impartiality interest is permitted to remain in that meeting and vote.</p>	<i>Local Government (Rules of Conduct) Regulations 2007</i> , reg 11.

Term	Definition	Legislation
Key Performance Indicator (KPI)	A type of performance measurement (using either qualitative or quantitative data) on the efficiency or effectiveness of activities in achieving purposes. It defines how performance may be measured.	
Local government	A local government established under the <i>Local Government Act 1995</i> .	
Local Government Standards Panel (LGSP)	A government body established under the <i>Local Government Act 1995</i> to make binding decisions to resolve allegations of minor misconduct. It deals with complaints about council members who it is alleged have committed a breach of one or more of the provisions of the <i>Local Government (Rules of Conduct) Regulations 2007</i> . The standards panel also has the jurisdiction to deal with misconduct allegations that relate to conduct at meetings under the provisions of a local government's Standing Orders Local Law. ¹⁶³	LG Act, Part 5, Division 9.
Lord Mayor	The person elected by the City's electors to hold the position as the elected leader at the City of Perth. The City of Perth has Western Australia's only Lord Mayor by virtue of it being the capital of the State. The Lord Mayor's special role, as distinct from the eight council members, is recognised by section 9(a) and s 10 of the <i>City of Perth Act 2016</i> .	CoP Act, s 9, 10; LG Act s 2.8, 2.10.
Meetings of council	A council is to hold ordinary meetings and may hold special meetings. Procedures apply to the convening of a meeting.	LG Act, Part 5, Division 2, Subdivisions 1 and 3; <i>Standing Orders Local Law 2009</i> .
Motion	A method of bringing forward at a meeting such business as is advisable, in the form of a motion, of which notice has been given in writing to the CEO.	LG Act, s 5.122(1), 5.122(2).
Notice to produce a statement of information (SOI)	A written notice requiring a public authority or public officer to produce a statement of information to the Inquiry Panel.	<i>Royal Commissions Act 1968</i> (RC Act), s 8A.
Notice to produce documents (NPR)	A written notice requiring a person to produce documents, books, writings or things to the Inquiry Panel.	RC Act, s 8B.
Organisational policy	Policy statements relevant to corporate administration and operational management of the City.	

Term	Definition	Legislation
Personal Communication	Means: (a) communication of information in the form of data, text; or (b) images by means of guided or unguided electromagnetic energy, or both; or (c) a communication of information in the form of sound by means of guided or unguided electromagnetic energy, or both, where the sound is processed at its destination by an automated voice recognition system ¹⁶⁴ and includes information transmitted to another person via SMS, MMS, text, WhatsApp, and any other 3rd party platform.	
Perth Public Art Foundation (PPAF)	A not-for-profit charitable incorporated association established by the City of Perth's Art Foundation, by the City in 1996. ¹⁶⁵ Its objects and purpose are to commission, through a sustainable business model, public artworks to benefit the people of the City of Perth. The Foundation is a not-for-profit charity registered and subject to the <i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth).	
Practice Directions	The Inquiry's Practice Directions are a publicly available document which provided guidance to witnesses (and others) appearing before the Inquiry, people summonsed or issued with a Notice to Produce documents or a Statement of Information, and other interested persons.	
Presiding member	The person 'chairing' formal proceedings of the Council or committee meeting. This may also be referenced as the "chair" or "chairperson" in this Report.	LG Act, s 5.12, 5.13, 5.14.
Procedural fairness	The principles of administrative law that require a person or body exercising statutory powers to adopt a fair decision-making procedure. The Inquiry afforded procedural fairness to witnesses and people who were potentially the subject of adverse findings in the Report.	

Term	Definition	Legislation
Procurement	Purchase by the City of goods and services. The procurement process is governed by legislation, policy and procedures.	LG Act, s 3.57; <i>Local Government (Functions and General) Regulations 1996</i> , Part 4.
Public officer	The term <i>public officer</i> is defined in section 1 of the <i>Criminal Code</i> and includes any employee of a local government or any member of the council or a committee of a local government.	Criminal Code s 1.
Public Sector Commission (PSC)	The Public Sector Commission is established under section 16(1) of the <i>Public Sector Management Act 1994</i> . The Commission has jurisdiction to investigate suspected minor misconduct by local government employees. ¹⁶⁶	LG Act, s 3.12(2), 4.63, 4.70, 5.12.
Relevant Persons	A relevant person is defined under section 5.74 of the <i>Local Government Act 1995</i> as a person who is a: <ul style="list-style-type: none"> • mayor or president; • council member; and • employee. 	LG Act, s 5.74.
Returns – Primary Returns and Annual Returns	Council members, the CEO and certain employees are required to disclose information on their financial interests to the City in: <ul style="list-style-type: none"> • a <i>primary return</i>, when they commence holding office or employment at the City; and • <i>annual returns</i>, by 31 August of each year. Both returns must be completed in a Forms 2 and 3, as prescribed in the <i>Local Government (Administration) Regulations 1996</i> .	LG Act, Part 5, Division 6, Subdivision 2.
Senior employees	Certain employees may be designated as, or belong to, a class of employees who are deemed ‘senior employees’ under the <i>Local Government Act 1995</i> . Council Policy “CP 12.6: Staff - Local Government Employees – Senior Employees” (in force during the Inquiry’s Terms of Reference) designated all directors at the City as senior employees. Under the <i>Local Government Act 1995</i> , the CEO is to inform the Council of each proposal to employ or dismiss a senior employee, and the Council may accept or reject the CEO’s recommendation. If Council rejects the CEO’s recommendation, it must inform the CEO of its reasons for doing so.	LG Act, s 5.37, 5.78.

Term	Definition	Legislation
Sponsorship	Money or in-kind contributions allocated by the Council in return for a reciprocal benefit.	
State Administrative Tribunal (SAT)	An independent Western Australian State Government body which reviews a range of administrative decisions, including planning decisions made by local governments and decisions made by the Local Government Standards Panel under the <i>Local Government Act 1995</i> .	<i>State Administrative Tribunal Act 2004</i> .
Tender	A process by which written quotations are received for work required by the City and are evaluated according to approved criteria. Acceptance of a tender is generally formalised by a contract.	
Terms of Reference	The instrument that appointed the Inquiry Panel and set out the nature, functions and duration of the Panel. Also known as the “ <i>Notice of Appointment of an Inquiry Panel</i> ”. For this Inquiry, it was signed by the Hon David Templeman, MLA on 24 April 2018. There were subsequent notices to amend the time for reporting.	LG Act, s 8.16, 8.17.
Western Australian Electoral Commission (WAEC)	A Western Australian State Government agency responsible for maintaining the State electoral roll, conducting elections, and promoting awareness of the electoral process.	
Western Australian Local Government Association (WALGA)	An independent, membership-based Western Australian association representing and supporting the interests of local governments in Western Australia.	LG Act, s 9.58.
Witness	A person summonsed under the RC Act to give evidence under oath or affirmation.	RC Act, s 9, 10, 11.
WhatsApp	A text and voice messaging and communication application.	

Endnotes

- 1 Website, Department of Local Government, Sport and Cultural Industries, Homepage,.
- 2 Website, WALGA, About Local Government, 16 June 2020.
- 3 Website, Department of Local Government, Sport and Cultural Industries, Homepage, 16 June 2020..
- 4 Australian Bureau of Statistics estimate for population of Western Australia was 2,621,700 at 30 June 2019.
- 5 Website, Department of Local Government, Sport and Cultural Industries, My Council, 16 June 2020.
- 6 Website, Department of Local Government, Sport and Cultural Industries, 16 June 2020.
- 7 *Planning and Development (Development Assessment Panels) Regulations 2011*, s 23.
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