



Interventions, oversight and enforcement under the Local Government Act

Introduction

The Local Government Act 1995 (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.

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 twelve 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 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. If a person believes that a council member has committed a minor breach (i.e. contravened a rule of conduct or local law relating to meeting procedures), 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 (SAT).

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.

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 quickly 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?

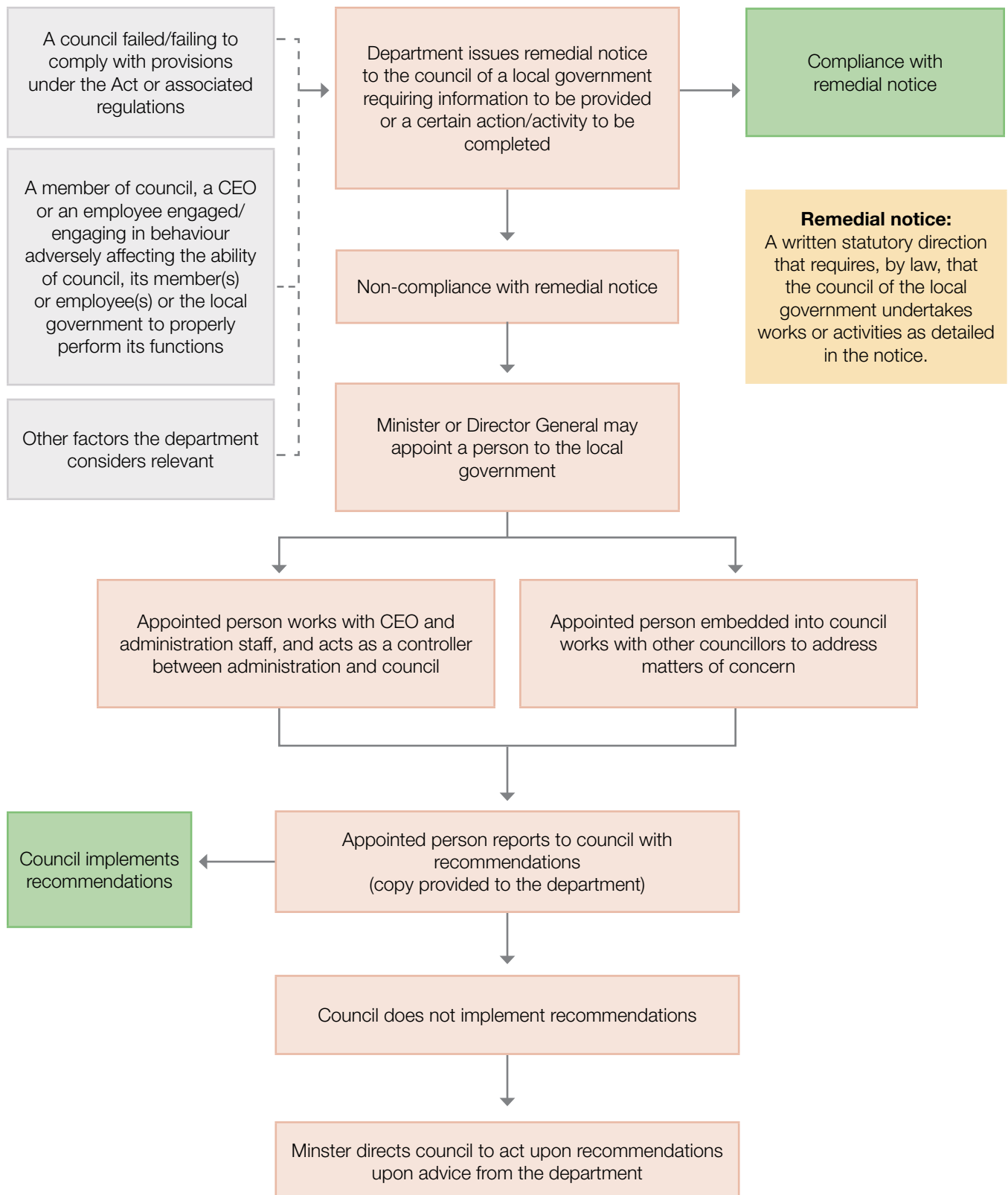
Building on the feedback from previous consultation regarding the power to appoint a person to the administration of a local government, the appointed person could be provided with the ability to direct the administration to perform certain actions and to override decisions made by the administration. 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. 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.

Remedial action process



Ensuring compliance with the Local Government Act

New offence – improper use of position

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.

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 CEOs and employees of a local government, and former CEOs and employees. This would ensure that CEOs 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 – knowingly 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 CEO 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 CEO 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 CEO or employee to knowingly provide false or misleading information to council.

What are the opportunities for reform?

The Act could be amended to provide that the CEO or an employee of a local government must not knowingly 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 CEO 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 Local Government 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 offences to be included in an infringement notice scheme. 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 should 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 Local Government 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.

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.

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.

