

PART 18 POLITICAL AND CIVIL RIGHTS GOALS

Local government in Western Australia has revealed itself to be a chameleon.

It is not what you think it is.

It is an illusion.

If we examine the structure and role of the Council we see merely a "committee" of citizens, who purport to represent the community.

That committee is no more representative than a "community reference group" or "panel".

Their election from a self-nominated pool of candidates does not bestow upon them any greater or lesser knowledge or understanding of the community's needs and aspirations.

Unlike board members or senior executives employed in the public and private sectors, Councillors are not required to possess any particular education or skills that might fit them for the role, which is now well paid.

It is clear from experience that Councillors have little or no knowledge of law, notwithstanding they MAKE law.

The "Council" is in fact merely a "committee of review", is not a legal entity and has no powers beyond accepting, rejecting or referring back recommendations and reports.

Decisions are made with majority vote by a show of hands – not exactly a difficult process.

The Council is responsible for the **management** of the local government but, excepting for the ballot box, **IS NOT ACCOUNTABLE**. Individual Councillors cannot be sued for decisions that adversely impact citizens. The "*local government*", which is a legal person, can be successfully sued BUT any compensation will be made at ratepayer expense.

Responsibility without accountability is meaningless drive.

So Council can dream up grandiose extravagant schemes with no recourse available to dissenting ratepayers.

Councils can also steer funds to sectional groups within the community at general ratepayer expense.

Hence Councils can do dreadful things to their citizens - such as breaching human and civil rights laws - with no recourse.

Persons employed in the public sector are paid the same – regardless of efficiency or outcomes

Rates are determined by budget forecasts of expenditure

Productivity improvement is not required for organisational survival, as is the case in the private sector, hence rates income increases to meet expenditure – or increases current income to prepare for future expenditure increase.

Cost increases arising from endemic inflation – which is higher than that for the general community (CPI) – may be offset by rates increases.

Borrowings are only limited by the self-discipline of a Council.

Statutory Audits are financial only and do not examine the purposes to which funds are expended – i.e. justifications for expenditures.

This Elector has been campaigning within and without Council for reform of the Local Government "SYSTEM" in Western Australia for nearly 20 years.

However systematic change is difficult in a contest between one citizen and the State.

The Local Government Act 1995 was presented to Parliament in 1995 by a Liberal/National Party coalition Government - organisations who frequently refer to the "Rule of Law".

The authority to do that under the "Rule of Law" was granted by the Western Australia Constitution Act 1899.

In 1979, Sections 52 and 53 of that Act were added to prescribe:

52. Elected local governing bodies

(1) *The Legislature shall maintain a system of local governing bodies **elected** and constituted in such manner as the Legislature may from time to time provide.*

(2) *Each **elected local governing body** shall have such powers as the Legislature may from time to time provide being such powers as the Legislature considers necessary for **the better government** of the area in respect of which the body is constituted.*

53. Certain laws not affected

Section 52 does not affect the operation of any law —

- (a) *prescribing circumstances in which the offices of members of a local governing body shall become and remain vacant; or*
- (b) *providing for the administration of any area of the State —*
 - (i) *to which the system maintained under that section does not for the time being extend; or*
 - (ii) *when the offices of all the members of the local governing body for that area are vacant; or*
- (c) *limiting or otherwise affecting the operation of a law relating to local government; or*
- (d) *conferring any power relating to local government on a person other than a duly constituted local governing body.*

Thus the model for the SYSTEM enacted in 1995 was intended to create **elected bodies for better government**.

This is consistent with the [WA Constitution Act 1899](#), which declares:

*2. THERE shall be, in place of the Legislative Council now subsisting, a Legislative Council and a Legislative Assembly: and it shall be lawful for Her Majesty, by and with the advice and consent of the said Council and Assembly, to make laws for the **peace, order, and good government** of the Colony of Western Australia and its Dependencies: and such Council and Assembly shall, subject to the provisions of this Act, have all the powers and functions of the now subsisting Legislative Council.*

However as is shown in this website commentary, **the system currently used cannot achieve those objects and is therefore unconstitutional**.

Importantly, notwithstanding changes to the Commonwealth and Western Australia Constitutions in 1986, when Australia became an independent sovereign nation, (one of the country's best kept secrets) subsequent WA Governments have not changed the local government SYSTEM in response - i.e to insert Commonwealth and international civil rights values into the local government system.

As far as I can discover, Local Government commenced its formal life in Western Australia with the [Local Government Water Supply Preservation Act 1892](#) which appears to be supplementary to The Public Health Act 1886.

Local Government commenced its formal life in Western Australia with the [Municipal Corporations Act 1906](#).

This was a very regulatory Act, with wide powers being bestowed upon local governments, including "Roads Boards".

There were no provisions for the public to ask questions in Council or Committee meetings.

However later the 1945 Act was amended to include at [Part VIII of the Eleventh Schedule](#), "REGULATION OF PROCEEDINGS OF COUNCIL OFFICERS, ETC. (page 255), what are now known as "Standing Orders".

The Municipal Corporations Act 1906-1947 was subsequently replaced by the Local Government Act 1960.

This Act was frequently amended - in fact was amended every year between 1960 and 1998, thence nearly every year until 2012. It is now just a shell of its former glory.

Since 2013 it has been entitled the [Local Government \(Miscellaneous Provisions\) Act 1960](#) - and remains in force alongside the 1995 Act.

The [Local Government Act 1995](#) was enacted just seven years after those profound changes in 1986 to the Commonwealth and State constitutions, which dramatically affected their inter-relationships.

An important feature of the [Local Government Act 1995](#) was the introduction of a formal "**Public Question Time**" and presentation of "**Petitions**" in Council and some Committee meetings.

Some amendments have since been made by Parliament, but none to further advantage the political and civil rights of Electors.

The great problem is that in the Australian version of the "Westminster" system of government (A "Constitutional Monarchy") the state has four core parts - [the Crown, the Legislature \(Parliament\), Executive, and the Judiciary](#).

Note: The linked "overview" above was prepared by the Commonwealth Attorney-Generals's Department and the Australian Government Solicitor. It makes no reference to the Australia Act 1986, which not only released Australia from British rule but also changed the historic relationships between Commonwealth and States.

The model established by the [Western Australia Constitution](#) is slightly different (click to view)

Executive government - i.e "the Cabinet, Ministry and public service" can therefore be only a servant and agent of the Crown.

But in the case of local government, Parliament has excelled itself and made local government generally independent to the Crown.

The [Local Government Act 1995](#) prescribes:

Crown not generally bound

1.6. This Act does not bind the Crown except to the extent expressly stated in this Act.

It appears that is not reciprocal - i.e local government is free from the jurisdiction of the Crown but the Crown is not free to control or correct local government.

In other words, local government is above the law.

As has been shown in the preceding sections, even the Minister for Local Government - a Minister of the Crown - does not have jurisdiction over a range of local government activities and cannot unilaterally dismiss a Council.

The person presiding over Council and Committee meetings is claimed to have **absolute** powers.

Consequently **we have a state within a state.**

The independence of local government, supported by a suite of local laws that often breach human rights and civil rights law, is now written in stone. But maybe not for long !!

There is a strong movement within the local government industry, including the [Australian Local Government Association \(ALGA\)](#), to seek recognition of local government in the Commonwealth Constitution - the object being to secure funding independently to state governments and thereby underwrite that independence.

But what these prophets of self-destruction have not realised is that **"Section 117 - Rights of residents in States"** declares:

A subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State."

The effect of this is that ALL Commonwealth law must be universal to all citizens in the nation.

Hence ALL local governments will be treated equally and subject to the same conditions and constraints.

That includes international law, treaties and covenants.

Not only that but the Commonwealth does not release funds unless it determines HOW they will be spent.

The Commonwealth is renown for its short-term focus on programme spending so it is likely reliable ongoing or recurrent funding will be unlikely.

Despite existing assurances from the federal government before the event, it is certain that after the event local governments will lose the independence and status they so clearly desire.

In any event, you the voter, has to approve such a Constitutional amendment.

Of course uniform national legislation means ALL citizens will be governed in like manner - a great leap forward.

See also [Local government and the Commonwealth: an evolving relationship](#)

OBJECTS:

The political, electoral, governance and civil rights OBJECTS of this Elector are to achieve:

1. **Eliminate Wards and create a single whole of local government DISTRICT electorate - i.e. a single ward**
2. **Election of the Mayor by the people - to replace the historic in-house single-candidate "elected unopposed" in Council by Councillors system**

3. Election of each Councillor by ALL of the people in the DISTRICT- to replace the historic manipulation of ward voting, by which a single candidate may be "elected unopposed" to Council, or stacking of ward candidates
4. Preferential voting
5. Public Statement Time
6. A right to ask relevant questions and receive complete and accurate responses to public questions put to Council, Committees, Executives and Officers
7. A right to be critical of the local government in its meetings - i.e. to publically identify its shortcomings and seek solutions or corrective action
8. A right to preface questions with a preamble/introduction that provides context to the question
9. A fixed maximum term for elected representatives (Mayor and Councillors)
10. Clarify the powers and duties of the Mayor and Deputy Mayor.
11. Develop Statutory Uniform Standing Orders for ALL local governments in WA.
12. Disallow Standing Orders Local Laws.
13. Disallow the "Suspension of Local Law Standing Orders".
14. Establish uniform rates (taxes) for property owners throughout the state.
15. Disallow Transfer of Responsibilities
16. Require local governments to implement AS/NZS/ISO9001 and AS/NZS/ISO9001 standards organization wide – i.e. to management and administration as well as operations
17. Ensure ALL Local Laws include OBJECTS and DEFINITIONS.

18. Restrict delegation by Council of those powers and functions of Council assigned to the CEO/Administration – Council is responsible for management and should be accountable. Delegation facilitates lazy management, lack of scrutiny and transfer of blame.
19. Allow PROXY voting at Elector Meetings

DETAILS OF THESE OBJECTS ARE SET OUT BELOW:

1. Eliminate Wards and create a single whole of local government DISTRICT electorate - i.e. a single ward

This will align the local government system to the requirements of the WA Constitution and Commonwealth and State Civil Rights laws.

Note: The Constitution empowers Parliament to create a system of "**elected governing bodies**". Obviously electing a set of individuals that collectively make up a body is not the same as electing individuals directly to the body.

One example of the difference can be seen in the election of a Mayor by a whole district but Councillors individually to wards. In that case, a Council cannot dismiss its Mayor because the Mayor has been directly elected to the office by the people. So there is a difference between conceptual electoral methodologies.

There is similar contrast between the electoral systems used for upper and lower houses of Parliament.

Whole of local government DISTRICT elections will eliminate manipulation of the representation process and achieve holistic representation.

The ward system encourages Electors to elect candidates offering or promising benefit or local interest to their local constituents in preference to the whole community.

This approach ignores the reality that every Councillor is required to consider and vote upon every matter affecting every ward, notwithstanding they may have little or no interest in such matters.

That requirement is consistent with the duties set down in the Local Government Act 1995:

2.10. Role of councillors

A councillor:

- (a) represents the interests of electors, ratepayers and residents of **the district**; and*
- (b) provides leadership and guidance to the community in **the district**; and*
- (c) facilitates communication between **the community** and the council; and*
- (d) participates in the local government's decision-making processes at council and committee meetings; and*
- (e) performs such other functions as are given to a councillor by this Act or any other written law.*

In the above Section of the Act the object is to represent **the DISTRICT in which the community resides, works and plays.**

That is to say, the Local Government Act 1995 requires each and every Councillor to represent **the whole DISTRICT. - i.e. every man, woman and child in the entire local government district - not just his or her local ward.**

The current system uses a ward based approach to the political electoral process of determining who shall represent the individual Ward as a means of eligibility to make decisions on a district wide basis.

The popular perception will be that the Ward system is the best way to do it, because it assumes each Councillor will be Ward focused, however it is not and cannot be because the process of decision making is not based upon Wards but upon the entire City.

The reasons why the Ward system fails are simple:

- The Ward system is a carry-over from the conceptual model of the 19th century where the Colony of WA was governed by the Governor, the public service was small, communications were slow and difficult and, once entrenched, difficult to remove**
- Council Sub-committees are based upon functional areas and not Wards.**
- Representation to Sub-committees is normally only one Councillor from each Ward, resulting in a diminished influence from each Ward**
- Council routinely unanimously endorses its Sub-committee recommendations**

- Council Sub-committees do not align with Executive Directors and therefore functional departments
- Matters presented for Council's consideration and endorsement normally originate from the Executive
- Ward Councillors have a direct vote of one v 13, or 2 v 12, on every matter vital to his or her Ward, so can never have a controlling influence
- Ward Councillors cannot prevent their Ward from being short-changed in budgets, infrastructure projects, facilities, or amenities determined by others
- Every local government has a flagship city centre where the CBD may be found. Often coupled with feature parks and gardens. In the case of the City of Armadale the CBD falls within one ward only.
- Ward Councillors are bound by City-wide Policies and Local Laws determined by others
- Local Law Standing Orders 2000 provides the ONLY process for dissent is to speak against a motion – when permitted - under a time limit constraint, thereby limiting influence and therefore representation of individual Ward Councillors - to negligible
- Ward Councillors may present Ward based Petitions to Council, however there is no requirement for the City to respond to demands or requests
- the City's Annual Budget and Annual Report are not based upon, nor provide, works or expenditure by Ward
- there is no evidence Councillors consult their Electors on any matter other than when there is a general Ratepayer reaction against a particular proposal
- Ward Councillors appear to have no interest in encouraging Electors to attend and participate in the Annual Meeting of Electors to bring local matters to Council and discuss them
- Councillors are bound by law to accept Council decisions once made, resulting in Councillors being prohibited from sponsoring Elector protests from their Ward against Committee recommendations to Council. Thus a Councillor who is not a member of a particular Committee cannot disagree with his or her fellow Ward representative excepting by formal debate and vote on the matter in Council – against an otherwise unanimous decision

- despite a new Council being elected every two years – i.e. is reconstituted every two years – history shows the incumbent sitting Mayor has remained in office. One could conclude that this arises because newly elected Ward Councillors represent a minority on each new Council and are not prepared to oppose a single-candidate in their first Mayoral election, thus preserving the status-quo.
- once a person stands for election in a Ward and fails that person may be forever described within Council as a "disgruntled failed candidate" – i.e. they and any of their subsequent representations to Council are likely to be forever suppressed or dismissed because they are an electoral threat to the sitting Ward Councillors. Apart from one or two individuals, there is no evidence of any former failed candidate or former Councillor being active in the Public Gallery

2. Election of the Mayor by the people - to replace the historic in-house single-candidate "elected unopposed" in Council by Councillors system

The Western Australia Local Government Act 1995 prescribes:

2.8. Role of mayor or president

(1) The mayor or president —

- (a) presides at meetings in accordance with this Act; and
- (b) provides leadership and guidance to the community in the district; and
- (c) carries out civic and ceremonial duties on behalf of the local government; and
- (d) speaks on behalf of the local government; and
- (e) performs such other functions as are given to the mayor or president by this Act or any other written law; and
- (f) liaises with the CEO on the local government's affairs and the performance of its functions.

5.6. Who presides at council meetings

- (1) The mayor or president is to preside at all meetings of the council.

5.30. Who presides at electors' meetings

- (1) The mayor or president is to preside at electors' meetings.

Local Government (Administration) Regulations 1996

18. Procedure at meeting (Act s. 5.31)

Subject to regulations 15 and 17, the procedure to be followed at a general or special meeting of electors is to be determined by the person presiding at the meeting.

As noted in Part 1 of this paper, according to the Department of Local Government and the Office of the Minister, the person presiding is assigned in law ABSOLUTE powers to DISCRETIONALLY determine not only procedures but matters to be discussed AND to reject or censor questions AND to respond or not respond

It follows the only rational method of appointing a suitable person to this high local public office is via a district wide election that expresses and represents the views and preferences of the whole community.

Otherwise we all stand to be manipulated according to the whim and preferences of that individual.

It is relevant to that principle that, by virtue of his or her public office, the incumbent Mayor is consequently appointed to a range of government boards and committees, industry and professional organisations, for the purpose of presenting the views of his or her community.

The Mayor is not required by law to present the views of his or her local government or committee to such boards and committees.

Hence incumbent Mayors may pursue whatever agenda and ideologies they want – free from public scrutiny and accountability.

Since boards and committees are not usually legal entities, they can do their thing with gay abandon, knowing whatever they do is beyond the reach of the law – criminal conduct excepted.

Note also the Local Government Act does not require a candidate for election to Council to disclose political party memberships, affiliations or sympathies. This can result in a Mayor covertly representing his or her political party when participating in external organisations away from the public eye.

In regard to that principle, several City of Gosnells Councillors nominated for political party pre-selection for recent (2017) state elections.

The City of Gosnells immediately geographically adjoins the City of Armadale

<http://www.yourlolexaminer.com.au/yang-withdraws-from-burt-preselection/>

<https://thewest.com.au/opinion/gareth-parker/willmott-adds-spice-to-pre-selection-contest-ng-ya-103409>

<http://www.abc.net.au/news/2016-03-22/wa-liberal-preselections-for-federal-election-announced/7267762>

<https://www.pressreader.com/australia/comment-news-gosnells/20160816/281556585227006>

<http://www.theaustralian.com.au/national-affairs/liberal-mp-dennis-jensen-storms-out-after-losing-preselection/news-story/de2298871bd67ed61cb0dab4aa372e1f>

To qualify for political party pre-selection one must first be a political party member.

So the illusion of impartiality and independence you see in local government is not necessarily the reality of what you get !!

In the case of those who never put their hand up for a state or federal election Electors will never know if those individuals are, or are not, members of a political party.

Note that political parties are "not for profit" organisations and as such members must sign and pledge allegiance to the organisation, its rules, its policies and its decisions.

Hence the ideal Mayor will ideally be a person who is willing to express and advance his or her WHOLE OF community aspirations when behind closed doors.

It is therefore imperative the Mayor be elected directly by the people so that he or she has their expressed confidence.

3. Election of each Councillor by ALL of the people in the DISTRICT- to replace the historic manipulation of ward voting, by which a single candidate may be "elected unopposed" to Council, or stacking of ward candidates

See Section 1 above.

ELECTION OF COUNCILLORS.

Local government elections do not require candidates to:

- reveal allegiances with or preference to political parties or religious, ethnic, cultural or sectional interests such as business associations or land developers
- reveal allegiances to existing cabals or coalitions within Council
- offer policy statements
- express what skills or experience they will bring to Council if elected

- express support or opposition to existing rolling 15 year Strategic Plans or policies pre-approved by Council. Given a Councillor is elected for four years and strategic plans extend 11 years after that term expires, it follows that a Councillor is extremely limited in what he or she might affect.

Perhaps that is the real game plan.

- express support or opposition to existing Local Laws, which have a life of at least eight years.

To qualify for election, candidates need only self-nominate

The Ward system enables electoral rigging or manipulation simply through the number of candidates offered.

- if there is one candidate – as has happened many times in Armadale (because alternative candidates believe they cannot win against a well-funded sitting Councillor), the lone candidate is "elected unopposed".
- if there are two candidates one will win with at least a 51/49 % split – i.e. needs only 51% of the votes cast to win
- if there are three candidates the dissenting vote is split two ways and neither of the second and third preference candidates has a chance at all. The minimal voting split to win is only 34/64 % - i.e. needs only 34% of the votes cast to win
- if there are more than three candidates the lesser preference candidates have no hope at all. The winner may attract less than 20% of the votes cast

The ward system of voting enables sitting Councillors to arrange to have friends or supporters stand in elections so that they take votes away from candidates opposing Council's preferred candidate

One recent example is the 2015 election result for Neerigen Ward, where there were six candidates.

The winning vote was 469 votes from an electorate of 1316 Electors. This result represents 36% of the votes cast – BUT represents only 14% of the Electorate.

The second preference candidate attracted 409 votes, leaving just 438 total votes to the remaining four candidates

However if the election had been whole of DISTRICT wide, the result would have been:

CITY OF ARMADALE 2015 ELECTION

If the election was district wide – i.e. one Ward – the result would have been very different

Previously Sitting Councillors are shown in red.

WARD	CANDIDATE	VOTES CAST BY WARD	PLACE FROM VOTES CAST BY DISTRICT
Heron	STEWART, Jim	844	6
	OKEKE, Chris	355	
Jarrah	NIXON, Grant	1134	2
	ANSTEY, Brad	619	7
Lake	SILVER, Michelle	1147	1
	MUNN, Jeff	1077	3
Minnawarra	DOHERTY, Terrance	326	5
	BUSBY, Kerry	898	
	PRESTON, Craig	86	
Neerigen	ELLIOTT, Jay	409	
	GIBB, Cameron	89	
	GEARY, Mark	469	
	BUSBY, Bret	167	
	POLLARD, John	81	
	TOKE, Steve	101	
Palomino	SARGESON, Laurence	604	
	NORTHCOTT, Melissa	580	
River	ZELONES, Henry	976	4
	DAVIS, William	479	
		_____	_____
Total Votes cast		10,441	
Total Electorate		43,988	
Winning Votes Total		6,072	

Winning Votes % of total electorate = 13.8%

It will be observed that in the case of election by Ward, five of the seven Wards offered just two candidates.

On the other hand if the same candidates stood for a single-ward election there would have been nineteen candidates for seven positions.

The result is shown in the right-hand column above.

Remarkably the difference ratio between the highest and lowest vote is 14:1

The ward system of voting favours sitting Councillors, because Electors prefer to vote for the known v the unknown.

Sitting Councillors are shown above in red. Only two of seven sitting Councillors were displaced, but in both cases only by a very slim margin.

Token candidate Bill Davis opposed the sitting Candidate Mayor Zelones - who had been previously "elected unopposed" - only to prevent a recurrence of a single candidate election - however, despite making no effort, he still attracted one third of the votes cast, indicating significant dissent in the community.

This proves the concept of election by multiple Wards is not democratic because it suppresses the will of the people by dismissing dissent.

Even if preferential voting was applied in Wards the result would still be a Council dominated by local Ward interests and the core power group coalition.

STOP PRESS !!!!

There is a local government election in Western Australia scheduled for 21 October 2017

In the case of the City of Armadale, at close of nominations on 14 September 2017 the following nominations were received for one Councillor position per ward:

HERON WARD – 2 candidates
one a sitting Councillor

HILLS WARD – 3 candidates
one a sitting Councillor
one a past Councillor

**LAKE WARD – 4 candidates
one a sitting Councillor**

MINNAWARRA WARD – 7 candidates

**PALAMINO WARD – one candidate
sitting Councillor "elected unopposed"**

**RANFORD WARD - 6 candidates
one a former Deputy Mayor**

**RIVER WARD – 2 candidates
one a sitting Councillor and Deputy Mayor
one a former Councillor**

The conclusion is obvious – "more of the same" government.

Together with existing sitting Councilors from the 2015 election, the status-quo will be preserved and all will be well.

CONCLUSIONS.

Australia professes to be a democracy, yet the ward electoral system in local government is not democratic because it produces results which are not representative of the preferences of the voters.

Voters have one choice only in this "first past the post" system.

The result shows the entire current half-Council as elected in 2015, was elected by only 14% voters of the electorate, and can in no way claim to fairly represent the people of Armadale.

In the 2011 election, two Wards offered only three candidates, four wards offered only two candidates and one Ward offered only one candidate – i.e. the maximum number of candidates in any Ward was three.

In the latter case, no votes were cast at all – yet, so that candidate (Cr Zelones) was "elected unopposed" – but despite being only the fourth most popular by whole of District, this candidate subsequently became Mayor of the City.

That is to say, the 2011 election in a claimed "democratic" system produced a statutory leader of the City of Armadale district who was not only not the most popular (or preferred), but was not elected at all. That electoral process rivals the worst regimes in the world.

It would not have happened with a single-district wide system.

Of relevance is that the current Mayor has served as a Councillor since 1989 and presided over the City's planning and development since 1992 – i.e. longer than the 30 years of the City's existence. That influence extends out to at least 2032 when forward 15 year plans are factored into the equation during his current term of office.

He has also been a Commissioner on the WA State Planning Commission since 2002.

Thus it may be said "elected unopposed" Mayor Zelones AOM JP, has been the star of Armadale's democratic election process, rising to great heights in the State's Executive Government.

It may be concluded from this influence that the current result of conservative ad-hoc planning may be fairly and squarely attributed to his and his supporters' leadership, policies, recommendations and guidance to Council.

However, Electors not happy with the state of Armadale and its lack of progress are powerless to do anything about the matter.

The result of applying the Ward system exclusively throughout the history of the City of Armadale, determined by a self-interest Council focused on retaining power and control over its subjects ("the governed"), is that Armadale has stagnated and is choking through lack of strategic vision and endemic waste. If there is a complicated and expensive way of doing something this system ensures that will be the chosen way, because there is no effective internal opposition.

The ward electoral system produces a status-quo rubber-stamp Council because there is no competition for a place on Council and no mechanism for accountability between or during elections.

As noted above, sitting Councillors are prohibited by law, Council's Code of Conduct and City Policies, from criticising past decisions or actions of Council. Hence each election produces the same result – i.e. the status- quo, in the way the Council does what it does and the decisions it makes or does not make. It is noted that most successful candidates in past elections have been conspicuously absent from asking Public Questions at Council meetings and Elector meetings prior to their candidacy, suggesting their claim to have interest

in the politics of the City may well be illusionary.

CEO's POSITION on Ward Representation

In an article published by the Comment News, newspaper July 16, 2016, City of Armadale CEO Mr. R. S. Tame is quoted in the following terms:

"Mr. Tame has been chief executive at the City of Armadale for 18 years and said, in his experience, the public was the most cynical it had ever been about all levels of government.

"I have worked in local government long enough to remember that the intention of the last review of the Act (1995) was to make it less restrictive, giving councils more autonomy and freedom to govern 'for the good of their local community'," he said."

"From the vitriol and negativity with which the Federal Government criticises State Government and in turn, State Government criticises local government, it is little wonder the public has little faith and a general low opinion of all levels of government," he said. (end quote)

The historic governance behavior of the City of Armadale has not been "all for one and one for all" but "a house divided".

The Ward system ensures each and every Councillor competes with each and every other Councillor to achieve favour and support from their Ward Electors.

That produces "pork-barreling" projects to please electorally grateful sectional interests such as sporting clubs, facilities and grants. The track record proves this.

Add into the mix bias from the ruling coalition and the result is that the entire Council is focused not on the City of Armadale as a whole, but on its seven Wards.

History shows that approach to governance produces a Council populated by sycophants, eager to win the favour of the power elite, who have agendas beyond ward boundaries.

That results in the continuing "unanimous" decisions so common in this Council.

The fact is that EVERY major project within the City of Armadale district during the life of the City of Armadale Local Government has been STATE government sponsored.

The Armadale and Kelmscott CBD "revitalisation" projects, Forrestdale Business Park, Champion Lakes development, Armadale City Shopping Centre, Armadale Central Shopping Centre, Police Station, Courthouse, Armadale Railway Line electrification, Replacement Railway Station, Tonkin Highway, Ranford Road and its two upgrades, Araluen Botanical Park etc etc are all STATE Government sponsored projects.

That leaves the Harvey Normal centre (established in a non-complying zoning), Homestyle Furniture (defunct), Grand Cinemas (at the expense of the Pioneer Village Cinema), Haynes Retail Development (actually just a relocation of the West Armadale Shopping Centre) and the wonderful recycling facility at the Armadale Tip as credits to the City Council.

The crowning glory is the City's new edifice "Tower of Babel" like "Orchard House", which stands as a monument to self-aggrandisement but of little interest to struggling Ratepayers.

Despite former Mayor Reynolds and Mayor Zelones being Board Members of the ARA, Mayor Reynolds being a Chairman of the Local Government Grants Commission, Mayor Zelones being a Member of the Western Australia Planning Commission - among many lucrative State Government appointments, this is all that 30+ years, of City governance has produced.

Prior to this the fact that former Mayor Stubbs who, unanimously supported by Council, stood against the ruling Liberal Party Government for the State seat of Armadale - and recently honoured by Council as a Freeman of the City – is a declaration in itself that the current Council is a rival to the currently ruling Liberal Party.

The STATE Government is well aware of this, so why should it favour a bunch of sycophants who publically proclaim these projects as their own?

So if the goal is to win autonomy from the State then the City must become united in its quest to stand together as one in common purpose.

That is difficult to achieve when many of the City's Executive and staff live out of town, do not have a primary personal allegiance to the interests of the City's Ratepayers, have personal career agendas, and a Council leadership not focused on holistic community values and goals.

The City's organisation has a "top-down" pyramid structure, so without common purpose and inspirational leadership throughout the entire organization - top to bottom – it can never achieve much at all except work to rule. That rule is: "tell me what to do and I will do it - but until then I will do nothing".

Throughout its literature, the City proclaims itself as a "team", however a team's members cannot be playing different games at the same time.

The goal **MUST** be singular, with a common ethos and common purpose.

Thus, "the team" must be "all for one and one for all".

This can only be achieved with a no-Ward District-wide electoral system that produces selfless Councillors committed to the entire community.

Only then will the confidence of Electors (currently absent by the low voter participation rate) be gained.

4. Preferential voting

Is essential to apply preferential voting to determine the successful candidates from an election.

5. Public Statement Time

A formal "Public Statement Time" in Council and Committee meetings (as is already the case in some Local Governments) is essential to free speech and openness

This enables Members of the Public, Electors, Ratepayers, Residents and users of LG facilities and services, to speak directly to Council and Committees to present their issue or matter.

This process avoids issues and matters being censored or manipulated by the Executive, who are master wordsmiths with the capability to present "no" as "yes".

Reference to minutes of Councils who already incorporate a "Public Statement Time" in their meetings shows that persons who are requesting rezoning or building approvals often present a case directly to Council for their development, with the intent of persuading Council. This is a healthy means of avoiding private covert lobby groups or individuals obtaining momentum within the LG organization.

It also provides a means for ordinary residents to express their concerns at proposals that might result, or have resulted, in community angst.

A formal "Public Statement Time" is a mark of a progressive local government.

A "Public Statement Time" may be regarded as an oral *Petition* - which is an ancient common law right.

6. A right to ask relevant questions and receive complete and accurate responses to public questions put to Council, Committees, Executives and Officers

Deceptive, incomplete and misleading responses cannot be challenged by a member of the public.

It is not sufficient to threaten a Person Presiding with a "you have been a naughty boy (or girl)" slap on the wrist by a Local Government Standards Panel for an alleged breach of a Code of Conduct. In any event it is not unlawful to provide deceptive, incomplete or misleading responses.

7. A right to be critical of the local government in its meetings - i.e. to publically identify its shortcomings and seek solutions or corrective action

Unless a system incorporates "feedback" it is a closed-loop system. Closed-loop political and organisational management systems are self-destructive.

Council is charged with the custody and application of the public purse, so must be open to public scrutiny and review.

8. A right to preface questions with a preamble/introduction that provides context to the question

A review of Minutes of meetings shows responses recorded without context are often meaningless babble

9. A fixed maximum term for elected representatives (Mayor and Councillors)

It is obvious Councillors form sub-groups of common interest and common purpose, however the implied Theory of Council operation under the Local

Government Act 1995 and its Regulations, is that decisions are merit based upon a show of hands - i.e popular impartial and independent vote within Council on EVERY matter presented.

Therefore it is impossible for Council to be dysfunctional

Nonetheless many are, so either implode or continue to dysfunction with various factional power plays at work. The 2017 City of Perth saga is but one example.

It is a characteristic of humans that we have a herd mentality and it is provable fact that groups automatically select a leader to guide and stimulate the group and to help it achieve its goals.

Consequently coalitions, cabals and factions etc develop over time as Councillors get to know each other better.

However these are covert and do not display publically when there is little or no debate, little or no dissention and unanimous voting on virtually every item presented for decision.

A maximum fixed term of two or three x four year terms is essential to prevent the formation of informal covert power-centric cabals and the bypassing of protocols designed to prevent corruption.

10. Clarify the powers and duties of the Mayor and Deputy Mayor.

The Local Government Act 1995 and its Regulations define the powers of the Mayor and, when not available, de-facto powers of the Deputy Mayor.

Section 2.8 assigns NO powers to the Mayor.

Hence NO Mayor can go to an election with promises of benefits arising from his or her election, as has been the case in some local governments, because the next Council has not yet been elected and the Mayor has a casting vote only.

The Local Government Act 1995 prescribes:

5.21. Voting

(1) Each council member and each member of a committee who is present at a meeting of the council or committee is entitled to one vote.

(2) Subject to section 5.67, each council member and each member of a committee to which a local government power or duty has been delegated who is present at a meeting of the council or committee is to vote.

(3) If the votes of members present at a council or a committee meeting are equally divided, the person presiding is to cast a second vote.

What that means in the City of Armadale, which has 14 Councillors, is that if all are present and the vote is 7 all (which never happens and is likely to never happen) then the person presiding is to cast a "second" vote.

That appears to mean a "deciding" vote - but does it ?

11. Develop Statutory Uniform Standing Orders for ALL local governments in WA.

To allow 138 different organisations to design their own way of managing meetings is an invitation to chaos.

As noted above, the Commonwealth Constitution provides every resident of every state is entitled to the same rules.

Why should a person living on one side of a street governed by a particular local government be subjected to different local laws, directions, notices, orders and policies to a person living on the opposite side of the same street but governed by a different local government ?

As noted above, the [Municipal Corporations Act 1906-1947 Part VIII of the Eleventh Schedule](#) prescribes a set of UNIFORM Standing Orders.

Thus it has and can be done.

However there must be scope for free and open discussion of issues and matters in Council and in sub-committees. That is not currently available in any of the above referenced sets of Standing Orders, all of which impose rigid environments for discussion.

This can only result in Councils and Committees ignoring the law for convenience.

12. Disallow Standing Orders Local Laws.

Standing orders are merely procedures to regulate/manage meetings.

There is no reason for non-uniform Standing Orders to be law.

Local Laws must be reviewed every eight years, which means that four successive Councils are bound by them.

This creates a situation for control of agendas and meetings by the Executive by application and manipulation of due process.

13. Disallow the "Suspension of Local Law Standing Orders".

Disallow the setting aside of Standing Orders

When a Council is sitting as an executive administrative body - i.e. when not making local laws - there is no case for a Council to suspend a law that is in place to govern its activities

How can a Council, which is a committee, lawfully switch a law on or off ?

Furthermore, how can a sub-committee, which is not assigned "powers or duties" switch a local law on or off ?

Then there is the question of a person presiding who is neither a Councillor nor an Executive Officer – i.e. an "Elector" or a "Member of the Public". Under defined circumstances prescribed by the Local Government Act 1995 and Regulations, such a person is empowered to preside over meetings. How then can such a person switch a law off ? Whatever has happened to the [RULE OF LAW](#) ?

Is not the law the law ?

If a law can be switched off by low-level public officers where is the Rule of Law ?

To underwrite "democracy" and expression of free speech in the political arena, the law should prohibit the Person Presiding from disallowing motions of "no-confidence" in the Mayor or Shire President, any Councillor, the CEO or the Executive collectively.

As noted in Parts 3, 4 and 5 of this paper, no parliament can lawfully prevent public critique of itself. That includes unlawful or invalid disallowable Local Laws made by a local government.

Historically the Council (all fourteen of them), their executive and support staff (numbering many), are all entitled to vote if enrolled.

Since motions are most likely to be directed at decisions the Council has already made or are likely to make, this process is a breach of the principles of "Natural Justice" – i.e. Councillors (all fourteen of them), their executive and support staff are voting *in their own cause*.

Hence the few Electors who actually attend are outnumbered, resulting in a very non-democratic skewed system favouring the local government.

Since one of the primary functions of an Elector meeting – particularly a "Special Electors Meeting", is to review the decisions, actions or performance of the local government, it follows that if the Electors present are outnumbered then their influence is zero.

14. Establish uniform rates (taxes) for property owners throughout the state.

All local government receive state and federal government grants as well as from the Lotteries Commission.

That system creates competition within the local government sector and should lead to better and fairer outcomes.

There is no reason why a uniform base rate cannot be applied throughout the state, with particular local needs being met by grants.

If a person decides to relocate to a new local government district to reduce rates and taxes and charges, there is no guarantee an incoming Council (occurring every two years) will not change the rates to a higher level than those previous.

One technique used by local governments is to increase the minimum rate. Such increase is known to have occurred to 50% in one year.

15. Disallow Transfer of Responsibilities

The Local Government (Official Conduct) Amendment Act 2007 established a system of standards of compliance for Councillors by introduction of a Code of Conduct for each local government.

However executive officers - i.e. CEO and staff - are not subject to those provisions.

The procedure is that a complaint against a Councillor is to be made to a Standards Panel whereas a complaint against the CEO or staff is to be made to the Council.

Consequently, when the CEO and or officers are acting as independent agents under authorities delegated by Council - i.e. performing a management function

being the responsibility of Council, but on behalf of Council, complaints will be against those officers and not Council.

Complaints against officers are heard behind closed doors under different laws and standards to those applicable to Councillors.

This system enables Council to flick-pass its responsibilities to officers and thereby avoid scrutiny and accountability.

16. Require local governments to implement AS/NZS/ISO9001 standard

The Local Government Act 1995 prescribes:

3.18. Performing executive functions

(1) A local government is to administer its local laws and may do all other things that are necessary or convenient to be done for, or in connection with, performing its functions under this Act.

(2) In performing its executive functions, a local government may provide services and facilities.

(3) A local government is to satisfy itself that services and facilities that it provides —

(a) integrate and coordinate, so far as practicable, with any provided by the Commonwealth, the State or any public body; and

(b) do not duplicate, to an extent that the local government considers inappropriate, services or facilities provided by the Commonwealth, the State or any other body or person, whether public or private; and

(c) are managed efficiently and effectively.

A Council or Committee has no arms or legs – merely secretarial support, hence must rely upon others to implement its policies and decisions.

Given Council is directly responsible for the management of its local government but has no resources within itself, it must rely upon its Executive officers to implement its decisions and to provide feedback information via reports as to when and how those actions have been implemented.

[AS/NZS/ISO9001 standard: Management Systems](#), provides a means of developing confidence in the Executive's capabilities, efficiency, effectiveness and commitment in supporting its Council.

[AS/NZS/ISO9001 standard: Management Systems](#), provides a means of developing an efficient and effective organization by means of clearly defined policies, processes, practices, procedures and planned activities

Without such an ongoing and transparent monitoring and review mechanism, Council only knows what it is told by others.

Given the [City of Armadale Policies](#) prohibit Councillors from talking to officers, the only way Councilors can determine what has happening is to wait until it has happened.

To ensure efficient and effective management, [AS/NZS/ISO9001 standard: Management Systems](#), should be applied to all aspects of activities - i.e. organisational wide.

Local governments are process driven entities so implementation of this standard is not complex.

The principles supporting this standard are described in this informative [booklet](#).

This standard is concerned with the management of organisations and provides a simple framework for achieving organisational control and effectiveness.

It also establishes a platform for planned systematic continuous improvement.

It does not prevent discretionary decision making but does enable those decisions to be made in a disciplined controlled environment consistent within organisational objectives, norms and performance standards.

The creation of documented processes and controlled records of process outcomes is essential to reliable organisational performance and traceability of decisions and actions.

The [INDEX](#) to ISO9001 shows the scope of this standard.

Individual elements can be omitted when not applicable.

ISO9001 may be applied to management of the organisation and/or processes and/or products and/or service outcomes.

It is essential that Council, who is responsible in law for the management of the local government, is included within the scope of an ISO9001 Management System.

Independent third-party certification and regular compliance auditing is a desirable option for this standard, which is widely used throughout the world. Independent third-party certification ensures independent verification of compliance.

17. Encourage local governments to implement AS/NZS/ISO9001 standard

AS/NZS ISO 9004:2011 Managing for the sustained success of an organization— A quality management approach

This International Standard provides guidance to support the achievement of sustained success for any organisation in a complex, demanding, and ever-changing environment, by a quality management approach.

The sustained success of an organization is achieved by its ability to meet the needs and expectations of its customers and other interested parties, over the long term and in a balanced way. Sustained success can be achieved by the effective management of the organisation, through awareness of the organisation's environment, by learning, and by the appropriate application of either improvements, or innovations, or both.

This International Standard provides a wider focus on quality management than ISO 9001; it addresses the needs and expectations of all relevant interested parties and provides guidance for the systematic and continual improvement of the organization's overall performance.

It facilitates a more strategic approach to continuous improvement.

It is unclear as to why a local government can happily implement Australian standards to its financial and accounting systems, as well as impose a wide range of standards to civil engineering works, building and construction projects, food industries and other community activities, but be immune from compliance itself.

Local governments will argue that they must comply with regulatory compliances however regulations do not prevent poor or mismanagement.

The City of Armadale has previously rejected periodic submissions from this Elector that this standard be applied to its activities.

Now as it happens, the Executive Director, Sector Regulation and Support for the Western Australia Department of Local Government and Communities as at 04/2017 is one Mr. Brad Jolly.

The 2014-2015 Annual Report describes his role in this manner:-

"Brad Jolly has a breadth of experience across both the private and public sector. He was appointed executive director governance and legislation at the former Department of Local Government in October 2009.

In his current role, Mr. Jolly is responsible for all legislative, statutory and regulatory functions performed by the department. A key focus of the role is assisting local governments to achieve high standards of governance and probity as well as administering the statutory functions of the Local Government Act 1995 and other legislation administered by the department.

He is also responsible for the State-wide implementation and development of the [NATIONAL QUALITY FRAMEWORK](#) for early childhood education and care.

Mr. Jolly also occupies the positions of presiding member of the Local Government Standards Panel and deputy chair of the Local Government Grants Commission and is also a member of the National Early Childhood Policy Group." - (end quote)

So we must ask – "if early childhood education and care can be regulated by standards for quality processes and performance why cannot local governments be similarly regulated" ?

The National Quality Framework for early childhood education and care is derived from AS/NZS/ISO9001, which can be applied generically to any product, service or industry.

A vital strategy element is for a formal strategy for *continuous improvement* – measured against predetermined *meaningful* standards or targets.

A relevant example is that set by the [Australian Children's Education and Care Quality Authority](#).

18. Ensure ALL Local Laws include OBJECTS and DEFINITIONS.

The Interpretation Act 1984 prescribes:

18. *Purpose or object of written law, use of in interpretation*

In the interpretation of a provision of a written law, a construction that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to a construction that would not promote that purpose or object.

19. *Extrinsic material, use of in interpretation*

- (1) *Subject to subsection (3), in the interpretation of a provision of a written law, if any material not forming part of the written law is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material —*
- (a) *to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law; or*
 - (b) *to determine the meaning of the provision when —*
 - (i) *the provision is ambiguous or obscure; or*
 - (ii) *the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law leads to a result that is manifestly absurd or is unreasonable.*

Note: In law, "matters" and "procedures" are not the same.

- (2) *Without limiting the generality of subsection (1), the material that may be considered in accordance with that subsection in the interpretation of a provision of a written law includes —*
- (a) *all matters not forming part of the written law that are set out in the document containing the text of the written law as printed by the Government Printer; and*
 - (b) *any relevant report of a Royal Commission, Law Reform Commission, committee of inquiry or other similar body that was laid before either House of Parliament before the time when the provision was enacted; and*
 - (c) *any relevant report of a committee of Parliament or of either House of Parliament that was made to Parliament or that House of Parliament before the time when the provision was enacted; and*
 - (d) *any treaty or other international agreement that is referred to in the written law; and*
 - (e) *any explanatory memorandum relating to the Bill containing the provision, or any other relevant document, that was laid before, or furnished to the members of, either House of Parliament by a Minister before the time when the provision was enacted; and*
 - (f) *the speech made to a House of Parliament by a Minister on the occasion of the moving of a motion that the Bill containing the provision be read a second time in that House; and*

- (g) *any document (whether or not a document to which a preceding paragraph applies) that is declared by the written law to be a relevant document for the purposes of this section; and*
 - (h) *any relevant material in any official record of proceedings in either House of Parliament.*
- (3) *In determining whether consideration should be given to any material in accordance with subsection (1), or in considering the weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to —*
- (a) *the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law; and*
 - (b) *the need to avoid prolonging legal or other proceedings without compensating advantage.*
-

Consider also the [Statement By The Joint Standing Committee On Delegated Legislation](#)

INTERPRETATION ACT 1984

J. Section 41 of the *Interpretation Act 1984* provides that all “subsidiary legislation” must be published in the Gazette and comes into operation on the date of publication (or the day Specified in the subsidiary legislation).

This reflects a fundamental principle of Representative democracy based on the rule of law.

The RULE OF LAW requires that law must be publicised with sufficient precision.

John Locke said:

For all the power the government has, being only for the good of society, as it ought not to be arbitrary and at pleasure, so it ought to be exercised by established and promulgated laws, that both the people may know their duty, and be safe and secure within the limits of the law, and the rulers, too, kept within their due bounds...

And Lord Reid has said:

The acceptance of the rule of law as a constitutional principle requires that a Citizen, before committing himself to any course of action, should be able to know in advance what are the legal consequences that will flow from it.

IN OTHER WORDS, IT IS A REQUIREMENT IN STATUTE LAW DETERMINED BY PARLIAMENT THAT LOCAL LAWS SHOULD BE COMPREHENSIVE AND EXPLANATORY IN LANGUAGE AND CONVEY CLEAR PURPOSE AND MEANING.

Compare the City of Armadale's Local laws with that criteria.

The full suite of current City of Armadale local laws may be found [here](#)

Careful reading shows some of these laws refer to "Council" as the prosecuting authority however Council has no powers other than to make decisions and direct the CEO via those decisions. As previously explained "Council" is not a legal person hence cannot be a prosecuting public authority – that is the function of the CEO, representing the local government.

In fact it has been shown that in the recent past, City of Armadale prosecution actions went all the way to the WA Court of Appeal, incurring huge expenses along the way – **without the approval of Council.**

Another curious situation arises with CITY OF ARMADALE ENVIRONMENT, ANIMALS AND NUISANCE LOCAL LAWS 2002

5. (3) Where an authorised person or other officer serves a notice or other direction purporting to be as a consequence of an opinion or decision of the Council, a copy of an extract from the minutes of the Council meeting at which that opinion was formed or decision made, showing record of the forming of that opinion or making of that decision and certified by the Chief Executive Officer, or another officer of Council who has been delegated or authorised to do so, as being a true and accurate copy, shall be sufficient evidence of the forming of that opinion or making of that decision for any legal proceedings under these local laws

This local law refers to an "opinion" of Council, however [Local Law Standing Orders 2000](#) provides no mechanism for Council to express an "opinion". So how does the " *authorised person or other officer*" determine Council's "opinion" ?

Perhaps they mean "policies" approved by Council – but "opinions" and "policies" are discretionary.

Hence "*an authorised person or other officer*" can lawfully discretionally decide under discretionary policies or opinions to discretionally prosecute a person.

Further study of [current City of Armadale Local Laws](#) will show further anomalies that breach the conventions set out by [The Joint Standing Committee On Delegated Legislation](#)

Local Laws may be made by a local government under the powers prescribed by Section 3,5 of the Local Government Act 1995

3.5. Legislative power of local governments

(1) A local government may make local laws under this Act prescribing all matters that are required or permitted to be prescribed by a local law, or are necessary or convenient to be so prescribed, for it to perform any of its functions under this Act.

(2) A local law made under this Act does not apply outside the local government's district unless it is made to apply outside the district under section 3.6.

(3) The power conferred on a local government by subsection (1) is in addition to any power to make local laws conferred on it by any other Act.

(4A) Nothing in the Building Act 2011 prevents a local government from making local laws under this Act about building work, demolition work, a standard for the construction or demolition of buildings or incidental structures, or the use and maintenance of, and requirements in relation to, existing buildings or incidental structures, as those terms are defined in section 3 of that Act.

(4B) Nothing in the Health (Miscellaneous Provisions) Act 1911 or the Public Health Act 2016 prevents a local government from making local laws under this Act about matters relating to public health (as defined in the Public Health Act 2016 section 4(1)).

(4) Regulations may set out —

(a) matters about which, or purposes for which, local laws are not to be made; or

(b) kinds of local laws that are not to be made, and a local government cannot make a local law about such a matter, or for such a purpose or of such a kind.

(5) Regulations may set out such transitional arrangements as are necessary or convenient to deal with a local law ceasing to have effect because the power to make it has been removed by regulations under subsection (4).

3.7. Inconsistency with written laws

A local law made under this Act is inoperative to the extent that it is inconsistent with this Act or any other written law.

Note: That means Commonwealth as well as state law.

3.8. Local laws may adopt codes etc.

(1) A local law made under this Act may adopt the text of —

(a) any model local law, or amendment to it, published under section 3.9; or

(b) a local law of any other local government; or

(c) any code, rules, specifications, or standard issued by Standards Australia or by such other body as is specified in the local law.

(2) The text may be adopted —

(a) wholly or in part; or

(b) as modified by the local law; or

(c) as it exists at a particular date or, except if the text of a model local law is being adopted, as amended from time to time.

(3) The adoption may be direct, by reference made in the local law, or indirect, by reference made in any text that is itself directly or indirectly adopted.

3.12. Procedure for making local laws

(1) In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.

(2A) Despite subsection (1), a failure to follow the procedure described in this section does not invalidate a local law if there has been substantial compliance with the procedure.

Note: In this section, Parliament has chosen to set aside "due process" and allow a local government to do what it likes so long as it "substantially applies" – but who decides "how substantially" is defined ?

Note: In Sections 3.12 to 3.16 there is no requirement to comply with directions or guides issued by the WA Parliament's Joint Standing Committee on Delegated Legislation BEFORE a local law is gazetted.

e.g. "A Guide to "Local Laws" under the Local Government Act 1995 as "Subsidiary Legislation" under the Interpretation Act 1984"

31. *Preambles, schedules etc. to form part of written law*

- (1) *The preamble to a written law forms part of the written law and shall be construed as a part thereof **intended to assist in explaining its purport and object.***
- (2) *An appendix or schedule to or a table in a written law, together with any notes thereto, forms part of the written law.*

It is clear from the above that every local law must comply with the foregoing requirements – but they do not.

But since the strategic governance strategy of a local government is to give itself powers to do whatever it wants, it follows ANY local law will fulfil that objective – regardless of how one (the governed) might interpret it.

**THE GOLDEN RULE OF
COMMUNICATION IS TO SAY WHAT
YOU MEAN AND MEAN WHAT YOU SAY
!!**

19. Restrict delegation by Council of those powers and functions of Council assigned to the CEO/Administration – Council is responsible for management and should be directly accountable.

Delegation facilitates lazy management, lack of involvement, lack of scrutiny and transfer of blame.

The pathways become even more murky and more difficult to assign accountability when delegated authorities are further delegated down the line.

This element is self evident

20. Allow PROXY voting at Elector Meetings

Elector Meetings are intended to allow Electors to meet their Council and discuss issues face to face as a vital element in demonstrating "openness" and "accountability" in the local government system.

An Elector meeting is the ONLY forum in which an Elector can lawfully address Council – if Council chooses to be present.

However in practice, Elector meetings are stage manipulated to ensure the minimum number of eligible Electors are present. This strategy is achieved by minimal advertising and promotion, and a clear absence of explanation of the purpose and scope of Elector meetings within the "democratic" system of government.

Electors are not encouraged to participate.

Legally speaking, in an Elector meeting Councillors and Executives have no greater standing than rank and file (Ordinary) Electors, however if Electors decide to attend, they are faced with an intimidatory seating plan which ensures Councillors and staff dominate the available space. This strategy offsets the different standing of Councillor and Executive Electors v rank and file (Ordinary) Electors.

Local Law Standing Orders may be applied – in full or in part (*mutatis mutandis*) - at the discretion of the Person Presiding, which means money penalties and post-meeting retrospective rulings may discretionally apply.

Of course, until such time as the Person Presiding actually announces or reveals the procedures to be applied to the meeting, nobody has a clue as to what the process might be. Historically, as the minuted record shows, when asked to declare procedures to be applied, the Person Presiding has indicated that "they will be determined as or when I decide to determine them – if I decide to determine them" - i.e. "made up as we go along".

Hence few Electors actually attend and even fewer dare to participate.

VOTING

Then there is the question of voting.

Electors may only vote only if they actually attend.

But first a motion must be put and independently seconded to be accepted for vote. But as noted elsewhere in this paper, motions may be discretionally rejected by the Person Presiding.

Then there is the issue of manipulation of procedure to advantage the local government.

It can be seen from the minuted record of Elector meetings in the City of Armadale that the first item of business is, by law (Regulation), the presentation to and receiving by the Electors present of the City's Annual Report.

The motions formalizing that process have been presented by Councilors and not seconded.

That is, the presentation and receiving of the City's Annual Report has been completed by itself using an abridged procedure.

But when motions are presented by rank and file Electors they must be seconded or lapse.

Is not the purpose of presenting the Annual Report to Electors for consideration and discussion the purpose of the meeting?

Again we have the Council breaching the principles of natural justice, "standing in its own shoes".

Then there is the second item of business as prescribed in law.

That is "General Business"

But again, applying an abuse of power, the Person Presiding has changed the advertised lawful agenda to replace it with "Questions" and, if fortunate, reasonable explanatory responses.

To underwrite "democracy", the law should prohibit the Person Presiding from disregarding the statutory agenda for Elector Meetings.

It should be noted that a specific formal complaint regarding this matter was submitted to the Department of Local Government but dismissed, who determined that the Person Presiding is not bound by law.

You work that one out.

Proxy Voting

Hence if proxy voting was allowed then a "representative" Elector could present numerous proxy votes on behalf of those too frightened to attend or who are unable to attend due to other commitments.

Procedures for verifying the proxies would be simple.

Such a system might just introduce some degree of fairness to the current manipulated system.

Of course to be valid, it would need to count each proxy as one vote – unlike the planning approval public submission process which counts multiple submissions as one.

The current laws prescribe that a successful motion becomes a "**decision**" of the meeting. That decision must be **considered** by Council – although there is no obligation for it to be accepted for further action.

Council is not required to consider any other aspect of the meeting or any matter or issue raised by questions.

However, as the minuted record shows, the Council of the City of Armadale interpretes the term "consider" to mean **accepting a report** from the CEO describing the decision – full stop – i.e. with no further descriptors or recommendations.

That acceptance process takes about thirty seconds to complete.

The result is pure lip-service to the law.

For further "official" proposals see also the:-

FINAL REPORT OF THE INDEPENDENT PANEL -
METROPOLITAN LOCAL GOVERNMENT REVIEW - JULY
2012