



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

DETAILED DISCUSSION PAPER

SMART

Interventions

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, 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 Submissions that contain defamatory or offensive material will not be published.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) provides means to regulate the conduct of local government officers and council members and sets out powers to scrutinise the affairs of local governments.

The Act provides the Minister with the ability to:

- Establish an inquiry by an Inquiry Panel;
- Suspend councils;
- Appoint Commissioners; and
- Dismiss a council.¹

The Act also provides the Director General with the power to:

- Conduct authorised inquiries;
- Refer allegations of serious or recurrent breaches to the State Administrative Tribunal; and
- Commence prosecution for an offence under the Act.

Local governments are given powers to enforce the legislation, namely, to:

- Enter premises;
- Arrest a person suspected of committing an offence who fails to give certain information to a local government employee;
- Issue infringement notices; and
- Commence a prosecution for an offence under the Act.

In 2017-18, the number of authorised inquiries into local governments conducted by the Department was the highest it has ever been and more than three times the number of authorised inquiries conducted in the previous year. In the last 12 months, the Department and the Local Government Standards Panel have also received a record number of complaints regarding alleged breaches under the Act.

The inquiry into the City of Perth was the first Panel of Inquiry commenced since 2012-13 and independent reports from bodies such as the Corruption and Crime Commission have raised concerns regarding practices at some local governments. Local government, like all tiers of government, is not immune to misconduct.

There is a community expectation that the misconduct of local government officers and organisational dysfunction and governance issues within local governments are dealt with appropriately. This is achieved through balancing the ability of the State Government to intervene in local government matters and enabling local governments to operate as autonomous bodies in managing their own operations and affairs.

Taking an approach which enables the Department to work in partnership with local governments has the potential to improve good governance and performance across the local government sector, and strengthen local government capacity. Reforms

¹ Via an order made by the Governor.

could also enable the Department to be more flexible in investigating matters and enforcing the Act.

Investigations and inquiries

Complaints process

A person who suspects that a council member has committed a breach of the Act may make a complaint to their local government or to the Department, depending on what type of breach the complaint relates to. There are two types of breaches under the Act, namely minor breaches and serious breaches. A council member commits a minor breach if he or she contravenes a rule of conduct or a local law relating to meeting procedures. A serious breach occurs when a council member commits an offence under a written law and an element of the offence is that they are a council member. Serious breaches include a recurrent breach which occurs when a council member has been found to have committed two or more minor breaches.

The process for lodging a complaint about an alleged breach of the Act differs depending on the type of breach involved. If a person believes that a council member has committed a minor breach (i.e. contravened a rule of conduct or local law), he or she may make a complaint to the complaints officer of the local government. The complaints officer is then responsible for referring the minor breach complaint to the Local Government Standards Panel.

A person may make a complaint about a serious breach (i.e. a council member committing an offence under a written law) to the Director General. The Director General then decides how the matter should be dealt with, including whether it is appropriate for the matter to be referred to the State Administrative Tribunal.

What are the opportunities for further reform?

An amendment to the Act could be made to simplify the process of making a complaint so that both minor breach and serious breach complaints are to be made to the Director General who then decides how the complaints should be dealt with. This reduces red tape for local governments as it removes the requirement for the complaints officer of a local government to receive complaints.

State Government's ability to assist

Remedial action process

The options available to support local governments in challenging times are currently limited and can escalate to direct interventions such as suspending a council and installing a commissioner or dismissing the council.

Feedback received through previous consultation indicated that there was support for the State Government to provide intensive assistance and support to local governments by way of a remedial action process. The process could involve:

- Issuing a remedial notice to a local government requiring the provision of information or the performance of an action or activity;
- The appointment of a person to the local government administration to assist the local governments with its operations; and
- Requiring the local government to participate in a capacity building program.

What are the opportunities for further reform?

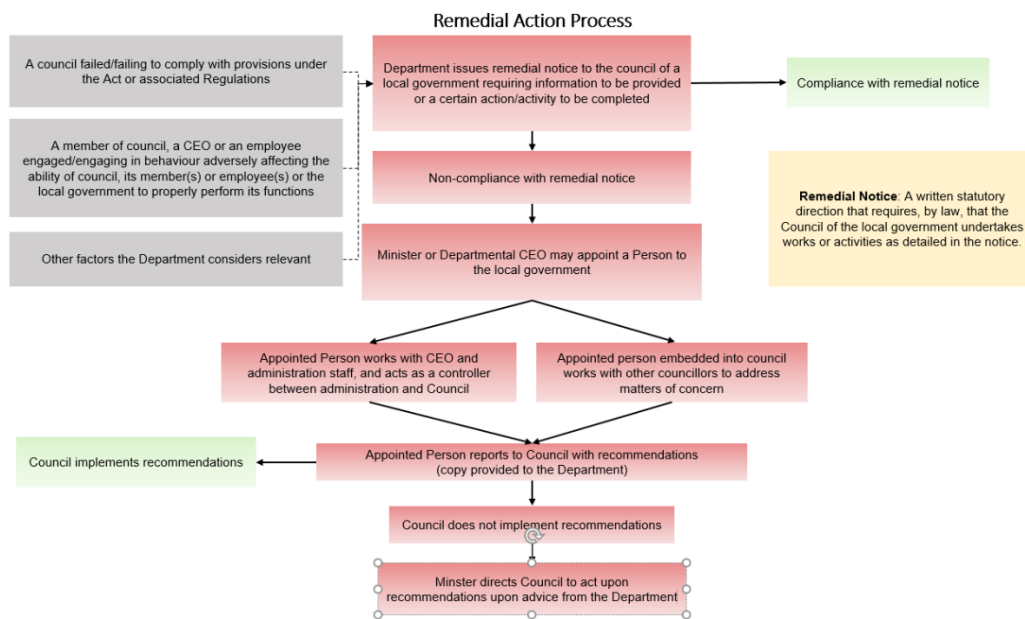
Building on the feedback from previous consultation regarding the power to appoint a person to the administration of a local government, the appointed person could be provided with the ability to direct the administration to perform certain actions and to override decisions made by the administration. This would increase the ability of the appointed person to ensure that the administration takes the necessary action to address the issues in question.

Additionally, the Act could be amended to enable the State Government to embed a person (with suitable expertise and experience) into a council. The person could have the ability to direct the council to perform certain actions and to override decisions made by the council if they were illegal or contrary to the interests of the community as a whole. This may take the form of the appointed person taking over the roles and responsibilities of the Mayor or President.

The intention of embedding a person into council is to allow the council members to remain on council and for the appointed person to work with council members to address the matters of concern. This may be particularly effective in situations where a council is dysfunctional.

This option of embedding an appointed person into a council is based on the model in Victoria. In Victoria the Minister can appoint a “Municipal Monitor” to a council (following written notice to the council of the appointment). The role of the “Municipal Monitor” or “Authorised Inspector” could include monitoring governance processes and practices, providing advice to council on governance improvements, and reporting to the Minister on any steps or actions taken by council to improve its governance and the effectiveness of those steps or actions.

The flowchart below outlines the proposed steps in the remedial action process.



Ensuring compliance with the Act

Improper use of Information

Under the Act, a person who is a council member, a committee member or an employee must not make improper use of any information acquired in the performance of his or her functions to gain an advantage for themselves or any other person, or to cause detriment to the local government or any other person. This offence does not apply to former council members, committee members or employees who use information (which they acquired when they were engaged with a local government) improperly.

What are the opportunities for reform?

The Department of Local Government and Communities initiated a review in 2015 of the *Local Government (Rules of Conduct) Regulations 2007* which included a recommendation that the improper use of information offence be extended to apply to former council members, committee members or local government employees. Feedback supported the recommendation, however, there was no consensus as to how long a person would be liable for such an offence following their separation from the local government (i.e. the period following their engagement with a local government in which they are prohibited from improperly using the information). The suggested time frames ranged from 12 months to five years. In most Australian states, the liability period for this type of offence is unlimited.

The Act could be amended to extend the improper use of information offence to former council members, committee members or employees for a particular period.

New offence – improper use of position

Under the *Local Government (Rules of Conduct) Regulations 2007*, a council member must not make improper use of his or her office as a council member to gain directly or indirectly an advantage for themselves or any other person, or to cause detriment to the local government or any other person.

As this regulation only applies to elected members, there is no equivalent “improper use of position” offence under the Act which applies to Chief Executive Officers or employees of a local government.

What are the opportunities for reform?

An amendment to the Act could be made to include an “improper use of position” offence which applies to council members, Chief Executive Officers and employees of a local government, and former council members, Chief Executive Officers and employees. This would ensure that Chief Executive Officers and employees do not escape liability for improperly using their position, especially in situations where the conduct of the individual does not fall within the jurisdiction of the Corruption and Crime Commission or the Public Sector Commission.

New offence – providing false or misleading information to council

In making decisions, the council of a local government may consider written reports which have been prepared by the Chief Executive Officer or employees of the local government and verbal information provided by local government staff (normally senior executive staff) during a council meeting. The Department has received complaints whereby council members have been provided with a written report from the Chief Executive Officer or employee of their local government which contains false or misleading information. There is currently no provision under the Act which makes it an offence for a Chief Executive Officer or employee to provide false or misleading information to council.

What are the opportunities for reform?

Regular comparisons are made between local government council members and Members of Parliament. Knowingly misleading a House or Committee of Parliament constitutes contempt of Parliament. Under the *Criminal Code*, it is an offence if a person under examination knowingly gives false evidence to Parliament. While the nature of the decisions and duties are different, members of council like members of Parliament make decisions that directly affect the community. These decisions can involve committing significant amounts of public money.

The Act could be amended to provide that the Chief Executive Officer or an employee of a local government must not deliberately or negligently provide false or misleading information to council. This would ensure that a council, as the decision-making body

of a local government is provided with accurate information from its Chief Executive Officer and employees.

New offence – Tendering requirements

The Act requires a local government to invite tenders before it enters into certain contracts for the supply goods or services. The *Local Government (Functions and General) Regulations 1996* set out the requirements regarding when tenders must be publicly invited and how the tendering process is to be undertaken.

Currently, the Act does not provide that a breach of the tendering provisions under the Act and regulations is an offence. Therefore, a person who does not comply with the tendering requirements cannot be prosecuted unless their conduct constitutes an offence under another provision.

What are the opportunities for reform?

Local governments spend around \$1 billion dollars on goods and services annually. The tendering requirements under the Act ensure that local governments provide the community with goods and services which are of the best value and that there is transparency in the procurement process. To ensure that these requirements and obligations are enforced, the Act could be amended to provide that the non-compliance of tendering requirements is an offence.

Enforcement of the Act

Infringements

Infringements allow breaches of legislation to be resolved by way of a fixed penalty and can be an effective way of deterring people from further non-compliance.

What are the opportunities for reform?

The Department can commence a prosecution against local governments and individuals for offences under the Act but may be reluctant to do so due to the costs involved in legal proceedings. It may not be in the public interest to spend funds on prosecuting for offences where the impact has been small.

While not all the offences are suitable to be dealt with via an infringement notice, it may be appropriate for some of the following offences to be included in an infringement notice scheme:

- Failure to invite tenders before entering into a contract;
- Failure to vote during a council or committee meeting;
- Failure to lodge a primary return by the required date;
- Failure to lodge an annual return by the required date;
- Disclosing information about a Serious or Minor Breach Complaint before the matter is determined;
- Giving false or misleading information in a Serious or Minor Breach Complaint;

- Failing to comply with a notice from the Director General or Minister to provide information; and
- Failing to comply with a direction of an authorised person, hindering or obstructing, or knowingly giving false or misleading evidence to an authorised person.

The Department would have the discretion to decide whether to issue an infringement notice or commence prosecution for the offence in the courts.

Harmonisation

The Act allows authorised local government persons (e.g. rangers) to, among other things, require suspected offenders to provide their personal details, examine vehicles, and arrest people if they give false information or obstruct the officer from performing their duties. Authorised persons are also given powers to issue infringement notices and commence prosecutions.

What are the opportunities for reform?

Since 1995, major reforms have been made to the Criminal Investigation, Criminal Procedure and Road Traffic legislation, which means that certain powers contained within the Act do not represent current “best practice”. Accordingly, to modernise the Act, the harmonisation of the powers and procedures could be undertaken so that they are consistent with similar powers and procedures in other legislation.

Default penalties for local laws

The Act allows local governments to make local laws and there are various pieces of legislation that enable local governments to set penalties for offences in their local laws. If a local government fails to provide a penalty for an offence contained within a local law, the local government is unable to enforce that offence.

What are the opportunities for reform?

To ensure that any local laws which do not specify penalties for offences are enforceable, the Act could be amended to include a provision for a default penalty to apply.

Powers under the Act

Notice issued by a local government to require a person to undertake an action

During earlier consultation in the Act Review, several submissions were received from local governments that raised issues with the ability of a local government to issue a notice to a land owner or the occupier of land, requiring the person to undertake certain actions. Examples of notices include directing a person to prevent water dripping/running from a building onto another piece of land and directing a person to remove overgrown vegetation, rubbish or disused material. If a person fails to comply with the notice, the local government can do anything it considers necessary to give

effect to the notice. The local government can also recover the cost of undertaking those activities.

What are the opportunities for reform?

Notice to secure a building

Vacant buildings may be vandalised and used for inappropriate purposes by squatters. Although local governments have broad powers with respect to issuing notices to remediate issues on premises, they do not have the ability to request that an owner must effectively secure a building. The Act could be amended to include an ability for a local government to provide a notice which requires the owner to secure a building.

Expanding the list of disused materials

Currently, the Act defines “disused materials” to include disused motor vehicles, old motor vehicle bodies and old machinery. This list of disused materials could be expanded to enable a local government to direct a person to remove items other than vehicles and machinery from land that it considers to be untidy or causing a hazard.

Framework for disposing of property

The procedure in the Act for disposing of property removed by a local government due to a contravention of a local law or regulation is unclear. The Act could be amended to provide a clearer framework for local governments to dispose of property. This would include the type of property that may be disposed, when property is to be disposed and how property is to be disposed.

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 10 minutes to complete.

We ask that you take care in completing a survey. While you may lodge multiple written submissions via email at actreview@dlqsc.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.

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

Survey - Interventions

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?
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. Depending on the nature of the allegation, different parties are responsible for receiving allegations of breaches of the Act. Should the Department responsible for local government be responsible for receiving all allegations of breaches of the Act?
 - a. Yes
 - b. No

c. Unsure

13. To what extent are you concerned about behaviour and good governance in local government?

- a. A great deal
- b. A lot
- c. A moderate amount
- d. A little
- e. Not at all

14. To what extent do you support the following statements?

	Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive
“The Act should enable an external person to be appointed to work with a local government’s administration to improve governance and resolve problems.”				x	
“An external person appointed to work with a local government’s administration to improve governance and resolve problems should have the powers to direct the administration and override decisions made by the administration.”		x			
“The external person should be appointed by the Minister.”			x		
“The costs of appointing an external person to work with an administration to improve governance and resolve problems in a local government should be met by the local government.”				x	
“The costs of appointing an external person to work with an administration to improve governance and resolve problems in a local government should be met by the State Government.”			x		

15. To what extent to you support the following statements?

	Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive
"The Act should enable an external person to be appointed to work with council members to improve governance and resolve problems."				x	
"An external person appointed to work with council members should have the power to direct the council."				x	
"An external person appointed to work with council members to improve governance and resolve problems should have the powers to override council decisions."			x		
"An external person should be appointed by the Minister."			x		
"The costs of appointing an external person to work with council members to improve governance and resolve problems in a local government should be met by the local government."				x	
"The costs of appointing an external person to work with council members to improve governance and resolve problems in a local government should be met by the State Government."			x		

16. To what extent do you support the following statements?

	Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive
"Former local government council members, committee members and employees should be prosecuted if they misuse information."				x	
"Local government council members, committee members or employees should be prosecuted if they use				x	

	Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive
their position to cause detriment to the local government or any person.”					
“People who knowingly provide false or misleading information to a council should be prosecuted.”				x	
“Local government employees that breach procurement rules should be prosecuted.”				x	
“When a breach of the Act is identified an infringement notice should be issued as is the case for traffic offences.”			x		

17. To what extent do you support the following statements?

	Very unsupportive	Unsupportive	Neutral	Supportive	Very Supportive
“In cases where a local law does not define a penalty amount, the Act should set a default penalty amount.”			x		
“Local governments need greater powers to direct property owners to tidy property for amenity, health and safety reasons.”				x	
“Local governments need greater powers to direct property owners and occupiers to remove items like disused motor vehicles for amenity, health and safety reasons.”				x	
“Local governments should be able to destroy property or items removed from a property within 28 days when there has been a breach of a local law or regulations. This might include rubbish, goods deemed to be of little value, or decaying items.”				x	

18. Do you have any additional comments on this topic of interventions?
Additional information can also be provided to the review team via email at actreview@dlgsc.wa.gov.au.