

Local Government Compliance Review Guidelines

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Abbreviations	Full form
The Act	<i>Local Government Act 2019</i>
Agency	Department of Housing, Local Government and Community Development
CEO	Chief Executive Officer of a council
Minister	Minister for Housing, Local Government and Community Development

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Disclaimer

The Local Government Compliance Review Guidelines is a reference guide. These Guidelines have been prepared by the Agency and do not form part of the *Local Government Act 2019* or *Local Government (General) Regulations 2021*, which should be used as the authoritative source for all legislative requirements and compliance.

While all care has been taken to ensure that information contained in these Guidelines is true and correct at the time of publication, changes in circumstances (including amendments to legislation) after the time of publication may impact on the accuracy of its information. You should not rely upon information in this publication for the purpose of making any serious, business or investment decisions without obtaining independent and/or professional advice in relation to your particular situation. The Agency disclaims any liability or responsibility or duty of care towards any person for loss or damage caused by any use of or reliance on the information contained in these Guidelines.

1. Background

Section 298 of the *Local Government Act 2019* (“Act”) mandates the establishment of a program of compliance reviews for councils to ensure that they conduct their business lawfully. This is achieved through inspectors of local government testing the administrative, financial and governance activities of the council.

Inspectors of local government are responsible for conducting compliance reviews. After conducting a compliance review, the Agency is required by section 300 of the Act to report to council on the results of the compliance review.

2. Definitions

These Guidelines should be read using the definitions contained with the Act.

3. Authority of Inspectors

Authority of inspectors to conduct compliance reviews

The following are section references to the Act which outline the parameters and jurisdiction for carrying out a compliance review:

1) Section 294 provides that:

- (1) *The Minister may appoint inspectors of local government.*
- (2) *An appointment may be made on terms and conditions specified in the instrument of appointment.*
- (3) *The terms and conditions of appointment may limit the circumstances in which the appointee may exercise powers as an inspector.*

An example for subsection (3) is given and is summarised here: where a person who is appointed as an inspector has expertise in financial auditing, then the Minister may decide to limit their appointment to that field.

2) Section 297(a) provides that one of the functions of an inspector is “to carry out compliance reviews”.

3) Sections 298(1)-(2) provide:

- (1) *The Agency must establish a program of compliance reviews for councils and local government subsidiaries.*
- (2) *The purpose of a compliance review is to ensure that councils and local government subsidiaries conduct their business lawfully.*

4) Section 299 provides that “A compliance review is to be carried out by one or more inspectors assigned to the review by the Agency”.

5) For the purposes of conducting a compliance review, section 302(1) gives inspectors the power to:

- (a) *enter, examine and search land and premises of the council or local government subsidiary; and*
- (b) *examine and take copies of any records or other documents of the council or local government subsidiary.*

6) An inspector has the power of formal questioning under section 303, which states:

- (1) *For the purpose of a compliance review or investigation, an inspector may, by written notice, require a person:*

- (a) within the time allowed in the notice, to provide written answers to specific questions or other specified written information; or*
- (b) attend before the inspector at a specified time and place for examination on a subject stated in the notice; or*
- (c) within the time allowed in the notice , to produce specified records or documents; or*
- (d) within the time allowed in the notice, to produce records or documents of a specified kind.*

4. Obligations of Council Employees

In order for compliance reviews to be undertaken there are certain obligations which council employees are required to comply with. These can be found in section 302(2) which provides:

“The CEO, chief executive, or any other member of the council's staff or local government subsidiary's staff must, at the request of an inspector, do the following:

- (a) anything reasonably necessary to facilitate the exercise of powers under subsection (1);*
- (b) answer any question relevant to the compliance review or the investigation asked by the inspector;*
- (c) produce any specified record or documentary material relevant to the compliance review or the investigation;*
- (d) give any other assistance the inspector reasonably requires;*
- (e) any combination of the above”.*

Formal Questioning

Section 303(4) provides that it is an offence to not comply with a requirement of the formal questioning provisions. The maximum penalty is 100 penalty units. Subsection (6) provides that a person has a defence to this offence if they take reasonable steps to comply with their requirements under the formal questioning provisions.

Confidentiality

Section 305 of the Act provides as follows:

- (1) A person must not refuse to comply with a requirement under section 302 or 303 because the answer, information, record or document is confidential.*
- (2) However, the person is not required to comply with the requirement if it requires the person to disclose legally privileged information.*

5. Scope of Work

The compliance review aims to ensure councils conduct their business lawfully. It is within the inspector's discretion to determine the scope of each compliance review.

As a means of making their assessment, inspectors apply and take into consideration the following:

- *Local Government Act 2019;*
- *Local Government (General) Regulations 2021;*
- *Ministerial guidelines / general instructions made under the Act; and*
- *Any other laws relevant to the operations of the council.*

6. Compliance Review Steps

The Compliance Review Steps under this section are a general guide on the steps of a compliance review and may be varied at the sole discretion of the inspector/s. Additional steps or alternative approaches may be taken in the compliance review process.

Step 1: Approval and Notification

1.1 Approval and Notification

The compliance review process begins with the approval of the annual Compliance Review Program by the Agency's CEO. This program identifies the councils that will be subject to a review during the financial year.

Once approved, the Agency writes to the council's principal member and CEO to advise them of the upcoming compliance review. If the timing of the review is in the near future, then the letter will also include details under section 1.2 Council Engagement.

1.2 Council Engagement

When the proposed date of the review approaches, the Agency will write to the council and advise:

- details outlining the review process;
- the proposed commencement date;
- a request for the name and contact details of an officer for the inspectors to liaise with during the review process (ideally this will be a senior officer within the council who can arrange the provision of information and access to staff as required by the inspectors during the review process); and
- details of the initial documentation required for the inspectors to select a sample for review.

The letter also offers for the inspectors to attend a council meeting or to meet with council and / or staff prior to commencing the review to inform elected members and / or staff of the compliance review process and address any initial questions or concerns. This engagement ensures transparency and sets the stage for effective collaboration throughout the review process.

Step 2: Pre-Review Document Collection

2.1 Document Request

The inspector/s will provide a Document List (**Appendix A**) to the council with its letter that details the policy documents and other information to be submitted to the inspector/s by a specified date prior to their onsite visit. This allows the inspector/s to review and become familiar with the council's policies such as the Delegation Manual, Procurement Policy, Confidential Meeting Notices, and Human Resources Management Policies, and select a sample of transactions for testing. The Document List also provides the legislative references and reasons for the information requested.

2.2 Review of Documents

Upon receipt of the requested documents (provided from the Document List), the inspector/s then review the policies provided to assess compliance against the requirements of the Act and Regulations. This review assists the inspector/s in understanding the council's internal control procedures and provides a solid foundation for the subsequent stages of the compliance review.

The inspector/s will also select a sample of transactions and/or documents for further testing during the onsite visit by providing a "Sample List" to the council's key contact. The samples in the Sample List will be selected from across the range of compliance review areas, e.g. procurement and HR. The inspector/s will work with the key contact staff and council regarding timeframes to provide the Sample List documents. During the on-site visit the inspector/s will review the source documents to test these for compliance against

the Act, Regulations and Council policy and procedures. Please note the Act and the Regulations supersede any conflicting council policies and procedures.

Step 3: Conducting the Review

3.1 On-Site Visit

On-site visits are planned and conducted to verify the implementation of policies, test sample documents and observe operational practices. During these visits, the inspector/s examine physical records, observe day-to-day operations, and interact with staff to gain a deeper understanding of the council's compliance environment.

Step 4: Reporting

4.1 Report Preparation

On conclusion of the onsite visit the inspector/s will compile a report which provides a summary of the review process, interim findings of any instances of non-compliance against the legislation, and recommendations for corrective actions. The council will be given a specific date by which to remedy individual issues in the report

4.2 Stakeholder Feedback

The report with the interim findings and a covering letter will be provided to the CEO with an invitation to review and provide any feedback on the report along with any documentation to support their position. The CEO will be given a specified timeframe to provide this response.

In the event that the interim findings relate to the CEO, the draft report may instead be discussed with, or provided directly to the council members for further discussion / feedback. This ensures council members have the opportunity to review and provide any feedback on the report relating to findings against the CEO.

If the CEO and / or all council members require an extension of time to provide the feedback on the report, the inspector/s will advise if an extension request is granted, or if a council resolution is required either at an ordinary council meeting or via special council meeting to request the extension. This resolution is to be made before the timeframe expires.

4.3 Final Compliance Report Submission

After receiving any feedback and / or additional information regarding the report, the inspector/s will finalise the compliance report with final findings, along with any recommendations and timeframes for the recommendations to be completed. In finalising the compliance report, the inspector/s may amend the original report to incorporate any feedback and / or additional information obtained during the feedback stage.

The inspector/s will send the principal member and the CEO the compliance report. As soon as practicable after receiving the compliance report, it is a requirement under the Act that the CEO must provide a copy of the compliance report to all council members.

In circumstances where the inspector/s find evidence of an irregularity in the conduct of the council or local government subsidiaries affairs, the inspector must report the matter to the Minister and the council. If the irregularity appears to involve improper conduct, the inspector/s must also report the matter to the Independent Commissioner Against Corruption.

Step 5: Follow-Up Actions, Monitoring and Closure

5.1 Monitoring Implementation

Over the following period of at least 3 months, the inspector/s will continue to monitor the council to ensure they are addressing any issues in the compliance report in a timely manner. The inspector/s may also

conduct a follow-up review to ensure council is actively implementing the recommendations in the compliance report. This ongoing monitoring ensures that the council is making progress to address the issues identified in the compliance report. Additional on-site visits may be conducted by the inspector/s if necessary to verify progress.

5.2 Closure

Once the inspector/s are satisfied that all the issues that were identified in the compliance report have been addressed, the compliance review will be officially closed. A formal closure letter will be sent to the CEO and the principal member. The CEO is to table this letter at the next ordinary council meeting.

7. Local Government Compliance Review Procedure Flowchart

