



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

Consultation report – local laws

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Introduction

The *Local Government Act 1995* 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.

The Act sets out the process that local governments are required to comply with to make a local law. 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.

To assist guide discussions on whether there are opportunities to reform the current legislative framework for local laws, the department released a discussion paper. This paper provides an overview of the feedback received during the consultation period.

How we consulted

Following the release of discussion papers in September 2018, over 100 workshops, forums and meetings were held with community, local governments and stakeholders. This consultation included 28 community workshops across Western Australia and 'pop-up' stalls in shopping centres and community halls.

To ensure all Western Australians had an opportunity to have their say, multiple workshops were held in all Western Australia's regions.

The workshops provided an opportunity for attendees to discuss topics that were of interest to them. All attendees were also encouraged to provide a submission.

Individual council members, local government staff, peak bodies, community organisations, councils and community were invited to have their say by completing online surveys or providing a written submission.

The objective of the consultation was to seek the views of as many interested people as possible, rather than scientifically sampling the population. As a consequence, responses are from people with a keen interest in local government, either because of their working relationship or because of their experiences with local government (often their own).

Responses received

Overview

A total of 3,151 responses to the review were received. This was made up of surveys to each of the 11 discussion papers released, written submissions and informal 'post card' responses collected during workshops.

For every topic residents/ratepayers provided the largest number of responses.

The gender balance amongst survey responses was reasonably representative (55% male, 45% female), but the sample was skewed heavily towards older age groups. Around 75% of respondents were aged 46 years or over, with nearly half over 55. Less than 12% were aged 35 or under.

Breakdown of responses on local laws

A total of 185 responses addressed the topic of local laws, made up of 131 survey responses and 54 written submissions.

The 185 responses were drawn from private individuals and residents/ratepayers groups (66); local government councils and zones (44); council members (21); local government staff and chief executive officers (36); government agencies (4); peak bodies (4); members of parliament (2) and stakeholders from business and civil society (8).

What we heard

The following sections provide data on and outline key messages in the feedback received on the topic of local laws.

Responses expressed viewpoints on both the process of making local laws and the end result. Many local government staff expressed frustration at the process for creating local laws and the role of the Joint Standing Committee on Delegated Legislation (JSCDL). One local government called for a review of the JSCDL's terms of reference and for the JSCDL to be involved in the preparation of model local laws. At least one response was critical that correspondence from the Committee is confidential.

Local governments favoured reforms that might result in a reduction of external oversight of local laws, especially from the JSCDL. This included local laws being prepared by a legal professional and model local laws.

A common theme in many submissions was that local laws need to be consistent between local governments, including suggestions that local laws should be replaced by State government regulations.

“Local laws are a complete nuisance: - they take an enormous amount of administration time to draft, make and review - they are another instrument to enforce, when local government has already such an enormous amount of legislation to deal with - the penalties and fines are laughable and not a deterrent - they are confusing for ordinary people, being different from one local government to another. Much better would be to have uniform legislation across the state, one rule for all.” (Staff member, Shire of Mundaring)

Model 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.

Model local laws may provide greater consistency and make the local law-making process easier. On the other hand, a key reason for local laws is to provide local governments with the ability to tailor laws to suit their local communities.

Workshops

While feedback received through the workshops recognised that there is a need for local laws to be tailored to individual local governments, there was support for the content of some local laws to be prescribed in regulations. The argument for this was to increase consistency between local governments. There was also support for the introduction of model local laws if there was still the ability to modify the laws to the relevant district.

An alternative suggestion made at the workshops was for local laws that applied to all local governments in a region.

Surveys and written submissions

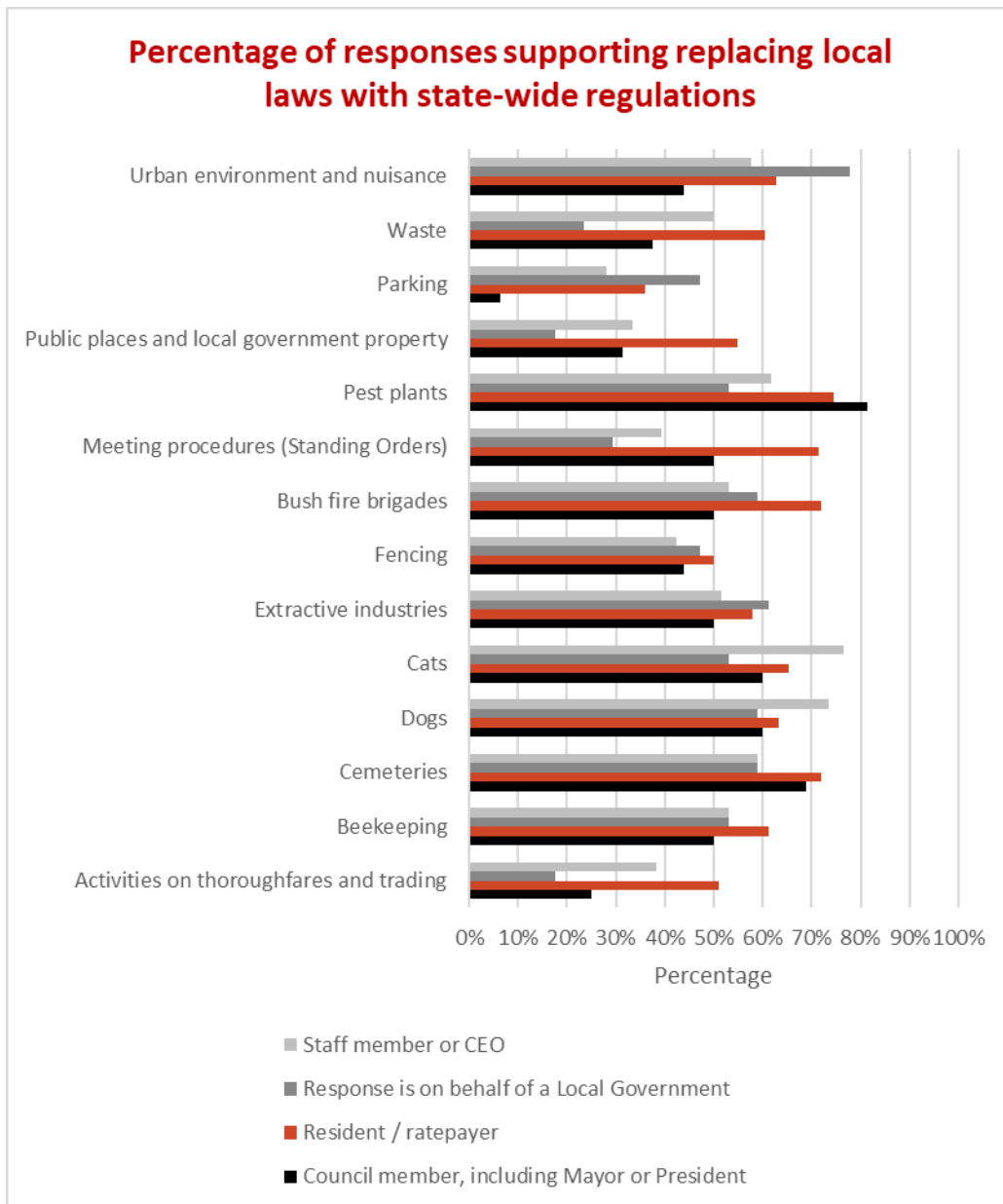
Statewide regulation

Respondents to the surveys were asked if any types of local laws should be replaced by statewide regulations. Responses varied considerably by topic area with different views also expressed by residents, council members, staff and responses on behalf of local government.

“Variations in local laws creates an administrative burden for builders who work across multiple local governments. Consistent local laws would reduce the complexity for the housing industry, but this might not be achieved through model legislation. Hence regulations are the preferred mechanism with limited scope provided for particular elements to be prescribed in local policy.” (Housing Industry Association)

Overall, the leading topics where respondents considered local laws should be replaced with state-wide regulation were:

- pest plants
- cemeteries
- dogs, and
- cats



Respondents were also invited to list any other types of local laws that should be replaced by State Government regulation. Residents proposed several topics including:

- planning for infill
- CCTV
- fishing;
- management of trees and branches; and
- recycling.

On a topic by topic basis, differences could be seen in the viewpoints of different types of respondents. Residents were most likely to support replacing local laws with State Government regulation, followed by staff and council members.

“The Local law-making and review process is a burden on local government without bringing much benefit. Preference would be for the State Government

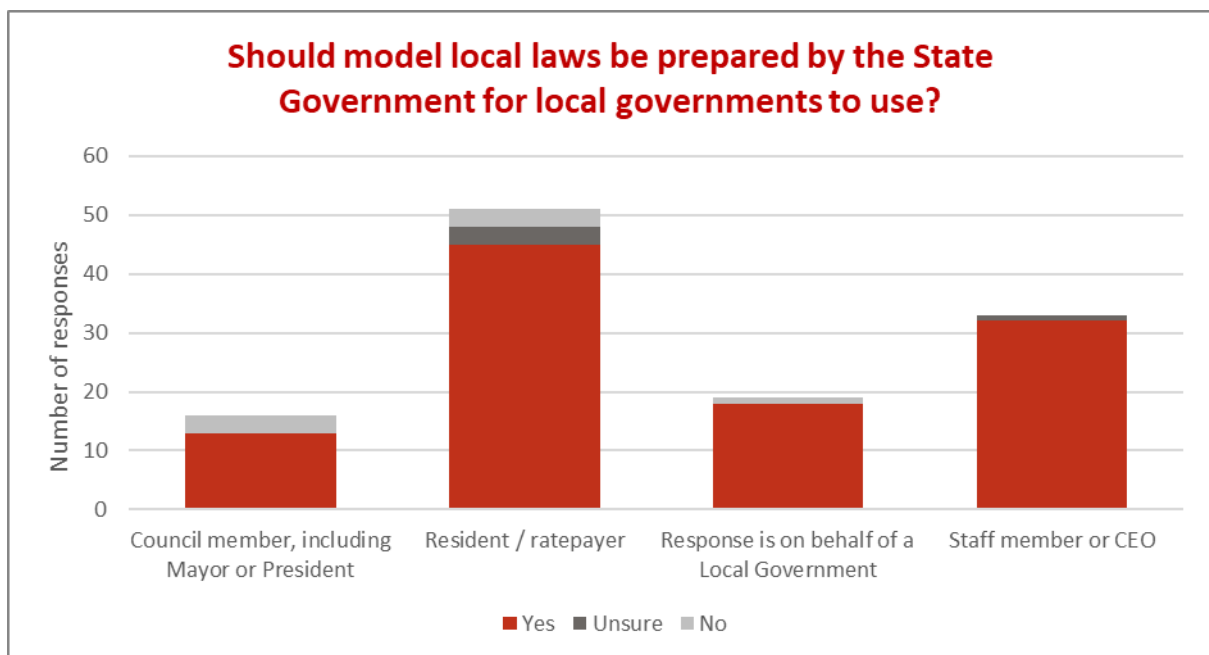
to make state-wide regulations on matters common to all local governments.”
(Shire of Mundaring)

Model local laws

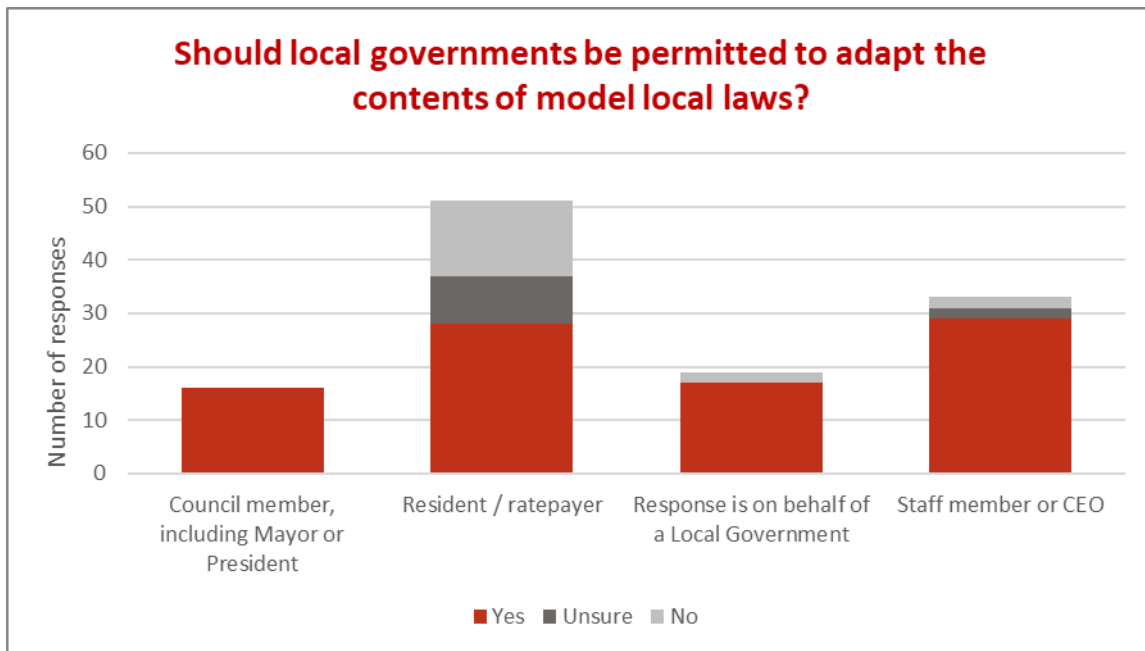
In line with the request for consistent local laws was a call for the introduction of model local laws.

“Local Governments should be able to prepare local laws based on a legislative template with sign off by a legal practitioner to certify that the draft complies with current drafting standards and does not exceed the local government's statutory powers. This could then be advertised, and following consideration of any submissions Council could adopt and then send to State for Gazettal. This would see a substantial reduction in red tape and administrative inefficiency currently involved in local law-making. In the event that a model local law is to be adopted without change there should be no need for public consultation.”
(Staff member, City of Bayswater)

The creation of model local laws was near universally supported by respondents. Greatest support came from staff members (97 percent) and responses provided on behalf of local government (95 percent), with residents (88 percent) and council members (81 percent) generally also supporting the concept.

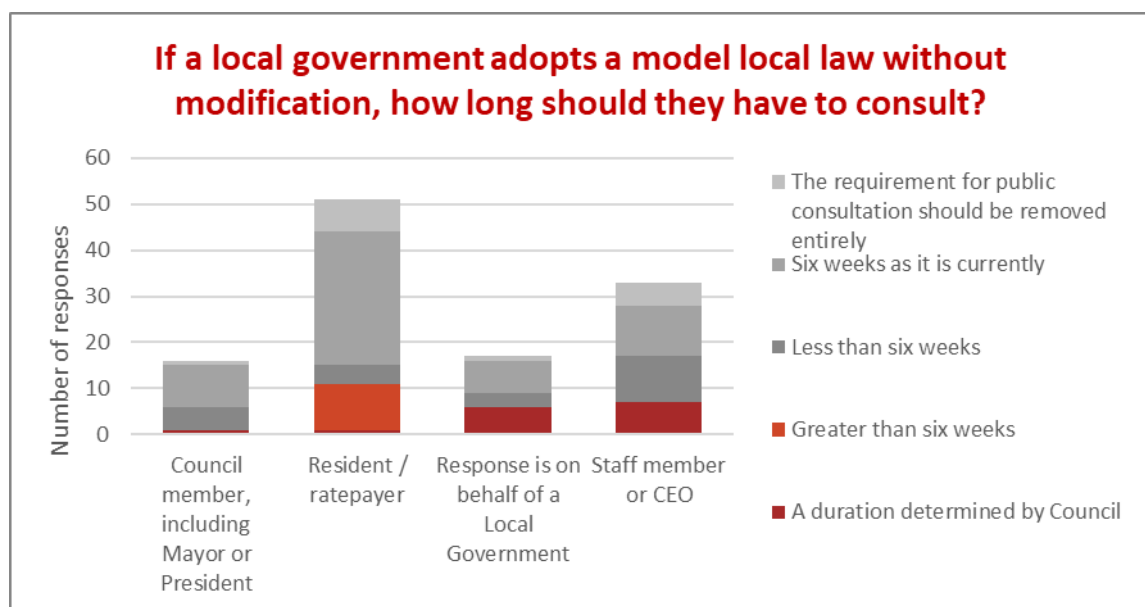


Of the respondents that answered the survey question about whether local governments should be able to modify the contents of a model local law, this was supported by 55 percent of residents. Council members who were least likely to support model local laws, universally supported being able to vary model local laws.



Local governments are required to consult for six weeks on draft local laws. Feedback was sought through the surveys as to whether this requirement should remain if a local government adopted a model local law without modification.

Over half (56 percent) of residents and council members supported the current period of six-week consultation prior to adoption of a model local law. A further 19 percent of residents supported a period greater than six weeks. Responses from staff and those provided on behalf of local government were split across the options.



Peak bodies and other stakeholders

The WA Local Government Association (WALGA) and LG Professionals WA both called for the requirement to remove the need to consult on model local laws.

The Small Business Development Corporation (SBDC) expressed their concerns about how the variation of local laws between local governments can impact small businesses. The Property Council shared a similar view.

The SBDC, Chamber of Commerce and Industry WA and Cat Haven also noted that it is not only the inconsistency between local laws, but the interpretation and administration of local laws that leads to confusion. In the SBDC's submission, they suggested that the culture of a local government and its willingness to work with small businesses to understand compliance requirements, was also a factor relating to the administration of local laws.

While the SBDC supports the principle of model local laws or regulations, they note the importance of ensuring they are drafted in a way that doesn't hinder administrative or process improvements.

The submission from Civic Legal noted that while more consistency between local government local laws may be convenient for businesses, if more rules are in regulations it may be seen as removing the local from local government.

Drafting of local laws

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. These laws are made under delegated power from the Parliament and the Parliament, on advice from the Joint Standing Committee on Delegated Legislation, will void any local law that it identifies as being outside power, poorly drafted or that has not followed the correct process for consultation and adoption by the council.

Workshops

Local governments raised concerns about the time and expertise required to draft local laws. Feedback was also received that the process needs to be simplified.

Frustration was expressed with the Joint Standing Committee on Delegated Legislation (JSCDL), which reviews local laws after they have been gazetted which can result in a local law being disallowed. It was suggested during the workshops that more direction should be provided by the JSCDL and that their scrutiny should occur prior to adoption and gazettal of the local law.

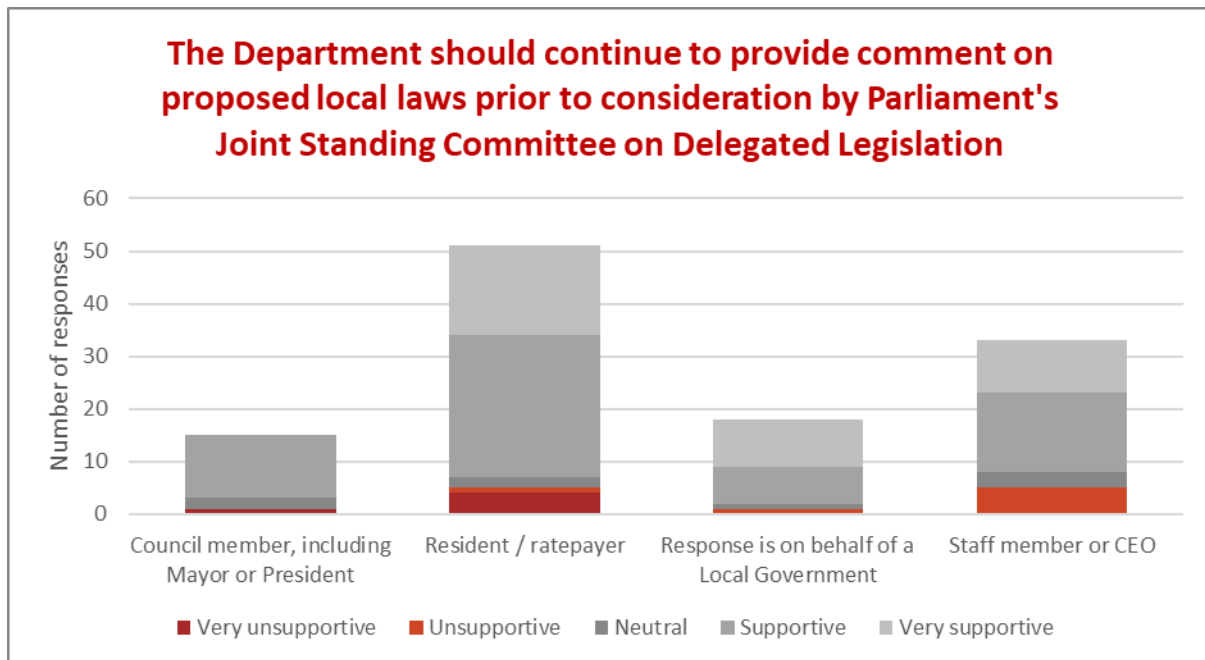
Feedback was varied in relation to whether local governments should be required to receive certification from a legal practitioner that a local law is compliant with legislation. While it was recognised that legal advice could be beneficial to the drafting process there were concerns with the associated costs. One suggestion received was that if local governments were able to develop local laws that apply across a region (rather than just a local government district), the cost of a legal practitioner could be shared.

Surveys and written submissions

Some members of the public were very concerned about the reach and power of local laws and advocated a fundamental revision to the way local governments create local

laws, including giving the community more involvement in the design, content and enforcement of any local law.

Currently, the Department of Local Government, Sport and Cultural Industries reviews local laws during the public submission period. While local governments do not need to adopt the comments, there was near universal support for the department to continue this role.



Responses also addressed concern about the involvement of the JSCDL prior to gazettal.

“Local laws should receive comment from Joint Standing Committee prior to Gazettal and finalising to reduce risk of the local law not being supported after spending considerable funds. However, should the local law be modified not in line with the Joint Standing Committee's recommendations then it should not be approved.” (Shire of Kellerberrin)

In the survey responses, two-thirds (66 percent) of residents supported local governments being required to obtain certification by a legal practitioner. The concept was also generally supported by council members (60 percent). Staff (45 percent) and responses on behalf of local government (44 percent) were less likely to support being required to have their local laws certified.

Peak bodies and other stakeholders

WALGA suggested replacing the need for scrutiny by the JSCDL with certification by a legal practitioner.

Civic Legal also supported the requirement for local governments have a legal practitioner review and provide advice on local laws as they noted issues with the interpretation and enforcement of local laws drafted without this legal involvement.

In regard to the role of the department in providing advice and comments on draft local laws, the Hon Robin Chappel MLC and member of the JSCDL stated:

“Local Government Department should provide templates for forms, pro formas and local laws, not WALGA. As part of a broader overhaul of the role of WALGA in advising councils and councillors, I believe that many of the powers of WALGA must be reassumed by the Department. In my role as a member of the Delegated Legislation Committee of the WA Parliament, we regularly move to disallow local laws for a variety of reasons, and while I do not lay the blame for that at WALGAs feet, a proper level of advice and review by the Department would be a more effective vehicle for ensuring uniform standards across local governments.” (Hon Robin Chappel MLC)

Review of local laws

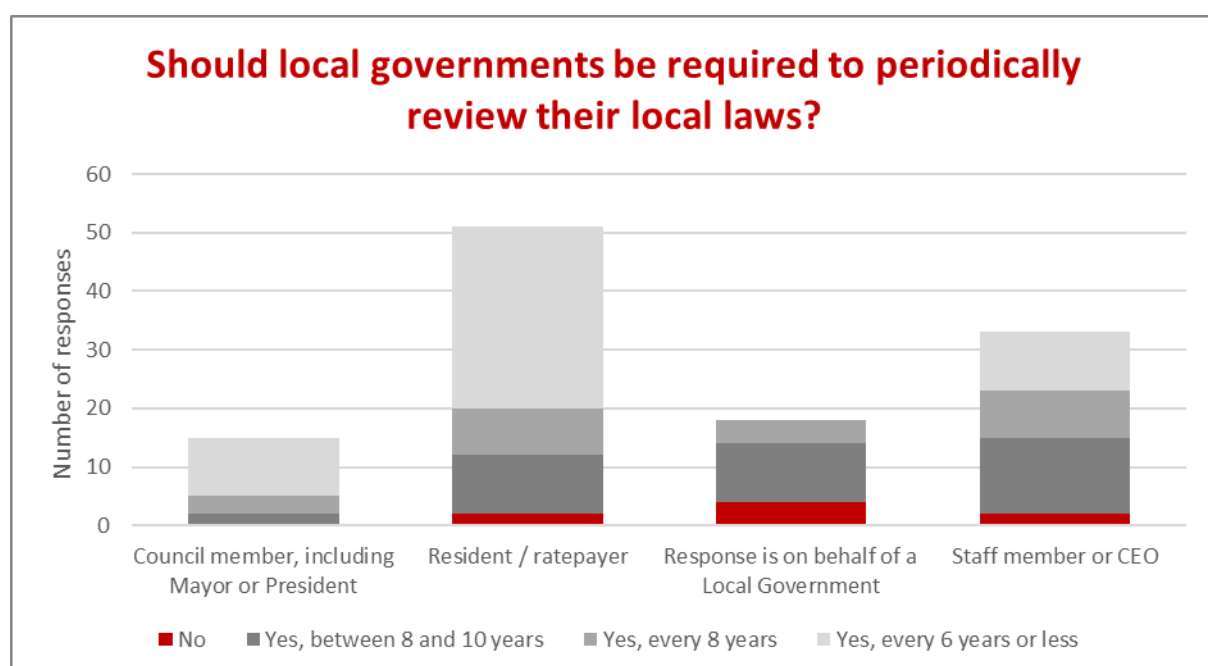
Local laws are currently required to be reviewed every eight years. The local government must conduct a review by consulting with the community, prepare a report and the council must determine if it considers that a local law should be repealed or amended.

Workshops

Feedback received through the workshops generally supported the removal of the legislated requirement for local laws to be reviewed every eight years.

Surveys and written submissions

Compared to the feedback received during the workshops, the survey responses indicated near universal support for local governments being required to review their local laws. Most council members (66 percent) and residents (60 percent) supported local laws being reviewed at least every six years. Local government staff and responses provided on behalf of local governments tended to support a review every 8 to 10 years.



Peak bodies and other stakeholders

WALGA and LG Professionals called for the removal of the requirement to review local laws.

The Committee for Perth advocated for regular review of local laws and model local laws. These views were echoed by the Property Council.

Summary

An analysis of feedback received through the consultation workshops and submissions has identified the following key themes:

- There is an appetite for model local laws and increased state-wide regulation in place of individual local government local laws in many areas.
- The local law-making process is a resource intensive process for local governments and there needs to be consideration of ways to simplify and clarify the process.
- The community want to be involved in the local law-making process, including being given adequate time to comment on draft laws.

The submissions also highlighted that there is a need for education to local governments on the current process for developing local laws and the reason why local laws are scrutinised by Parliament.

Where to from here

Feedback and suggestions received during the consultation period will be used to inform the new Local Government Act.

Consideration will be given to balancing the requirement for transparency, simplicity, legislation standards and community expectations.