

Local Government Act 1995 (WA): Delegations, Authorisations and Acting Through

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This article discusses the concepts of delegating authority, acting through and authorisations. It also explains how these concepts are relevant to local governments.

Delegations

Every society has a source of ultimate authority. In Ancient Rome, the Emperor (or the Senate) had that power. Today, in Australia, the ultimate authority resides in parliament. It is parliament that passes laws which then give power to public bodies to do things that ordinary citizens cannot. Those laws are found in statutes, which apply to Ministers, government agencies and other public bodies, like local governments.

However, the range of tasks that need to be done under some heads of power cannot possibly be undertaken by the one person or entity. This is where the concept of delegations comes into play.

Delegations occur when a person with the statutory power appoints another person to exercise a power or discharge their duty. The person who has been delegated a power has full discretion in regard to exercising that power. However, the delegated power is deemed to be exercised by the original authority.

For example, let's consider the *Local Government Act 1995 (WA)* (the **Act**). The Act creates and gives powers to local governments. The Act then empowers the local government to delegate its powers to the CEO and Committees.¹ This gives the CEO or a committee the authorisation to exercise power on behalf of the local government, in the local government's name.

Delegatus non potest delegare

One of the pivotal principles of administrative law is *delegatus non potest delegare*, which is Latin for "a delegate cannot delegate". This means that a person who has been delegated a power from a higher source, cannot in turn delegate that power to another.²

Delegated power can only be delegated to another if there is express power to do so as part of the original delegation. For example, once a local government has delegated powers to the CEO, the CEO can only on-delegate these powers if he or she can rely on an express provision in the Act.³ Typically the CEO will on-delegate these powers to senior officers, such as the Corporate Services Director, the HR Manager, or the Director of Finance.

Just because a power has been delegated, does not mean the power has been abandoned. For example, if a CEO has delegated the power to discharge a duty to another employee, the CEO can still discharge that duty themselves.

Acting through

Not all powers can be delegated. Furthermore, having too many delegations may create difficulties in maintaining consistency, control or organisational focus. If a power cannot be delegated or is deliberately not delegated, it is possible for a delegate to act through another person.

¹ *Local Government Act 1995 (WA)*, ss 5.16(1), 4.42(1).

² *Interpretations Act 1984 (WA)*, s 59.

³ *Local Government Act 1995 (WA)*, s 5.44(1).

For example, in local governments the CEO (or other employees who have been delegated power) often have so many tasks to complete that they cannot personally tend to them all. It therefore becomes an administrative necessity to direct other persons to do some of the work, without the need to go through the formal delegation process. One example of this would be in calculating the rates to be charged to ratepayers.

The CEO may direct another employee or external agency to complete the relevant tasks in order to ensure the required work is done. This is legally referred to as “acting through”. In this case, the CEO is acting through another employee or external agency.

What’s the difference between acting through and delegations?

One factor which distinguishes acting through from delegations is that the person whom one is acting through has no discretion in relation to how the power is to be exercised. All discretion remains with the delegate.

This is reflected in practices like *per pro* or *pp* where an officer is tasked with attaching the CEO’s signature to letters or notices being issued. The officer can complete the required task but exercises no discretion when doing so.

The acting through concept also applies to external parties. For example, when a CEO engages lawyers or accountants, they will seek ‘instructions’ of ‘confirmations’ from the CEO. The lawyers or accountants will complete a set task as instructed, rather than exercising any discretion over it.

Authorisations

Like delegations, authorisations come from statutes and relate to statutory powers. They are directed to an individual person or persons specified in the provision to exercise a power or discharge a duty, such as giving notices, entering property or giving directions in the event of emergency.

For example, section 9(3) of the *Public Health Act 2016* (WA) states that a delegation of a function by the Chief Health Officer may expressly authorise the delegate to further delegate the function to another public health official.

Authorisations are typically for the purpose of enforcement, i.e. ensuring that the mechanisms for enforcing the statute are done by specified categories of people.

Conclusion

Increasing the range of delegations can give an organisation more flexibility and responsiveness. Reducing them can increase consistency of decision-making.

Discretions are to be found at the heart of delegations and statutory authorisations. That in turn also makes them relevant for other aspects of governance, for example, in the area of disclosure of interests.

For all these reasons, it is vital that public officers, in local government and other levels of government, appreciate the nuances of this area of law. This should ensure greater clarity in their actions.

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