



Administrative efficiencies

Introduction

Distinguishing red tape from vital checks which ensure our government acts in a fair manner, members of the community are protected and that everyone abides by the law, can be difficult. Accountability measures that go too far can become regulatory burdens that create unnecessary costs that outweigh their compliance benefits.

This paper identifies a number of options for increasing efficiencies within the Local Government Act and regulations.

Potential administrative efficiencies

One size fits all approach to local governments in Western Australia

Local governments in Western Australia vary considerably in respect to their capacity to raise revenue and their expenditure. For example, the combined operating budget of the State's 40 smallest local governments is less than the annual operating expenditure of the State's largest local government.

The Act currently treats all local governments the same, regardless of their size and capacity. Through their peak bodies, the local government sector has long advocated for amendments which provide a

tailored approach to local government governance to allow for the differences in capacity that are found across the State.

Possible areas of reform where a tailored approach to regulation could be adopted have been addressed throughout the discussion papers.

Local laws

Introduction

The Act enables local governments to make local laws considered necessary for the good government of their districts. Laws can only be made when authorised by the Act or other written laws but cannot be inconsistent with any State or Federal law. The types of laws made by local governments cover areas such as parking, activities on thoroughfares, public places and council and committee meetings.

How local laws are made

In Western Australia, to make a local law a local government is required to:

- Give public notice of the proposed local law (with a six week submission period);
- Provide a copy of the proposed local law to the relevant Minister;
- Consider the submissions received;
- Make the local law (via passing a resolution) and publish the local law in the Gazette; and
- Provide the local law and explanatory material to Parliament.

As local laws are a type of legislation, they must be approved by the Parliament. Each new or amended local law is examined by the Parliamentary Joint Standing Committee on Delegated Legislation which makes a recommendation to Parliament on whether the local law should be accepted or disallowed.

What are the opportunities for reform?

Consistency of local laws

During earlier consultation on the Act review many submissions were received concerning the inconsistency of local laws from one local government district to another. While these concerns are valid and consistency of local laws across districts is important, requiring a local government to enact a local law in a certain form impacts upon a local government's ability to tailor a local law to local conditions or the wishes of the local community.

One way to achieve consistency is for the State government to make regulations that act as local laws, for example the Local Government (Uniform Local Provisions) Regulations 1996. The possibility of using regulations has been raised in relation to health, parking, cemeteries, cats and dogs – areas currently covered by local laws. Every local government would be covered by the same rules. While regulations will achieve consistency, they will also remove or limit the ability of a local government to tailor local laws to meet their community's expectations.

Model local laws provide consistency and make the local law-making process easier. Local governments can choose whether or not they adopt the model, and the extent to which it is modified.

Another alternative is to require local governments to adopt the model local law while leaving open the ability for local governments to tailor certain parts of the local law to suit the local community. An example could be a dog local law which allows the local government to set the number of dogs that can be allowed in different parts of the district: a residential area compared to a semi-urban or rural area; or a parking local law that allows the local government to set the fees.

Drafting of local laws

There is no intention to remove the local law making power; local governments will still be able to prepare their own local laws to address local situations.

As such the local law development process needs to be flexible and robust to ensure local laws are well drafted and within the powers of the local government.

Currently, the department monitors and provides advice to assist local governments with the making of their local laws. This is done by providing detailed comments on proposed local laws to assist the relevant local government in finalising a local law to ensure that it will be enforceable and effective. There is no requirement that a local government follow the advice given by the department.

Western Australia is the only jurisdiction that requires a local law to be provided to the Minister prior to enactment; most jurisdictions rely on certification from a legal practitioner.

Review of local laws

As in most Australian jurisdictions local laws are currently required to be reviewed (every eight years in WA). To do this, the local government must conduct a review by consulting with the community, prepare a report and the council must determine if the local law should be repealed or amended.

The survey on local laws asks you for your views on consistency, drafting and review of local laws.

Local Government Grants Commission and the Local Government Advisory Board

Introduction

On 20 September 2017, the Premier instructed all agencies to review the ongoing need for boards and committees, particularly where there are costs involved. While the standards panel was discussed in earlier consultation of the Local Government Act Review, the composition and use of the grants commission and advisory board was not.

Local Government Grants Commission

The Grants Commission provides advice and makes recommendations to the Minister for Local Government on the amount of Commonwealth Financial Assistance Grants paid to local governments each financial year. In order to receive Commonwealth funding, a Local Government Grants Commission must be established.

Local Government Advisory Board

The Local Government Advisory Board is established under the Local Government Act, that makes recommendations to the Minister for Local Government on proposals to change local government boundaries, wards and councillor numbers.

What are the opportunities for reform?

Combining the grants commission with the advisory board

The composition of the grants commission and the advisory board are somewhat similar, in that the skills and knowledge required to be appointed as a member of either of these bodies is an in-depth knowledge and experience in the local government sector. This knowledge and experience enables members to consider the appropriate factors, weigh the information before them and provide the appropriate recommendations to the Minister.

While the duties and responsibilities of the grants commission and the advisory board are different, the composition and selection of board and commission members is similar:

- The grants commission has five members with three members selected from names provided by the Western Australian Local Government Association (WALGA). These represent the metropolitan area, country cities and towns, and rural shires.
- The advisory board has five members with one nominated by Local Government Professionals WA and two by WALGA.
- Both have an independent chair appointed by the Minister and a departmental member who acts as the deputy to the chair.

Other potential synergies exist. Having substantial knowledge of the grants program may assist with the consideration of ward and boundary reviews and knowledge of the latter may assist with deliberations about grant funding. Both bodies are already supported by the same team within the department.

A similar review was recently undertaken by South Australia which resulted in their grants commission being given responsibility for the assessment of local government boundary changes. Similar changes could be implemented in Western Australia if it was determined to be efficient, effective and appropriate to do so.

Specific reforms to the Local Government Advisory Board requirements

Board requirement to determine the question and summary – elector poll

Currently, if a local government wishes to change the method of election of the mayor/president from election by electors to election by the council, the advisory board must determine the question to be voted on by electors and prepare a summary for both the yes and no cases.

An alternative approach would be for the question and the summaries to be prepared by the affected local government, which is likely to have more insight on local issues. After the question and summary have been drafted the advisory board could approve/endorse it before any poll is conducted.

Boundary changes, abolishing districts, names and ward representations

There are a number of aspects of the advisory board process which could be reformed to improve efficiency and effectiveness.

The quality and content of proposals submitted to the advisory board vary significantly. This can result in a significant amount of time being used contacting various parties to gather all the relevant information. The information, which is set out in regulations, allows the advisory board to form a view in line with the principles set out in the Act and ultimately make recommendations to the Minister on each proposal.

Proposals are then advertised for public comment. Submissions received either from the public or from local governments sometimes do not provide sufficient information to inform the decision-making of the advisory board. Often this is because the writer has not read the original proposal.

A local government (or other applicant) may wish to withdraw an application that has been made to the advisory board. At present this cannot be done because the advisory board is required to make a recommendation to the Minister even if the applicant does not wish to proceed with the proposal.

Many submissions in earlier consultation of the Local Government Act review suggested the number of electors required to submit a proposal for large local governments should be raised from

250 electors to 500 electors. In most metropolitan and large regional local governments, 250 people represents only a very small portion of the electors. This may lead to a proposal being submitted that is not a true representation of the community's view. For local governments with a population of electors less than 5000, only 10% of the electors would be required to support the initial proposal.

To improve these processes, a number of amendments have been suggested.

Local Government (Miscellaneous Provisions) Act 1960

Introduction

In 1995 the majority of the 1960 Act was replaced by the Local Government Act 1995. The remainder of the 1960 Act was renamed the Local Government (Miscellaneous Provisions) Act 1960.

Large parts of the 1960 Act were later incorporated into building legislation. It is appropriate to consider whether the sections that remain in the 1960 Act are still required.

What are the opportunities for reform?

New street alignments, prescribing and effect of etc.

The purpose of this section is to provide a local government with the power to compulsorily acquire land required to realign a street if other parties have an interest in the land. To the department's knowledge this power has only been used twice since 1995.

Currently, there are two other mechanisms to acquire land (for street realignment or any other public purpose) available to a local government: either by purchasing the land from the owner or acquiring it under the Land Administration Act 1997. Do local governments still require this additional mechanism?

Cattle trespass, pounds, pound keepers and rangers

This provides local governments and individual members of the public with the power to impound cattle if cattle stray upon their land. The Act also provides very detailed requirements that are placed upon local governments, pound keepers and individuals that have impounded cattle in relation to what they are to do with the cattle.

Local governments already operate facilities that house animals (for example dog pounds) and can appoint authorised persons who can impound animals if the presence of the animal presents a hazard to public safety or obstructs the lawful use of any place.

While a minor amendment to the local government legislation would clearly enable local governments to impound cattle, it needs to be determined if there is still a requirement for members of the public to be able to impound cattle.

Offences

Likewise, the Act contains a number of offences specific to the impounding of livestock for example:

- A failure to maintain the pound to an acceptable standard;
- Milking cattle without permission;
- Threats against the pound keeper and damage to the pound;

The majority of these offences can be dealt with by prosecuting the offender under other pieces of legislation for example the Criminal Code or Animal Welfare Act 2002.

The only conduct that cannot be dealt with via another means are:

- Removal of a fence to allow cattle to trespass; and
- Owner permitting cattle to stray.

Your views on these matters are sought in the survey.

Information provided to and decisions made by the department and the Minister

When the Local Government Act 1995 was enacted it fundamentally changed the powers of local governments providing them with greater autonomy. It removed a great deal of control from the Minister and provided local governments with the ability to make a greater range of decisions without having the State Government reviewing or approving those decisions.

While the 1995 Act heralded a marked shift and devolution of control, there are still many sections within the Act that require a local government to provide information to the Minister or department prior to, or after a decision is made, and many other general reporting requirements.

The assessment of what information to be provided was primarily made in the mid-1990s when the majority of the Act and Regulations were enacted. It is appropriate to review what information should be provided, what reports should be submitted, and which decisions should still be made by the Minister. Your feedback is sought on this in the [survey](#).

Absolute majority decisions

The council is the decision-making body of a local government. The Local Government Act 1995 sets out how decisions are to be made by the council members that form the council. In most cases this is via a 'simple majority'; that is, a decision is made if over half of the council members present at the meeting vote for it. In some cases, a higher bar has been set. An 'absolute majority' requires half of the total number of council member positions to vote for a matter for the decision to be made. Thus if there are eleven positions on council but at a particular meeting two council members were absent, five votes would be needed for a simple majority and six for an absolute majority.

It is appropriate to review what 'majority' is required by a council to make a certain decision.

Have your say

Have your say on these important issues by completing the [survey](#) or emailing actreview@dlgsc.wa.gov.au. A [more detailed paper](#) is also available.

