



Department of
Local Government, Sport
and Cultural Industries

Local Government Reform

Summary of the Proposed Intervention Model, Questions and Answers



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Introduction

The State Government continues to progress major reforms to the system of local government in Western Australia.

In November 2021, the Minister for Local Government announced a package of reform proposals. These proposals were based on a significant volume of previous work, including reviews and investigations, public consultation, Parliamentary inquiries, and reports to government. The proposed reforms are based on six themes:

1. Earlier intervention, effective regulation, and stronger penalties
2. Reducing red tape, increasing consistency and simplicity
3. Greater transparency and accountability
4. Stronger local democracy and community engagement
5. Clear roles and responsibilities
6. Improved financial management and reporting.

One key element of the proposed reforms is the establishment of the Local Government Inspector, as part of a reformed system of early intervention, effective regulation, and stronger penalties.

This summary provides further detail on the proposed Inspector, and how the introduction of the Inspector and Monitors will bolster oversight of local government in Western Australia.

Roles and Responsibility of Local Government in Western Australia

The *Local Government Act 1995* (the Act) establishes local governments as largely independent and autonomous organisations, who make decisions in the best interest of all people within their district.

Critically, the Act establishes that every local government is governed by a council of elected representatives. The Council can establish policies and make important decisions, including about service delivery, expenditure, and the setting of rates. Councils also employ the local government's Chief Executive Officer (CEO). The CEO manages the local government administration, which implements the policies and decisions made by the Council.

Councillors are publicly elected and are directly accountable to residents and ratepayers for their decisions. Ordinary local government elections are held every two years.

Requirements for Open Decision-Making

The Act and associated Regulations contain a range of requirements for how Councils must make decisions, including that:

- decisions may only be made at Council meetings, which are generally open to the public;
- local governments must publish meeting agenda and minutes, and reasons for decisions (where applicable);
- local governments must publish budgets and financial reports about how ratepayer money is collected and used; and
- local governments must publish defined public information.

The McGowan Government has already implemented a range of measures to bolster oversight of local government in Western Australia. For instance, in 2017, the McGowan Government introduced a new requirement for all audits of local government financial statements to be overseen by the Office of the Auditor General. This has provided all ratepayers with greater assurance that public money collected by local governments is accurately accounted for.

Complaints about Local Government

While councils can independently set policies and make decisions, everyone in local government must comply with State legislation.

Local governments in Western Australia are subject to oversight under several Acts of Parliament, with different agencies and authorities being responsible for managing different types of complaints.

These include complaints about behaviours, and forms of misconduct which may be in breach of legislation. For instance, the *Local Government Act 1995* defines certain alleged breaches of the Act that are to be lodged with the Department of Local Government, Sport and Cultural Industries. All elected members and employees of local governments are subject to the oversight the Corruption and Crime Commissions (CCC), and employees of local governments are also subject to the oversight of the Public Sector Commission (PSC). Complaints relating to potential misconduct and serious misconduct can be lodged with those agencies accordingly.

The WA Ombudsman can receive complaints about the fairness of administrative decisions made by local governments.

Reforming the System of Resolving Breach Complaints

Several issues with the current system of managing complaints have informed the design of the proposed reforms. These issues include:

- many complaints lodged are about the ordinary policies or decisions made by Councils – which do not relate to any breach of legislation.
- it can be confusing for a person to understand the most appropriate avenue to lodge a complaint. This can be the case for complaints about the behaviours of elected councillors, or complaints relating to the CEO of a local government.
- many complaints about behaviours relate to interpersonal disputes between people within a local government. This has also been a common finding in recent Authorised Inquiries.
- while local governments are best placed to resolve behavioural and interpersonal issues, there have been occasional cases of repeated and significant behavioural issues which are not able to be addressed at the local level.
- some complaints (and counter-complaints) about elected members reflect personal and vexatious grievances, or civil disputes, rather than an actual breach of legislation.
- authorised Inquiries are very costly and time consuming and can be highly disruptive to the function of local governments, including the delivery of core services to small businesses and ratepayers.
- under the existing system, some complaints can take significant time to resolve, especially for complex issues where there is uncertainty about the facts.

The proposed reforms have been designed to address these issues, and to resolve significant issues more quickly within local governments.

This document has been developed to answer common questions on the proposed reforms and provide further detail on how the Inspector and Monitor will work to resolve potential problems within local governments in Western Australia.

Frequently asked questions

What are the existing powers for investigations?

The *Local Government Act 1995* currently has limited powers for investigations. This means that in cases where there are significant concerns about issues within a local government, the Department of Local Government, Sport and Cultural Industries may undertake an Authorised Inquiry.

An Authorised Inquiry is usually a significant investigation, involving Departmental staff going into local governments to collect evidence to inform findings. In severe cases, a Panel Inquiry (similar to a Royal Commission), can be called.

Inquiries are highly disruptive to the operations of the local government, which can impact on the services delivered to ratepayers and local businesses and impact the employees of the local government. Inquiries can also be costly and time-consuming, meaning that any issues identified in the Inquiry can take several months to address and enabling the dysfunction and chaos to continue for a long period.

A consistent finding of many recent Authorised Inquiries has been that dysfunction within local governments is often caused by a breakdown in professional working relationships.

Authorised Inquiries can also find complex organisational problems in local governments, which may take significant work to address. Local governments that have organisational issues related to resources and capability may find it particularly challenging to address these problems. By being able to work within local governments, Monitors will be able to both identify and assist local governments to form and implement plans to fix complex organisational issues.

Why is an Inspector needed?

The new Local Government Inspector will coordinate the management and resolution of problems in local government by targeting resources to investigate and address breaches of the *Local Government Act 1995* and associated Regulations. The Inspector will be tasked with identifying and resolving any significant underlying issues which may be causing non-compliance.

The Inspector will oversee a range of new powers aimed at more quickly addressing problems, early intervention, and investigations where necessary.

The Inspector will be able to:

- receive, assess, and manage complaints about local governments, with a clear focus on identifying and addressing significant issues and problems that may be causing non-compliance with the Act;

- respond earlier to a potential issue, including supporting a local government's compliance with the Act through the appointment of a Monitor. A Monitor is a specialist person who will work with a local government to identify and address the root causes of problems;
- exercise clearer and more specific investigation powers to collect evidence about non-compliance, including powers to obtain evidence;
- apply a wider range of powers to require local governments to address problems; and
- more quickly impose lower-level penalties for clear breaches of the Act.

Why are Monitors needed?

Many issues in local governments may relate to relatively simple causes, such as personal disputes, breakdowns in working relationships, and technical or administrative issues.

Monitors are intended to work productively with local governments to assist them to resolve problems as quickly as possible. Monitors will be identified and placed into local governments on the basis of having the appropriate skills and experience related to the type of issue they have been assigned to assist with.

The focus on Monitors is to assist local governments to resolve problems at an early stage to avoid ongoing dysfunction and prevent the need for costly investigations.

What is the idea of the Inspector and Monitors based on?

The Inspector has been based on a significant body of work and consultation and has been partly modelled on similar agencies established in other States, including in Victoria and Queensland.

There have been several recommendations to the Western Australian Government regarding a proposed Office for Local Government Oversight, including the:

- Local Government Review Panel Report, which recommended the establishment of an Office of Local Government Assessor (similar to the model in place in Queensland);
- City of Perth Inquiry which made various recommendations to establish an Office of the Local Government Inspector; and
- Parliamentary Select Committee Report, which contained recommendations for a new dedicated entity to manage regulation of the local government sector.

In 2009, the Victorian Government established the Local Government Inspectorate, which is responsible for investigating alleged breaches of the Local Government Act (Victoria). The Inspector is overseen by a Chief Municipal Inspector.

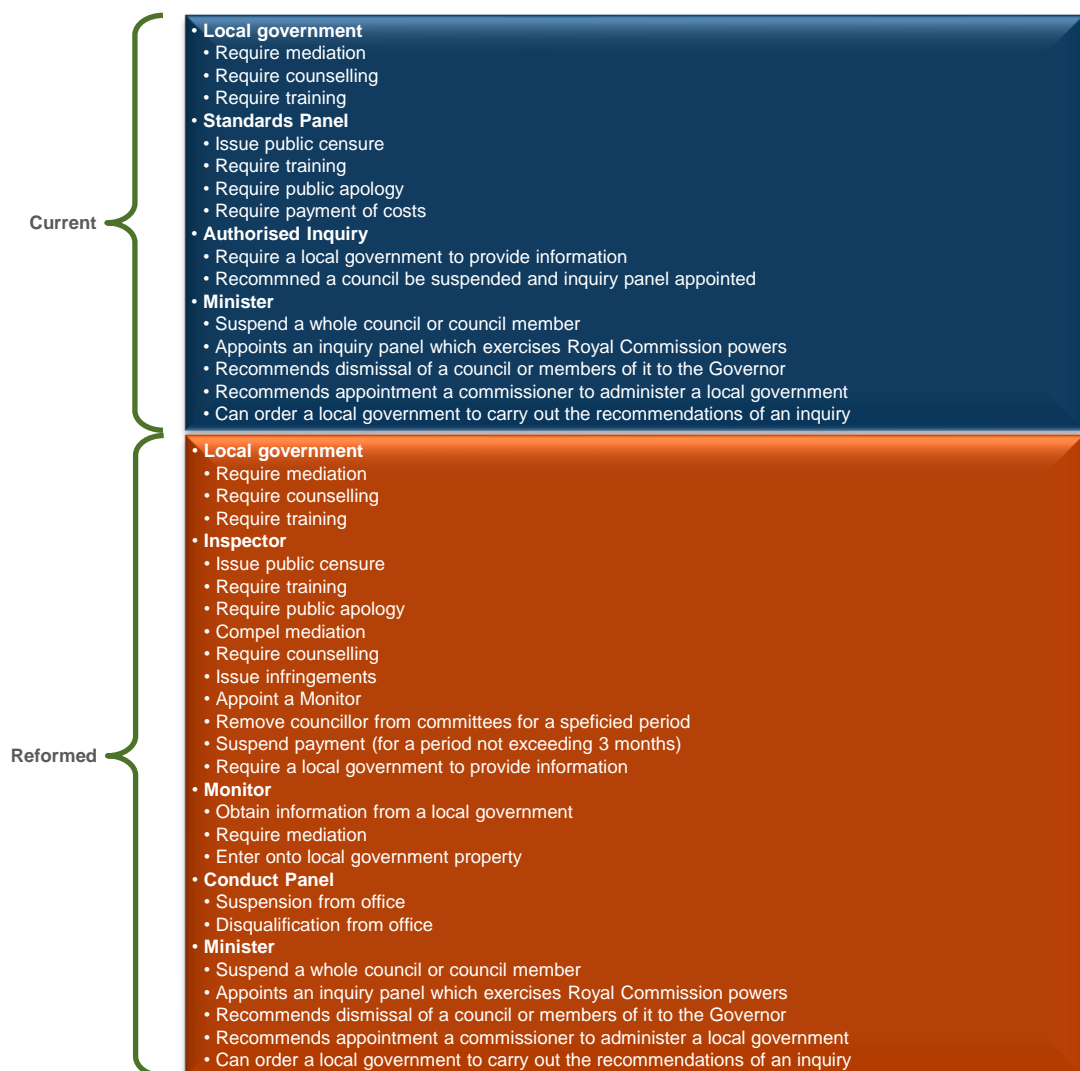
In 2015, further reforms established Municipal Monitors, who can be appointed by the Minister to assist local governments provide good governance and compliance with the Victorian Local Government Act.

In 2018, the Queensland Government established the Office of the Independent Assessor to review all complaints about councillor conduct in that State. The Office also investigates misconduct complaints against local government mayors and councillors and, where appropriate, prosecutes those complaints in the Councillor Conduct Tribunal.

The frameworks in place in other States provide practical examples for how a Western Australian Local Government Inspectorate can be structured to effectively manage the resolution of problems within local governments.

How will intervention powers change?

The reforms will deliver a much broader range of intervention powers, enabling issues to be identified and addressed more quickly. By establishing a greater range of early intervention powers, the Inspector will have more options in how to deal with potential problems within local governments:



How will the new Inspector and Monitor resolve issues in the current system?

The establishment of the Inspector and Monitors, and the wider system of local government oversight in WA, has been designed to address the issues that can arise in the current system. These include:

Issue	Resolution
Many complaints lodged are about the ordinary policies or decisions made by Councils – which do not relate to any breach of legislation.	The Inspector will have clear powers to assess complaints and dismiss complaints that do not relate to a clear breach of legislation. The core purpose of the Inspector is to identify and address significant issues in compliance with the <i>Local Government Act 1995</i>
It can be confusing for a person to understand the most appropriate avenue to lodge a complaint. This can be the case for complaints about the behaviours of elected councillors, or complaints relating to the CEO of a local government.	The Inspector will have clear powers to assess complaints, and direct and refer complaints to other organisations, such as individual local governments, the PSC, and CCC. The Inspector will also be able to receive complaints about CEOs.
Many complaints about behaviours relate to interpersonal disputes between people within a local government. This has also been a common finding in recent Authorised Inquiries.	The introduction of the Inspector and Monitor will provide for earlier and targeted assistance to resolve personal disputes and breakdown of working relationships within a local government.
While local governments are best placed to resolve behavioural and interpersonal issues, there have been occasional cases of repeated and significant behavioural issues which are not able to be addressed at the local level.	Monitors will be available to assist local governments in resolving personal disputes. Monitors will have clear powers to require people within local government to attend mediation and dispute resolution. Local governments will be able to seek the assistance of a Monitor if they are not able to resolve an ongoing issue, including for interpersonal conflicts.
Unfortunately, some complaints (and counter-complaints), including those about the conduct of elected members, reflect personal and vexatious grievances, or civil disputes, rather than an actual breach of legislation.	The Inspector will have clear powers to assess complaints and dismiss complaints that do not relate to a clear breach of legislation. The new reforms also include new powers for local government CEOs to stop engaging with people who repeatedly make vexatious complaints, with an avenue of appeal to the Inspector.
Authorised Inquiries are very costly and time consuming and can be highly disruptive to the function of local governments, including the delivery of core services to small businesses and ratepayers.	The Inspector will have clear powers to undertake any investigation the Inspector identifies as being appropriate, and to require anyone within local government to provide information to assist with investigations and resolving complaints. The Inspector will also be able to impose lower-level penalties for minor breaches. By providing for earlier intervention (including through Monitors) faster investigations, and more rapid penalties, a greater range of problems will be resolved quickly, without the need for an Authorised Inquiry.
Under the existing system, some complaints can take significant time to resolve, especially for complex issues where there is uncertainty about the facts.	The new system of oversight provides many more tools to support rapid resolution of problems. The Inspector will have clear powers to obtain information, which will be supported by new transparency and accountability measures, including the recording of meetings and online registers. The core purpose of the Inspector is to identify and address significant issues in compliance with the <i>Local Government Act 1995</i> .

How will the Inspector change how complaints are handled?

The Inspector will simplify the process for making complaints. By having clear powers to receive, assess, manage, and refer complaints, the Inspector will be able to provide the public with clear advice about how to lodge complaints for specific breaches.

Type of Complaint	Example	Relevant Law	Avenue for Making Complaint (Current)	Avenue for Making Complaint (Reformed)
Behavioural breaches by elected members	Rude language to another person	Model Code of Conduct (Division 3)	Local government	The Local Government (the council or complainant may then refer to Inspector if the complaint cannot be resolved)
Behavioural breaches by a CEO or local government employee		The local government's employee code of conduct		The Inspector
Minor conduct breaches by an elected member	A councillor is abusive or threatening towards an employee	Model Code of Conduct (Division 4)	Local Government Standards Panel	The Inspector
Serious breaches of the Act by an elected member, CEO or local government employee	An elected member makes a false or misleading disclosure	<i>Local Government Act 1995</i>	DLGSC (investigations – usually through an Authorised Inquiry)	The Inspector (with the finding and sanction determined the Conduct Panel)
Minor misconduct by the CEO or local government employee	As defined in the <i>Corruption, Crime and Misconduct Act 2003</i>	<i>Corruption, Crime and Misconduct Act 2003</i>	Public Sector Commission (employees only)	The Inspector (who may refer the case to the Public Sector Commission, the Corruption and Crime Commission, or the WA Police*)
Serious misconduct by an elected councillor or CEO			Corruption and Crime Commission	
Complaints about administrative fairness of local government decisions	Unfair or unreasonable application of discretion	<i>Parliamentary Commissioner Act 1971</i> and other legislation	WA Ombudsman May be specific avenues for appeal in other legislation	Unchanged

*Nothing will prevent a person from submitting complaints directly to these agencies.

Why is the Standards Panel being replaced by the Conduct Panel?

The Conduct Panel is designed to adjudicate cases based on evidence presented by the Inspector. With penalties in the *Local Government Act 1995* being bolstered, the Conduct Panel will also have stronger powers to apply penalties, including suspending or disqualifying elected members in certain circumstance. Avenues for appeal will be retained.

The Conduct Panel will be made up of qualified and experienced people who will assess and adjudicate on allegations of breaches. While former councillors may sit on the Panel, current serving councillors will not be eligible to simultaneously serve on the Conduct Panel.

By enabling the Inspector, rather than a Standards Panel, to make findings and sanctions on minor breaches, it will enable these complaints to be dealt with more efficiently and quickly.

Don't the existing powers under the Local Government Act provide for intervention?

Some powers in the *Local Government Act 1995* are vaguely defined, without a clear framework for how they should be used. This means that any action or decision based on these powers may result in lengthy legal disputes. In practice, this ambiguity means that the powers have rarely, if ever, been used in the past. It also means that, in practical terms, the main tool for investigating issues has been to undertake a long and costly Authorised Inquiry.

Key Investigation Powers	Issues with Existing Power	Proposed Reform Measures
Powers to Require Provision of Information (Section 8.2)	Process for seeking and receiving information is unclear, so it can take a long time for information to be provided. The vagueness of the law means that disputes can arise, which can further prolong the resolution of any underlying issue.	Amended legislation will more clearly outline the process for how information is to be provided to the Inspector in a clear and timely way.
Authorised Inquiry Recommendations (Section 8.13-8.15)	Implementation of recommendations can take a long time, well after a problem has otherwise resolved or is no longer relevant. For instance, the council or CEO at the time of the recommendation may no longer be in office by the time the recommendation is considered by the council.	Monitors and the Inspector will work more closely with local governments to proactively resolve issues. Monitors will work within local governments to directly assist the council to implement a practical resolution to any problem. Where a Monitor is not able to resolve a problem directly, they may write a report with recommendations.

Key Investigation Powers	Issues with Existing Power	Proposed Reform Measures
Standards Panel Determinations (Section 5.110)	Standard Panel has no investigation function – it determines cases only on the complaint and written response documents.	The Inspector will undertake investigations and make findings and sanctions for all minor breaches. For serious breaches, the Inspector will undertake an investigation and provide information to the Conduct Panel to make a determination.
Notice to Prevent Continuing Contravention (Section 9.13A)	<p>This power only applies to continuing contravention (which is not an offence), not individual instances of non-compliance or specific offences.</p> <p>As the Minister does not investigate complaints, significant work to establish an ongoing breach is needed before this power could be used. The lack of definition of this power also makes any notice highly vulnerable to a dispute, which risks further delaying resolution of the underlying problem. This means that this power is generally not practical for addressing issues in a local government.</p> <p>The <i>Local Government Act 1995</i> also does not contain a clear avenue for direct support. If there is continuing contravention within a local government, assistance to address root causes will often be the most effective way to resolve underlying problems.</p>	<p>A clearer power will be provided for the Inspector to issue directions to issue any non-compliance related to the Local Government Act or Regulations.</p> <p>The Inspector will be able to issue compliance directions to the local government, and the Minister will also be able to publish more general guidance material to inform local governments about how to comply with the Act and Regulations.</p> <p>The Inspector, as the entity responsible for undertaking investigations, is the most appropriate entity to consider whether it is appropriate to issue compliance directions. The Inspector is also best placed to draft and issue specific directions.</p> <p>Monitors will also be available to practically assist local governments to fix ongoing problems.</p>

By establishing the Inspector and specific powers for investigations and actions to ensure compliance, the reforms will enable earlier intervention to identify and fix problems within local governments.

Doesn't the Minister already have the ability to suspend a council member or whole council?

Historically, the *Local Government Act 1995* has only allowed the Minister for Local Government to suspend or dismiss an entire council where there has been significant, ongoing, and unresolved dysfunction in a local government. In 2018, amendments were made to the Act to provide the Minister with certain limited powers to dismiss individual councillors, in certain circumstances.

Permanently removing a councillor from office is a very serious and significant action. However, temporarily suspending a councillor from acting in their elected office, or temporarily suspending their entitlements for sitting fees, are effective ways to stop ongoing non-compliance, and to deter further breaches.

It is important that council members are deterred from continuing behaviours which do not meet community expectations of standards of behaviour.

This is why the reforms have been designed to provide a range of early intervention powers, such as mediation, to assist local governments address breaches.

How will the Inspector have oversight of CEOs?

Under the *Local Government Act 1995*, the council are the employer of the CEO.

Recognising the critical importance of CEOs to the effective function of all local governments, the Inspector will be able to receive complaints and undertake investigations about CEOs.

In doing so, the Inspector may:

- refer evidence of misconduct to other public sector agencies, such as the Public Sector Commission and Corruption and Crime Commission;
- make recommendations to the Council, who are the employing authority of the CEO; and
- make recommendations to the Minister about potential future appointments of that person as a CEO.

In cases where the Inspector makes significant findings about a CEO, the Inspector may provide advice to the council about the options that they may take to address those issues. For instance, the Inspector may suggest the council consider disciplinary action or terminating the employment of the CEO.

How are the reforms designed to support the Inspector?

Many of the reforms have been designed to encourage and facilitate compliance with the *Local Government Act 1995*, as well as improve record keeping to support faster investigation, identification, and resolution of potential issues in a local government.

For instance, new requirements for the recordings of all council meetings will ensure there is clear evidence of any behavioural breaches or misconduct at meetings.

The standardisation of meeting procedures for all councils will also establish a common convention for managing meetings to ensure consistent standards of behaviour and provide all Western Australians with the same opportunity to engage with the business of local government decision-making.

Who will be able to make a Complaint?

Complaints can be made by anyone, including members of the public, elected members and employees. The Inspector will provide clear guidance on the DLGSC website to outline where complaints are to be directed too, depending on the type of complaints.

Further Information

Further information on the reforms is available at <https://www.dlgsc.wa.gov.au/lgactreform>.