



Audit and Risk Committee

# Agenda

Wednesday 24 July 2024

## *Our Vision*

Where environment, lifestyle and opportunity meet



## *Community Aspirations*



### KEY THEME 1

#### **Environment**

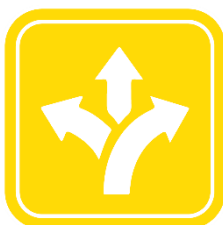
An environment that is valued, conserved and enjoyed by current and future generations.



### KEY THEME 2

#### **Lifestyle**

A place that is relaxed, safe and friendly, with services and facilities that support positive lifestyles and wellbeing.



### KEY THEME 3

#### **Opportunity**

A vibrant City with diverse opportunities and a prosperous economy.



### KEY THEME 4

#### **Leadership**

A Council that connects with the community and is accountable in its decision making.

**NOTICE OF MEETING**

**TO: THE MAYOR AND COUNCILLORS**

**NOTICE** is given that a meeting of the Audit and Risk Committee will be held in the Council Chambers, Administration Building, Southern Drive, Busselton on Wednesday 24 July 2024, commencing at 9:00am.

Your attendance is respectfully requested.

**DISCLAIMER**

Statements or decisions made at Council meetings or briefings should not be relied on (or acted upon) by an applicant or any other person or entity until subsequent written notification has been given by or received from the City of Busselton. Without derogating from the generality of the above, approval of planning applications and building permits and acceptance of tenders and quotations will only become effective once written notice to that effect has been given to relevant parties. The City of Busselton expressly disclaims any liability for any loss arising from any person or body relying on any statement or decision made during a Council meeting or briefing.



**TONY NOTTLE**

**CHIEF EXECUTIVE OFFICER**

17 July 2024

### **BEHAVIOUR PROTOCOLS**

The City of Busselton values are:

- Listening
- Considered Decision Making
- Appreciation
- Respect
- Teamwork

In accordance with these values, the following outlines the behaviour expectations while attending a Council meeting, Committee meeting, Community Access Session, or Public Agenda Presentation:

- Listen respectfully through the meeting or presentation
- Respect the Council process and comply with directions from the Presiding Member
- Use respectful language when addressing Council, staff, and other members of the public
- Behave in a manner that is respectful and non-confrontational
- Do not use offensive language or derogatory language towards others

The City values the diverse input of the community and seeks to ensure that all members of the community can attend a meeting and have their say.

Elected Members, Committee members and Candidates are bound by the City's Code of Conduct and agree to uphold the values of the City of Busselton and principles of good behaviour, maintaining and contributing to a harmonious, safe, and productive environment.

Anyone who does not behave in accordance with the above values and behaviours may be asked by the Presiding Member to leave the gallery.

CITY OF BUSSELTON

Agenda for the Audit and Risk Committee to be held on Wednesday 24 July 2024

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## 1 OFFICIAL OPENING

The City of Busselton welcomes Elected Members, staff, guests and members of the public to the Audit and Risk Committee meeting of 24 July 2024.

The City of Busselton acknowledges the Wadandi and Bibbulmun people as the traditional custodians of this region and pay respects to Elders past and present.

Please note this meeting will be audio recorded for minute taking purposes.

## 2 ATTENDANCE

| <b>PRESIDING MEMBER</b> | <b>MEMBERS</b>      |
|-------------------------|---------------------|
| Cr Andrew Macnish       | Mayor Phill Cronin  |
|                         | Cr Anne Ryan        |
|                         | Cr Val Kaigg        |
|                         | Cr Kate Cox         |
|                         | Cr Richard Beecroft |
|                         | Cr Jarrod Kennedy   |
|                         | Cr Jodie Richards   |
|                         | Cr Mikayla Love     |
|                         | Mr Ben Townend      |

| <b>OFFICERS</b>                             |
|---|
| Chief Executive Officer                     |
| Director Corporate Strategy and Performance |
| Manager Legal, Governance and Risk          |
| Manager Systems and Information             |
| Governance and Risk Coordinator             |
| Governance Officer                          |

| <b>APOLOGIES</b>          |
|---------------------------|
| Nil at time of publishing |

### 3 DISCLOSURES OF INTEREST

#### DISCLOSURES OF FINANCIAL INTEREST

A declaration under section 5.65 of the *Local Government Act 1995* requires that the nature of the interest must be disclosed. An elected member or employee who has made a declaration must not preside, participate in, or be present during any discussion or decision-making procedure relating to the matter on which the subject of the declaration without the approval of the Council in accordance with the Act.

#### DISCLOSURES OF IMPARTIALITY INTEREST

Elected members and employees are required, in addition to declaring any financial interest, to declare an interest that might cause or perceive to cause a conflict. If the elected member or employee declares that their impartiality will not be affected then they may participate in the decision-making process.

### 4 PUBLIC QUESTION TIME

#### 4.1 RESPONSES TO PREVIOUS QUESTIONS TAKEN ON NOTICE

Nil

#### 4.2 QUESTION TIME FOR PUBLIC

##### Public question time procedures and guidance

Public question time allows members of the public to participate in local government by asking questions of the Council in relation to issues affecting the City. It also assists the City in identifying issues of importance to the community and assists the public to be better informed about how the City is governed.

- The City will allocate a minimum of 15 minutes and a maximum of 30 minutes per Council meeting for public question time.
- Members of the public should register their intent to ask a question at a Council meeting by completing and submitting the [Public Question Time form](#) before 4pm the day prior to the relevant meeting.
- Members of the public will be invited to ask their question in order of registration.
- Questions will be limited to three per person. Additional questions may be permitted by the Presiding Member where time permits.
- Where a person is not present to ask their submitted question it will be responded to administratively as general correspondence.
- Questions may be taken on notice, to be responded to at a later time by the CEO in accordance with clause 6.7 of the Standing Orders.

- Public question time is for the tabling of questions, not for members of the community to make statements. For context, the Presiding Member may allow a short preamble.
- Questions containing defamatory remarks or offensive language, or that question the competency or personal affairs of Elected Members or employees may be ruled inappropriate by the Presiding Member subject to the Presiding Member taking reasonable steps to assist the member of the public to rephrase the question.
- There will be no debate or discussion on the response provided.

For further information, please see the [Meetings, Information Sessions and Decision Making Processes Policy](#).



## 5 CONFIRMATION AND RECEIPT OF MINUTES

### 5.1 Audit and Risk Committee 8 May 2024

#### RECOMMENDATION

That the minutes of the Audit and Risk Committee meeting held 8 May 2024 and resumed on 15 May 2024 be confirmed as a true and correct record (as published at 17 July 2024 on the [City of Busselton's website](#), inclusive of any confidential material published on the restricted internal Docs on Tap application)

6 REPORTS

6.1 RFQ61/24: Provision of Internal Audit Services

|                                 |  |
|---------------------------------|--|
| <b>Strategic Theme:</b>         | Key Theme 4: Leadership<br>4.2 Deliver governance systems that facilitate open, ethical and transparent decision making. |
| <b>Directorate:</b>             | Corporate Strategy and Performance   |
| <b>Reporting Officer:</b>       | Manager Legal and Governance - Ben Whitehill   |
| <b>Authorised By:</b>           | Director Corporate Strategy and Performance - Sarah Pierson  |
| <b>Nature of Decision:</b>      | Contractual: To enter into a contract e.g. a lease or the award of a tender etc.   |
| <b>Voting Requirements:</b>     | Simple Majority  |
| <b>Disclosures of Interest:</b> | No officers preparing this item have an interest to declare.   |
| <b>Attachments:</b>             | Nil  |

OFFICER RECOMMENDATION

**That the Council accept the quotation from Moore Australia (WA) Pty Ltd (as agent for a partnership of trusts) for the Provision of Internal Audit Services.**

**EXECUTIVE SUMMARY**

The City issued RFQ61/24 Provision of Internal Audit Services via VendorPanel on 9 May 2024. This report recommends that the Council endorse the outcome of the evaluation panel’s assessment and accept the quotation from Moore Australia (WA) Pty Ltd (as agent for a partnership of trusts).

**STRATEGIC CONTEXT**

The provision of internal audit services helps support delivering governance systems that facilitate open, ethical and transparent decision making.

**BACKGROUND**

At the ordinary meeting on 20 March 2024 the Council resolved (C2403/51) to approve the allocation of \$35,000 for consultancy in the 2024/2025 budget to fund the engagement of a consultant to undertake the internal audit function.

The City’s objectives for the procurement of the internal audit function are to:

- (a) establish an effective and independent internal audit function that enhances good governance and accountability;
- (b) develop an internal audit charter and three-year internal audit plan;
- (c) deliver an effective and independent internal audit function that provides timely and useful information to the CEO and the Audit and Risk Committee, enhances good governance and accountability and drives continuous improvement; and
- (d) to deliver an effective internal audit function, that will improve the effectiveness of risk management, internal control and governance processes within the City.

Once appointed, the successful consultant will be required to develop an internal audit charter, develop the City's three-year internal audit plan in conjunction with the City's Audit and Risk Committee for the first phase of the works. The second phase requires the implementation of the plan and will involve delivering and performing the internal audit program as outlined in the internal audit plan for a period of three years, periodically communicating findings and recommendations by the provision of reports for the Audit and Risk Committee on the outcomes of internal audits and attending Audit and Risk Committee meetings as required (in person or virtually).

Ordinarily contracts of this value would not be provided to the Audit and Risk Committee or the Council for endorsement. However, in this instance, officers are seeking a recommendation from the Audit and Risk Committee (and Council approval) prior to awarding a contract because the internal auditor will have a functional reporting relationship to the Audit and Risk Committee.

### OFFICER COMMENT

On 9 May 2024, the City sought quotations via VendorPanel from the following 7 WALGA Preferred Suppliers with demonstrated skill and expertise in compliance and audit services:

- AMD Audit and Assurance Pty Ltd
- Assurance Advisory Group Pty Ltd
- Australian Audit Pty Ltd
- Civic Legal
- Dry Kirkness (Audit) Pty Ltd
- MACRI Partners
- Moore Australia (WA) Pty Ltd as agent for a partnership of trusts

The request for quotations closed at 4pm 29 May 2024 with a total of 4 submissions received from the following entities:

- AMD Audit and Assurance Pty Ltd (**AMD**)
- Australian Audit Pty Ltd (**Australian Audit**)
- Dry Kirkness (Audit) Pty Ltd (**Dry Kirkness**)
- Moore Australia (WA) Pty Ltd as agent for a partnership of trusts (**Moore**)

### Assessment Process

In accordance with the City's procurement practices and procedures, the quotation assessments were carried out by an evaluation panel comprising City officers with relevant skills and experience.

The assessment process included assessing compliant quotations against the following qualitative criteria (weighted as indicated in the table below):

| Criterion                           | Weighting |
|-------------------------------------|-----------|
| Relevant Experience                 | 25%       |
| Key Personnel Skills and Experience | 25%       |
| Demonstrated Understanding          | 20%       |

The qualitative criteria were scored depending on the extent to which the respondent was able to appropriately satisfy each criterion and the quotation scored and ranked to determine the most advantageous outcome to the City, based on principles of best value for money. That is, although

price was a consideration, the quotation containing the lowest price will not necessarily be accepted by the City and nor will the quotation rank the highest on the qualitative criteria.

### **Evaluation outcome**

The City received four high quality submissions in response to the request for quotation for the provision of internal audit services. The result of the panel's evaluation process is to recommend the award of the contract to Moore.

A summary of the assessment and each of the submissions is outlined below:

|                         | Qualitative Rank | Price Rank      | Overall Rank          |
|-------------------------|------------------|-----------------|-----------------------|
| <b>AMD</b>              | 2 <sup>nd</sup>  | 3 <sup>rd</sup> | <b>2<sup>nd</sup></b> |
| <b>Australian Audit</b> | 3 <sup>rd</sup>  | 1 <sup>st</sup> | <b>3<sup>rd</sup></b> |
| <b>Dry Kirkness</b>     | 4 <sup>th</sup>  | 4 <sup>th</sup> | <b>4<sup>th</sup></b> |
| <b>Moore</b>            | 1 <sup>st</sup>  | 2 <sup>nd</sup> | <b>1<sup>st</sup></b> |

### **AMD**

AMD ranked second overall. They demonstrated excellent local government experience across metropolitan and regional local governments. The key personnel had suitable qualifications and experience. AMD were able to demonstrate a good understanding of the work and have provided a methodology for the provision of the services. Regarding price, the fixed fee component, for the audit charter and audit plan, was in the mid-range and hourly rates were comparable with other submissions.

### **Australian Audit**

Australian Audit ranked third overall. They demonstrated good local government experience, having worked with a variety of metro and regional Western Australian local governments. Australian Audit's key personnel were adequately experienced, and a good methodology was proposed. The fixed fee for the preparation of the internal audit charter and internal audit plan was in the mid-range and hourly rates were less than the other submissions.

### **Dry Kirkness**

Dry Kirkness ranked fourth overall. They demonstrated some local government experience with internal audit and Financial Management Systems Review and Regulation 17 audits for local government as well as good experience with other entities. In general, their relevant experience was less than other submissions. Key personnel are appropriately qualified and have good audit experience. Dry Kirkness provided a reasonable understanding of the scope of works and methodology, including a possible audit program. The fixed fee for the preparation of the internal audit charter and internal audit plan was at the upper end and hourly rates were comparable to other submissions.

### **Moore**

Moore ranked first overall and demonstrated excellent relevant experience and key personnel. Their extensive local government and Office of the Auditor General (OAG) experience means Moore appears to be well placed to provide the Audit and Risk Committee expert advice on best practice.

Moore demonstrated an excellent understanding of the scope of works and provided a detailed methodology for undertaking those works. The fixed fee for the preparation of the internal audit charter and internal audit plan was at the lower end and hourly rates were comparable to other submissions.

### **Statutory Environment**

Not Applicable

### **Relevant Plans and Policies**

The officer recommendation aligns to the following adopted plan or policy:

Plan:

Not applicable.

Policy:

[Purchasing](#)

[Risk Management](#)

### **Financial Implications**

The City's draft 2024/25 budget includes an amount of \$35,000 (ex GST) for the provision of internal auditing services. It is anticipated that this amount will cover the preparation of the internal audit charter and internal audit plan as well as the implementation of the plan for the first year. Subsequent years will be funded in future budgets.

### **External Stakeholder Consultation**

Not Applicable

### **Risk Assessment**

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place. No risks of a medium or greater level have been identified.

### **Options**

As an alternative to the proposed recommendation the Council could:

1. Decline to accept any quotation.
2. Accept a quotation from another respondent.

### **CONCLUSION**

It is recommended that the Council accept the quotation from Moore Australia (WA) Pty Ltd (as agent for a partnership of trusts) for the provision of internal audit services.

**TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

The officer recommendation will be implemented in full, or in stages as per the following table:

| Milestone         | Completion Date   |
|-------------------|-------------------|
| Award of contract | Early August 2024 |

## 6.2 CEO Regulation 17 Review of Systems and Procedures Recommendations - Implementation status

|                                 |   |
|---------------------------------|---|
| <b>Strategic Theme:</b>         | Key Theme 4: Leadership<br>4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.  |
| <b>Directorate:</b>             | Corporate Strategy and Performance  |
| <b>Reporting Officer:</b>       | Manager Legal and Governance - Ben Whitehill  |
| <b>Authorised By:</b>           | Director of Corporate Strategy and Performance - Sarah Pierson  |
| <b>Nature of Decision:</b>      | Noting: The item is simply for information purposes and noting.   |
| <b>Voting Requirements:</b>     | Simple Majority   |
| <b>Disclosures of Interest:</b> | No officers preparing this item have an interest to declare.  |
| <b>Attachments:</b>             | <ol style="list-style-type: none"><li>2023 Reg 17 Review AMD report [6.2.1 - 23 pages]</li><li>Reg 17 Review Recommendations: Status at July 24 [6.2.2 - 3 pages]</li></ol> |

### OFFICER RECOMMENDATION

**That the Council acknowledge the status update in relation to the recommendations of the Regulation 17 Review (as at the end of June 2024) and that the next update will be provided to the Audit and Risk Committee at the meeting on 13 November 2024.**

### **EXECUTIVE SUMMARY**

Regulation 17 of the *Local Government (Audit) Regulations* (the Audit Regulations) requires the Chief Executive Officer to review the appropriateness and effectiveness of a local government's systems and procedures in relation to risk management, internal control and legislative compliance.

The City engaged AMD Chartered Accountants (AMD) to undertake this review on behalf of the CEO, with findings and recommendations presented to the Audit and Risk Committee and then to Council on 21 June 2023. This report presents a status update in relation to the recommendations.

### **STRATEGIC CONTEXT**

Appropriate and effective systems and procedures for risk management, internal control and legislative compliance provides for the good governance of the City and appropriate levels of risk and risk management activity.

### **BACKGROUND**

In May 2023, the City engaged AMD, a local government audit, accounting and advisory firm in Western Australia, to undertake the Regulation 17 review on behalf of the CEO. The CEO presented a report on the findings of that review to the Audit and Risk Committee on 7 June 2023 (endorsed by Council on 21 June 2023), which included management comments in relation to the findings (Attachment 1).

Council resolved (C2306/111):

*That the Council*

- 1. Accept the CEO's Regulation 17 review of the appropriateness and effectiveness of the City of Busselton systems and procedures in relation to risk management, internal control and legislative compliance; and*
- 2. Request that the Chief Executive Officer provide quarterly updates to the Audit and Risk Committee on the progress of the recommendations for improvement identified as part of the review.*

An update on the status of the recommendations was last presented to the Audit and Risk Committee in March 2024.

## OFFICER COMMENT

Of the twelve recommendations, five have been completed. These are:

- Item 2.2.5: Tender Management;
- Item 2.2.8: Lease Management;
- Item 3.2.1: Business Activity Statement ("BAS") Lodgement Relief;
- Item 4.2.1: Compliance Calendar; and
- Item 4.2.2: Audit and Risk Committee

Seven findings remain in progress, and the status of each is provided below:

**Item 2.2.1: Risk Management Framework and Risk Reporting:** In March 2024, the Council confirmed its support for a planned program to uplift the City's corporate risk management capability, which includes review of the risk management framework and implementation of regular risk reporting, as well as approval of a new risk resource. The commencement of this program is dependent on the City recruiting that new dedicated risk officer. Funding has been allocated in the 2024/25 budget, and recruitment for this position is underway.

**Item 2.2.2 Emergency Risk and Response Management:** Has been partially implemented and is on track for completion by the target date of June 2025.

**Items 2.2.3 Misconduct, Fraud and Corruption Policy:** Priorities across the Corporate Strategy and Performance directorate has resulted in this action not being completed by 30 June 2024. This work is considered lower priority, noting Code of Conduct training is provided to staff through new staff inductions and refresher training. Review of the City's Code of Conduct for employees is currently underway, with Equal Employment Opportunity and appropriate workplace behaviour training for employees (looking at the Code of Conduct) scheduled for September 2024.

**Item 2.2.4 Contract Management:** Recommendation is partially implemented with a contractor performance review having been designed and implemented. Further implementation is contingent on resourcing to centralise the contract management function and systems. Officers are looking to quantify resourcing impacts and determine what can be implemented using existing resources. The target date for this item has therefore been revised.

**Item 2.2.6 Risk Management Policies and Procedures:** The majority of policies and procedures identified by AMD as potentially requiring review have now been reviewed, and approved by the CEO or adopted by the Council as required. The Council Policy: Asset Management is outstanding and will be reviewed by the Policy and Legislation Committee in July 2024. The recommendation to



develop a new policy with respect to specimen signatures has been considered but is not currently an operational priority. Vacant positions in the Work Health and Safety team were filled mid - March 2024 and work is progressing in relation to the review of various operational practices, and associated work processes and guiding documents. The target date has been updated to end - December 2024 for review of the identified operational practices, noting that review of contractor management WHS has a number of dependencies which may impact.

**2.2.7 IT Strategic Plan and Business Continuity Plan Testing:** A business continuity testing exercise was completed in May 2024, and subsequent updates to the Business Continuity Plan are in progress. The ICT Strategy has yet to be presented to the Council, and is pending completion of the City's Council Plan to ensure no adjustments are required in response.

**4.2.3 Internal Audit:** An RFQ for an internal audit engagement has been completed. The outcomes are provided in item 6.1 of this Audit and Risk Committee agenda for consideration.

Further information on the implementation status for each of the recommendations is provided in Attachment 2.

### **Statutory Environment**

Regulation 17 of the Audit Regulations requires the Chief Executive Officer to review the appropriateness and effectiveness of a local government's systems and procedures in relation to risk management, internal control and legislative compliance once every 3 financial years and report the results of that review to the Audit and Risk Committee.

### **Relevant Plans and Policies**

The officer recommendation aligns to the following adopted plan or policy:

Plan:  
Not applicable.

Policy:  
Not applicable.

### **Financial Implications**

There are no financial implications associated with the officer recommendation. Progression of the recommendations in full, however, are likely to have financial implications for example for uplift of risk management and centralisation of procurement and contract management functions.

### **External Stakeholder Consultation**

Not Applicable

### **Risk Assessment**

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place. No risks of a medium or greater level have been identified.

**Options**

The Council could choose not to accept the officer recommendation.

**CONCLUSION**

This report provides a status update in relation to the recommendations of the City’s most recent Regulation 17 Review.

**TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

The officer recommendation will be implemented in full or in stages as per the following table:

| Milestone                                     | Completion Date  |
|---|------------------|
| Status report to the Audit and Risk Committee | 13 November 2024 |



# Regulation 17 Review

May 2023





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**AMD Audit & Assurance Pty Ltd**  
ACN 145 719 259 t/a AMD

Unit 1, 28-30 Wellington Street,  
Bunbury, WA 6230  
PO Box 1306, Bunbury, WA 6231

31 May 2023

**Mr T Nottle**  
**Chief Executive Officer**  
**City of Busselton**  
**Locked Bag 1**  
**BUSSELTON WA 6280**

Dear Tony

### **2023 REGULATION 17 REVIEW**

We are pleased to present the findings and recommendations resulting from our 2023 City of Busselton Local Government (Audit) Regulations 1996, Regulation 17 Review.

This report relates only to procedures and items specified within the 2023 Regulation 17 Review Proposal and does not extend to any financial report of the City.

We would like to thank Sarah, Christine and the City of Busselton team for their co-operation and assistance whilst conducting our review.

Should there be matters outlined in our report requiring clarification or any other matters relating to our review, please do not hesitate to contact me.

Yours sincerely  
**AMD Chartered Accountants**

A handwritten signature in black ink, appearing to read 'Tim Partridge', with a long horizontal stroke extending to the left.

**TIM PARTRIDGE FCA**  
**Director**



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### Inherent limitations

Due to the inherent limitations of any internal control structure, it is possible that fraud, error or non-compliance with laws and regulations may occur and not be detected. Further, the internal control structure, within which the control procedures that have been subject to review, has not been reviewed in its entirety and, therefore, no opinion or view is expressed as to its effectiveness of the greater internal control structure. This review is not designed to detect all weaknesses in control procedures as it is not performed continuously throughout the period and the tests performed on the control procedures are on a sample basis. Any projection of the evaluation of control procedures to future periods is subject to the risk that the procedures may become inadequate because of changes in conditions, or that the degree of compliance with them may deteriorate.

We believe that the statements made in this report are accurate, but no warranty of completeness, accuracy or reliability is given in relation to the statements and representations made by, and the information and documentation provided by, the City of Busselton management and personnel. The review findings expressed in this report have been formed on the above basis.

### Third party reliance

This report was prepared solely for the purpose set out in this report and for the internal use of the management of the City of Busselton. This report is solely for the purpose set out in the 'Scope and Approach' of this report and for City of Busselton's information, and is not to be used for any other purpose or distributed to any other party without AMD's prior written consent. This review report has been prepared at the request of the City of Busselton Chief Executive Officer. Other than our responsibility to the Council and management of the City of Busselton, neither AMD nor any member or employee of AMD undertakes responsibility arising in any way from reliance placed by a third party.



## 1. Executive Summary

### 1.1. Background and Objectives

To undertake a review of the appropriateness and effectiveness of risk management, internal controls and legislative compliance of the City of Busselton ("the City") in accordance with the Local Government (Audit) Regulations 1996, Regulation 17 for the period ended 30 June 2023 ("Review").

Our findings included within this report are based on the site work completed by us during the week ending 12 May 2023, and subsequent communication via email and phone calls to 19 May 2023. Findings are based on information provided and available to us during and subsequent to this site visit.

### 1.2. Summary of Findings

The procedures performed and our findings on each of the focus areas are detailed in the following sections of the report:

- Section 2 – Risk management;
- Section 3 – Internal controls; and
- Section 4 – Legislative compliance.

Following the completion of our review and subject to the recommendations outlined within sections 2 to 4, we are pleased to report that in context of the City's overall risk, internal control and legislative compliance environments, policies, procedures and processes in place are appropriate, and have been operating effectively at the time of the review.

At the time of the onsite review in May 2023, we noted the City of Busselton is in the process of an organisation review. Many comments and recommendations raised within this report are based on observations and discussions held with senior management relating to the key review areas. We raise these comments and recommendations in accordance with best practice guidelines.

Furthermore, during our limited review of the City of Busselton IT environment which forms part of the risk management section of our review, we identified the Office of the Auditor General had completed an Information Systems Performance Audit with the final report dated 8 December 2022. Our review has indicated action taken to date with respect to the Information Systems Performance Audit findings is being regularly monitored and reported by the IT department. As a result, findings reported within the Information Systems Performance Audit report have not been reported within this report unless they specifically relate to an area we are required to report on within our risk management review scope. We recommend the City continue to progress with the actions required resulting from this Information Systems Performance Audit accordingly.

Findings reported by us are on an exceptions basis, and do not take into account the many focus areas tested during our review where policies, procedures and processes were deemed to be appropriate and in accordance with best practice.



The following tables provide a summary of the findings raised in this report:

|                               | Extreme Risk | High Risk | Medium Risk | Low Risk |
|-------------------------------|--------------|-----------|-------------|----------|
| Number of new issues reported | 0            | 1         | 7           | 4        |

*For details on the review rating criteria, please refer to Section 5.*

| Ref                           | Issue  | Risk Rating |
|-------------------------------|--|-------------|
| <b>Risk management</b>        |  |             |
|                               | <b>Risk Management Framework and Risk Reporting</b>  |             |
| 2.2.1                         | Further enhancements recommended with respect to risk management and reporting including management through a centralised online system managed by a dedicated team.   | High        |
|                               | <b>Emergency Risks and Response Management</b>   |             |
| 2.2.2                         | Further enhancements recommended with respect to emergency risk documentation and management of brigades, emergency facilities and service level emergency equipment.  | Medium      |
|                               | <b>Misconduct, Fraud and Corruption Policy</b>   |             |
| 2.2.3                         | Suggest a formal Fraud and Corruption Control Plan be developed and implemented throughout the City. Also recommend the development of a communications strategy for ethics, fraud and corruption awareness and integrate this into the fraud and corruption control plan. | Medium      |
|                               | <b>Contract Management</b>   |             |
| 2.2.4                         | The City does not have a Contractor Management Framework or dedicated contract manager to oversee contracts.   | Medium      |
|                               | <b>Tender Management</b>   |             |
| 2.2.5                         | Various documents in respect to two tenders selected by us for testing were unavailable. Recommend Council consider developing a policy for post tender reviews.   | Medium      |
|                               | <b>Risk Management Policies and Procedures</b>   |             |
| 2.2.6                         | A number of policies and procedures are outdated, requiring review and some City practices do not have documented policies and/or procedures.  | Medium      |
|                               | <b>IT Strategic Plan and Business Continuity Plan Testing</b>  |             |
| 2.2.7                         | IT Strategic Plan in progress and not yet approved. Business Continuity Plan (Disaster Recovery Plan) not formally tested or reviewed since 2019.  | Medium      |
|                               | <b>Lease Management</b>  |             |
| 2.2.8                         | Recommend ensuring the required insurance coverage is in place by the lessee and current.  | Low         |
| <b>Internal controls</b>      |  |             |
|                               | <b>BAS Lodgement Relief</b>  |             |
| 3.2.1                         | Our inquiries indicated the Finance Coordinator is the only employee with access to the ATO portal to lodge BAS.   | Low         |
| <b>Legislative compliance</b> |  |             |
|                               | <b>Compliance Calendar</b>   |             |
| 4.2.1                         | The City does not have a centralised Compliance Calendar.  | Medium      |
|                               | <b>Audit and Risk Committee</b>  |             |
| 4.2.2                         | Various enhancements and improvements suggested in relation to the operation of the City's Audit and Risk Committee.   | Low         |
|                               | <b>Internal Audit</b>  |             |
| 4.2.3                         | There is currently no formal internal audit function in place.   | Low         |



## 2. Risk management

### 2.1. Scope and approach

Our review examined the following areas:

- Whether the Local Government has an effective risk management system and that material operating risks to the Local Government are appropriately considered;
- Whether the Local Government has a current and effective business continuity plan (including disaster recovery) which is tested from time to time;
- The internal processes for determining and managing material operating risks in accordance with the Local Government's identified tolerance for risk, particularly in the following areas:
  - Potential non-compliance with legislation, regulations and standards and local government's policies;
  - Important accounting judgements or estimates that prove to be wrong;
  - Litigation and claims;
  - Misconduct, fraud and theft; and
  - Significant business risks, recognising responsibility for general or specific risk areas, for example, environmental risk, occupational health and safety, and how they are managed by the local government;
- Regular risk reports presented to the Audit Committee/Council, which identify key risks, the status and the effectiveness of the risk management systems, to ensure that identified risks are monitored and new risks are identified, mitigated and reported;
- Adequacy of the Local Government processes to manage insurable risks and ensured the adequacy of insurance cover, and if applicable, the level of self-insurance;
- Effectiveness of the Local Government's internal control system with management and the internal and external auditors;
- Whether management has controls in place for unusual types of transactions and/or any potential transactions that might carry more than an acceptable degree of risk;
- The Local Government's procurement framework with a focus on the probity and transparency of policies and procedures/processes and whether these are being applied;
- Audit Committee meeting practices ensuring periodically meeting with key management, internal and external auditors, and compliance staff, to understand and discuss any changes in the local government's control environment;
- Ascertained whether fraud and misconduct risks have been identified, analysed, evaluated, have an appropriate treatment plan which has been implemented, communicated, monitored and there is regular reporting and ongoing management of fraud and misconduct risks.





## 2.2. Detailed findings and recommendations

### 2.2.1. Risk Management Framework and Risk Reporting

#### ***Finding Rating: High***

Our review of Council's Risk Management Framework ('Framework') and discussions with key City Executive identified the following:

- Risk reports are not presented to the Audit and Risk Committee;
- There is no online centralised system to monitor work, health and safety ("WHS") risks, rather these are manually monitored;
- Corporate risk is managed through a central online system however individual officers are responsible for updating their area risks as they become due; which may result in inconsistencies across departments;
- Previously the City employed a 0.5FTE who was focused on management of corporate risks, however due to recent changes to WHS risks, this position has changed whereby there is now 1FTE focusing on WHS risks only resulting in an identified gap with the management of corporate risks to the desired level; and
- Risk Management Committee Terms of Reference states an annual evaluation of the group's effectiveness is required to be undertaken however this has not occurred due to recent turnover within the team.

#### **Implications / Risks**

Without updated policies and procedures and a centralised system to monitor organisation risks, staff may be unaware of Council and management's expectations regarding how to manage City risks.

#### **Recommendation**

We recommend the Risk Management Framework:

- Be reviewed and updated on a periodic basis. A comprehensive risk identification process may be required to be completed across all departments;
- Clear reporting requirements be documented within the Risk Framework and these reporting requirements be complied with. Ideally this would involve risk reports being presented to the Audit and Risk Committee on a quarterly basis to report emerging risks and ensure management / Council are notified of how risks are being managed;
- WHS risk management be matured through the implementation of an online centralised system;
- Corporate risk be managed by a dedicated risk officer; and
- The re-established Risk Management Committee undertake the annual evaluation as required by the Terms of Reference.

#### **Management Comment**

The City accepts the findings and recommendations and also acknowledges that its risk management systems are at a basic level of maturity. Additional resourcing is required to increase this maturity level and implementation of all of the recommendations will be reliant on additional risk resourcing. Subject to that, the recommendations could be implemented by 31 December 2023.

**Responsible Officer:** Sarah Pierson, Manager Governance and Corporate Services

**Completion Date:** 31 December 2023



## 2.2.2. Emergency Risks and Response Management

### **Finding Rating: Medium**

Our discussions with key City Executive relating to emergency risks management identified the following:

- There is no current risk register maintained for brigades resulting in gaps in the risk documentation identification and treatment strategies for emergency risks. An identification process for linking risk assessment with DFES requirements, training, reporting and sharing of information may be required;
- Bushfire management plan requires updating to comply with DFES required format;
- The City does not manage brigade structures and the management of emergency facilities is reactive rather than pro-active, i.e. there is no preventative maintenance plan for facilities such as painting schedule etc. Furthermore a regular walk through of brigade facilities is not currently being undertaken; and
- Service level emergency assets are not recorded on a register and there is no replacement program in place including how funding will be sourced (example: water tanks located on subdivisions gifted to the City many years ago).

### **Implications / Risks**

Without effective risk management of brigades, emergency facilities and emergency assets, the City may be exposed to uncontrolled risks which could have catastrophic consequences and reputational impacts.

### **Recommendation**

We recommend:

- Risk register be introduced for specific emergency services and brigades to identify, treat and monitor risks;
- The bushfire management plan be updated as required by DFES with appropriate approval and communication of the revised plan;
- A preventative maintenance and management plan be documented and implemented for brigade structures and emergency facilities including regular walkthrough of facilities; and
- Service level emergency assets be recorded on a centralised register with an initial complete identification process undertaken as the initial step and development of a replacement program considered.

### **Management Comment**

The City accepts the findings and recommendations and have begun taking tangible steps towards addressing this risk including:

- Completing a WHS audit of emergency services and brigade management processes which will include establishment of a risk register, treatments, monitoring, and reporting. It is envisaged this mitigation work will be completed within the 2023/24 financial year.
- A holistic review of its existing Bushfire Risk Management Plan, due for review in the 2024/25 financial year. DFES are currently reviewing the State bush fire risk management planning format and required inclusions, which will inform the review.
- Development of an inventory and condition assessment of brigade structures and facilities and development of a brigade facility asset management plan; expected to be completed in the 2023/24 financial year.
- Development of an emergency management asset plan through an analysis of service level emergency assets and funding gaps / priorities.



**Responsible Officer:** Rachel Runco, Manager Regulatory Services

**Completion Date:** 30 June 2024 – emergency services audit and risk register, and asset management planning.

30 June 2025 – review of Bushfire Risk Management Plan.

### **2.2.3. Misconduct, Fraud and Corruption Policy**

**Finding Rating: Medium**

Our review of the current Misconduct, Fraud and Corruption Policy indicated the Policy is very limited in guidance and related processes.

Furthermore, our inquiries indicate that the Shire has not developed an ethics, fraud and corruption communications and training strategy nor are employees required to complete ethics and/or fraud and corruption awareness training.

#### **Implications / Risks**

- Risk governance and oversight responsibilities not being met.
- City employees may not understand their responsibilities with respect to misconduct, fraud and corruption.

#### **Recommendation**

We recommend that a formal Fraud and Corruption Control Plan be developed and implemented throughout the City.

The Fraud and Corruption Control Plan should incorporate:

- The City's approach to controlling fraud and corruption at a strategic, tactical and operational levels;
- The Shire's intended action in implementing and monitoring the City's fraud and corruption prevention, detection and response initiatives;
- Any existing policies dealing with fraud and corruption risk; and
- The roles and responsibilities, reporting lines of all personnel involved.

The Fraud and Corruption Control Plan should be reviewed every two years.

Furthermore, we recommend the development of a communications strategy for ethics, fraud and corruption awareness and integrate this into the fraud and corruption control plan. The strategy could include processes for:

- Ensuring all appropriate employees receive training on ethics related documents and other elements of the City's Integrity Framework at induction and throughout the period of their employment;
- Ensuring all employees receive regular fraud awareness training appropriate to their level of responsibility;
- Ensuring updates and changes to fraud-related policies, procedures, the ethical documents and other ethical pronouncements are effectively communicated to all employees; and
- Encouraging employees to report any suspected incidence of fraud or corruption.



### Management Comment

Previous governance reviews have identified a similar finding in regards to having a formal Fraud and Corruption Control Plan, however work to develop this has been considered a lower or future priority noting Code of Conduct training is provided to all staff every 2 years and through new staff inductions. Having said that, we will progress work towards the development of a formal plan. The City's Induction program is currently under review and we will also look to increase fraud awareness and ethics training as part of that and as part of our next Code of Conduct training.

**Responsible Officer:** Sarah Pierson, Manager Governance and Corporate Services

**Completion Date:** 30 June 2024

### 2.2.4. Contract Management

**Finding Rating: Medium**

We noted the following in respect to our review of contract management:

- The City does not have a contract management framework outlining the consistent approach to be undertaken for all City contracts;
- There is no dedicated contract manager to oversee contracts;
- There is no centralised register of City contracts, including variations maintained;
- Testing of 4 service contracts identified the following:
  - 2 instances where the OSH Obligations form had been signed by the contractor, however the City representative had not counter-signed the form;
  - An instance where the OSH Obligations form could not be provided;
  - 3 service contracts where there was no documentation maintained to evidence contractor induction;
  - An instance where a contract variation memo had not been signed by the CEO as approval;
  - 3 instances where current insurances could not be provided (i.e. insurances maintained on file were out of date);
  - The contract with the contractor providing access control system servicing and upgrading services expired in 2022; and
  - No evidence provided relating to contractor performance review.

### Implications / Risks

- The City is potentially exposed to risks due to contractor non-compliance with contract terms and conditions.
- Risk contract risks are not identified, assessed and consistently managed throughout the contract.
- Risk that findings and results from a contract are not used to improve future contract processes conducted by the City.

### Recommendation

We recommend Council consider:

- A contract management framework be developed incorporating policies and procedures relating to contract management;



- Consideration be given to a dedicated department which is designated responsibility to oversee contract management;
- A detailed and centralised contracts register be maintained and updated as required;
- OSH obligations forms are obtained for all contracts and signed by both the contractor and the City representative;
- Documentation to evidence contractor induction be retained;
- Contract variations be approved;
- Current insurances for City contractors be obtained and a system be implemented whereby a notification is issued when contractor insurances are due to expire;
- Contracts due to expire are re-negotiated / compliance with City procurement processes complied with; and
- A contractor performance review be designed and implemented.

#### **Management Comment**

We accept the recommendation to consider improved and more centralised management of contracts, noting the following:

- a contract management framework is likely to be required however there are concerns about how effective such a framework will be without centralised oversight or management of contracts;
- a dedicated department with responsibility for contract management is supported if achievable with existing resources (consider whether procurement and contract management functions could be centralised);
- a contracts register is a high priority with Local Government reform likely to require public registers of certain contracts in the short to medium term;
- contractor work health safety oversight and inductions as well as insurances are areas for improvement;
- an IT solution (TechnologyOne or otherwise) should be considered as a contract register and for managing contracts (manage contract expiry, insurances, required documentation call ups etc.); and
- the City has contractor performance review documentation which is available on the intranet procurement page. The use of the documentation is not mandated and it is acknowledged that it is not well utilised.

Further consideration and determination of these matters will be undertaken by the end of 2023.

**Responsible Officer:** Ben Whitehill, Manager Legal and Property Services

**Completion Date:** 31 December 2023

#### **2.2.5. Tender Management**

**Finding Rating: Medium**

We noted the following for the one of the two tenders selected for testing:

##### **Tender 04/22**

The following documents were not provided to us at the time or subsequent to our onsite review:

- Post tender review. Our inquiries indicated there is no policy in place which requires officers to undertake a post project / tender review process.



### Implications / Risks

- Risk of non-compliance with internal documentation requires.
- Lack of documentation to support project evaluation outcomes.

### Recommendation

We recommend:

- All tender documentation be completed in full and retained; and
- A formal post tender/ project review process be developed for projects exceeding a predetermined dollar value or considered to be high risk.

### Management Comment

The City has post tender / project review documentation which is available on the City's intranet procurement page. The use of the documentation is not mandated and it is acknowledged that it is generally not well utilised. Similar to the comments for contract management centralisation of procurement and contract management functions would facilitate reductions in risk, but is subject to resourcing limitations.

**Responsible Officer:** Ben Whitehill, Manager Legal and Property Services

**Completion Date:** 31 December 2023

### 2.2.6. Risk Management Policies and Procedures

**Finding Rating: Medium**

While completing a review of the City's internal risk management policies and procedures, we noted:

#### (A) No Policy or Procedure

No policies or procedures in place in respect to:

- Specimen signature for officers with delegated authority.

#### (B) Potential Out of Date Documents

| Document  | Last Revision Date / Comments  |
|---|--|
| Code of Conduct – Employees   | Approved 24 May 2021.<br>Does not specify next scheduled review date   |
| Code of Conduct for Council Members, Committee Members and Candidates | Approved 28 April 2021.<br>Does not specify next scheduled review date |
| Contractor OHS Management Operational Practice                        | 21 October 2019<br>Stated next review due 3 yearly - 21 October 2022   |
| Drug and Alcohol Staff Management Practice                            | 18 May 2018<br>Stated next review due 6 monthly - 18 November 2018     |
| OSH Objectives and Targets Operational Practice                       | 3 September 2019<br>Stated next review due 3 yearly – 3 September 2022 |
| Personal Protective Equipment Operational Practice                    | 5 May 2020<br>Stated next review due 3 yearly – 5 May 2023             |



|   |   |
|---|---|
| Misconduct, Fraud and Corruption Council Policy             | 27 August 2019<br>Stated next review due 3 yearly – 27 August 2022              |
| Media and Public Statements Council Policy                  | 12 February 2020<br>Stated next review due 3 yearly – 12 February 2023          |
| Environment Council Policy                                  | 10 October 2018<br>Stated next review due 3 yearly – 10 October 2021            |
| Bushfire Risk Management Plan 2019-2024                     | Plan refers to AS/NZS ISO 31000:2009 which has been replaced with 2018 version. |
| Asset Management Council Policy                             | 2 November 2019<br>Stated next review due 3 yearly – 2 November 2022            |
| Events Council Policy                                       | 12 August 2020<br>Stated next review due 3 yearly – 12 August 2023              |
| Waste Collection Services Council Policy                    | 31 October 2019<br>Stated next review due 3 yearly – 31 October 2022            |
| Waste Management Facility and Plant reserve Council Policy  | 12 September 2018<br>Stated next review due 3 yearly – 12 September 2021        |
| Social Media Personal Use Operational Practice              | 19 June 2018<br>Stated next review due 3 yearly – 19 June 2021                  |
| Performance Improvement and Discipline Operational Practice | June 2017<br>Stated next review every 2 years – June 2019                       |
| Numerous Policies and Operational Practices                 | Approved by former CEO, Mike Archer   |

Our review of policies and procedures was limited to those which were provided during our onsite visit.

#### **Implications / Risks**

Lack of policies and/or procedure evidencing specific risks to the City. In addition, outdated policies and procedures may not reflect the actual practices followed by City representatives.

#### **Recommendation**

We recommend the following:

- Policies and procedures be developed and implemented for those identified areas of risk highlighted at (A) above; and
- Those potentially out of date policies and procedures identified (B) above, be reviewed and updated accordingly.

#### **Management Comment**

The City acknowledges there are a number of policies and procedures that are due for review. As noted during the Audit a review schedule has been put in place with completion of the reviews by the end of the 2023/2024 financial year.

**Responsible Officer:** Sarah Pierson, Manager Governance and Corporate Services





**Completion Date: 30 June 2024**

#### **2.2.7. IT Strategic Plan and Business Continuity Plan Testing**

**Finding Rating: Medium**

We noted the following with respect to IT Strategies (and risk management) and the Business Continuity Plan (Disaster Recovery Plan):

- The City of Busselton Strategic IT Plan is currently in draft and not yet formally adopted; and
- Testing of the Business Continuity Plan / Disaster recovery Plan was last completed in 2019 with no formal testing or review since this date.

#### **Implication / Risk**

- Lack of approved documentation outlining the City's IT strategies.
- Risk of significant delays and business interruption in the event of unforeseen events.
- Risk of inappropriate preparation for business interruption events identified in the Business Continuity Plan.

#### **Recommendation**

We recommend:

- The IT Strategic Plan be finalised and approved for implementation; and
- The Business Continuity Plan be tested on pre-determined basis to ensure that in the event of a disaster, appropriate actions can be taken.

#### **Management Comment**

Development of the ICT Strategic Plan is ongoing and will be a focus between now and its delivery. We are aiming to have this completed and published by 30 September 2023.

The Business Continuity Plan (BCP) will be tested by the end of the 2023 calendar year, with a regular testing schedule determined.

The updated ICT Disaster Recovery Plan (DRP) has been drafted and is being reviewed by relevant members of the ICT team. We are aiming to have this completed and published by 30 June 2023. A tabletop exercise to test the ICT DRP will be scheduled once it has been published to raise awareness within the team and test the processes to make sure they are accurate.

**Responsible Officer: Tim Allingham, Manager Information Services**

**Completion Date: 31 December 2023**

#### **2.2.8. Lease Management**

**Finding Rating: Low**

Overall our review and testing of processes in place relating to lease management indicated internal controls are adequate and have been effectively implemented for the review period.

However we noted one instance whereby current insurance had not been obtained for the Busselton Bowling Club (insurance certificate of currency maintained on file expired 21 September 2021).





**Implications / Risks**

The City is potentially exposed to risks due to lessee's non-compliance with lease terms and conditions.

**Recommendation**

We recommend current insurances be obtained as required by City leases and a system be implemented whereby a notification is issued when lease insurances are due to expire.

**Management Comment**

The City has a call up system for expired certificates of currency for leases. In the particular example cited the insurance was followed up in September 2022 but the officers were not provided with updated certificates of currency by the Busselton Bowling Club. Unfortunately this was not further followed up. Controls will be put in place to ensure that in further follow ups occur.

**Responsible Officer:** Ben Whitehill, Manager Legal and Property Services

**Completion Date:** 30 June 2023



### 3. Internal controls

#### 3.1. Scope and approach

Our review examined the following areas:

- Segregation of roles and functions, processing and authorisation controls;
- Delegations of authority (completeness and adherence);
- Documented policies and procedures;
- The effectiveness of policy and process reviews;
- Approval of documents, letters and financial records;
- Management internal reviews undertaken in respect to comparison of internal data with external sources of information;
- The adequacy of internal controls;
- Security controls in respect to physical access to assets and records;
- Security controls in respect to computer applications and information systems (general and application IT controls);
- Access limits placed on data files and systems;
- Whether the maintenance and review of financial control accounts and trial balances is regular and appropriate;
- Key management internal reviews undertaken in respect to comparison and analysis of financial results with budgeted amounts;
- Key management internal reviews undertaken in respect to the arithmetical accuracy and content of records;
- Controls in respect to purchasing and payment of accounts;
- Effectiveness of the training and development plan for staff and elected members;
- Reporting, review and approval of financial payment and reconciliations; and
- Physical cash and inventory count records when compared to accounting records.



### **3.2. Detailed findings and recommendations**

#### **3.2.1. Business Activity Statement (“BAS”) Lodgement Relief**

##### ***Finding Rating: Low***

Our inquiries indicated the Finance Coordinator is the only employee with access to the portal to lodge BAS.

##### **Implications/Risks**

Lack of backup and relief for a key legislative compliance function.

##### **Recommendation**

We recommend an additional delegated employee be provided access to the portal to lodge BAS in case the Finance Coordinator was not available.

##### **Management Comment**

We will provide additional employees with access to the portal as recommended.

**Responsible Officer:** Paul Sheridan, Manager Financial Services

**Completion Date:** 31 December 2023



## 4. Legislative compliance

### 4.1. Scope and approach

Our review examined the following areas:

- Internal monitoring of compliance with legislation and regulations;
- The Local Government's ability to stay informed regarding legislative changes;
- The Local Government's completion of the annual Compliance Audit Return and reporting the results of that review to the Audit Committee and Council;
- The monitoring of the Local Government's structured guidelines that detail the Local Government's processes for meeting statutory obligations (compliance frameworks);
- Communications between key management and the Audit Committee to ensure the Audit Committee is informed in respect to the effectiveness of the Local Government's compliance and recommendations for changes as required;
- The Local Government's procedures in respect to receiving, retaining and handling complaints, including confidential and anonymous employee complaints;
- Key managements internal review processes in respect to the identification of adverse trends and management plans to address these;
- Management disclosures in financial reports of the effect of significant compliance issues (if any);
- The internal and / or external audit contracts include an assessment of compliance and ethics risks in the development of the audit plan and in the conduct of audit projects, and report compliance and ethical issues to the Audit Committee; and
- The Audit Committee's processes and procedures in respect to compliance with legislative and regulatory compliance ensuring no misuse of position through adequate disclosure of conflicts of interest.



## 4.2. Detailed findings and recommendations

### 4.2.1. Compliance Calendar

#### ***Finding Rating: Medium***

We noted the City does not have a centralised Compliance Calendar.

#### **Implications / Risks**

Risk of non-compliance with legislative requirements.

#### **Recommendation**

We recommend the City develop a centralised Compliance Calendar to be accessed and utilised by individual City staff as required.

#### **Management Comment**

The City has recently purchased the Attain compliance system for management of its returns, delegations, and gift processes. There is also a compliance calendar module which allows for scheduling of key compliance tasks, and which will be implemented by the end of the 2023/2024 financial year. Officers understand through discussions during the audit that this recommendation is broader in nature and is more focused on development of a register of legislative requirements by position. Clarification as to the focus of this recommendation is sought, although the City will consider development of such a register. In terms of priorities and resourcing however it is considered to be a lower priority than other recommendations.

**Responsible Officer:** Sarah Pierson, Manager Governance and Corporate Services.

**Completion Date:** 30 June 2024

### 4.2.2. Audit and Risk Committee

#### ***Finding Rating: Medium***

We noted the following:

- There are no risk reports presented to the Audit and Risk Committee;
- Audit and Risk Committee meeting agendas do not include a standing agenda item to update the status of actions previously tabled and agreed; and
- Audit and Risk Committee agendas do not include a standing item regarding effectiveness of compliance at the City.

#### **Implications/Risks**

- Risk of governance and oversight responsibilities not being met.
- Risk the Local Government Act and Regulations are not being regularly assessed.

#### **Recommendation**

We recommend:

- Risk reports be presented at each Audit and Risk Committee meeting;
- Audit and Risk Committee meeting agendas include a standing item relating to updating on the status of actions previously tabled, and the discussion of risk; and



- Audit and Risk Committee meeting agendas include a standing item relating to compliance and the effectiveness of compliance at the City.

#### **Management Comment**

The City acknowledges and accepts the recommendations in relation to risk reports being presented to the Audit and Risk Committee meeting and a standing item being presented in relation to previously tabled actions. As per earlier comments, the City's risk management function is operating at a basic level of maturity and requires additional resourcing.

In relation to the recommendation for a standing agenda item relating to the effectiveness of compliance at the City, the City notes it annually provides a Compliance Audit Return to the Committee along with findings from the annual OAG Financial and IT Audits. The City is not clear on what additional reporting in relation to legislative compliance would achieve, noting we do support the recommendation below in relation to internal audit.

**Responsible Officer:** Sarah Pierson, Manager Governance and Corporate Services

**Completion Date:** 30 June 2024

#### **4.2.3. Internal Audit**

##### ***Finding Rating: Low***

We noted that the City does not currently have a formal documented internal audit program in place.

#### **Implications/Risks**

Risk of non-compliance with Department of Local Government, Sport and Cultural Industries Guidelines recommended practices.

#### **Recommendation**

The Department of Local Government, Sport and Cultural Industries guidelines recommend an internal audit function be established incorporating an internal audit program which is re-assessed annually.

We recommend the City consider an internal audit function overseen by the Audit and Risk Committee.

#### **Management Comment**

The City is audited on a regular basis by the OAG in relation to its financial systems and processes and also information management systems. The City has, in addition, been considering the development of a broader internal audit function and has commenced discussions with other local governments as well as AMD in relation to the structure and options for such a function. The City will prepare a report for the Audit and Risk Committee in relation to this, noting it will have resourcing implications.

**Responsible Officer:** Sarah Pierson, Manager Governance and Corporate Services

**Completion Date:** 30 September 2023



## Guidance on Risk Assessment

Risk is uncertainty about an outcome. It is the threat that an event, action or non-action could affect an organisation's ability to achieve its business objectives and execute its strategies successfully. Risk is an inherent component of all service activities and includes positive as well as negative impacts. As a result not pursuing an opportunity can also be risky. Risk types take many forms – business, economic, regulatory, investment, market, and social, just to name a few.

Risk management involves the identification, assessment, treatment and ongoing monitoring of the risks and controls impacting the organisation. The purpose of risk management is not to avoid or eliminate all risks. It is about making informed decisions regarding risks and having processes in place to effectively manage and respond to risks in pursuit of an organisation's objectives by maximising opportunities and minimising adverse effects.

The risk guidelines stated below are based on the City of Busselton's 2021 Risk Management Framework.

Our guidance to risk classification in completing our review is as follows:

### **Measure of Likelihood of Risk**

Likelihood is the chance that the event may occur given knowledge of the organisation and its environment.

The following tables provide broad descriptions to support the likelihood rating:

|            |                | Consequence   |       |          |       |              |
|------------|----------------|---------------|-------|----------|-------|--------------|
|            |                | Insignificant | Minor | Moderate | Major | Catastrophic |
| Likelihood | Almost Certain | M11           | H16   | H20      | E23   | E25          |
|            | Likely         | L7            | M12   | H17      | H21   | E24          |
|            | Possible       | L4            | M8    | M13      | H18   | E22          |
|            | Unlikely       | L2            | L5    | M9       | M14   | H19          |
|            | Rare           | L1            | L3    | L6       | M10   | M15          |

Where:

|   |                |
|---|----------------|
| L | = Low Risk     |
| M | = Medium Risk  |
| H | = High Risk    |
| E | = Extreme Risk |

*\*Above Extracted from the City's Risk Management Framework.*



| Rating         | Description                                     | Frequency  |
|----------------|---|--|
| Rare           | May occur but only in exceptional circumstances | 1 in 10,000 - 100,000<br>Less than once in fifteen years |
| Unlikely       | Could occur at some time                        | 1 in 1,000 to 10,000<br>At least once in fifteen years   |
| Possible       | Should occur at some time in the future         | 1 in 100 - 1,000<br>At least once in five years          |
| Likely         | Will probably occur in most circumstances       | 1 in 10 - 100<br>At least once a year                    |
| Almost Certain | Is expected to occur in most circumstances      | > 1 in 10<br>More than once a year                       |

*\*Above Extracted from the City's Risk Management Framework.*





### ***Measure of Consequence of Risk***

Consequence is the severity of the impact that would result if the event were to occur. The following table provides broad descriptions to support the consequence rating:

| Rating                        | Insignificant   | Minor  | Moderate   | Major   | Catastrophic  |
|-------------------------------|---|--|--|---|---|
| <b>Public Health / Safety</b> | First aid injury  | Medical treatment injury   | Hospitalisation injury   | Multiple serious injuries causing hospitalisation                               | Death or permanent disability   |
| <b>OSH</b>                    | First aid injury  | Medical treatment injury   | Lost Time Injury (< 30 days)   | Lost Time Injury (> 30 days)  | Death or permanent disability   |
| <b>Financial</b>              | < \$ 25k  | \$ 25k to \$250k   | \$ 250k to \$ 1m   | \$ 1m to \$ 10m   | > \$ 10m  |
| <b>Operational</b>            | Inconvenient delays with recovery within acceptable timeframe | Moderate delays to service delivery with unacceptable recovery time or inconvenient delays to major deliverables | Significant delays to service delivery with unacceptable recovery time or significant delays to major deliverables | Interruption of service delivery > 1 month or non-achievement of key objectives | Indeterminate prolonged interruption of services – non-performance > 3 months |
| <b>Reputational</b>           | Minor adverse local community comment or complaint            | Minor media interest with low news profile, e.g. local paper   | Public embarrassment, moderate news profile (including TV)   | High news profile, third party action (e.g. legal)                              | Widespread national news profile, formal government inquiry                   |
| <b>Environmental</b>          | Brief pollution but no environmental harm                     | Minor environmental harm   | Moderate environmental harm with mid term recovery   | Significant long term environmental harm  | Catastrophic, long term environmental harm                                    |

*\*Above Extracted from the City's Risk Management Framework.*

| Reference              | Theme   | Recommendation   | Risk Rating | Status      | Target Date            | Status update - July 2024   |
|------------------------|---|--|-------------|-------------|------------------------|---|
| <b>RISK MANAGEMENT</b> |   |  |             |             |                        |   |
| 2.2.1                  | <b>Risk Management Framework and Risk Reporting</b> | <p>We recommend the Risk Management Report:</p> <ul style="list-style-type: none"> <li>• Be reviewed and updated on a period basis. A comprehensive risk identification process may be required to be completed across all departments;</li> <li>• Clear reporting requirements be documented within the Risk Framework and these reporting requirements be complied with. Ideally this would involve risk reports being presented to the Audit and risk Committee on a quarterly basis to report emerging risks and ensure management/Council are notified of how risks are being managed;</li> <li>• WHS risk management be matured through the implementation of an online centralised system;</li> <li>• Corporate risk be managed by a dedicated risk officer; and</li> <li>• The re-established Risk Management Committee undertake the annual evaluation as required by the Terms of Reference.</li> </ul>  | High        | In progress | 31-Dec-24              | <p>In March 2024, the Council confirmed its support for a planned program to uplift the City's corporate risk management capability, which includes review of the risk management framework and implementation of regular risk reporting, as well as approval of a new risk resource. The commencement of this program is dependent on the City recruiting that new dedicated risk officer. Funding has been allocated in the 2024/25 budget, and recruitment for this position is underway.</p> <p>The City uses CI Anywhere Risk Management for corporate risk management. WHS risk assessments and hazard registers are currently managed in the City's centralised record keeping system, ECM. The City will be implementing Work Metrics Incident Reporting, Learning Management and Work Sign modules. This adds on to the existing online induction module. The WHS Advisor is undergoing system training before meeting with the software set-up team to develop a project plan to customise and roll out implementation across the City.</p> |
| 2.2.2                  | <b>Emergency Risks and Response Management</b>      | <p>We recommend:</p> <ul style="list-style-type: none"> <li>• Risk register be introduced for specific emergency services and brigades to identify, treat and monitor risks;</li> <li>• The bushfire management plan be updated as required by DFES with appropriate approval and communication of the revised plan;</li> <li>• A preventative maintenance and management plan be documented and implemented for brigade structures and emergency facilities including regular walkthrough of facilities; and</li> <li>• Service level emergency assets be recorded on a centralised register with an initial complete identification process undertaken as the initial step and development of a replacement program</li> </ul>   | Medium      | In progress | 30-Jun-25              | <p>Operational risks have been mapped through DFES systems and the City has identified, treated and monitored risks relating to facilities. The review of the bushfire management plan will occur toward the end of 2024. The City has completed an audit of all facilities and will now progress the development of a preventative maintenance and management plan. Service level emergency assets are now recorded on a centralised register.</p>   |
| 2.2.3                  | <b>Misconduct, Fraud and Corruption Policy</b>      | <p>We recommend that a formal Fraud and corruption Control Plan be developed and implemented throughout the City.</p> <p>The Fraud and Corruption Control Plan should incorporate:</p> <ul style="list-style-type: none"> <li>• The City's approach to controlling fraud and corruption at a strategic, tactical and operational levels;</li> <li>• The intended action in implementing and monitoring the City's fraud and corruption prevention, detection and response initiatives;</li> <li>• Any existing policies dealing with fraud and corruption risk; and</li> <li>• The roles and responsibilities, reporting lines of all personnel involved.</li> </ul> <p>The Fraud and Corruption Control Plan should be reviewed every two years.</p> <p>Furthermore, we recommend the development of a communication strategy for ethics, fraud and corruption awareness and integrate this into the fraud and corruption control plan. The strategy could include processes for:</p> <ul style="list-style-type: none"> <li>• Ensuring all appropriate employees receive training on ethics related documents and other elements of the City's Integrity Framework at induction and throughout the period of their employment;</li> <li>• Ensuring all employees receive regular fraud awareness training appropriate to their level of responsibility;</li> <li>• Ensuring updates and changes to fraud-related policies, procedures, the ethical documents and other ethical pronouncements are effectively communicated to all employees; and</li> <li>• Encouraging employees to report any suspected incidence of fraud or corruption.</li> </ul> | Medium      | In progress | 30-Jun-24<br>30-Jun-25 | <p>Priorities across the Corporate Strategy and Performance directorate has resulted in this action not being completed by 30 June 2024. This work is considered lower priority noting Code of Conduct training is provided to staff through new staff inductions and refresher training. Review of the City's Code of Conduct for employees is currently underway, with Equal Employment Opportunity and appropriate workplace behaviour training for employees (looking at the Code of Conduct) scheduled for September 2024.</p>   |

|                          |  |   |        |             |                               |   |
|--------------------------|--|---|--------|-------------|-------------------------------|---|
| 2.2.4                    | Contract Management                                    | <p>We recommend Council consider:</p> <ul style="list-style-type: none"> <li>• A contract management framework be developed incorporating policies and procedures relating to contract management;</li> <li>• Consideration be given to a dedicated department which is designated responsibility to oversee contract management;</li> <li>• A detailed and centralised contracts register be maintained and updated as required;</li> <li>• OSH obligations forms are obtained for all contracts and signed by both the contractor and the City representative;</li> <li>• Documentation to evidence contractor induction be retained;</li> <li>• Contract variations be approved;</li> <li>• Current insurances for City contractors be obtained and a system be implemented whereby a notification is issued when contractor insurances are due to expire;</li> <li>• Contracts due to expire are re-negotiated/compliance with City procurement processes complied with; and</li> <li>• A contractor performance review be designed and implemented.</li> </ul> | Medium | In progress | 31-Dec-24                     | Further resourcing is required to fully implement this recommendation. Officers recognise the benefits of a centralised procurement and contract management function with an appropriate system to ensure that contracts are recorded, contractors inducted and to ensure that contracts are monitored for contract and insurance expiry. A contractor performance review has been designed and implemented.  |
| 2.2.5                    | Tender Management                                      | <p>We recommend:</p> <ul style="list-style-type: none"> <li>• All tender documentation be completed in full and retained; and</li> <li>• A formal post tender/project review process be developed for projects exceeding a predetermined dollar value or considered to be high risk.</li> </ul>   | Medium | Closed      | Completed<br>31 December 2023 | All tender documentation is retained. Formal post project review of contractor performance is provided for staff to complete and is recommended for projects over \$1,000,000. More detailed project reviews are being considered as part of the development of the City's project management framework. Officers consider that this recommendation has now been implemented.   |
| 2.2.6                    | Risk Management Policies and Procedures                | <p>We recommend the following:</p> <ul style="list-style-type: none"> <li>• Policies and procedures be developed and implemented for specimen signature for officers with delegated authority.</li> <li>• Potentially out of date policies and procedures identified be reviewed and updated accordingly:</li> </ul>  | Medium | In progress | 30-Jun-24<br>31 Dec 24        | <p>The City's Employee Code of Conduct was reviewed and approved by the CEO on 16 May 2023. The Code of Conduct for Council Members, Committee Members and Candidates remains aligned to the Model Code, which was last updated in February 2021. All Council policies which were identified as requiring review have been reviewed and adopted, with the exception of the Council Policy: Asset Management which will be reviewed by the Policy and Legislation Committee on 31 July 2024. The recommendation to develop a new policy with respect to specimen signatures has been considered but is not currently an operational priority.</p> <p>Vacant positions in the Work Health and Safety (WHS) team were filled mid-March 2024 and work is progressing in relation to the review of various operational practices, and associated work processes and guiding documents. The team are currently consulting with City staff (as required under the consultation obligations of the WHS Act 2020) to gather information to review and update the Contractor OHS Management OP, OSH Objectives and Targets OP and Personal Protective Equipment OP. HR are currently reviewing the Drug and Alcohol OP which also requires consultation with City staff. Work processes and other guiding documents that sit with these OPs also require reviewing, updating and operationalising. The target date has been updated to end-December 2024 for review of the identified OPs, noting that review of contractor management WHS has a number of dependencies which may impact.</p> |
| 2.2.7                    | IT Strategic Plan and Business Continuity Plan Testing | <p>We recommend:</p> <ul style="list-style-type: none"> <li>• The IT Strategic Plan be finalised and approved for implementation; and</li> <li>• The Business Continuity Plan be tested on pre-determined basis to ensure that in the event of a disaster, appropriate actions can be taken.</li> </ul>   | Medium | In progress | 30-Jun-24<br>31 Dec 24        | A business continuity testing exercise was completed in May 2024, and subsequent updates to the Business Continuity Plan are in progress. The ICT Strategy has yet to be presented to the Council, and is pending completion of the City's Council Plan to ensure no adjustments are required in response.  |
| 2.2.8                    | Lease Management                                       | We recommend current insurances be obtained as required by City leases and a system be implemented whereby a notification is issued when lease insurances are due to expire.  | Low    | Closed      | Completed<br>30 June 2023     | Additional controls have been implemented. Completed.   |
| <b>INTERNAL CONTROLS</b> |  |   |        |             |                               |   |
| 3.2.1                    | Business Activity Statement ("BAS") Lodgement Relief   | We recommend an additional delegated employee be provided access to the portal to lodge BAS in case the Finance Coordinator was not available.  | Low    | Closed      | Completed March 2024          | The Manager Financial Services has also been provided with access to the BAS lodgement portal, mitigating the low level key person risk identified.   |

| LEGISLATIVE COMPLIANCE |                          |   |        |             |           |  |
|------------------------|--------------------------|---|--------|-------------|-----------|--|
| 4.2.1                  | Compliance Calendar      | We recommend the City develop a centralised Compliance Calendar to be accessed and utilised by individual City staff as required.   | Medium | Closed      | 30-Jun-24 | A centralised compliance calendar has been implemented in Attain, the City's cloud based compliance management system designed specifically for Western Australian local governments. The compliance calendar will continue to be refined and continuously improved, however this finding is considered addressed.   |
| 4.2.2                  | Audit and Risk Committee | <p>We recommend:</p> <ul style="list-style-type: none"> <li>• Risk reports be presented at each Audit and Risk Committee meeting;</li> <li>• Audit and risk Committee meeting agendas include a standing item relating to updating on the status of actions previously tabled, and the discussion of risk; and</li> <li>• Audit and Risk Committee meeting agendas include a standing item relating to compliance and the effectiveness of compliance at the City.</li> </ul> | Medium | Closed      | 30-Jun-24 | This finding was considered when the Audit and Risk Committee terms of reference were updated in January 2024. The refreshed terms of reference better reflects the ARC's role in monitoring the strategic risk profile, and the status of recommendations and actions arising from internal and external audit activities. This item is considered closed, noting that risk reporting to the ARC will be addressed through finding 2.2.1 above. |
| 4.2.3                  | Internal Audit           | The Department of Local Government, Sport and Cultural Industries guidelines recommend an internal audit function be established incorporating an internal audit program which is re-assessed annually. We recommend the City consider an internal audit function overseen by the Audit and Risk  | Low    | In progress | 30-Sep-24 | An RFQ for an internal audit engagement has been completed. The outcomes are provided in item 6.1 of this Audit and Risk Committee agenda for consideration.   |

## 7 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

### 7.1 Notice of Motion – PCBU

#### MOTION

That the Audit & Risk Committee recommend to Council the following:

1. The CEO immediately commences the process of obtaining legal opinion (including a presentation to Councillors and senior staff) from an expert on the laws set down in the Work Health and Safety Act 2020, and the responsibilities of Councillors, the Council, the CEO, and City of Busselton employees or volunteers (in all their forms – i.e. contractors and subcontractors, full time, or part time staff) and any related entity under licenses, leases, (or any such arrangement as the case may be), or visitor which may be subject to a PCBU (Person Conducting a Business Undertaking).
2. The legal expert and brief, is to be approved to the satisfaction of Council before proceeding, along with an estimate of cost and source account of funding.

#### NOTICE OF MOTION

Cr Anne Ryan has given notice that at the Audit and Risk Committee meeting on 24 July 2024, she will move the above motion.

#### REASONS

This Notice of Motion is commended to this Committee due to the RISK it poses to our organisation. The above aligns with the City of Busselton Strategic Plan:

*“STRATEGIC CONTEXT*

*4. LEADERSHIP – a Council that connects with the community and is accountable in its decision making ...”.*

So who is the PCBU, when a lessor, staff member, or even a visitor is confronted with an issue emanating from the WHS Act? Isn't it incumbent on Councillors to be fully briefed? It is also appropriate that our CEO is fully aware of this WHS issue. It is not appropriate to be presented with a WHS claim, such as the Esperance matter (currently subject to an enquiry) and be clueless.

<https://www.abc.net.au/news/2024-03-11/workplace-health-and-safety-firefighters-gvroc-liability-walga/103549268>

Our current policy is ineffective, in my opinion, as it does not mention PCBU's throughout the entirety of the document. In light of the above the RISK to our organisation is something which must be considered. Noting the purpose of the Policy;

*1.1. The purpose of this Policy is to demonstrate the commitment of the City of Busselton to providing and maintaining a healthy and safe environment for all people at City of Busselton Workplaces.* <https://www.busselton.wa.gov.au/documents/122/work-health-and-safety>

The consequences of sticking our heads in the sand is no longer an option and we as individuals, the Council as a body, and any PCBU of the City must be clear on the law.

The attached correspondence from the WorkSafe WA Commissioner (provided to the Local Government Elected Members Association) informs the PCBU is the local government body corporate, which appears to be at odds with the link provided above.

From the WorkSafe Website - *Duties of a PCBU* <https://www.safeworkaustralia.gov.au/law-and-regulation/duties-under-whs-laws/duties-pcbu#:~:text=A%20PCBU%20is%EE%80%80%20a%20person%20conducting%20a%20business>

*"A person conducting a business or undertaking (PCBU) has a primary duty of care to ensure the health and safety of workers while they are at work in the business or undertaking and others who may be affected by the carrying out of work, such as visitors".*

The City's own Website provides information to the public <https://www.busselton.wa.gov.au/documents/1149/information-statement> with such statements as

*"Leadership - A Council that connects with the community and is accountable in its decision making",*

*"Legislation Administered - The principal legislation governing the operation of Western Australian local governments is the Local Government Act 1995 (WA). The City is also responsible to administer a number of State and Commonwealth Acts and Regulations. Some significant pieces of legislation include, but is not limited to, the following: ..... (amongst other things) Work Health and Safety Act 2020" and*

*"Function and Structure of the City - The City is a body corporate, constituted under section 2.5 of the Local Government Act 1995. Its general function is to provide for the 'good government of persons in its district'."*

The Local Government Act states:

***"Division 2 — Local governments and councils of local governments***

***2.5. Local governments created as bodies corporate***

*(1) When an area of the State becomes a district, a local government is established for the district.*

***(2) The local government is a body corporate with perpetual succession and a common seal.***

***(3) The local government has the legal capacity of a natural person.***

*(4) The corporate name of the local government is the combination of the district's designation and name.*

*Example: City of (name of district)*

*(5) If the district's name incorporates its designation, the designation is not repeated in the corporate name of the local government.*

*Example: district's name : Albany (Town), corporate name : Town of Albany*

*(6) Proceedings may be taken by or against the local government in its corporate name.*

## 2.6. Local governments to be run by elected councils

**(1) Each local government is to have an elected council as its governing body.**

*(2) The offices on the council of the local government of a city or town are those of the mayor, the deputy mayor and the councillors.*

*(3) The offices on the council of the local government of a shire are those of the president, the deputy president and the councillors”.*

It is incumbent on Councils, and specifically you as a Councillor of the City of Busselton, to be informed of the laws, which are everchanging, however this WHS law in relation to the PCBU must be explored to ensure we are aware of the facts, to facilitate any potential future actions which might affect us collectively, the CEO and his staff, and indeed the people and community we represent.

### OFFICER COMMENT

Officers do not support this notice of motion on the basis that the City administration is confident in its understanding of its obligations under the Work Health Safety Act 2020 (the WHS Act), has professional employees who work hard to develop and implement a work health and safety system, and, where required, also has access to experienced external industrial relations legal advice. The City administration does not, to quote the reasons provided for the motion, have ‘our heads in the sand’, and officers strongly reject this suggestion.

Officers provided elected members with a briefing post the commencement of the WHS Act and are happy to do so again. Officers can also arrange a briefing if preferred with a specialist legal professional, noting this will incur cost. A notice of motion is not required for this to be arranged. In the interim, below is a brief overview of the key elements of the WHS Act.

### Person Conducting a Business or Undertaking (PCBU)

- A ‘person’ (conducting a business or undertaking) can include a body corporate (company), unincorporated body or association or a partnership.
- A local government is a body corporate per Section 2.5 of the Local Government Act 1995, and it conducts an undertaking, with work being carried out.
- The City of Busselton as a local government entity is a PCBU.
- A PCBU has a primary duty of care to ensure, so far as is reasonably practicable, the health and safety of workers. Under the primary duty of care, a PCBU must ensure, so far as is reasonably practicable ensure the following:
  - the provision and maintenance of a working environment that is safe and without risks to health, including safe access to and exit from the workplace;
  - the provision and maintenance of plant, structure and systems of work that are safe and do not pose health risks (for example, providing effective guards on machines and regulating the pace and frequency of work);
  - the safe use, handling, storage and transport of plant, structure and substances (for example, toxic chemicals, dusts and fibres);
  - the provision of adequate facilities for the welfare of workers at work (for example, access to washrooms, lockers and dining areas);

- the provision of information, instruction, training or supervision to workers needed for them to work without risks to their health and safety and that of others around them;
  - that the health of workers and the conditions of the workplace are monitored to prevent injury or illness arising out of the conduct of the business or undertaking; and
  - the maintenance of any accommodation owned or under their management and control to ensure the health and safety of workers occupying the premises.
- Additionally, a PCBU has a duty of care to ensure, so far as is reasonably practicable, that the health and safety of other people is not put at risk from work carried out as part of the conduct of the business or undertaking, such as visitors or the public. The person with management or control of a workplace (as per Section 20 of the WHS Act) also has obligations for the workplace.
  - Reasonably practicable is outlined in the WHS Act (section 18).
  - Where an incorporated or unincorporated association employs one or more person to carry out work for the organisation then they are also a PCBU.
  - A volunteer association, as defined in the WHS Act, is not however a PCBU:

*A volunteer association is a group of volunteers working together for one or more community purposes and none of the volunteers, either separately or jointly, or the association itself employ a person to carry out any work for the association*

- There are often multiple PCBU's who share work health safety obligations for workers. The specific obligations of each PCBU will depend on the circumstances of each relationship and the capacity to influence and control the work / workplace.
- Additionally, more than 1 person can concurrently have the same duty.
- PCBU's have an obligation to consult and cooperate with each other under the WHS Act.

### **Officers of a PCBU**

- An officer of a PCBU is defined by reference to section 9 of the Commonwealth Corporations Act 2001. It also includes officers of a business or undertaking of the Crown (the Commonwealth, a state or territory) and officers of a public corporation.
- Under the Corporations Act an officer of a corporation means:  
*a director or secretary of the corporation, or  
a person: – who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation, or – who has the capacity to affect significantly the corporation's financial standing, or – in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation), or  
specified persons, such as administrators, liquidators and receivers of a corporation.*
- The Act also sets out who an officer in a public authority context is:



*A person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of a public corporation is taken to be an officer of the public corporation for the purposes of this Act.*

- In a local government context the CEO will be an officer, as will, in all likelihood, a Senior Employee or Directors. Beyond that it will be dependant on each organisation's structure and functioning.
- Elected Members are expressly excluded from being an officer in the WHS Act under Section 4A (1) (b) (iii):

*does not include ..... a local government member*

- Officers must exercise due diligence to ensure that the PCBU complies with its duties or obligations. Due diligence is outlined in the WHS Act (Section 27 (5)).

### **Workers**

- A 'worker' is any person who carries out work in any capacity for a PCBU and includes work as:
  - an employee;
  - a contractor or subcontractor;
  - an employee of a contractor or subcontractor;
  - an employee of a labour hire company who has been assigned to work in the person's business or undertaking;
  - an apprentice or trainee;
  - a student gaining work experience; and / or
  - a volunteer.
- Workers have obligations / duties for their own health and safety (Section 28 of the WHS Act).

### **Elected Members**

- Elected members have obligations / duties under section 29 of the Act as an 'other person' - as set out below:

*A person at a workplace (whether or not the person has another duty under this Part) must —*

*(a) take reasonable care for the person's own health and safety; and*

*(b) take reasonable care that the person's acts or omissions do not adversely affect the health and safety of other persons; and*

*(c) comply, so far as the person is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person conducting the business or undertaking to comply with this Act.*

- As noted above, elected members are expressly excluded under the WHS Act as being an 'officer' of a PCBU.
- Section 5 (5) of the WHS Act also expressly excludes a local government member from the definition of a PCBU:

*A local government member does not conduct a business or undertaking.*

## **Penalties**

- The City of Busselton (the entity) as a PCBU can be held in breach of its workplace health and safety obligations and penalised.
- Officers of a PCBU can also be held liable, as can other individuals (workers and other persons).
- There are 4 categories of offences:
  - Industrial manslaughter – applies to those with a WHS duty where their conduct in failing to comply with that duty caused a death. Only PCBUs and their officers can be charged with industrial manslaughter. The prosecution must establish, beyond reasonable doubt, that the person knew their conduct was likely to cause the death of, or serious harm to, an individual and they acted in disregard of that likelihood.
  - Category 1 – applies to those with a WHS duty where their conduct in failing to comply with that duty caused the death of, or serious harm to, a person.
  - Category 2 – applies to those with a WHS duty where their conduct in failing to comply with that duty exposed a person to the risk of death, injury or harm to health.
  - Category 3 – applies to those with a WHS duty who failed to comply with that duty.

In summary, it is the view of officers that a legal opinion in relation to the responsibilities of Councillors, the Council, the CEO and the City of Busselton employees / volunteers is not currently required (albeit a briefing is certainly supported and can be arranged, regardless of this Notice of Motion).

With respect to the current Council Policy, the Policy (as per the City's Policy Framework) provides a strategic statement of Council's direction and in this case commitment to work healthy and safety. The policy is not an operational document. Having said that, officers can seek to provide more contextual information in the policy in relation to the City's obligations as a PCBU when the policy is reviewed.



Government of Western Australia  
WorkSafe Commissioner



Our ref A76218512  
Contact Sally North – ph 6251 2390

Ms Sandra Boulter  
Chair  
Local Government Elected Members Association  
PO Box 284  
COTTESLOE WA 6911

By email: [lgema@iinet.net.au](mailto:lgema@iinet.net.au)

Dear Ms Boulter

**Work Health and Safety Act 2020 – Application to local government councils and CEOs**

Thank you for your letter of 6 May 2024 seeking information regarding the application of the *Work Health and Safety Act 2020* (WHS Act) to reduce risks to local government elected members from psychosocial hazards.

While I appreciate the information provided about the Parliamentary Inquiry into Serious Misconduct and its findings and recommendations relating to local governments, as you will appreciate my primary focus is on work health and safety.

Under the WHS Act, persons conducting a business or undertaking (PCBUs) must manage risks to worker (and others) health and safety, including psychosocial health and safety as far as reasonably practicable. Therefore, PCBUs should have appropriate systems in place to manage these risks.

As noted in your letter the WHS Act applies to the local government body corporate (as a PCBU), CEOs (as an officer) and workers or other persons (elected members and others) at a workplace. All have duties to themselves and each other under the WHS Act. I can confirm that a local government CEO is not a PCBU. The council of elected members is not a PCBU, however elected members on council have a role in contributing to work health and safety for the local government body corporate (PCBU), such as by strategic decision making and the adoption of budgets and policies.

The issues you refer to relating to dysfunctional governance are matters for the Department of Local Government, Sport and Cultural Industries and no doubt will be addressed by that agency.

In relation to your request for WorkSafe to produce model Workplace Safety Policy guides for councils, publications relating to workplace bullying, psychosocial hazards and mentally healthy workplaces have been produced and are available on the [WorkSafe website](https://www.worksafe.wa.gov.au). These may be helpful for local governments to produce their own WHS policy and supporting material. For those local governments that do not employ

Level 1 Mason Bird Building 303 Sevenoaks Street (entrance Grose Avenue) Cannington Western Australia 6107

Postal address: Locked Bag 100 East Perth WA 6892

Customer help centre 1300 307 877 Facsimile +61 8 6251 2201

[commissioner@worksafe.wa.gov.au](mailto:commissioner@worksafe.wa.gov.au) | [www.worksafe.wa.gov.au](https://www.worksafe.wa.gov.au)

ABN 69 410 335 356

a work health and safety manager/coordinator, there are many WHS consultants who could assist with the development of suitable policies and procedures.

I am sorry to hear of about elected members of local government being exposed to psychosocial hazards and experiencing bullying. If the organisation is not able to resolve the concerns internally, I suggest that the elected members be encouraged to report such concerns to WorkSafe by telephone or email as outlined on the [WorkSafe website](#).

You may be interested to know that WorkSafe is planning to conduct proactive visits during 2024/25 to some local government organisations. It is envisaged that those visits will incorporate a review of work health safety systems in place, including for psychosocial hazards.

I trust the advice I have provided is of some assistance to your members.

Yours sincerely



Sally North  
**Acting WorkSafe Commissioner**

24 May 2024

## **8 CONFIDENTIAL MATTERS**

### **OFFICER RECOMMENDATION**

**That the Council close the meeting to the public to consider the following item which is confidential.**

#### **8.1 Progress Update on Findings from OAG General Computer Controls Audit 2023**

This report contains information of a confidential nature in accordance with Section 5.23(2)(f)(ii) of the Local Government Act 1995, as it contains information relating to a matter that, if disclosed, could be reasonably expected to endanger the security of the local government's property.

## **9 NEXT MEETING DATE**

Wednesday 13 November 2024

## **10 CLOSURE**