

Significant Reform Local Government Act 1995 Overview

By Jennifer Long

What you need to know

The *Local Government Legislation Amendment Act 2019* was passed on 5 July 2019.

The amendment act introduces significant amendments to the *Local Government Act 1995 (Act)* which affect the governance of local governments in Western Australia. Many of the changes are already in force. These include –

1. changes to the Local Government Standards Panel (commenced 6 July 2019);
1. greater transparency of information (some amendments commenced on 6 July 2019 with the remaining amendments to commence on proclamation);
1. introduction of universal training for council members (induction training requirement commenced 9 August 2019 and training and development requirements commenced 16 September 2019);
1. revised gift framework (commenced 19 Oct 2019);
1. introduction of standards for CEO recruitment and performance reviews; and
1. new code of conduct for council members.

Consultation for the new standards and code of conduct have closed and it is expected that the regulations prescribing the standards and code will come into effect in early 2020.

What you need to do

Local governments need to –

1. take account of the amendments and carry out implementation planning to ensure that –
1. the amendments are integrated into the local government's systems, policies and practices; and
1. all council members and employees are aware of the new requirements;
1. ensure that their websites contain the information required by the Act; and
1. ensure that new policies for professional development, attendance at events and acting CEO arrangements are

drafted, adopted (by Council, when required) and implemented and that their existing policies are updated to comply with the Act.

The reforms - an overview

Changes to the Local Government Standards Panel

The amendments provide greater power to the Local Government Standards Panel (**Standards Panel**), including, the power to –

1. request mediation between the parties prior to dealing with the complaint;
1. consider the respondent's willingness to participate in mediation (and the outcome of the mediation) when determining how the breach is to be dealt with;
1. order a council member to reimburse the costs of the Panel proceedings if an adverse finding is made; and
1. order that no sanction be imposed (rather than dismissing a complaint after a breach is found).

The timeframe to lodge complaints with the Standards Panel has been reduced to 6 months.

There is also a requirement for the register of minor breaches and all adverse findings of the Standards Panel and the SAT, including censure orders, to be published on the local government's website.

The prohibition on the disclosure of complaints to the standards panel has been extended. The Act now requires all complaints to remain confidential until the matter has been determined with a finding that a breach has occurred.

Greater transparency and easier access to information

A number of amendments have been made to provide for greater transparency, easier access to local government information and recognition of advancements in technology.

It is now a requirement for certain information to be published on a local government's website, including –

1. a map of its district and ward boundaries;
2. consolidated copies of local laws;
3. the annual budget;
4. list of fees and charges;
5. plans for the future;
6. minutes and agendas;
7. register of gifts;
8. adopted policies for ongoing professional development for council members and attendance at events for council members and the CEO;
9. business plans for proposed major trading undertakings and major land transactions;

10. for rates, a document describing the objects of, and reasons for, each proposed rate and minimum payment; and
11. notices for the sale or transfer of land for unpaid rates or service charges (for at least 35 days).

To encourage local governments to live stream meetings, the Act now provides statutory protection from defamation for local governments publishing council proceedings on its website. This protection does not extend to the people making the comments. Council members and employees already have protections from actions of tort under section 9.56 for anything they have, in good faith, done in the performance of a function under the Act or under any other written law.

Changes have also been made to the notice requirements under the Act. For example, local rather than statewide notice is now required for advertising local laws. Local public notice will require publication on the local government's website and notice to be given in at least 3 of the ways prescribed under the Act.

Universal training for council members

The Act now contains compulsory training requirements for council members.

All candidates will be required to complete an online induction, prior to nominating for election.

Once elected, each council member will be required to complete 5 modules of training within 12 months of being elected to office.

There is also a requirement for local governments to prepare and adopt an ongoing professional development policy for its council members and to record and report annually on the training completed by each member.

Revised gift disclosure framework

There is a revised gift disclosure framework, which includes the following amendments –

1. council members and CEOs are now required to disclose any gift over \$300, that is received in the capacity of council member or CEO. Where more than 1 gift is received from the same person during the year, disclosure is required when the total of those gifts is over \$300;
1. a breach of this disclosure requirement will also constitute a serious breach under the Act;
1. there is a significant penalty of \$10,000 or imprisonment for 2 years for a breach of the disclosure requirements;
1. the definition of gift has been simplified and now includes travel contributions; and
1. the CEO is required to record disclosures in the gift register, within 10 days of the disclosure being made, and publish an up to date version of the register on the local government's website.

Local governments will also be required to prepare and adopt a policy that deals with attendance at events as a representative of council.

There is also a revised disclosure of interest framework, which includes the following amendments –

1. a member of a council or a committee is now required to declare any gift over \$300 (or series of gifts that total over \$300) that it receives in any capacity, from a person who has a matter before council and committee; and
1. a council or committee member who receives the gift will be prohibited from voting on matters that concern the donor of the gift for the period of their term. Approval to participate can be given by the council for gifts up to \$1,000. However, for amounts over \$1,000 or where a quorum is needed, participation approval will be required from the Minister.

CEO recruitment and performance review

There is a requirement for mandatory minimum standards covering the recruitment and selection, performance review and early termination of local government Chief Executive Officers.

Once the regulations prescribing the standards are proclaimed, local governments will be required to prepare and adopt standards that incorporate the model standards within 3 months of the regulations taking effect.

The council is also required to prepare and adopt a policy for acting CEO arrangements.

Code of conduct

There is a requirement for the introduction of a mandatory code of conduct for council members, committee members and candidates.

Once the regulations prescribing the code are proclaimed, local governments will be required to prepare and adopt a code of conduct that incorporate the model code within 3 months of the regulations taking effect.

Consultations on the draft code of conduct have closed. The draft code comprised of 3 parts, which outlines the principles, standards of behavior and rules of conduct that council members, committee members and candidates must adhere to.

Part A - Principles

The principles of integrity, relationships with others and accountability.

Part B - Standards of Behavior

The standards of behavior required to meet the principles in Part A. Part B also sets out how a complaint is to be managed.

It is proposed that a breach of part B is to be managed by the local government and that a local government will be able to amend Part B to include additional behaviors, which are not inconsistent with the code.

Part C - Rules of Conduct

Part C comprises the rules of conduct. These have been modelled on the current provisions in the Rules of Conduct Regulations and include repeated breaches of Part B.



An alleged breach of a rule of conduct in Part C is to be managed as a minor breach in accordance with the Act and will be referred to the Standards Panel.

Where to from here

The reforms complete the first stage of review of the Act. The next stage envisages a new *Local Government Act* and the Department has formed an expert panel to progress the development of a new act.

Further updates will follow as the remaining amendments come into effect.

The information contained in this article should not be relied on without obtaining further detailed legal advice in the circumstances of each case. For further information or advice regarding the amendments to the Local Government Act, please contact Jennifer Long on 9383 3133 or jlong@mcleods.com.au.

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