



## LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

DETAILED  
DISCUSSION PAPER

SMART

### Local Laws

Our vision is for the local government sector to be agile, smart and inclusive.

Our objective is to reform local government so that it is empowered to better deliver quality governance and services to their communities now and into the future.

A new Local Government Act will be drafted, Transforming Local Government.

Smart includes those topics that focus specifically on how local governments can best use their resources efficiently and rationally. It is important that they are transparent and accountable to their communities.

The topics addressed in this theme are:

- Administrative efficiencies;
- Council meetings;
- Interventions; and
- Local laws.

### Have your say!

We need your input to inform how local government will work for future generations.

### Submissions

The simplest way to have your say is to answer the questions via the online surveys.

The survey questions relate to the matters discussed in the papers and we encourage you to read the relevant paper before completing the survey.

While you may lodge multiple written submissions via email at [actreview@dlgsc.wa.gov.au](mailto:actreview@dlgsc.wa.gov.au), you will only be able to complete each online topic survey once. The public submission period closes on 31 March 2019. This is the last day that you will be able to respond to the surveys.

**Note:** Unless marked as confidential, your submission (including survey responses) will be made public and published in full on the Department of Local Government, Sport and Cultural Industries' (the Department) website. Submissions that contain defamatory or offensive material will not be published.

## Introduction

The *Local Government Act 1995* (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;
- Provide 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);
- 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?

### 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. 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.

Similar issues are raised across all Australian jurisdictions with most jurisdictions providing the State Government with a power to provide model local laws, as shown in the following table.

Jurisdiction	Uniformity of local laws
Western Australia	Western Australian Local Government Association (WALGA) currently provide template local laws (for a fee) that a local government can enact.
New South Wales	Nil.

Jurisdiction	Uniformity of local laws
Victoria	Nil.
Queensland	Minister may make a 'model local law' that can be adopted by local governments. Consultation is not required if a model is adopted.
South Australia	Governor has the power to proclaim a model local law. The non-governmental Local Government Association has previously issued model (template) by-laws.
Tasmania	Minister may make a 'model local law' that can be adopted by local governments.
Northern Territory	Minister may make a 'model local law' that can be adopted by local governments.

Model local laws provide consistency and make the local law making process easier. On the other hand, a purpose of local laws is to provide local governments with the ability to tailor local laws to suit the local community. An example is a Dog Local Law which sets the number of dogs that can be allowed in a residential area compared to a semi-urban or rural area within the one local government district.<sup>1</sup>

Another mechanism that could be used to achieve consistency is the State Government enacting regulations that act as local laws. An example of this is *the Local Government (Uniform Local Provisions) Regulations 1996*. The possibility of using regulations was raised during the policy forums, particularly in relation to Health, Parking, Cemeteries, Cats, and Dogs Local Laws.

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.

### Consultation

Each Australian jurisdiction provides a different consultation period to be undertaken prior to the enactment of a local law.

Jurisdiction	Consultation Required
Western Australia	6 week submission period, submissions must be considered.
New South Wales	6 week submission period, submissions must be considered.

<sup>1</sup> For example, the City of Swan.

Jurisdiction	Consultation Required
Victoria	The Council must make a local law in accordance with its community engagement policy. <sup>2</sup>
Queensland	No specific requirement to consult although the Act generally requires among other things:  'transparent and effective processes, and decision-making in the public interest'  'democratic representation, social inclusion and meaningful community engagement'  No requirement to consult on a model local law.
South Australia	3 week submission period, submissions must be given reasonable consideration.
Tasmania	3 week submission period, submissions must be considered.
Northern Territory	3 week submission period, submissions must be considered.

### Drafting of local laws

There is no intention to limit the current legislative power of local governments 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. 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 as not followed the correct process for consultation and adoption by the council.

Currently the Department monitors and provides an advisory function to assist local governments with the making of their local laws. It works closely with WALGA and the Joint Standing Committee on Delegated Legislation to ensure that the content of proposed local laws complies with legislative requirements.

The Act requires that copies of proposed laws are forwarded to the Minister for Local Government and other relevant State Ministers. The Department examines the proposed local laws on behalf of the Minister for Local Government and considers the following:

---

<sup>2</sup> The requirements described are not within the current *Local Government Act 1989* (Vic), but are currently before the Victorian Parliament within the *Local Government Bill 2018*. The requirement in the 1989 Act is: a 4 week submission period, submissions must be considered and report made.

- Whether the proposed local law conflicts with the Act and any other written law; and
- Matters raised previously by the Joint Standing Committee on Delegated Legislation, including State Government policy issues.

The Department provides detailed comments to the relevant local government to assist it in finalising a local law that will be enforceable and effective. This positively impacts upon the number of local laws that are disallowed by Parliament.

The local government is not required to follow the advice given by the Department.

Western Australia is the only jurisdiction that requires a local law to be provided prior to enactment, most jurisdictions rely on a certification from a legal practitioner (see below).

Jurisdiction	External vetting
Western Australia	Department provides comments, although there is no requirement for a local government to adopt or even consider the advice given.
New South Wales	Nil.
Victoria	A certificate from a legal practitioner stating it is consistent with the local law requirements. <sup>3</sup>
Queensland	Local governments are to comply with guidelines issued by the Parliamentary Counsels Office.  After the law is made a copy is provided to the Minister.
South Australia	A certificate from a legal practitioner is required stating it is within power and not in conflict with the Local Government Act.
Tasmania	A certificate from a legal practitioner stating it is made in accordance to law is required.
Northern Territory	A certificate from a legal practitioner stating the law is consistent with the principles of the Local Government Act is required.

### Review of local laws

<sup>3</sup> The requirements described are not within the current *Local Government Act 1989* (VIC), but are currently before the Victorian Parliament within the *Local Government Bill 2018*. The requirement in the 1989 Act is: after the law is made a copy is provided to the Minister.

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.

Local governments believe a review of their local laws should only be required to be undertaken when the local government believes it is appropriate to do so in response to changing circumstances.

Five of the seven Australian jurisdictions which have local governments require a local government to review or re-enact a local law<sup>4</sup> after a prescribed period, as shown in the following table:

Jurisdiction	Review of local laws
Western Australia	Local law must be reviewed every 8 years.
New South Wales	Expire 12 months after the last general election.
Victoria	Expire after 10 years.
Queensland	Nil.
South Australia	Expire after 7 years.
Tasmania	Expire after 10 years.
Northern Territory	Nil.

## What do you think?

The easiest way to have a say on the future of your community is to complete the survey available [here](#).

Your responses to this survey will inform the review and will take approximately 15 minutes to complete.

We ask that you take care in completing a survey. While you may lodge multiple written submissions via email at [actreview@dlgsc.wa.gov.au](mailto:actreview@dlgsc.wa.gov.au), you will only be able to complete each online topic survey once.

The public submission period closes on 31 March 2019. This is the last day that you will be able to respond to the surveys.

Unless marked as confidential, your submission (including survey responses) will be made public and published in full on the Department's website. Submissions that contain defamatory or offensive material will not be published.

---

<sup>4</sup> Not all jurisdictions call them local laws. Some refer to them as by-laws and NSW has 'local policies'.

The questions in the survey are provided below but we encourage you to complete the survey online which is available [here](#).

## Survey - Local Laws

1. Have you read the discussion paper associated with this survey?
  - a. Yes
  - b. No
2. Who are you completing this submission on behalf of?
  - a. Yourself
  - b. An organisation, including a local government, peak body or business
3. What is the name of that organisation? Shire of Carnarvon
4. What is your name? David Burton
5. What best describes your relationship to local government?
  - a. Resident / ratepayer
  - b. Staff member or CEO
  - c. Council member, including Mayor or President
  - d. Peak body
  - e. State Government agency
  - f. Supplier or commercial partner
  - g. Community organisation
6. What best describes your gender?
  - a. Male
  - b. Female
  - c. Other
  - d. Not applicable / the submission is from an organisation
7. What is your age?
  - a. 0 – 18
  - b. 19 – 35
  - c. 36 – 45
  - d. 46 – 55
  - e. 56 – 65
  - f. 66 – 75
  - g. 76+
  - h. Not applicable
8. Which Local Government do you interact with most? Shire of Carnarvon
9. Would you like to be updated on the progress of the *Local Government Act 1995* review and further opportunities to have your say?
  - a. Yes
  - b. No
10. Do you wish for your response to this survey to be confidential?
  - a. Yes
  - b. No
11. What is your email address? [REDACTED]



12. Should any of the following topics covered by local laws be replaced by state-wide regulations?

	Yes	No	Unsure
Activities on thoroughfares and trading		x	
Beekeeping		x	
Cemeteries		x	
Dogs		x	
Cats		x	
Extractive industries		x	
Fencing		x	
Bush fire brigades		x	
Meeting procedures (standing orders)		x	
Pest plants		x	
Public places and Local Government property		x	
Parking		x	
Waste		x	
Urban environment and nuisance		x	
Other (please specify)		x	

13. Should model local laws be prepared by State Government for local governments to use?

- a. Yes
- b. No
- c. Unsure

14. Should local governments be permitted to adapt the contents of model local laws?

- a. Yes
- b. No
- c. Unsure

15. Currently a local government is required to consult for a period of six weeks. If a local government adopts a model local law without modification, how long should the mandatory consultation period be?

- a. Less than 6 weeks
  - b. Greater than 6 weeks
  - c. 6 weeks as it is currently
  - d. The requirement for public consultation should be removed entirely
  - e. A duration determined by council
16. If a local government is seeking to adopt a model local law that it has modified, how long should the mandatory consultation period be?
- a. Less than 6 weeks
  - b. Greater than 6 weeks
  - c. 6 weeks as it is currently
  - d. The requirement for public consultation should be removed entirely
  - e. A duration determined by council
17. To what extent do you support the following statements?

	Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive
“The Department should continue to provide comment on proposed local laws prior to consideration by Parliament’s Joint Standing Committee on Delegated Legislation.”				x	
“Local governments should be required to modify proposed local laws according to the instructions of the Department.”			x		
“Local governments should be required to have a legal practitioner certify that a local law is within power and legally enforceable.”			x		

18. Should local governments be required to periodically review their local laws?
- a. No
  - b. Yes, every 6 years or less
  - c. Yes, every 8 years
  - d. Yes, between 8 and 10 years
19. Do you have any additional comments on the topic of local laws? Additional information can also be provided to the review team via email at [actreview@dlgsc.wa.gov.au](mailto:actreview@dlgsc.wa.gov.au)