



Phase 2 Review: *Local Government Act 1995 (WA)*

Submission to the Department of Local Government, Sport and Cultural Industries

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About CME

The Chamber of Minerals and Energy of Western Australia (CME) is the peak resources sector representative body in Western Australia. CME is funded by its member companies who are responsible for most of the State's mineral and energy production and employment of the sector's workforce.

In 2017-18, the value of Western Australia's mineral and petroleum industry was \$115 billion. Iron ore is currently the State's most valuable commodity at \$61 billion. Petroleum products followed at \$26 billion, with gold at \$11 billion.

The resources sector is a major contributor to the local, State and Australian economy, with royalties received from the sector totalling \$5.8 billion, accounting for 19 per cent of State Government's revenue.¹

Background

CME is supportive of reforms that will increase the probity, transparency, accountability, and sustainability of how local governments best use revenue and expenditure. To assist local governments to best respond to the expectations and aspirations of industry and community, strategic guidance and direction by the Minister for Local Government; Heritage; Culture and the Arts (the Minister) and Department of Local Government, Sport and Cultural Industries (the Department) needs to occur.

Historically local governments have had differing levels of procedural oversight, transparency and, in turn, public scrutiny when compared to other tiers of government. Investigations by the Public Accounts Committee (the Committee), Corruption and Crime Commission (the Commission) and Office of the Auditor General for Western Australia (Auditor General) have highlighted the need for improved education, internal controls, governance and organisational capacity in local governments.

Some local governments in regional, rural and remote Western Australia financially depend on receiving rates revenue from the resources sector on a yearly basis. For example, the Shire of Sandstone received around 90 per cent of their 2018-19 revenue from the sector. These local governments may not have a diverse or sufficient rate base to sustain day-to-day operations. Within this context, there is limited clarity and consistency on how rates are determined across these local governments, potentially leading to volatility, formal objections of rate notices and subsequent erosion of trust and confidence in local governments.

There is also limited incentive for local governments to demonstrate efficient and effective use of ratepayer funds to deliver quality facilities and services to the community. Reform to encourage a culture of good governance, continuous improvement and capability building is a priority. CME therefore welcomes this opportunity to constructively propose areas for change, and in particular, facilitate standardisation of clear and consistent practices across local governments.

Summary of recommendations

CME's key recommendations for the second phase of the review are as follows:

Beneficial enterprises

- If there is adequate corporate governance and ownership independence to maintain oversight and justify expenditure, local governments should be permitted to establish beneficial enterprises using assets they own and operate.

¹ Department of Mines, Industry Regulation and Safety, *Western Australian mineral and petroleum statistics digest 2017-18*, October 2018.

- CME does not currently support establishment of beneficial enterprises involving unregulated regular passenger transport routes.

Administrative efficiencies and local laws

- Preparation and adoption of financial decisions should continue with an absolute majority of council members.
- To maintain compatibility, CME supports alignment of local government planning schemes with the State Planning Strategy and its policy instruments.
- Local governments should prepare an infrastructure strategy that considers transport and industrial activity as part of existing planning processes.
- Minimum standards and State Planning Policies (SPP) in model rules to enforce planning consistency across local governments is essential.

Council meetings

- Increased modernisation, timelier and easier access to transcribed or Hansard minutes of meetings regarding financial decisions.
- If there is insufficient public notice provided, local governments should not call special meetings on matters that will materially affect ratepayers.

Interventions

- The provision of advice and governance training by the Department to address systemic incompetence and mismanagement.
- An experienced and suitably qualified person should be involved in decision making for determining buffers regarding complex competing land uses, spatial and temporal scales.

Community engagement and integrated planning and reporting

- Improved integration and clearer alignment of strategic community plans, engagement charters, local planning schemes, asset management plans, corporate business plans, long-term financial plans, workforce plans, rate-setting strategies and annual budgeting processes needs actioning.

Complaints management

- CME supports implementation of a customer service charter that will set clear processes for local governments to respond to complaints in a timely manner.

Elections

- As council members elected by the public to use ratepayer funds, legal responsibilities similar to those imposed on directors under the *Corporations Act 2001 (Cth)* should apply to council members.
- There should be public disclosure of a candidate's history of serious allegations, adverse findings of minor breaches, planning and building legislation offences in a single accessible location.
- In the interest of transparency, during an election there should be public disclosure of donations made to candidates and council members.

Financial management

- As the tier of government closest to community, implementation of accountability and prudent use of ratepayer funds across all aspects of the Act's remit is vital.
- CME proposes development of specific industry guidance for local governments who have significant dealings with the resources sector.

- As decisions on financial matters are likely to affect a number of ratepayers, local governments should make publicly available a minimum standard of supporting documentation.
- CME supports ongoing annual audits by the Auditor General with a broader scope on the financial performance, sustainability and regulatory functions of local governments.
- A reduction in reported financial ratios is welcome, where the baseline information provided is not useful or meaningful in providing a true and fair view of the local government's financial performance or position.
- CME is supportive of publishing consistent financial documents in a single easily accessible location.

Rates, fees and charges

- To better align with long-term financial plans and the Office of the Valuer General's frequency of valuations, rate-setting strategies should be longer term at three to five years.
- Department guidance and oversight to ensure local governments implement the taxation principle of benefits-received over capacity-to-pay.
- Local government should adhere to a clear set of standards for preparation and publication of a revenue and rating strategy, including guidance and constraints on the use of criteria to determine differential rates.
- Public notice advertisement of all rates and minimum payments for a minimum of 28 days provides a reasonable timeframe for all ratepayers to respond as soon as practicable.
- If the notice is likely to affect a disproportionately small number of ratepayers, local governments should demonstrate good faith to ensure there is successful notification via a combination of notice mediums.
- Local governments should implement formalised policies and practices relating to the internal review and determination of objections to rate notices, rather than limiting it to the collection of overdue rates only.
- To allow comparability across local governments, CME recommends adoption of the New South Wales model, which standardises the types of rating categories. Granting a degree of autonomy through standardisation of clearly defined sub-categories is appropriate.
- Reinstatement and application of the benefits-received principle will ensure appropriateness of using the Victorian model.
- Low intensity land uses such as exploration and rehabilitation ought to be exempt or rated lower than mining leases.
- CME strongly recommends maintaining the status quo of requiring Ministerial approval when local governments seek to impose a differential general rate more than twice the lowest rate. CME does not support an increase in this threshold.
- Additional powers and discretion should be afforded to the Minister to intervene early in order to avoid unreasonable and unjustified rates increases.
- Alternatively, if the existing threshold for Ministerial approval is changed, a maximum increase on differential rates could prevent uncontrolled rate increases. These rate-caps should not be in excess of the weighted average cost of capital.
- Clearer Departmental guidance on the impact of land valuation on revenue and rate setting strategies provided to local governments needs to occur.

Introduction

On 20 June 2017, the Minister Hon. David Templeman MLA announced a two-phase review of the *Local Government Act 1995 (WA)* (the Act). This is the Act's first significant review since its introduction in over two decades.

It is widely recognised Western Australia is a decade behind other States and Territories in implementing reforms.² Despite recognition by the Committee and WA Local Government Association (WALGA) that local government reform was due in 2006,^{3 4 5} Western Australia remains one of the last to undergo reform.^{6 7} This reform is thus a welcome opportunity to increase the transparency and effectiveness of how local governments operate. As the tier of government closest to community, implementation of accountability and prudent use of ratepayer funds across all aspects of the Act's remit is vital. A culture of good governance and regulatory stewardship will reduce escalation of incidents to the Local Government Standards Panel (the Panel) and Commission.

Under the first phase of this review, CME advocated for increased transparency, accountability and availability of information in relation to local government budgets and rate setting processes.⁸ Before the launch of the *MyCouncil* website, the availability, quality and timeliness of information provided across local governments has been inconsistent and inadequate. CME has made several submissions to various agencies such as the Productivity Commission, the former Department of State Development and Department of the Premier and Cabinet on related concerns.

In conjunction with the Association of Mining and Exploration Companies, CME commissioned a report reviewing the way local governments set rates for mining and exploration leases in Western Australia.⁹ It focused on benchmarking current policies and rating strategies against other Australian jurisdictions, establishing a case for change. The report's recommendations support the views included in this second submission.

On 19 September 2018, the Department announced its vision and policy positions from phase one of the review. CME is supportive of these positions, and in particular, those related to universal training, mandatory behavioural Codes of Conduct and performance reviews of Chief Executive Officers. Introduction of the *Local Government Legislation Amendment Bill 2019 (WA)* in Parliament this month is a positive step. **As council members elected by the public to use ratepayer funds, legal responsibilities similar to those imposed on directors under the *Corporations Act 2001 (Cth)* should apply to council members.** Tailored responsibilities to address the operational complexity, diversity and risk profile of local governments should be considered in defining such responsibilities.

Under this second phase of the review, the Department released consultation papers detailing priority reforms across nine topics.

² Hon. Ben Wyatt MLA, Treasurer; Minister for Finance; Energy; Aboriginal Affairs, *Treasurer's speech*, budget paper no. 1, May 2018.

³ Parliament of Western Australia, *Local government accountability in Western Australia*, Public Accounts Committee, Legislative Assembly, September 2006.

⁴ Parliament of Western Australia, *Improving local government accountability*, Public Accounts Committee, Legislative Assembly, November 2015.

⁵ WA Local Government Association, *In your hands: Shaping the future of local government in Western Australia*, final panel report, December 2006.

⁶ Morris, R., Callaghan, R. & Walker, B., *Rural-remote and indigenous local government: Western Australian scoping study report*, Edith Cowan University July 2010.

⁷ Dollery, B. & Tiley, I., *Historical evolution of local government amalgamation in Queensland, the Northern Territory and Western Australia*, working paper series, Centre for Local Government, University of New England, March 2010.

⁸ CME, *Phase 1: Local Government Act 1995 review*, submission to the Department of Local Government, Sport and Cultural Industries, March 2018:

<https://www.dlgsc.wa.gov.au/localgovernment/Documents/ChamberofMinesandEnergy.pdf>

⁹ A copy was included as an attachment to the Association of Mining and Exploration Companies' confidential submission to phase one of the review.

As outlined below, CME supports these proposed reform options in-principle:

- **Beneficial enterprises** – **If there is adequate corporate governance and ownership independence to maintain oversight and justify expenditure, local governments should be permitted to establish beneficial enterprises using assets they own and operate.** Prior to establishing an enterprise, there should be a strong business case submitted for independent review. The business case should demonstrate a low investment risk profile in separating the delivery of services. In turn, outsourcing operations to experts or sharing common resources with other local governments has the potential to deliver efficiencies and cost savings. Establishment of beneficial enterprises, however, should not apply to core services where it is in the community's interest to remain as a cost centre.¹⁰ Given the recent public and media interest in regional airfares,¹¹ **CME does not currently support establishment of beneficial enterprises involving unregulated regular passenger transport routes.** It is appreciated the Department of Transport will work closely with local governments to develop a State Aviation Strategy and Strategic Airport Asset and Financial Management Framework to help address issues on charges.
- **Administrative efficiencies and local laws** – Uniform model local laws to provide consistency and comparability between different local governments is encouraged. **Preparation and adoption of financial decisions should continue with an absolute majority of council members,** with consideration given to modernising voting practices to include those attending via remote technologies.
- **Council meetings** – **Increased modernisation, timelier and easier access to transcribed or Hansard minutes of meetings regarding financial decisions.** Insertion of relevant documents into the minutes should continue to be encouraged where it provides meaningful context to council discussions. If there is an improvement in the availability and quality of information made publicly available, this may reduce objections to rate notices and requests under the *Freedom of Information Act 1992 (WA)* seeking clarity on obscure resolutions adopted by local governments. **If there is insufficient public notice provided, local governments should not call special meetings on matters that will materially affect ratepayers.**
- **Interventions** – An experienced and qualified person should be involved in due diligence of financial decisions that are likely to have a material impact on industry or the community. With high discretionary authority and limited support available, it has been recognised regional local governments carry a higher inherent risk of misconduct.¹² **The provision of advice and governance training by the Department to address systemic incompetence and mismanagement.**¹³ Clearer guidance on minimum expectations and who to contact for further support and information may be effective.
- **Community engagement and integrated planning and reporting** – Community participation in budgets and rate-setting decisions is welcome. Improved consultation will assist local governments to better understand the willingness of ratepayers to pay for the provision of community facilities and services (the range and quality of service levels, enabling delineation of core and non-core discretionary services). This will provide a stronger nexus to the requisite rates to fund those services. **Improved integration and clearer alignment of strategic community plans, engagement charters, local planning schemes, asset management plans, corporate business plans, long-term financial plans, workforce plans, rate-setting strategies and annual budgeting processes needs actioning.**

¹⁰ Regional Aviation Association of Australia, *Submission: Inquiry into regional airfares in Western Australia*, Economics and Industry Standing Committee, Legislative Assembly, July 2017.

¹¹ (a) Inquiry into regional airfares in Western Australia, (b) inquiry into the operation, regulation and funding of air route service delivery to rural, regional and remote communities, and (c) economic regulation of airports.

¹² Corruption and Commission, *Report on the review of the capacity of local governments in the Pilbara to prevent, identify and deal with misconduct*, April 2013.

¹³ Department of Local Government, Sport and Cultural Industries, *Report of the inquiry into the Shire of Wiluna: Authorised inquiry under Part 8 Division 1 of the Local Government Act 1995 (WA)*, August 2018.

Reporting of measurable progress against tangible key performance indicators and intangible social values would further increase accountability and “buy in” of community. Without mandating, there is virtually no reporting of performance apart from individual projects and against annual budgets.¹⁴

- **Complaints management** – **CME supports implementation of a customer service charter that will set clear processes for local governments to respond to complaints in a timely manner.** If a formal mechanism is established, local governments will have an opportunity to proactively respond and resolve the matter before escalation to Panel or Commission. Standardised biannual reporting on complaints and response timeframes will also improve transparency.
- **Elections** – Compared to directors, there is limited responsibility and consequences for misconduct by council members. Allegations received by the Commission continue to be breaches of Code of Conduct, corruption, unprofessionalism and abuse of position for benefit.¹⁵ Furthermore, there has been a significant increase in behavioural complaints referred to the Panel, with a majority on securing personal advantages.¹⁶ CME is supportive of the State Government’s policy position on providing notice. **There should be public disclosure of a candidate’s history of serious allegations, adverse findings of minor breaches, planning and building legislation offences in a single accessible location.** This information could be located on the local government’s website or on the *MyCouncil* website. This would assist the community to build trust and make better-informed decisions in electing candidates that meet minimum standards. Furthermore, **in the interest of transparency, during an election there should be public disclosure of donations made to candidates and council members.**

Additional to the above reform topics, CME wishes to raise issues regarding (1) Financial management, (2) Rates, fees and charges and (3) Local planning laws. The remainder of this submission discusses these topics in detail, and where relevant, reinforces previous recommendations made by CME.

Financial management

CME acknowledges the positive work by the Department to develop the *Western Australian Local Government Accounting Manual* in response to the *Systemic Sustainability Study*.¹⁷ As State and Commonwealth Governments *Financial Assistance Grants* continue to decline, it is critical local governments have the requisite guidance to maintain financial sustainability.

CME proposes development of specific industry guidance for local governments who have significant dealings with the resources sector. The framework should apply to those who do not adequately communicate and collaborate with their constituents, and those with an unsustainable financial dependence on the resources sector. The framework could consider strategies for banking surpluses via low risk financing options. Year-on-year dependence is not a desirable outcome as resource projects can close from falling commodity prices, leading to shortfalls in local government budgets.

Alternatively, the framework may provide a model for seeking one-off collaborations and contributions from the resources sector (rather than ongoing rate increases without consultation), which have demonstrated mutual economic benefits and intergenerational

¹⁴ Productivity Commission, *Local government: Shifting the dial – Five-year productivity review*, supporting paper no. 16, August 2017.

¹⁵ Corruption and Crime Commission, *Overview of serious misconduct: Quarter 2 2018/2019*, January 2019.

¹⁶ Local Government Standards Panel, *Annual report 2017-18*, Department of Local Government, Sport and Cultural Industries, August 2017.

¹⁷ WA Local Government Association, *The journey: Sustainability into the future – Shaping the future of local government in Western Australia*, final paper, August 2008.

outcomes. This will bring openness and clarity to negotiations, abating “rent-seeking” behaviour and fostering cost effective public-private partnerships.

Keeping of financial records

In the past, CME have submitted requests for documentation that support decisions adopted by local governments. The range and quality made available suggests a high degree of inconsistency and variability in record keeping and financial management practices. Not all local governments could provide evidence of due diligence, i.e. written correspondences, detailed minutes of meetings, modelling calculations and sensitivity analyses exploring alternative revenue and rate-setting strategies. **As decisions on financial matters are likely to affect a number of ratepayers, local governments should make publicly available a minimum standard of supporting documentation.**

Performance auditing oversight

On 28 August 2017, the *Local Government Amendment (Auditing) Bill 2017 (WA)* passed in Parliament to expand the Auditor General’s auditing powers to local governments. CME welcomed this passage as it adds credibility to financial statements. This will increase transparency, accountability and responsibility of local governments in line with State Government agencies, as well as improving the quality of comparative data on *MyCouncil*. Prior to this, there has been no whole-of-sector audits on the financial prudence of local governments in regional Western Australia.

In Queensland, New South Wales and Victoria, their respective Auditor Generals have conducted whole-of-sector audits on local government service delivery and financial performance. As noted by the Committee, audits to date have been limited to “straight financial checks”. The recently completed audit into procurement practices¹⁸ and annual financial reports¹⁹ is a timely and constructive step towards addressing the shortcomings of local government frameworks and functions. Findings and recommendations from these reports continue to reinforce CME’s views, including:

- Local governments should maintain the integrity of their financial control environments, such as ensuring policies and procedures are used effectively and consistently, implement better oversight, better documentation of decisions and conflict of interests.
- Management should promote a culture of applying leading practice financial management and compliance with internal policies, including robust assessment of key assumptions and methodology driving valuations.

Embedding these recommendations across whole-of-sector is an important step to achieving successful reform. **CME supports ongoing annual audits by the Auditor General with a broader scope on the financial performance, sustainability and regulatory functions of local governments.**

Annual reporting

Some local governments use the model financial statements as a compliance exercise, rather than best practice. The use of financial ratios and explanatory notes to these statements is also inconsistent, with the level of detail largely discretionary. For ratepayers seeking clarity on how their local governments operate, these financial statements may not provide useful or meaningful information.

¹⁸ Office of the Auditor General Western Australia, *Local government procurement*, report no. 5, October 2018.

¹⁹ Office of the Auditor General Western Australia, *Audit results report: Annual 2017-18 financial audits of local government entities*, report no. 15, March 2019.

Local governments should collect and disclose meaningful information relevant to their performance. To increase transparency and accountability, CME recommends local governments disclose the following with or without the financial statements:

- Corporate business plans, long-term financial plans, annual budgets and determinations of reviewed budgets. **A reduction in the financial ratios is welcome, where the baseline information provided is not useful or meaningful in providing a true and fair view of the local government’s financial performance or position.**
- Revenue and rate-setting strategies, Statements of Rating Objects and Reasons for the imposition of differential general rates, minimum payments and airport fees.
- Breakdown of financial information for each beneficial enterprise and significant asset class such as airports, road infrastructure and leisure complexes, etc.
- Self-assessed compliance audit returns, certified compliance audit reports and adverse findings. The Committee has identified these self-assessed documents have historically been a “tick the box” exercise, with no enforcement on adverse findings.
- Listing of asset investments, borrowing arrangements, associated securities and management policies to reduce risk to an acceptable level.
- Tender contracts and transactions over a specified amount as determined by the local government’s size and risk profile.
- Register of gifts, donations and development contributions, with narrations provided on collection and management of these funds. Disclosure of corporate and political donations during election cycles will reduce undue influences.
- Register of complaints and objections to rate notices, with a narration for those escalated to the Minister, State Administrative Tribunal, Panel or Commission.

This information could be published online either on the websites of local governments or on *MyCouncil*. There is also an opportunity to align and integrate information across *Know Your Council* and *Localeye*. **CME is supportive of publishing consistent financial documents in a single easily accessible location.** Where relevant, these documents should be submitted to the Minister, Department or Auditor General for scrutiny.

Rates, fees and charges

CME welcomes a reform of the current rates, fees and charges system. CME has made submissions to several agencies on poorly justified substantial rate increases. It was not clear whether local governments exercised due diligence in considering the so-called “reality check” principles of benefits-received, reasonableness, fairness and equity across all ratepayer classes.²⁰ The level of reasoning varies widely across local governments, with some replicating content highly similar to others for the sake of form, without providing clear supporting justification relevant to their specific circumstances.

These rate increases can be inconsistent with prior years or unreasonable given economic conditions (downward pressures to curb growth in expenditure). There is little predictability or reliability in the current process for either ratepayers or local governments. It enables local governments to change rates on a yearly basis, which is inefficient, unpredictable and reduces confidence in long-term planning. This behaviour is contradictory to the State Government’s fiscal focus on reducing debt and increasing economic efficiency.

²⁰ Department of Local Government and Communities, *Local government budget process: Timeline and considerations factsheet*, E1648967, January 2017.

Rate-setting strategy

To improve the transparency of decision-making processes, CME supports the requirement that local governments prepare a revenue and rating strategy statement. This will be additional to long-term financial plans, which currently do not address rate increases adequately or consistently. **To better align with long-term financial plans and the Office of the Valuer General’s frequency of valuations, rate-setting strategies should be longer term at three to five years.** An indicative outlook for the next five to ten years could be included to reflect strategic community and corporate business plans. This would encourage:

- Consideration of intergenerational needs, revenue raising equity and neutrality.
- Reduce uncertainty for proponents seeking to invest in large-scale long term projects. The Town of Port Hedland’s recent announcement of increasing rates from the thousands to the millions²¹ is a prime example of “rate shock” and volatility that could hinder investment.
- As identified by WALGA in the 2008 study, the longer the planning horizon, the more effective infrastructure planning and asset renewal outcomes are likely to be.
- Continued economic assessment and prioritisation of viable facilities and services that ratepayers are willing to pay for. This will enable sound fiscal management that balances revenue-raising behaviour.

Some local governments’ describe the rating categories (objects) and logic (reasons) in imposing differential rates and minimum payments. Not all local governments, however, provide sufficient detail in directly linking these rate increases with their forecasted incremental needs. More often than not, similar to current practices in Queensland, these descriptions are perfunctorily “boilerplate” with little consideration of specific circumstances.²²

CME acknowledges that local governments need to recover costs associated with additional maintenance and reduction in the asset life of public roads caused by heavy vehicle usage. However, where increased expenditure on maintenance is a reason for increased rates, there is no reference to funds received with the specific purpose of maintaining roads. If local government road expenditure included dedicated Main Roads WA budgets, over 50 per cent of the sector’s road expenditure receives funding from the following sources:²³

- Local road user agreements specifying conditions of access and charges for heavy vehicles to offset costs of additional maintenance.^{24 25 26}
- *State Road Funds to Local Government Agreement* – Direct grants, project grants for commodity routes, strategic and technical support to local government managed programs. As well as Main Roads WA *State Initiatives on Local Roads* program.
- *State Royalties for Regions* Programs.
- State and Commonwealth *Black Spot* Programs.
- State and Commonwealth *Financial Assistance Grants* – Untied funds for local roads, special projects, matched funding of major maintenance and replacement of bridges.
- Commonwealth *Roads to Recovery* and *Heavy Vehicle Safety and Productivity* Programs.

²¹ Commonwealth of Australia, *How the mining sector can support businesses in regional economies*, Proof Committee Hansard for the House of Representatives public hearing at Port Hedland, Standing Committee on Industry, Innovation, Science and Resources, October 2018.

²² Queensland Audit Office, *Forecasting long-term sustainability of local government*, report no. 2, October 2016.

²³ WA Local Government Association, *Report on local government road assets and expenditure 2016/17*, June 2018.

²⁴ WA Local Government Association, *Heavy vehicle cost recovery policy guideline for sealed roads*, July 2017.

²⁵ WA Local Government Association, *Policy for assessing applications to operate restricted access vehicles on local government roads*, December 2017.

²⁶ Main Roads Western Australia, *Heavy vehicle services update 17-2018: Current status of restricted access vehicle permit condition CA07*, December 2018.

With such limited transparency, often combined with chronic operating deficits and infrastructure backlogs, it is not clear if these rate increases are being used as a “profits tax” to “double dip” or cross-subsidise operation of unsustainable facilities and services. Previous rate increases have often not directly corresponded to an increased demand on services, nor resulted in funding of improved service levels. There is a poor nexus between rates revenue received, grant funding and expenditure spent. Similar to New Zealand, local governments could address this by identifying ratepayers who benefit from the delivery of facilities and services and attributing true costs to them. Against this backdrop, member companies who are largely self-sufficient in remote isolated locations meaningfully contribute to local government facilities and services on an equitable and consistent basis.

CME welcomes the recent announcement to provide 20 per cent of State vehicle licence fee collections towards local governments, alleviating the pressures of vertical fiscal imbalances. Regardless, a large vertical fiscal imbalance still exists between tiers of government. Compounding this further, a large horizontal fiscal imbalance exists between metropolitan and regional local governments. This is although a majority of Western Australia’s Gross State Product comes from regions such as the Goldfields, Kimberley and the Pilbara.²⁷ As a result, current rate-setting strategies by regional local governments places a disproportionately unfair burden of tax incidence on the resources sector to bear, distorting allocative efficiency.

Differential rates and minimum payments imposed by local governments continue to be a key external cost pressure for the resources sector, which is additional to the substantial taxes and levies paid to State and Commonwealth Governments (well over \$10 billion per annum). In considering this imbalance, local government rates could offset royalties paid by member companies.²⁸ A higher allocation from the *Royalties for Regions* program to these regional local governments through the Country Local Government Fund would also be beneficial.

In introducing a revenue and rating strategy, the following should be publicly available:

- Definition of rating categories and sub-categories in relation to zones and land use characteristics specified in local planning schemes.
- The rates (cents) in the dollar per rating category, including rates set in prior years to increase relativity for ratepayers to understand.
- Breakdown of aggregate revenue received across different classes of ratepayers to provide visibility on how the rates burden is distributed.
- Clear and concise articulation for imposing differential rates and minimum payments. This reasoning needs to be based solely on zoning and land use characteristics, including where relevant comparison to past rationales.
- A decision criteria framework that clearly considers the key values of objectivity, fairness and equity, consistency, transparency and administrative efficiency. Sign off by the Chief Executive Officer confirming the framework is considered provides a needed check.

It is not clear if local governments consider economic conditions, remoteness of sites (and therefore almost non-existent demand on facilities and services) or the substantial local community contributions and developer contribution charges the resources sector already make across the long lifespan of their projects (over 40 years).

Local governments may also seek to impose higher rates using “social licence to operate” as substantiation. If local governments interpreted this concept holistically, it makes sense to include in the equation the intangible contributions, economic multipliers and substantial royalties, taxes and levies paid to other tiers of government. **Department guidance and oversight to ensure local governments implement the taxation principle of benefits-**

²⁷ The Pilbara was responsible for 12 per cent of revenue in Western Australia in 2017. Statistics provided by the Pilbara Development Commission.

²⁸ Drew, J., Dollery, B.E. and Blackwell, B.D., *A square deal? Mining costs, mining royalties and local government in New South Wales, Australia*, Resources Policy, vol. 55, November 2017.

received over capacity-to-pay. That is, applying prejudice based on the capacity of the owner of the land to pay, rather than the land use characteristics itself needs to be prevented.²⁹

The rating strategy should be long-term with an assessment of the adequacy, stability and likelihood in relying on particular revenue sources to meet shortfalls (sensitivity analysis of key assumptions and underlying trends). The strategy should require impact modelling of different rating options. Alignment of rating strategies, corporate business plans and long-term financial plans to meet community visions will also improve the transparency, visibility and predictability of future rate increases for both ratepayers and local governments. **Local government should adhere to a clear set of standards for preparation and publication of a revenue and rating strategy, including guidance and constraints on the use of criteria to determine differential rates.**

Giving local public notice

If differential rates are retained, CME is supportive of reform that requires local governments to give notice through a variety of modern electronic mediums such as emails, newsletters and social media platforms. Limiting distribution to traditional print can result in low coverage and engagement, resulting in delays of when a ratepayer may receive actual notice. This can result in accrual of interest before the ratepayer is aware. Extension of the current minimum of 21 days to invite submissions would address this. **Public notice advertisement of all rates and minimum payments for a minimum of 28 days provides a reasonable timeframe for all ratepayers to respond as soon as practicable.**

If the notice is likely to affect a disproportionately small number of ratepayers, local governments should demonstrate good faith to ensure there is successful notification via a combination of notice mediums. Although the Department has released guidance, suggesting local governments write to those categories with less than thirty ratepayers,³⁰ this is often not the reality. Many member companies, due to “snail mail” or other administrative issues have not received notices in a timely manner. Introduction of a community engagement charter will address this, encouraging direct and meaningful discussions between local governments and ratepayers.

Objections to rate notice processes

In contrast to the Office of the Valuer General's formalised objections process, there is little consistency amongst local governments on handling objections to rate notices. There have been cases where there is no acknowledgement or communication of receiving and incorporating the objection into the rate-setting process.

To address this, CME supports extending implementation of *Good Practice Guidance no. 7* to all scenarios regarding rates.³¹ If there is no adoption of a formal complaints management system, documentation of a fair and transparent procedure for objections should be included in public notices. **Local governments should implement formalised policies and practices relating to the internal review and determination of objections to rate notices, rather than limiting it to the collection of overdue rates only.** Clear receipt and consideration of objections needs communication to the ratepayer. If ratepayers are dissatisfied with the decision, alternative triage solutions needs to be outlined.

²⁹ Supreme Court of Queensland, *Xstrata Coal QLD PL v Council of the Shire of Bowen* [2010] QCA 170, SC no. 8239 of 2007, July 2010.

³⁰ Department of Local Government and Communities, *Local government budget process: Timeline and considerations factsheet*, E1648967, January 2017.

³¹ Ombudsman Western Australia, *Local government collection of overdue rates for people in situations of vulnerability: Good practice guidance*, December 2018.

Differential rating categories

The current rating structure provides considerable scope and flexibility for local governments to determine rates to meet their revenue requirements, as well as charge interest on overdue amounts. It allows arbitrary creation of new rating categories, and therefore ambiguity in the distribution of the tax burden across rating categories and sectors. There is no standardisation other than 'peer' benchmarking against the highest differential rate to maximise rating effort and overall revenue yield.

Land used by the resources sector is across different leases (prospecting, retention and mining) and non-leases (transient residential accommodation, industrial processing and downstream logistics). Some local governments have bundled multiple zones into a single generic category called "Other" or "General", applying a uniform rate in the dollar. Some other local governments have created several rating categories and respective rates in the dollar specific to their boundaries. Due to these inconsistencies, the overall rates imposed is highly variable and can pressure the cost of doing business.

It is thus difficult to understand, predict or compare rate increases imposed on similar properties by different local governments. **To allow comparability across local governments, CME recommends adoption of the New South Wales model, which standardises the types of rating categories. Granting a degree of autonomy through standardisation of clearly defined sub-categories is appropriate.** Sub-categories can impose a higher differential rate on specific land uses that put additional burdens on local governments to deliver facilities and services.

Similar to Queensland, this could comprise tiered scales on operational intensity, area size of the lease, full-time equivalent employees, tonnage output or land valuation values.³² It could also distinguish lower densities of residential populations in rural and urban areas. This would better reflect the cost to local government in servicing the specific land use, thereby allowing a fairer redistribution of the rates burden. A more accurate price signal is delivered to ratepayers on the consumption of services.

If a standardised model is not suitable to address the diversity of local governments in Western Australia, **reinstatement and application of the benefits-received principle will ensure appropriateness of using the Victorian model.**

Rating category exemptions

A category for exploration, prospecting and retention leases should be rated either exempt or lower than mining to reflect the absence of income generation, a lower capacity-to-pay and lower demand on facilities and services.

For similar reasons, as well as promoting conservation, a category for revegetation and rehabilitation of leases should be exempt or attract a lower rate. Environmental land ceases to generate an income, and would otherwise have no alternative use. Land with such uses typically impose lower costs on local governments, of which differences in valuation may not fully reflect.³³ **Low intensity land uses such as exploration and rehabilitation ought to be exempt or rated lower than mining leases.**

Maintaining regulatory oversight

CME strongly recommends maintaining the status quo of requiring Ministerial approval when local governments seek to impose a differential general rate more than twice the lowest rate. CME does not support an increase in this threshold. This check and balance

³² Department of Local Government, Racing and Multicultural Affairs, *Queensland local government comparative information 2016-17: General rate 2017-18*, June 2017.

³³ Independent Pricing and Regulatory Tribunal, *Review of the local government rating system*, appendix K of the draft report, August 2016.

assures ratepayers local governments are prudent in justifying higher rate increases. If there was a historical practice of incremental and predictable rate increases amongst local governments, CME would not have proposed a rate-cap in the first submission. With the introduction of rate-caps in New South Wales, local governments must rigorously demonstrate there is a business case for a variation to the rate cap. The number of variation requests has reduced since its inception.³⁴

Introducing autonomy for local governments to increase rates up to four times the lowest limit may lead to unstable and unpredictable revenues. Ratepayers cannot anticipate future rate increases, and combined with a lack of transparency and accountability in local government decision-making processes, could lead to distrust. This could undermine the efficiency and predictability of collecting rates on a year-to-year basis, disadvantaging a local government's ability to budget delivery of services.

Additional powers and discretion should be afforded to the Minister to intervene early in order to avoid unreasonable and unjustified rates increases. For example, there are instances where local governments intentionally circumvent seeking approval. Rate increases on the lowest rating category enables a respective increase in the mining rating category. Theoretically, this is consistent and equitable, however, in some instances local governments only offer discounts to the lowest rating category on upfront payments. This can distort economic behaviour. In other States, the respective Departments and Ministers have stepped in to provide best practice guidelines to prevent reoccurrence of similar instances.³⁵

Alternatively, if the existing threshold for Ministerial approval is changed, a maximum increase on differential rates could prevent uncontrolled rate increases. These rate-caps should not be in excess of the weighted average cost of capital, which should be determined annually by a body similar to the Independent Pricing and Regulatory Tribunal in New South Wales. Unlike government trading enterprises, local governments do not have a primary function to raise revenue for the benefit of the State economy. The determined rate-cap should therefore be reasonably predictable, without unreasonably exceeding inflation or cost of capital.

Such a rate-cap would be appropriate as it may incorporate the Local Government Cost Index, regional centre cost adjustors, population growth, productivity factors and other inflation indices. Current efforts by the Department of Transport to calculate a weighted average cost of capital for regional airport assets could feed into this process. A rate-cap provides greater certainty and consistency of impartial treatment to all ratepayer classes, as well as simplifying local government budgeting processes.

Land valuation methods

It is appreciated the Office of the Valuer General will periodically and independently review the method of valuing land. CME has previously worked closely with the Department and former Department of State Development to trial the gross rental value rating of mining leases. Concerns previously raised from the trial application continue to be relevant to this review.

It is a generally accepted common practice for local governments to hold steady or reduce the rates in the dollar when valuations increase to achieve relativity with previous revenue yields. In some cases though, where there has been an increase in valuation, local governments have also increased the rate in the dollar. An increase in the land valuation base should arguably address the principles of fairness and equity. Increasing the rates payable from two factors, both land valuation and rates in the dollar, undermines the fairness achieved in

³⁴ Victorian Auditor-General's Office, *Delivering local government services*, independent assurance report to Parliament 2018-19:8, September 2018.

³⁵ Department of Infrastructure, Local Government and Planning, *Guideline on equity and fairness in rating for Queensland local governments*, June 2017.

voluntarily adopting gross rental over unimproved valuation. Recent increases in Mining Tenement Rental above the Consumer Price Index of inflation have also contributed.

Validations of valuation methods should be open. Currently gross rentals are reviewed every three years, whilst unimproved valuations annually. In practice, gross rental reviews in regional areas only occur every four to six years. This can lead to instability if valuations materially fluctuate in response to global commodity cycles and housing booms. The Officer of the Valuer General should consider the interrelationships between rating efforts and market valuation swings, informing development of the Department guidance provided to local governments. **Clearer Departmental guidance on the impact of land valuation on revenue and rate setting strategies provided to local governments needs to occur.** Local governments should consider, with greater clarity, the interaction of rating with other policies and guidelines about rateable land and changes in the valuation of land.

Local planning laws

Population growth and demand for land in urbanised areas is exerting pressure on key infrastructure used by the resources sector. **To maintain compatibility, CME supports alignment of local government planning schemes with the State Planning Strategy and its policy instruments.**^{36 37 38} Town planning schemes and local laws should integrate with State and Commonwealth Government initiatives such as the Westport Strategy, Future Battery Industry Strategy and National Resources Statement. If streamlined, this may reduce administrative inefficiencies of overlapping planning processes. CME welcomes broader use of the mechanism, which enables the Minister to require local governments to update their planning schemes to be consistent with SPPs.³⁹

Currently there is no requirement for local governments to adhere to higher-order SPPs when assessing and evaluating land use conflicts within their boundaries. This means there is disconnect and inconsistency within and across tiers of government in protecting freight corridors and industrial precincts. As the resources sector often operate across multiple local governments and planning is across long-term horizons, this can create investment uncertainty and risk.

Key principles such as state significance and intergenerational equity underpin SPPs; hence local governments should have limited scope to tailor local application of land use conflict around major resource sector projects. Flexibility should be allowed only to increase (and not reduce) buffers to suit site-specific circumstances on a case-by-case basis, i.e. in response to sensitive land uses and community concerns.

Local governments should prepare an infrastructure strategy that considers transport and industrial activity as part of existing planning processes. Similar to the proposed reform topic on interventions, **an experienced and suitably qualified person should be involved in decision making for determining buffers regarding complex competing land uses, spatial and temporal scales.** In these circumstances, local governments should seek advice from the Department of Planning, Lands and Heritage or the future body Infrastructure WA. This encourages communication and coordination with the resources sector in forecasting future demand increases on local government roads, etc. **Minimum standards and SPPs in model rules to enforce planning consistency across local governments is essential.** Accompanying this, Department guidance to ensure local governments lacking in planning expertise consistently interpret and apply the various SPPs should be mandatory.

³⁶ CME, *Draft State Planning Policy 5.4: Road and rail noise*, submission to the Western Australian Planning Commission, December 2017.

³⁷ CME, *Draft State Planning Policy 4.1: Industrial interface*, submission to the Western Australian Planning Commission, February 2018.

³⁸ CME, *Modernising Western Australia's planning system*, submission to the Department of Planning, Lands and Heritage, July 2018.

³⁹ Section 77A of the *Planning and Development Act 2005 (WA)*.

Conclusion

In 2015-16, 60 per cent of CME's member companies paid \$70 million to local governments in Western Australia, with an additional \$4 billion paid to the State Government. Every year the resources sector employs over 120,000 full-time staff, pays over \$19 billion to businesses for goods and services and contributes over \$220 million to communities within Western Australia.^{40 41} The sector has been, and will continue, to be pivotal to the development of local, State and Australian economies. With a history of disproportionate contributions to local governments, the recommendations made in this submission, as well as CME's first submission, should be considered by the Department in this phase of the Act's review.

CME looks forward to your response to this submission and ongoing consultation on these issues throughout the reform process. If you have any further queries regarding the matters outlined in this submission, please contact Linh Nguyen, Policy Adviser, Economic Competitiveness, on (08) 9220 8513 or l.nguyen@cmewa.com.

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⁴⁰ Amounts cited are understated as only 46 ordinary member companies provided 2015-16 data.

⁴¹ CME, *2015/2016 Western Australian resource sector operations*, economic contribution maps and statistics prepared by a third party consultancy, March 2017: <https://www.cmewa.com/images/files/maps/Australia.pdf>