

Local Government Regulatory Framework

Local Government Unit – Department of the Chief Minister and Cabinet

Contents

1. Purpose	3
1.1. Our regulatory responsibilities	3
1.2. Intent of this framework	3
2. Our regulatory framework	4
2.1. Our regulatory role	4
2.2. Our regulatory outcomes	4
2.3. Our regulatory principles	4
2.4. Our regulatory functions	5
3. Our regulatory approach	7
3.1. Respectful	7
3.2. Collaborative	8
3.3. Consistent	8
3.4. Evidence-informed	9
3.5. Proportionate	9
3.5.1. Education and capacity building	10
3.5.2. Targeted support and guidance	11
3.5.3. Investigation	12
3.5.4. Enforcement	12
4. Implementation	13

1. Purpose

This Regulatory Framework outlines the Northern Territory (NT) Department of the Chief Minister and Cabinet's (the department) approach to conducting its role as regulator of the local government sector.

1.1. Our regulatory responsibilities

The department supports the Minister for Local Government in the administration of the *Local Government Act 2019* (the Act) and other legislation:

- *Burial and Cremation Act 2022*
- *Local Government Grants Commission Act 1986*
- *Northern Territory Rates Act 1971*
- *Crown Lands Act 1992* (section 79)
- *Local Government (Katherine Rates) Act 1999*
- *Nudity Act 1975*
- *Pounds Act 1930*
- *Status of Darwin Act 1959*
- *Status of Palmerston Act 2000*

The Act sets the governance framework within which councils must operate, and provides for the role of the regulator, including the requirement for ensuring councils conduct their business lawfully.

The department takes a constructive compliance approach for its regulatory activities.

Our first priority is to ensure local government councils have access to information, resources, guidance, and training to understand and comply with their obligations. Where a council cannot or will not comply with their obligations, compliance action is taken proportionate to our assessment of risk to the council and/or community.

Effective regulation aims to ensure that Territorians enjoy a responsive, accountable and efficient system of local government, delivering great places for people to live, work and visit.

The Act recognises that local government is a distinct and essential sphere of government. The NT local government sector provides services, infrastructure, and advocacy integral to the effective functioning of local communities.

It is crucial that local governments are well-supported and set up for success, given the critical services they provide to the community.

1.2. Intent of this framework

This Regulatory Framework describes the department's approach to regulating local government councils. The framework is not a legal document but is intended to provide clarity about how the department supports and engages with the sector and when and how it will take compliance action.

2. Our regulatory framework

2.1. Our regulatory role



Our role:

The Northern Territory Government agency responsible for strengthening the sustainability, performance, integrity, transparency and accountability of the local government sector

2.2. Our regulatory outcomes

In our work as regulator, we work in partnership with councils and others to deliver two key outcomes:



Sustainability: the local government sector is sustainable over the long-term – well governed, responsive, and using resources effectively and efficiently to achieve the best outcomes for their community.



Community confidence: each council operates in a manner that fosters their communities' effective engagement with, and confidence in, their council.

We administer the NT Government's local government grants program, and provide support for the NT Grants Commission as part of our role in the delivery of these outcomes.

The purpose of regulation is to ensure the proper use of public resources, the effective delivery of local government services and to support public confidence in the system of local government

Councils are responsible for ensuring they operate effectively, efficiently, and within the provisions of governing legislation. The department's role is to provide relevant standards, information, resources, guidance and support to enable councils to do so; and where there is risk of, or actual, failure to do so, to ensure councils conduct their business lawfully. Our powers are confined to those provided by the *Local Government Act 2019*, and other legislation for which we are responsible, such as the *Burial and Cremation Act 2022*.

2.3. Our regulatory principles

The department has five guiding principles for the way it performs its regulatory functions, including how it engages with councils and makes decisions. These principles govern our relationship with local government councils and other organisations and are in Figure 1 below.

Figure 1 |

Respectful	Collaborative	Consistent	Evidence informed	Proportionate
<p>We respect the role of local government as a distinct and essential sphere of government and acknowledge the context within which councils work.</p>	<p>We work in partnership with the sector and others to ensure that our approach is clear, relevant and targeted.</p>	<p>We develop clear standards and apply them consistently, we communicate clearly, and provide procedural fairness when delivering on our regulatory role.</p>	<p>We make evidence-based decisions based on the collection and analysis of reliable information.</p>	<p>Compliance action is proportionate and appropriate to the severity of risk posed to the community.</p>

2.4. Our regulatory functions

The department delivers on our regulatory role through the six functions in Figure 2 below. The Local Government Association of the NT (LGANT) and other stakeholders have important roles in the delivery of most of these functions. All of these functions are part of our role as a regulator and all are essential for meeting our regulatory responsibilities. Some such as Standard Setting and Information Gathering and Analysis apply across all councils, while others are applied in a targeted way as required to address non-compliance or the risk of non-compliance.

Figure 2 | Our regulatory functions



Description of functions

- **Standard setting:** Developing legal policy and legislative frameworks, defining standards, requirements and expectations of councils, and making this information available and accessible. This function applies to all councils, supporting all councils to operate to the same standards and all community members to know what to expect from their council.
- **Information gathering and analysis:** Gathering and analysing information to identify risks and challenges. This function applies to all councils. Information is gathered through a range of ways,

including by analysing trends in requests for advice, referrals to the department, council websites and publications, feedback from the sector, compliance reviews and investigations.

- **Education and capacity building:** Working with councils, LGANT, and other organisations to build skills and capabilities for well-governed, community-centred councils. This function can apply to all councils, for example through development of training for all elected members, or induction of new elected members. It can also apply in a more targeted way, for example the department may deliver or commission training in a particular area of councils' functions as a result of requests from councils or identification of need by a group of councils or the department. We also provide timely advice to councils from subject matter experts.
- **Targeted support and guidance:** Identifying councils that may be struggling to comply with their obligations and providing them with timely, targeted guidance and support. This function is often delivered as a result of a request by a council for advice or support, or identification by the department that there is a risk of non-compliance with the Act and other legislation that the department administers. It can take the form of the provision of guidance over a time-limited period to enable a council to exercise the responsibilities outlined in relevant legislation, or support for a council to access expertise to guide them through a particular challenge. The council is able to accept or decline this support and guidance, and remains the decision-maker.
- **Investigation:** Undertaking reviews, investigations, inquiries, or audits to determine compliance and guide remedial action. This will usually involve the appointment of an inspector who has powers under the Act and other legislation to require the provision of information and access to records and property. This function is targeted, and councils will generally be informed of an investigation and must comply. In some instances it will not be in the public interest to inform a council ahead of the investigation.
- **Enforcement:** Actions to compel compliance with regulatory requirements, including a notice of non-compliance, appointment of a financial controller, or recommendations to the Minister for Local Government in relation to official management, suspension or dismissal. This function is targeted, and is exercised where an assessment is made that the council cannot or will not comply with the Act, and there is sufficient risk to the community and/or council in non-compliance.

3. Our regulatory approach

All of the activities that we perform to deliver our regulatory functions are guided by our principles, as outlined below.

3.1. Respectful

We respect the context within which councils work

The department upholds the principle that local government is a distinct and essential sphere of government.

We aim, in all our work, to be a trusted regulator who works collaboratively with the sector, listens and acts on feedback, demonstrates respect for the role of councils and administration and reinforces and supports the integrity of these roles.

We conduct our regulatory activities and interact with stakeholders in a way that acknowledges the context within which each council works in the NT. We provide resources and support (where needed) to enable councils to meet their own obligations and responsibility for good governance.

We respect the varied size and capacity of local councils across the NT, and acknowledge that many elected members hold cultural leadership responsibilities and obligations as well as obligations for meeting the requirements for local government governance.

The department focuses its targeted regulatory functions on the councils that need the most support. In practice this means the department ensures relevant team members maintain contemporary knowledge and understanding of the risk profile of the sector as a whole and of individual councils.

We work to understand the context of each council and, where we can, we partner with councils in our approach to our regulatory functions. We enact our regulatory activities in a way that encompasses clear two-way communication and assessment of risk.

3.2. Collaborative

We work collaboratively with stakeholders

The department partners with the local government sector, LGANT, and other key stakeholders to ensure that its approach to regulation is relevant and targeted and consistent with legislation. We work closely with stakeholders to:

- Transparently define and communicate the department's role and what the sector and community can expect, including when and how we will take compliance action.
- Be clear about which functions we are undertaking at a particular time, and why
- Actively seek the input of those who will be affected when developing or reviewing legislation, policies, guidelines and standards.
- Listen to stakeholder views and act on advice and feedback about our operations.
- Encourage the sharing of information and best practice across the sector.
- Work with councils where appropriate to address issues and remedy non-compliance.

3.3. Consistent



We set clear standards

We set clear standards and expectations of councils through the development of legislation, regulation, guidelines and policies. Our standards describe key principles and desired outcomes. While councils are diverse, the standards seek to promote consistency in core areas. Councils' communities deserve well governed, community-focused, and efficient councils wherever they live in the NT.

We apply standards fairly and consistently

In all our engagements with councils, we are fair and consistent. In our investigations and use of enforcement powers, we ensure procedural fairness.

This includes:

- Ensuring our systems and processes support advice and guidance to each council that is based on consistent application of the provisions of the legislation and the role of the department.
- Providing councils and affected individuals the opportunity to put their case to the department where adverse findings have been made, before finalising investigations or compliance reviews.
- Undertaking investigations and making enforcement decisions as efficiently as possible and keeping parties updated about their progress.

- Maintaining confidentiality.

3.4. Evidence-informed



We routinely collect and analyse information to make decisions

We gather and analyse information on a routine basis to develop a picture of risk across the sector and at each council to enable us to proactively identify and address issues. Based on the evidence we collect we tailor our approach and focus our targeted regulatory activities on the councils that need them the most. This includes:

- Collecting information about council functioning and risk, as it relates to the governing legislation, through local relationships with councils and the department's Regional Network Group.
- Collecting and analysing council activity data, financial data, service delivery data and complaint data.
- Conducting a program of targeted compliance reviews with all councils being subject to a compliance review at least once every four years.
- Seeking to identify patterns and trends across councils and identify emerging risks.
- Testing our assumptions with the sector and individual councils, LGANT, other agencies or organisations.
- Developing and maintaining an evidence-informed risk-based approach to all our regulatory activities.
- Maintaining robust internal policies, systems and guidance that supports evidence-informed, proportionate and effective regulatory practice.

We also seek to continuously improve our approach by:

- Actively seeking up to date knowledge on regulatory theory and practice, maintaining effective collaboration with other jurisdictions' local government regulators and other regulators in the NT.
- Evaluating our actions and strategy to inform continuous improvement.

3.5. Proportionate

Our compliance approach is proportionate to the level of risk

The purpose of regulation is to ensure the proper use of public resources, the effective delivery of local government services and to support public confidence in the system of local government. Our compliance approach is to keep intervention and administrative requirements only to what is necessary.

Councils understand their obligations for compliance with governing legislation and will, in most instances, comply, or seek to comply. We prioritise standard setting, education and capacity building, and risk-based decision making across all councils to support good governance.

However the department cannot observe non-compliance and take no action. The action we take is informed by our assessment of risk to the community and council.

Where non-compliance or risk of non-compliance is identified, our first approach is usually to work with the relevant council, providing education, capacity building support and other guidance as needed to support their return to compliance. Our aim is generally that this is done in partnership with the council, with time-limited assistance provided until they are in a position to manage their own compliance responsibilities.

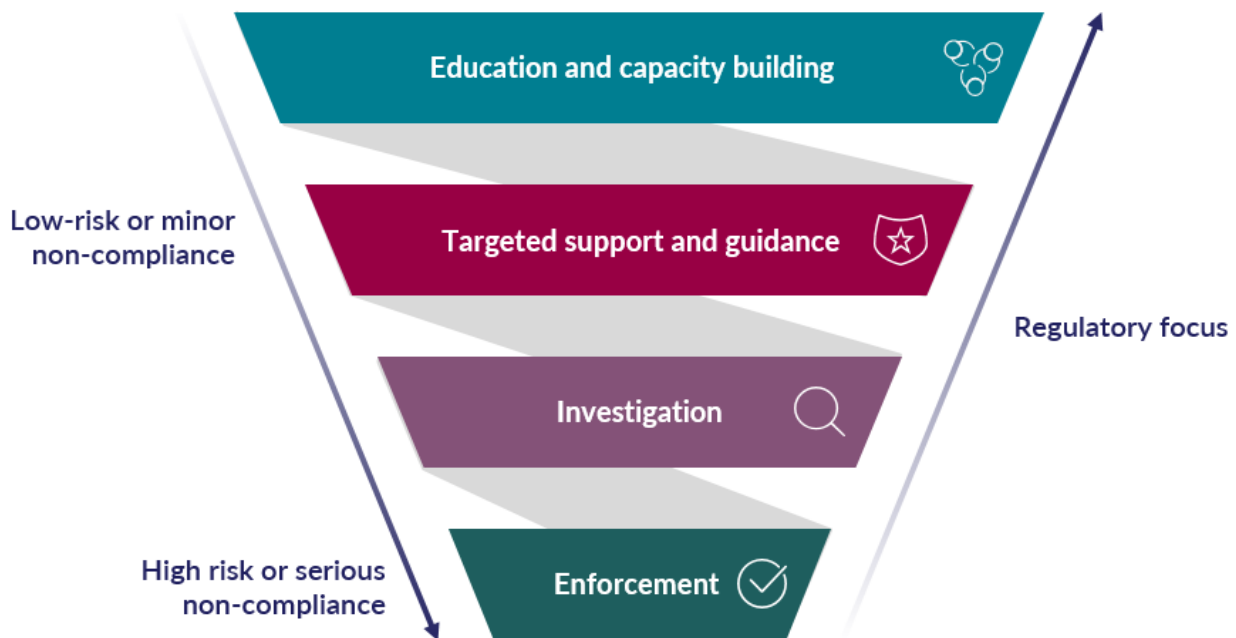
If there is risk that the council cannot or will not act to comply with their governing legislation, we will generally provide the council with advice that we may consider compliance action and provide them with the opportunity to take necessary action themselves, with our guidance if they accept it.

We may not always advise the council that we may consider action, or before we take action, depending on an assessment of risk to the community and/or council’s functioning.

Where councils fail to remedy non-compliance properly or there is repeated and/or deliberate non-compliance we use our powers in the Act to intervene to prevent escalation, or to remedy non-compliance. The decision to do so is informed by factors including the level of financial or service delivery risk to the community, council and NT Government, and the nature of the non-compliance as it relates to offences in the Act or other relevant legislation.

The regulatory pyramid displayed in Figure 3 below provides a visual representation of how we allocate our time and resources to respond to identified non-compliance or risk of non-compliance with further detail provided below. Our regulatory approach is not linear and multiple actions may be undertaken concurrently. The department upholds the principle of local government as a distinct and essential sphere of government and makes any decisions about intervention consistent with that principle.

Figure 3 | The regulatory focus



3.5.1. Education and capacity building



Our first priority is to provide information, education, guidance and support all councils to enable them to comply with their obligations. This recognises that providing councils with the knowledge and tools to comply is key to preventing non-compliance, and is an efficient and effective use of resources. We also develop targeted training and guidance materials informed by information gathered as part of our role, and feedback and advice from the sector.

The administration of local government grants and funding is a core part of council capacity building. This funding primarily provides for council operations recognising the limited own-source revenue opportunities for regional and shire councils in particular. Application-based grants focus on priorities established through analysis of information from the sector and communities, and the NT Government. Grants are administered in a way that prioritises place-based decisions within a framework that reflects consistency in the governance obligations of councils.

What does this look like?

- Provision of accessible information and guidance on legislation, regulations and guidelines on our website.
- Timely, consistent and accurate advice and information from subject matter experts via email or phone.
- Resources and tools via newsletter or direct communication, including guidance documents, templates and sample policies.
- Sector wide professional development, training and networking opportunities to support councils with foundation knowledge about requirements for good governance in local government.
- Targeted training informed by feedback from the sector and analysis of data on risk.
- Funding models that respond to community expectations of councils, build council capacity, and reflect the governance obligations and priorities of councils and the NT Government.

We actively seek feedback from the sector to continuously improve the quality, accessibility and value of education and capacity building activities. We work with LGANT and other partners to support consistency, efficiency and effectiveness of our education, guidance and support. We use feedback from compliance reviews, investigations and other activities to inform the focus for education and capacity building.

3.5.2. Targeted support and guidance



The Act and other legislation sets out clear obligations for councils and the department.

Where we or a council identify unintentional non-compliance and/or a council reaches out to us because of concerns about risk of non-compliance we will generally seek to resolve the issue together with them. This may take the form of advice or guidance which the council can act on and resolve the issue.

Where there is a risk that a council may struggle to comply with their obligations or expectations, we may offer targeted support and guidance.

What does this look like?

- Tailored advice and guidance on specific areas of concern raised by the council or others where we and/or the council assesses there is a risk of non-compliance.
- Provision of intensive mentoring, advice and/or support with resources to assist a council to navigate through a compliance issue and return to sound governance.
- Where a council is assessed to be willing and able to accept additional assistance, we may provide guidance and support to enable them to appoint additional temporary expertise or carry out an investigation in order to enable them to make informed decisions and return to sound governance.

Any targeted support will be developed together with the council. It will be time-limited, with the intention that the council will manage the risk and return to ongoing good governance. Where this occurs, we will likely determine that no further action is necessary.

We identify the councils that require targeted support through information gathering and analysis of risk. We also encourage councils to actively seek support, so issues can be resolved before they become more serious. We encourage councils to identify issues and ask us for guidance or support as they need it.

Education and guidance will generally be provided in writing, including by summarising and confirming verbal advice. Where we assess that it is necessary to caution a council that their conduct may be placing them at risk of further compliance action, we will provide that notice in writing. Where possible, we will work with the council to identify solutions to help them rectify the risk of non-compliance so no further compliance action is needed.

Where a council does not take timely action to return to sound governance, we may provide them with a written warning that we may take compliance action if they fail to act. If they act and the matter is resolved in accordance with their obligations under the Act, we will generally consider that there is no further action to be taken by the department, unless by agreement with the council.

If the non-compliance poses a significant risk to the community, council or NT Government, and the risk needs to be addressed immediately, we may progress immediately to compliance action.

We are obligated to report relevant matters as required under the *Independent Commissioner Against Corruption Act 2017*.

3.5.3. Investigation

Where efforts to address non-compliance are unsuccessful or there is a breach of the Act and a risk of a greater level of harm to the council or community, we may commence an investigation. Matters may progress directly to investigation where they involve careless, reckless or intentional non-compliance, or non-compliance that carries a higher risk of harm to the community or council.

Inspectors are appointed by the department. Their powers are outlined in the Act, and includes the power to compel the provision of information and access to facilities and documents, with penalties associated with failure to comply with an inspector's requests.

Investigations are undertaken in a timely way. Where possible, stakeholders are informed of the proposed timelines and of any variations to them.

Where an inspector finds evidence of an irregularity that appears to involve improper conduct, the matter must be reported to the Independent Commissioner against Corruption (ICAC), the Minister for Local Government, and the council itself. ICAC may also initiate investigations of local government employees and elected members or refer matters to the department for investigation.

3.5.4. Enforcement

We compel compliance with regulatory requirements using a graduated range of tools that include:

- the Minister for Local Government requiring remedial action;
- the Chief Executive Officer (CEO) of the agency appointing a financial controller;
- the Minister for Local Government placing a council under official management; and
- the CEO of the agency pursuing criminal prosecution.

We use our enforcement powers where:

- We have considered the risk and impact of an alleged or assessed non-compliance on the community, council or other parties.
- There is sufficient credible evidence available to support action.
- It is in the community's interest to take enforcement action, either to stop non-compliance, ensure future compliance, or deter and punish those who were non-compliant.
- Enforcement action is an efficient use of public resources, for example where more cost-efficient compliance tools such as education and capacity building or targeted guidance and support are unlikely to address non-compliance conduct.

More serious enforcement actions such as appointing a financial controller, placing a council under official management or pursuing criminal prosecution will be more likely when the following conditions are met:

- there are, or is risk of, deficiencies in the council's operations that place the council's operations and services at risk of failure, and/or significant risk to employee safety; and/or significant financial risk; and
- a council is unable or unwilling to appropriately address the non-compliance with appropriate urgency.

Enforcement action may also be taken where there is a sustained pattern of non-compliant conduct.

The department will generally provide councils with a warning that enforcement action is being considered, in order to provide the council with the opportunity to remedy the non-compliance in accordance with their obligations under the Act, in a timely way. If the risk is assessed to be too high and the consequences to community and council too great, we may progress to enforcement without warning.

4. Implementation

The department will develop an implementation plan and an evaluation methodology for the regulatory framework, in consultation with the local government sector and stakeholders.