

Western Australian Auditor General's Report



Regulation and Support of the Local Government Sector



Report 21: 2020-21

30 April 2021

**Office of the Auditor General
Western Australia**

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The Office of the Auditor General acknowledges the traditional custodians throughout Western Australia and their continuing connection to the land, waters and community. We pay our respects to all members of the Aboriginal communities and their cultures, and to Elders both past and present.

WESTERN AUSTRALIAN AUDITOR GENERAL'S REPORT

**Regulation and Support of the Local
Government Sector**

Report 21: 2020-21
April 2021



**THE PRESIDENT
LEGISLATIVE COUNCIL**

**THE SPEAKER
LEGISLATIVE ASSEMBLY**

REGULATION AND SUPPORT OF THE LOCAL GOVERNMENT SECTOR

This report has been prepared for submission to Parliament under the provisions of section 25 of the *Auditor General Act 2006*.

Performance audits are an integral part of my Office's overall program of audit and assurance for Parliament. They seek to provide Parliament and the people of WA with assessments of the effectiveness and efficiency of public sector programs and activities, and identify opportunities for improved performance.

This audit assessed whether the Department of Local Government, Sport and Cultural Industries effectively regulates and supports the local government sector.

I wish to acknowledge the Department's staff for their cooperation with this audit.

A handwritten signature in black ink, appearing to read 'C Spencer'.

CAROLINE SPENCER
AUDITOR GENERAL
30 April 2021

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Auditor General's overview

The local government (LG) sector provides a range of essential and valued services to the Western Australian community – more than simply “roads, rates and rubbish”.

Good governance and transparency are central to LG entities performing well and maintaining the confidence and support of the community, and have been a focus of attention as the legislative framework that establishes and supports the LG sector has been reviewed and reformed.



Given the diversity of LG entities across Western Australia – ranging from large city councils to very small remote shires – there is a range of maturity in governance and administration, and there are varying risks to service delivery and resource management. We see those risks in the interactions and findings from our financial, information systems and performance audits, and in the complaints and referrals my Office receives about the sector. The Parliament too sees those risks in the submissions to its Inquiries, and the issues raised with Members on a daily basis in their electorates.

While each LG entity is responsible for its own good governance, the Department of Local Government, Sport and Cultural Industries (Department) is charged with regulating and supporting the LG sector. It has a role for the LG sector that is similar to central agencies such as the Departments of Treasury and Finance in the State sector, which includes for example advising on, promulgating and overseeing the financial framework.

Like all State government entities, the Department has limited resources, and implementing the legislative reform agenda has been both a priority and significant workload. However, as this report shows, the Department's use of its limited resources is not underpinned by a good understanding of risk and clear objectives for the LG sector. Moreover, its performance in regulating and supporting the sector does not currently reflect the expectations of LG entities and their communities.

One impact of this has been an increase in reactive regulation – investigations and inquiries – which has absorbed resources at the expense of preventative earlier interventions such as education, guidance and monitoring. This is not cost-effective, and the Department needs to rebalance its regulatory activities if it is to make a significant contribution to improving good governance in LG entities.

I am pleased that the Department has already commenced steps to address some of the findings from this audit. Our recommendations will help the Department establish a more effective LG regulatory framework and help it to target resources to areas of greatest risk and impact.

Executive summary

Introduction

This audit assessed whether the Department of Local Government, Sport and Cultural Industries (Department) effectively regulates and supports the local government (LG) sector.

It focused on how the Department fulfils its regulatory functions under the *Local Government Act 1995 (Act)* and the support activities it provides to Western Australian local governments and regional councils (LG entities).

Background

The Department is established by legislation and funded by Parliament to regulate and support the LG sector. It has a statutory role to assist the Minister for Local Government in administering the Act and its associated regulations. In 2019-20, the Department allocated \$14.4 million to LG regulation and support activities.

Western Australia (WA) has 148 LG entities for a population of approximately 2.5 million people. LG entities make a significant contribution to the State's economy and provide a wide range of services and facilities to their communities. They spend more than \$4 billion a year, employ around 17,000 staff and administer approximately \$45 billion in assets.

LG entities range in size, governance capacity and levels of risk. For example, the City of Stirling has a population of more than 200,000 people and an operating expenditure of more than \$230 million. Whereas the Shire of Sandstone has a population of under 100 people and around \$7 million of operating expenditure. The Shire of Peppermint Grove is widely acknowledged as the smallest and wealthiest LG area in Australia.

The Department's stated strategic objective is to support the sector through a fit for purpose, sound legislative framework, that enables efficient and effective services to communities, good governance and compliance.

A full list of the Department's regulatory and support responsibilities is in Appendix 1. These include:

- advising the Minister in exercising functions under the Act
- processing of statutory approvals
- conducting authorised inquiries into LG entity operations and affairs
- developing policy and legislation
- advising the LG sector on the operation of the Act
- supporting the WA LG Grants Commission, the LG Advisory Board and the LG Standards Panel
- managing the State LG Partnership Agreement.

An effective and efficient LG policy agency and regulator provides timely advice and assistance to build capacity and conducts early intervention to prevent governance or relationship breakdowns. When there are breaches in the Act, the Department needs to investigate them in a timely way. Figure 1 summarises the key elements of a standard good practice regulatory framework, which we have adapted to suit the regulation and support of LG.



Source: OAG

Figure 1: Key elements of a good practice regulatory framework

Audit conclusion

We recognise that there has been a significant LG reform agenda in recent years. However, the Department is not providing efficient and effective regulation and support to the LG sector and lacks fundamental aspects of a good regulatory framework.

It is not effectively using the information it has available to assess the risk of non-compliance in the LG sector or to identify the areas where support is most required. Internally the Department is not addressing risks to its own delivery of regulatory and support services, some of which were identified as having significant gaps in a 2018 internal audit report and remain unresolved. It does not have a plan that links its regulatory and support activities for LG entities into achieving its overall objectives for the sector and does not have targets and measures in place to track its delivery and performance.

This means that the Department's regulatory intervention is largely reactive to emerging issues, rather than preventing breakdowns in governance. Not providing timely advice or effective capability-building increases the risk that LG entities will not provide good government and services to their communities.

Key findings

The Department is not targeting its regulation and support activities to key risks

It does not have a structured approach to gathering intelligence and using it to understand key risks in the sector

The Department is not using internal and annually reported information about the sector and individual LG entities effectively, and is not gathering external intelligence and linking it into its risk assessment. The Department's LG risk assessment register, developed in 2017, has not been maintained since 2018.

The Department is therefore missing opportunities to identify and target areas of regulatory and support risk and inform its strategic and operational planning. This impacts its ability to provide effective and efficient proactive regulation and support and allocate resources to where they are most needed. This increases the risk that non-compliance and poor governance will not be addressed.

The Department has advised us that it has undertaken extensive consultations with the LG sector on legislative reform and that it has worked with a consultant over the last 6 months to develop a risk analysis tool for the LG sector that will be finalised in May 2021.

Internal risks to effective and efficient delivery of regulation and support have not been addressed

Significant risks to the delivery of regulation and support were identified in a 2018 internal audit of LG enforcement, investigations and authorised inquiries. Fourteen of the 17 audit recommendations to reduce these risks have not been fully implemented. This includes not finalising the Department's LG strategic priorities and draft Capacity Building and Compliance Framework. This increases the risk that:

- investigations will not be completed in a proactive manner
- serious breaches of the Act will not be identified and actioned in a timely manner
- education, advice and support may not provide appropriate support to the sector.

The Department has advised us that it will complete the outstanding recommendations by 30 June 2021.

There is a lack of proactive input into financial framework matters, including timely guidance on a key financial reporting matter

The Department does not effectively manage the LG financial framework, contributing to reporting uncertainty and inefficiency in the sector. For example, it has not updated financial management guidance for some years to address emerging reporting concerns and capability to support fit-for-purpose financial reporting.

Furthermore, it was recently very slow in providing guidance following changes to Australian Accounting Standards. The result of which meant that there was a risk that 2019-20 financial reporting of some assets by LG entities would not comply with the treatment of leases. Failure to comply with the new accounting standard would have a material impact on the financial statements of some LG entities. The lack of timely guidance has contributed to a delay in the finalisation of financial statements and audits for a significant number of LG entities. Although the changes were made in December 2018, the relevant Local Government (Financial Management) Amendment Regulations 2020 were not gazetted until 6 November 2020.

There is no strategic plan for regulation and support activities that links into the achievement of overall objectives for LG entities or usefully guides departmental actions

The Department's responsibilities for the regulation and support of LG entities are described in legislation and strategic documents available on its website. Although its *Strategic Directions: 2020-2023* document lists several programs in the LG sector, we found that the Department does not have a plan that links its LG regulation and support activities into the achievement of its overall objectives. Consequently, the Department cannot demonstrate how it prioritises its regulatory and support activities, determines what resources it needs and show how it allocated the more than \$14 million it spent on these functions in 2019-20.

The Department has advised us that a specific LG statement of purpose with key outcomes will be developed based on risk profiling by 30 June 2021.

The Department does not effectively measure its performance in supporting and regulating LG entities

The Department has not set measures and targets to effectively assess how well it delivers its regulatory and support functions. This makes it hard for the Department and stakeholders to know how well it is doing and understand operational performance.

The level of early intervention has reduced as resources were directed to other more reactive and high-profile activities

Regulatory activities include proactive early intervention and reactive activities including authorised inquiries and investigations responding to minor and serious breach complaints. We found that:

- the level of early intervention has reduced in the last few years, in part because resources were directed to minor and serious breaches and authorised inquiries
- the trends in minor and serious breach complaints and authorised inquiries illustrate the imbalance between preventative and reactive regulatory activities
- finalising authorised inquiries and investigations into minor and serious breach complaints can take a long time.

This indicates that the Department's regulation has become more reactive and less preventative. Increased numbers of complaints and inquiries are both an indicator that standards in LG governance may not be being maintained and greater education and support is required.

In the absence of time targets and performance measures it is also hard to assess if these regulatory functions are managed efficiently and effectively. The Department has advised us that it has focused on completing long-standing authorised inquiries and minor and serious breach matters, reducing the resources available for preventative activities like guidance and support.

The Department has limited understanding of how effectively its LG support functions build capability within the sector

Support is provided through the LG advisory hotline, guidance documents and several projects to build capability within the sector. But the Department does not analyse which of these approaches is effective in supporting and improving good governance in LG entities. For example, a significant fall in the number of calls to the LG advisory hotline since 2015 could reflect improved capability within LG entities or it could indicate that LG entities believe they can no longer rely on the Department. Understanding the reasons for fewer calls could help improve the support provided to the sector.

The Department told us that it must manage expectations about the level of support it provides, as most of its resourcing is used for reactive regulation, resolving complaints and minor and serious breach investigations. It also told us that it intends to reallocate resources towards capacity building in the LG sector once the legislative reform process is completed. At the time of reporting, a new LG Act is expected to be completed in 2021.

Audited key performance indicators only provide a limited view of the Department's regulation and support activities

The Department's 3 audited key performance indicators (KPIs) that measure performance against LG business objectives provide high-level insights into operational aspects. Although the Department has discussed future KPIs with our Office and has proposed changes, that the Department believes would provide a more effective measurement of activities and functions, the KPIs need to be supported by robust performance measures and analysis to

examine the impact of the Department's LG activities. On their own, the KPIs do not inform where the Department should focus its strategies and resources, and rarely provide sufficient information for sound internal decision-making.

Recommendations

The Department should:

1. review how it gathers, records and reports information to maintain an up to date LG sector risk assessment

Department response: Agree

Implementation timeframe: by 31 August 2021

2. target its regulation and support activities to areas of highest risk, with regard to the potential benefits to improved outcomes across the LG sector

Department response: Agree

Timeframe for implementation: by 31 August 2021

3. clearly define its LG regulation and support objectives, deliverables, and targets. This should include robust performance monitoring measures and reporting that are communicated to staff, LG entities and other key stakeholders.

Department response: Agree

Implementation timeframe: by 31 August 2021

Response from the Department of Local Government, Sport and Cultural Industries

The Department is currently updating a risk-based approach to be able to align regulatory and compliance frameworks, and to direct resources, support and guidance towards the greatest threats to local government's ability to govern and function effectively in the interests of the community.

The updated risk analysis tool will be completed by May 2021. In addition, the Department's operational plan for 2020/21 includes all outstanding audit items which will be completed by 30 June 2021.

As part of normal operations, the Department monitors the local government sector through environmental scanning (including print and social media and intelligence from various sources), industry reviews and audits. This has informed the development of the risk analysis tool to better guide the prioritisation of targeted proactive regulation.

Audit focus and scope

This audit assessed whether the Department of Local Government, Sport and Cultural Industries (Department) effectively regulates and supports the local government (LG) sector.

Our specific criteria were:

- Does the Department effectively regulate LG entities?
- Does the Department effectively support LG entities?

We focused on how the Department fulfils its regulatory functions under the *Local Government Act 1995* (Act), and the support activities it provides to LG entities.

During the audit we:

- reviewed relevant Department policies, procedures, strategic and operational planning documents, including its *Local Government Compliance Framework* and its draft *Capacity Building and Compliance Framework*
- interviewed key Department staff involved in regulation and support functions
- analysed calls to the LG advisory hotline over the period 2014 to 2020 and reviewed minor and serious breach complaints received from 2017 to 2020
- assessed the implementation status (on 6 October 2020) of recommendations from the Department's internal audit of enforcement, investigations and authorised inquiries
- met with the WA Local Government Association (WALGA) and Local Government Professionals Australia WA (LG Pro WA), the peak LG industry and representative bodies in the State, to discuss and examine the Department's role and responsibilities in regulating and supporting the LG sector from the perspective of key stakeholders
- drew on results of other OAG audit work in the LG sector.

We did not review as part of this audit:

- the assessment and outcomes of individual LG entity complaints, investigations and authorised inquiries
- the Department's role in managing other legislation within the LG portfolio, which includes the control and management of domestic animals and the regulation of caravanning, camping and off-road vehicle use
- the activities of the other oversight agencies (such as the Corruption and Crime Commission, Public Sector Commission and Ombudsman Western Australia) and the peak LG industry and representative bodies in the State.

This was an independent performance audit, conducted under Section 18 of the *Auditor General Act 2006*, in accordance with Australian Standard on Assurance Engagements ASAE 3500 *Performance Engagements*. We complied with the independence and other ethical requirements related to assurance engagements. Performance audits focus primarily on the effective management and operations of entity programs and activities. The approximate cost of undertaking the audit and reporting was \$341,000.

Audit findings

The Department is not targeting its regulation and support activities to key risks

The Department does not have a structured approach to gathering intelligence and using it to understand key risks in the LG sector

Information about the sector and individual LG entities is not being used effectively and the Department is not actively gathering external intelligence and linking it into its risk assessment. This increases the risk that LG entities' non-compliance and poor governance will not be addressed.

The Department's LG risk assessment register, developed in 2017, has not been maintained since 2018. The Department is therefore missing opportunities to identify areas of regulatory and support risk and use this to inform its strategic and operational planning. This impacts its ability to provide effective and efficient regulation and support and allocate resources to where they are most needed.

There is a range of information that could be used more effectively to maintain the risk assessment. For example:

- the Department's complaints database
- requests for advice received by the LG advisory hotline and other staff within the Department
- LG entity compliance audit returns
- non-compliance and control weaknesses identified in the Office of the Auditor General's (OAG) annual financial audits of LG entities
- information reported and able to be shared by various integrity agencies, who receive a significant number of minor misconduct allegations from the LG sector.

This information and intelligence can provide important insights into risks across the sector and identify areas where the Department's regulatory and support activities are needed most.

In 2018-19, OAG financial audits of 112 LG entities identified:

- 111 material matters of non-compliance at 52 entities such as non-compliance with specific sections of the Act or associated regulations. These included 11 instances where LG entities had not completed reviews of their systems and procedures for financial management or risk management, internal control and compliance as required at least once every 3 years under LG regulations
- 857 significant or moderate control weaknesses in financial management and information systems controls such as weak controls over accounting journal entries, bank reconciliation, procurement, financial ratios, changes to master files and management review.

The Department advised us that it is aware of these issues and that it will follow-up non-compliance where necessary. It also told us that it:

- has undertaken extensive consultations with the LG sector on legislative reform

- has worked with a consultant over the last 6 months to develop a risk analysis tool for the LG sector that will be finalised in May 2021. By updating the risk-based regulatory approach, the Department advised that it would understand the key risks and direct resources towards the greatest threats to the LG sector's ability to govern and function effectively in the interests of the community. The completed analysis tool will enable the Department to ensure that (staffing) structures and resources are effectively allocated to the key sector risks
- established a new Executive Director LG position in August 2020 to integrate the Department's 5 LG function areas to achieve cohesion and efficiencies, whilst retaining the separation between complaint investigations and general support and compliance.

Internal risks to effective and efficient delivery of regulation and support have not been addressed

Significant risks to the delivery of regulation and support were identified in a 2018 internal audit of the Department's LG enforcement, investigations and authorised inquiries.¹ Three risks required immediate management action:

- the functional structure was under review and the overall objectives of its compliance program, structure and resourcing requirements had not been defined
- a draft Capacity Building and Compliance Framework had been prepared but had not been endorsed
- only limited resources had been allocated to LG advice, education and support.

Fourteen of the 17 audit recommendations to reduce these risks have not been fully implemented (Appendix 2 details the 17 recommendations and their implementation status). This increases the risk that:

- investigations will not be completed in a proactive manner
- serious breaches of the Act will not be identified and actioned in a timely manner
- education and advice may not provide appropriate support to the sector.

One of the recommendations was to finalise the Capacity Building and Compliance Framework that was drafted in August 2017. The new framework has not been approved or published. The draft framework:

- described the Department's proposed risk-based regulatory approach
- provided guidelines for LG entities to understand the Department's approach to improve the sector's performance
- acted as a diagnostic tool for the Department to identify and implement the most appropriate capacity building and compliance strategies for each LG entity.

Had it been finalised, the framework would have informed the LG sector of the Department's approach and helped target support to known capability, accountability and legislative compliance risks.

The Department has advised us that it will complete all 14 outstanding recommendations by 30 June 2021. Completing these should be a management priority.

¹ Department of Local Government, Sport and Cultural Industries internal audit report *Enforcement, Investigations & Authorised Inquiries*, June 2018.

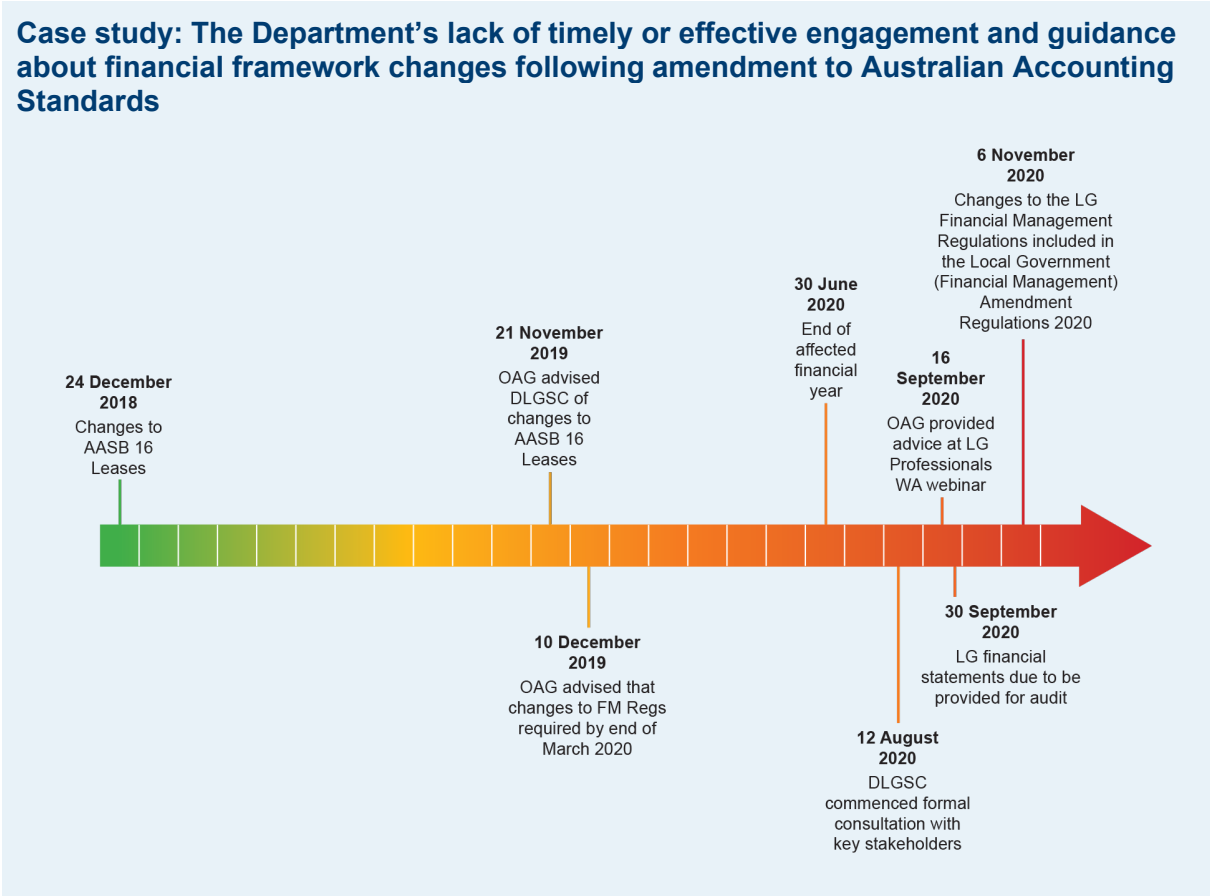
There is a lack of proactive input into financial framework matters, including timely guidance on a key financial reporting matter

The Department does not effectively manage the LG financial framework, contributing to reporting uncertainty and inefficiency in the sector. For example, it has not updated financial management guidance for some years to address emerging reporting concerns or to build capability to support fit-for-purpose financial reporting for LG entities.

The Department is responsible for advising the Minister and sector on the financial framework, but it has been largely absent from this space in recent years. The LG accounting manual for the sector has not been fully updated and 2 sections have been under review since 2012. Furthermore, the Department was recently very slow in determining its position and amending regulations following changes to Australian Accounting Standards.² The result of which meant that there was a risk that 2019-20 financial reporting of some assets by LG entities, if they complied with the LG financial management regulations, would not comply with Australian Accounting Standards.

Failure to comply with the new accounting standard would have a material impact on many LG entities’ reported asset values, and therefore financial statements and compliance status. The lack of timely guidance and appropriate regulatory change by the Department has contributed to a delay in the finalisation of financial statements and audits for a significant number of LG entities for the year ended 30 June 2020. Moreover, the level of effort required by the OAG in supporting the Department on this matter strongly indicated a lack of capability and engagement by the Department in routine financial framework matters affecting the LG sector. Further information on this matter is highlighted in the case study below.

Case study: The Department’s lack of timely or effective engagement and guidance about financial framework changes following amendment to Australian Accounting Standards



² Australian Accounting Standard AASB 16 *Leases* dated February 2016, Australian Accounting Standard AASB 2018-8 *Amendments to Australian Accounting Standards – Right-of-Use Assets of Not-for-Profit Entities* dated December 2018.

Following the change to the accounting standard, key stakeholders and LG entities contacted the OAG for advice and cited a lack of guidance and support from the Department, and uncertainty as to the impact on their financial reporting obligations. These extensive inquiries were not just an impost on OAG audit planning resources for the 2019-20 LG financial audit cycle but, more concerning, demonstrated an absence of participation in these matters by the Department.

During the 2019 audit season, we advised the Department that there had been a change to the financial reporting (accounting) standards. We asked whether it had considered the impact of the change on LG entities' reporting of assets, and the possibility of amending the Local Government (Financial Management) Regulations 1996 (FM Regulations) to reduce the reporting requirements relating to the change.

Ultimately, the Department did not commence formal consultation with the sector, through WALGA and LG Pro WA, about proposed changes to the FM Regulations until 12 August 2020, after the end of the relevant financial year. Our Office was then asked to present at a LG Pro WA webinar to explain the proposed changes and how they might apply to LG 2019-20 financial statements. We also distributed a draft position paper to assist LG entities understand the issues and facilitate discussion.

The relevant changes to the FM Regulations were included in the Local Government (Financial Management) Amendment Regulations 2020 which were gazetted on 6 November 2020, over 4 months after the end of the relevant financial year. We issued a position paper to provide guidance to LG entities on the application of the changes to the FM Regulations.

While we are working actively to support enhanced financial management and capability across the LG sector, the level of OAG involvement required to progress this particular financial framework matter was surprising, and we would consider excessive for the independent auditor. The momentum and action on this should more appropriately have been driven by the central policy agency for the sector, the Department, as part of the regulation and support role for which it is funded.

The Department does not have a LG strategic plan to guide its regulatory and support functions

The Department's responsibilities for the regulation and support of the LG sector are described in legislation, its strategic intent and a *Local Government Compliance Framework* which are available on its website.

Although the Department's *Strategic Directions: 2020-2023* document lists several programs in the LG sector, the Department does not have a LG plan that sets out how it will achieve its overall objectives for LG and guide its regulatory and support functions. Consequently, the Department cannot demonstrate how it prioritises its regulatory and support activities, how it determines what resources it needs to deliver those functions, or show the appropriateness and outcomes of the more than \$14 million allocated to these functions in 2019-20.

The Department has advised us that a specific LG statement of purpose with key outcomes will be developed based on risk profiling by 30 June 2021.

The Department's *Strategic Intent 2019-21* and *Local Government Compliance Framework* outlined the Department's overall objectives and approach to the regulation and support of LG. The strategic intent focused on improving LG capability and outcomes and listed 8 LG initiatives. These included LG Act reform, developing a risk assessment model, performance framework and vision for LG, and conducting better practice reviews.

In October 2020, the Department published its new *Strategic Directions 2020-2023* document which reiterates a focus on improving LG capability and outcomes. The Department has also recently established a *Local Government Operational Plan 2020-2021*. Although the plan provides transparency over the delivery of 65 projects, it is not clear how the projects link to the achievement of its overall objectives for the sector.

The *Local Government Compliance Framework* was established in 2011. It provides a summary of how the Department aims to ensure a high-level of integrity in the LG sector, structured around 4 key strategies (Figure 2). The compliance framework's pyramid approach is consistent with recognised risk management frameworks, which apply higher levels of intervention and treatments to escalating risks.



Source: OAG and the Department

Figure 2: The Department's compliance framework's pyramid approach, with examples of regulatory and support activities

The Department does not effectively measure its performance in supporting and regulating LG entities

Apart from 3 high-level KPIs the Department has not set measures and targets to assess how well it delivers its regulatory and support functions. This makes it hard for the Department and stakeholders to know how well it is doing and understand operational performance. It also limits informed operational and strategic decision-making.

LG entity regulation involves proactive early intervention and reactive activities including authorised inquiries and investigations in response to minor and serious breach complaints. In the absence of time targets and performance measures, it is hard to assess if these regulatory functions are managed efficiently and effectively.

Key stakeholders WALGA and LG Pro WA have publicly raised concerns regarding the Department's regulation and support of LG entities in submissions to Parliament's recent Select Committee into Local Government.³ Among the issues raised were the Department's ability to respond to issues and the time it takes to complete authorised inquiries. We have

³ WALGA's submission to the 40th Parliament's Select Committee into Local Government dated September 2019 and LG Pro WA's submission to the 40th Parliament's Select Committee into Local Government dated 19 August 2019.

also received several responses through the Have Your Say form on our website indicating concerns about the management of minor breach complaints.

The level of early intervention has reduced as resources were directed to other more reactive activities

Early intervention is an effective and efficient way to prevent breakdowns in governance and help build capability within the sector. We found that the level of early intervention by the Department has reduced in the last few years, in part because resources were directed to minor and serious breaches and authorised inquiries. This indicates that the Department’s regulation is becoming more reactive and less preventative.

Between 2015 and 2017, 18 better practice reviews were completed. The Department also previously conducted probity audits at LG entities. We found that no better practice reviews have been conducted since 2017 and no probity audits have been conducted since the 2018-19 financial year.

Better practice reviews and probity audits are important elements of proactive regulation. If these activities are not carried out there is a risk that breakdowns in governance will not be addressed. Early intervention through targeted proactive compliance and capacity building is also likely to be more cost efficient and effective than reactive regulation involving lengthy investigations and authorised inquiries.

The Department advised us that expectation of the levels of support that can be provided need to be considered in the context of resourcing and priorities, specifically much of the Department’s support and capacity building resources being applied to the resolution of complaints and minor and serious breaches.

The trends in minor and serious breach complaints and authorised inquiries illustrate the imbalance between preventative and reactive regulatory activities

Increased numbers of complaints and inquiries are both an indicator that standards in LG entity governance may not be being maintained and greater education and support is required. In addition, increased complaints also require a greater proportion of regulatory resources to try and provide timely resolution. This presents the risk of a negative cycle as growing complaints absorb preventative capacity building resources leading to continued higher levels of complaints. There are strong indications that this risk is being realised.

The number of minor breach complaints referred to the LG Standards Panel⁴ has increased significantly since 2017. However, we recognise that the Department has reduced the time it takes to finalise minor breach complaints (Table 1). This is in part because the panel has been meeting more frequently than it did in the past but is also because resources have been diverted from education and support to reactive complaint resolution.

Calendar year	Number of minor breach complaints received	Number of minor breach complaints finalised	Median time taken (days)	Shortest (days)	Longest (days)
2017	62	78	205	37	513
2018	133	68	183	8	280
2019	125	168	156	0	346
2020	154	119	112	0	873

Source: OAG using Department data

Table 1: Number of minor breach complaints received and the length of time to finalise

⁴ The [LG Standards Panel](#) makes binding decisions to resolve allegations of minor misconduct submitted by a LG.

The pattern with serious breach complaints is less clear, but the overall trend is for increasing numbers of complaints and time taken to resolve them. Again, this absorbs increased resources, and reduces the Department’s capacity to deliver preventative activity. Table 2 shows how many serious breach complaints were received in the last 4 years and how long it took to finalise investigations.

Calendar year	Number of serious breach complaints received	Number of serious breach complaints finalised	Median time taken (days)	Shortest (days)	Longest (days)
2017	46	34	54	0	197
2018	78	36	109	0	336
2019	36	70	357	0	665
2020	57	59	184	8	736

Source: OAG using Department data

Table 2: Number of serious breach complaints received and the length of time to finalise

The most resource intensive part of complaint resolution are authorised inquiries. The 6 authorised inquiries finalised in the last 2 years took between 13 and 32 months to complete. There are 5 authorised inquiries into LG entities underway that have been ongoing for between 10 and 27 months.

Lengthy authorised inquiries and investigations into minor and serious breach complaints increase the risk that poor governance will continue and generally involve significant costs to the Department and LG entities. We recognise that the time to complete authorised inquiries, and minor and serious breach complaints can depend on the complexity of issues and the need to provide LG entities with time to respond to information requests and recommendations. An example of this is an inquiry under Part 8 Division 1 of the Act where the Department is required to provide LG entities up to 35 days (or longer if the Minister allows) to respond to report recommendations.

However, the Department does not currently have timeliness targets for complaints and inquiries. Setting targets would manage stakeholder expectations and enable the Department to identify the levels of resources it needs to meet its reactive regulatory obligations. In turn this would also allow it to identify the level of resource needed for preventative activities and potentially demonstrate the impact of those activities.

Other regulatory and oversight entities have timeliness targets which measure the time taken to complete investigations. The Department also has targets and performance indicators that measure the time it takes to approve applications processed under delegation from the Minister for Local Government. These include applications under the Act to determine the method of valuation of land to be used by a LG entity as the basis for a rate and for differential general rates.

We have recommended that the Department should clearly define its LG regulation and support objectives, deliverables and targets. This should include robust performance monitoring measures. The Department has advised that the development of a risk analysis tool for the LG sector will help it define objectives, deliverables and targets.

The Department has limited understanding of how effectively its LG support functions build capability within the sector

Support is provided through the LG advisory hotline, guidance documents, and several projects to build capability within the sector. But the Department does not analyse which of these approaches to build capability is effective in supporting and improving good governance in LG. This means the Department and the LG sector do not understand if the level of support provided is adequate.

There are varying perceptions and trends around the Department's effectiveness, some of which were highlighted in WALGA and LG Pro WA's submissions to the recent Select Committee into Local Government. Without good measures and analysis, it is hard for Parliament and other stakeholders to understand if the sector is improving or not.

The Department told us that it must manage expectations about the level of support it provides, as most of its resourcing is used for reactive regulation, resolving complaints and minor and serious breach investigations. It also told us that it intends to reallocate resources towards capacity building in the LG sector once the legislative reform process is completed. At the time of reporting, a new LG Act is expected to be completed in 2021.

Examples of the support the Department provides include:

- guidance, advice, and support on legislative changes through governance bulletins, operational guidelines, and the *WA Local Government Accounting Manual*
- operation of the LG advisory hotline to support LG officers and elected members
- online LG council candidate induction
- attendance at meetings and workshops with WALGA, LG Pro WA and LG entities
- providing administrative support to the WA LG Grants Commission under the *Local Government Grants Act 1978*, the LG Advisory Board and managing the WA State LG Agreement.

The Department also provides funding to support several WALGA and LG Pro WA activities. In 2019-20 these included:

- \$133,250 payment to WALGA to build capability within the LG sector supporting the LG Corporate Partnership Agreement. This helped delivery of key outcomes relating to State Government priorities. The funding supported the promotion of diversity within councils, research, and delivery of capacity building strategies, and the 2019 LG Convention
- \$169,000 to LG Pro WA to improve content and performance of LG integrated planning and reporting. The agreement was increased by an additional \$100,000 in response to COVID-19
- a total of \$104,100 to LG Pro WA to support the Corporate Partnership Agreement and CEO Support Program, Emerging Leader Award and Standardised Chart of Accounts.

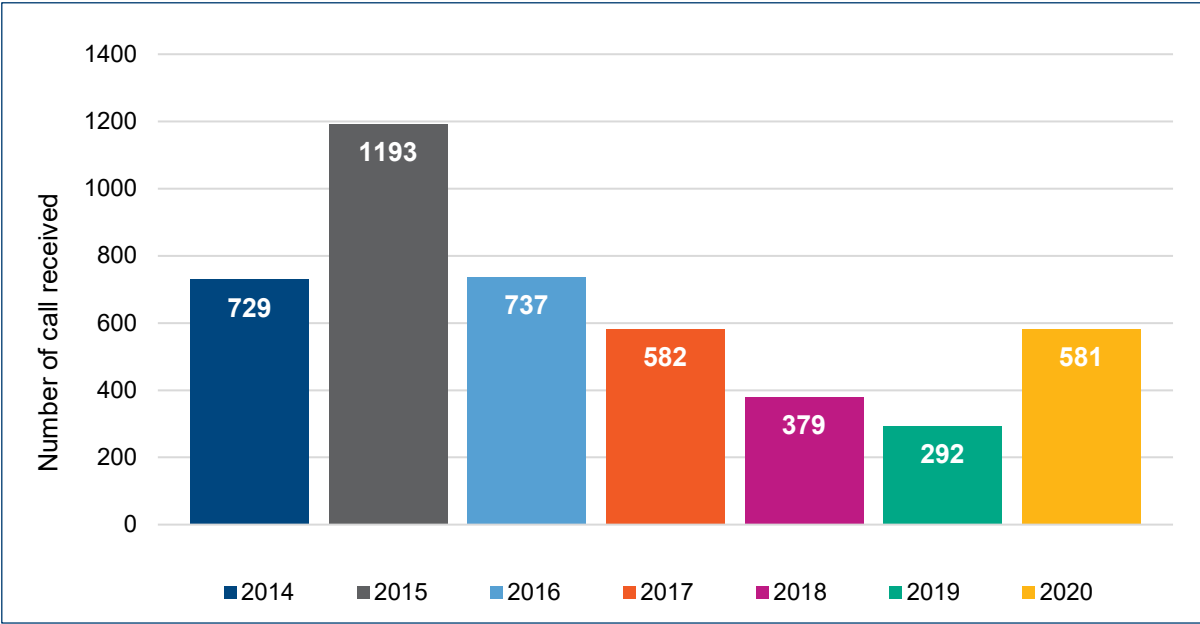
There has been a decrease in the number of calls to the LG advisory hotline, but the Department is not clear if this indicates improved LG capability

There has been an overall decline in the number of calls to the LG advisory hotline. For example, in 2015, the hotline received approximately 4 times as many calls as it did in 2019. There was then an increase in calls in 2020, albeit at a level lower than during 2014-17 (Figure 3).

The overall downward trend in requests for advice and support could reflect improved capability within LG entities, or it could indicate that LG entities believe they can no longer rely on the Department. The Department's Legislative Reform team informed us they also receive calls from LG entities seeking advice, however these calls are not recorded in the hotline register.

We saw no evidence that the Department had sought to identify the reasons for the significant fall in the number of calls received. Understanding the reasons for fewer calls could help improve the support provided.

The Department advised that a sector education and capability building framework is due to be completed by the end of April 2021. This framework will guide the development of sector educational materials and includes a toolkit of proactive strategies (e.g. revised better practice reviews and governance health checks).



Source: OAG using the Department’s data

Figure 3: LG advisory hotline calls received 2014 to 2020

Audited KPIs only provide a limited view of the Department’s regulation and support activities

The Department’s 3 audited KPIs that measure performance against LG business objectives provide high-level insights into operational aspects. Although the Department has discussed future KPIs with our Office and has proposed changes, that the Department believes would provide a more effective measurement of activities and functions, the KPIs need to be supported by robust performance measures and analysis to examine the impact of the Department’s LG activities. On their own, the KPIs do not inform where the Department should focus its strategies and resources, and rarely provide sufficient information for sound internal decision-making.

In 2019-20, the Department achieved its target in 2 of the 3 KPIs (Table 3).

KPI	Description	2018-19 actual	2019-20 target	2019-20 actual	Variance 2019-20
Effectiveness Measure LG1	Percentage of LG entities that did not have an action taken against them under the Department’s framework	49%	55%	61%	6%
Effectiveness Measure LG2	Percentage of LG entities with integrated planning and reporting plans reviewed	87%	25%	100%	75%
Efficiency Measure 1.1	Average cost per LG entity for regulation and support	\$76,743	\$90,129	\$99,795	\$9,666

Source: OAG

Table 3: The Department’s performance against its LG KPIs in 2019-20

We considered what the 3 KPIs reveal about the operational performance of the Department in the context of what we found during this audit.

The first KPI (Effectiveness Measure LG1) provides a high-level indication of how LG entities perform in fulfilling their statutory requirements. This measure is designed to allow the Department to understand how LG entities are performing their governance to fulfil their statutory requirements. The KPI shows that in 2019-20, 61% of LG entities did not have an action taken against them under the Department's regulatory framework. The Department reports that the increase in KPI performance in 2019-20 has been attributed to some compliance actions not being undertaken in 2019-20, as well as an overall decrease in the number of new complaints.

By itself, the KPI provides limited insights into where the Department should focus its resources to build capability in the sector. Other information could be used to inform decision-making. For example, how long the actions took, if LG entities had multiple actions, or if there were common issues within or across LG entities. This information is critical to target proactive regulation and support and build capacity within the sector. This in turn, should contribute to increasing good governance and a fall in the number of minor breach complaints, investigations, and authorised inquiries.

We reviewed the actions that made up the 2019-20 KPI (Effectiveness Measure LG1). In total, 122 actions were taken against 54 LG entities (Table 4). Some LG entities had several different actions taken against them.

Category	Number of actions
Authorised inquiries	9
Serious breach investigations	85
Recurrent breach	3
General non-compliance	14
Offence (non-elected member)	5
Other	6
Total	122

Source: OAG using Department information

Table 4: Actions taken against LG entities in 2019-20

The second KPI (Effectiveness Measure LG2) provides information about the support provided by the Department to review LG entities' integrated planning and reporting plans. This measure allows the Department to assess the level and currency of LG integrated planning. Although the Department reviewed all LG entity plans in 2019-20, there is no evidence that the Department used this review process to inform its approach to regulatory and support strategies for the sector, and we note this KPI provides limited insights into the Department's performance against its regulatory and support strategies.

The third KPI (Efficiency Measure 1.1) assesses the efficiency of the Department's resources. It is calculated by dividing the total cost allocation to regulatory and other services for LG by the total number of WA LG entities.⁵ In 2019-20, the cost was \$9,666 (11%) higher than the target. The Department has attributed this to its continued focus to support and build the capacity of the sector, however the efficiency and effectiveness of delivery of specific actions for the LG sector, and any improvements over time, remains undemonstrated by the Department.

⁵ 137 – the number of WA LG entities used to calculate the cost. It excludes the 2 Indian Ocean Territory LGs and 9 regional LGs.

Appendix 1: The Department's responsibilities to regulate and support LG entities

During our audit, the Department provided us with the following description of its roles and responsibilities to regulate and support LG entities. It is included in this report to help inform the LG sector and other stakeholders.

Area of responsibility	Function	Roles and responsibilities
Administration and management of LG system	Legislative interpretation and advice	<p>Departmental interpretation only (not legal advice) on legislation within the LG portfolio, provided to the Minister, sector stakeholders and the general public, in the form of:</p> <ul style="list-style-type: none"> • responses to telephone, email and written enquiries or complaints • Ministerial briefing notes and draft correspondence • guidelines and other advisory publications • information bulletins and circulars • website content on portfolio legislation • in person seminars and workshops with sector stakeholders • presentations including live and recorded online seminars (webinars). <p>Special support is also provided to the Indian Ocean Territory Shires of Christmas Island and Cocos (Keeling) Islands under a Service Delivery Agreement between the State and Commonwealth Governments.</p>
	Legislative development	<p>Ongoing review and amendment of Acts (and associated regulations) in the LG portfolio, including the following:</p> <ul style="list-style-type: none"> • <i>Local Government Act 1995</i> and <i>Local Government (Miscellaneous Provisions) Act 1960</i> • <i>Local Government Grants Act 1978</i> • <i>City of Perth Act 2016</i> • <i>Caravan Parks and Camping Grounds Act 1995</i> • <i>Cat Act 2011</i> • <i>Cemeteries Act 1986</i> • <i>Control of Vehicles (Off-road Areas) Act 1978</i> • <i>Dog Act 1976</i> (and <i>Dog Amendment Act 2013</i>). <p>The Department is currently in Phase 2 of the review to develop a new LG Act.</p>
	Legislative assistance to LG entities	<p>Assessment of draft local laws, providing advice and assistance on correct drafting, and statutory processes for consultation and gazettal.</p>
	Policy advice	<p>Policy advice provided to the Minister on all portfolio legislation, and proactive engagement with the LG sector to achieve the Act's intent and objectives.</p>
	Data collection and performance reporting	<p>Collation of data from strategic plans for the future prepared under the Act and Local Government (Administration) Regulations 1996, as well as annual budgets, budget reviews and annual financial reports prepared under the Act and Local Government (Financial Management) Regulations 1996.</p>

Area of responsibility	Function	Roles and responsibilities
		<p>The Department collates this data from its online Smart Hub portal and assesses it for the purposes of advising the Minister on issues of interest or concern. It also uses the information to provide comparative data for LG entities on the MyCouncil website.</p>
	Active role in local government elections	<p>Provision only of a support role in elections, as Part 4 of the Act gives each LG entity direct authority to conduct its own council elections or to engage the Western Australian Electoral Commission to conduct them. Departmental support has traditionally included:</p> <ul style="list-style-type: none"> • telephone, email and written advice on compliance with legislative requirements for the electoral process • presentations at LG entity induction sessions for prospective candidates and newly elected councillors • elections fact sheets and timetables, including information for prospective candidates • promotional publications and website content • CEO support materials, including bulletins and a regularly revised manual for returning officers • Ministerial reports and briefing notes on vacancies, nominations, voter participation and final results.
Investigation and compliance	Compliance audits	<p>Assessment of compliance audit returns lodged on the online Smart Hub portal in accordance with the Local Government (Audit) Regulations 1996, to assess general legislative compliance in the sector.</p> <p>The Department periodically conducts probity audits into individual LG entities. These are not mandated by legislation but are sometimes prompted by ongoing Departmental monitoring of the sector in areas such as legislative compliance and financial management. They can sometimes be requested by the Minister for a particular LG entity, or by the council of a LG entity itself, to assist in achieving good governance.</p>
	Investigation of councils	<p>Under Parts 8 and 9 of the Act, the Minister and Department have authority to inquire into the affairs and performance of LG entities, suspend or dismiss council members, and hold employees accountable for misapplication of LG funds or property. The Minister and Department have power to:</p> <ul style="list-style-type: none"> • order a LG entity, council member, CEO or employee to provide any information concerning the LG entity or its operations or affairs • inquire into any aspect of a LG or its operations or affairs • prosecute for any offence under the Act.
	Support of other (external) review mechanisms	<p>The Department liaises as necessary with, and monitors the findings of, a number of other government agencies including:</p>

Area of responsibility	Function	Roles and responsibilities
	Advice and implementation on findings from external bodies	<ul style="list-style-type: none"> • Western Australian Ombudsman (for complaints regarding LG administrative processes and customer service) • Public Sector Commission (for complaints regarding minor misconduct by LG employees) • Corruption and Crime Commission (for investigation of serious misconduct by LG elected members or employees) • Office of the Auditor General (for issues arising from LG audits and legislative compliance). <p>Findings by these agencies inform the Department in planning sector wide education and, where warranted, Departmental or Ministerial intervention.</p>
	Investigation of council members (including code of conduct complaints)	<p>Departmental jurisdiction over the general conduct of council members derives from the Local Government (Model Code of Conduct) Regulations 2021. Departmental investigative functions include:</p> <ul style="list-style-type: none"> • investigation of minor breaches of the Act and enforceable provisions of the Local Government (Model Code of Conduct) Regulations 2021 • investigation of recurrent and serious breaches of the Act • administrative support for the Minister's Local Government Standards Panel.
	Training and education (sector wide)	<p>Part of the Department's role in assisting with the administration of the Act is to build capacity in the sector. The Department generally facilitates training rather than providing it directly, engaging external providers to provide training sessions and programs on both a metropolitan and regional basis. In the case of elected members, some training is a regulatory requirement, and must be undertaken with approved providers.</p>
	Training and education (individual councils)	<p>Departmental training for individual LG entities tends to target those with identified issues or problems. Depending on the content, external parties may be engaged to provide the service because of relevant expertise in problem areas. The Department also facilitates mentors for LG CEOs as part of the CEO Support Program.</p>
	Direct involvement in council management (e.g. placement of an officer in a council)	<p>The Department does not become directly involved in LG administration, but Departmental officers may work closely with a particular LG entity's elected members and employees when conducting targeted probity audits or better practice reviews.</p>
Grants management	State Local Government Grants Commission	<p>The Department provides administrative support to the Western Australian Grants Commission under the <i>Local Government Grants Act 1978</i> and is also responsible for review or amendment of that legislation.</p>
	Grants to councils	<p>Grants are allocated to LG entities by the Western Australian Grants Commission.</p>

Area of responsibility	Function	Roles and responsibilities
Functional responsibilities	Administration of other legislation	<p>In addition to statutory approvals (see below), the Department performs administrative functions under other legislation in the LG portfolio including:</p> <ul style="list-style-type: none"> • administrative support when required to the Minister's Caravan Parks and Camping Grounds Advisory Committee - <i>Caravan Parks and Camping Grounds Act 1995</i> • administrative support to the Minister on the constitution and appointment of members to cemetery boards - <i>Cemeteries Act 1986</i> • establishment and closure of off-road vehicle permitted and prohibited areas - <i>Control of Vehicles (Off-road Areas) Act 1978</i> • administrative support when required to the Minister's Off-road Vehicle Advisory Committee - <i>Control of Vehicles (Off-road Areas) Act</i>.
	Statutory approvals	<p>Processing of statutory approvals includes:</p> <ul style="list-style-type: none"> • approvals to reduce requirements for quorums and majority votes at council and committee meetings in particular cases, to allow participation by someone declaring an interest, or to exempt someone from declaring an interest • approvals for LGs to change land valuation methods for rates, or impose certain differential rates or minimum payments • granting of exemptions from rates • revestment of land in the Crown • granting of exemptions from requirements of the Caravan Parks and Camping Grounds Regulations • approvals for burials outside proclaimed cemeteries and orders for exhumations • variations to off-road vehicle registration requirements and approvals for off-road vehicle use outside permitted areas • appointment of authorised officers for off-road vehicle enforcement • approvals for assistance dogs, and appointment of public access test assessors.
Other	Management of council boundaries and representation	<p>The Department provides administrative support to the LG Advisory Board which monitors and makes recommendations to the Minister on LG boundaries, ward structures and representation numbers.</p> <p>It also processes applications for Ministerial approvals for regional LG entities and regional subsidiaries, and amendments to their establishment agreements or charters.</p>
	Management of council information website	<p>The Department maintains the MyCouncil website, which collates data from sources including LG budgets, budget reviews, annual reports and annual financial reports, to provide comparative data for all LG entities in WA.</p>

Source: Department and OAG

Appendix 2: Status of the Department’s 2018 internal audit recommendations

The table below provides a status update for the recommendations from the Department’s 2018 internal audit of processes and practices for managing LG enforcement, investigations and authorised inquiries. The status was provided by the Department and represents the position in late 2020. The Department has advised us that all outstanding recommendations will be completed by 30 June 2021.

Recommendations	Risk rating	Implementation status
<p>The Department should finalise its draft capacity building and compliance framework, should establish strategic priorities for the compliance function and should use this to establish resourcing requirements and structure. This should include allocating appropriate resources to ensure the Department:</p> <ul style="list-style-type: none"> • has an effective, responsive LG education function that ensures common areas of risk are identified and supported, advice and education is provided to LG entities in those key areas • has an effective sector monitoring and compliance function that proactively monitors CARs (compliance audit returns) and LG financial reporting to identify and report risks of non-compliance • has an effective investigations functions that ensures all investigations and inquiries commence and conclude in a timely manner • should ensure staff members in the Department’s compliance function have appropriate training to ensure they have contemporary skills and knowledge to ensure best practice in investigation, monitoring and education. 	Extreme	Open
<p>The Department should review and update existing policies and procedures and should consolidate these into a comprehensive manual for LG legislative compliance, covering all aspects of the compliance framework providing a full policy and procedure guide. This should include the process involved in issuing show-cause notices, including the roles and responsibilities of the Department in pre-assessment prior to decisions being made, collecting evidence to support the case, processes involved during the show-cause notice period, and processes to be followed after the show-cause-notice is issued.</p>	High	Open
<p>The end-to-end policy and procedures should also capture the process for authorised inquiries, including timelines, key stakeholders, escalation processes, evidence gathering, reporting and follow up and enforcement.</p>	High	Closed
<p>The Department should develop a mechanism for rating compliance risks based on data derived from the CAR. This should include allocating a compliance risk rating of high, medium or low which could be used as an input to the LG entity’s overall risk assessment. This could be included as a function of the SMART Hub portal used by LG entities to report CAR data.</p>	High	Open
<p>The Department should issue a non-compliance risk rating report or letter to the CEO of the respective LG entities where high or medium</p>	High	Open

Recommendations	Risk rating	Implementation status
overall risk ratings are established. The Department should also make recommendations to LGs to manage compliance risks.		
The Department should use the risk ratings derived from CARs to escalate compliance risks to complete probity audits, integrity audits and investigations.	High	Open
The Department should monitor CAR data trends to determine the improvements in LG compliance and identify key risk areas.	High	Open
The Department should establish a process for random audits of LG entities to validate CAR data reported by LG entities.	High	Open
The Department should ensure decisions taken whether to investigate complaints are reviewed and endorsed by a second officer before the investigation commences.	High	Open
The Department should promote the need for a formal, agreed information sharing framework with other regulatory bodies including the CCC, WA Police and the OAG.	High	Open
A formal and documented conflict of interest process should be performed for each investigation. This could be incorporated in the investigation database, as part of a mandatory checklist prior to commencement of investigations by the respective investigations officer.	Moderate	Open
The Department should establish achievable target driven KPIs that are aligned to the objectives of the LG compliance function. KPI based performance reporting should be established and this should be regularly reported and reviewed.	Moderate	Open
The Department should ensure investigations are allocated in a timely manner to ensure there are no undue delays in the investigation process. Any investigations that are not allocated in a timely manner should be reported to management.	Moderate	Closed
The Department should also establish a more stringent screening process for complaints made by members of the public. This should include developing criteria for the escalation of complaints to the Manager Sector Governance and the initiation of an investigation.	Moderate	Open
The Department should introduce a mechanism for complainant feedback, including a short survey containing questions asking the complainant to rate the Department's service on a scale of 1-10.	Low	Open
A target timeframe for completion of each investigation should be established within the CRM. Investigations that remain open past that target time frame should be highlighted to management to reassess resourcing requirements for the investigation. Statistics on average hours taken for investigations should be used to inform broader resourcing requirements for the LG compliance function.	Low	Open
The Department should promote a mediation process between the complainant and the LG entities prior to complaint lodgement with the Department. At the end of the mediation process, the complainant would have the option to decide whether to lodge their complaint with the Department.	Low	Closed
Risk rating (defined by the internal audit report) Extreme – immediate management action required. Moderate – management action required. High – urgent management action required. Low – some management action required.		

Source: Department and OAG

Auditor General's 2021-22 reports

Number	Title	Date tabled
20	Opinions on Ministerial Notifications – Policing Information	28 April 2021
19	Opinion on Ministerial Notification – Bennett Brook Disability Justice Centre	8 April 2021
18	Regulation of Consumer Food Safety by the Department of Health	1 April 2021
17	Department of Communities' Administration of Family and Domestic Violence Support Services	11 March 2021
16	Application Controls Audits 2021	8 March 2021
15	Opinions on Ministerial Notifications – Tax and Funding Information Relating to Racing and Wagering Western Australia	26 February 2021
14	Opinion on Ministerial Notification – Hotel Perth Campaign Reports	24 February 2021
13	Opinion on Ministerial Notification – Release of Schedule of Stumpage Rates	24 February 2021
12	Grants Administration	28 January 2021
11	COVID-19 Relief Fund	21 December 2020
10	COVID-19: Status of WA Public Testing Systems	9 December 2020
9	Western Australian Registry System – Application Controls Audit	26 November 2020
8	Regulating Minor Pollutants	26 November 2020
7	Audit Results Report – Annual 2019-20 Financial Audits of State Government Entities	11 November 2020
6	Transparency Report: Major Projects	29 October 2020
5	Transparency Report: Current Status of WA Health's COVID-19 Response Preparedness	24 September 2020
4	Managing the Impact of Plant and Animal Pests: Follow-up	31 August 2020
3	Waste Management – Service Delivery	20 August 2020
2	Opinion on Ministerial Notification – Agriculture Digital Connectivity Report	30 July 2020
1	Working with Children Checks – Managing Compliance	15 July 2020

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