



Model Process Illegal Dumping

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City of Bayswater

City of Fremantle

City of Stirling

City of Swan

City of Wanneroo

Eastern Metropolitan Regional Council

Department of Water and Environmental Regulation (DWER)

1.0 Background Information

The Model Process is designed to facilitate a consistent Local Government response to illegally dumped material. The Model Process provides an overview of the legislative framework and roles and responsibilities. The Model Process also outlines the options available to Local Government when responding to reports of illegally dumped material on private property, or land managed by a state/federal agency.

The benefits of adopting a consistent approach for Local Government include:

- Improved customer service
- Improved internal and external communication
- Increased resource recovery
- Increased understanding of the cost of managing / responding to illegal dumping
- Implementation of consistent behaviour change approaches
- Ability to identify trends in illegal dumping and develop business cases for action.

To address illegal dumping, a range of different approaches are needed. This includes infrastructure to facilitate the disposal of materials, community engagement, incentives to encourage good behaviour and enforcement of the law. The Model Process does not address all of these issues.

NOTE: This document has been prepared by WALGA to assist Local Governments in Western Australia. WALGA does not warrant or represent that the information is exhaustive or complete. WALGA will not be liable for any loss or damage suffered or incurred by any person arising from the use or reliance on the information contained in this document. Local Governments may wish to obtain their own legal advice on matters raised in this document.

2.0 Supporting Documents

The approaches suggested in the Model Process focus predominantly on how Local Governments can effectively respond to illegally dumped material on public and privately owned or managed land. A number of supporting documents are available, including:

The DWER [Interim Compliance and Enforcement Policy \(2017\)](#) provides guidance on DWER's compliance and enforcement functions. In addressing illegal dumping under the *Environmental Protection Act 1986*, the interim Policy reaffirms the use of the approach outlined in the former Department of Environment Regulation [Enforcement and Prosecution Policy \(2013\)](#).

The DWER [Reporting Pollution to Land – Including Waste and Litter](#) provides guidance on the appropriate entity to contact when reporting various types of pollution incidents. Serious illegal dumping incidents should be reported to DWER's 24 hour Pollution Watch hotline - 1300 784 782.

The [Waste Avoidance and Resource Recovery Strategy 2030](#) sets the strategic direction for waste management in Western Australia. The Strategy contains objectives, targets, and strategy descriptions that relate to avoidance, recovery and protection of the environment. This includes a target of towards zero illegal dumping.

Local Government Waste Plans are a requirement of the *Waste Avoidance and Resource Recovery Act 2007*. DWER is developing a template that will facilitate the alignment of Local Government activities to the achievement of Waste Strategy targets.

The WALGA [Template Waste Local Law](#) provides Local Government with the ability to issue modified penalties for material left on the verge. An associated [Guidance Note](#) explains the rationale used to develop the Template Local Law, and assist Local Governments in applying it to their local situation.

WALGA's [Better Practice Optical Surveillance Devices \(aka CCTV\)](#) focuses on the use of Optical Surveillance Devices and the specific legal and practical issues relevant to their use as a means of combating littering and illegal dumping. The Guideline also includes case studies and opportunities available to Local Government to work with the State Government on the issue of illegal dumping.

The WALGA [Background Paper on Illegal Dumping of Shopping Trolleys](#) identifies a number of approaches that can be taken to respond to illegally dumped shopping trolleys, including engagement with retailers and various compliance options.

3.0 Overview of the Legislative Framework

Litter Act 1979 - Littering

The *Litter Act 1979* provides Local Governments with the ability to issue infringements, or to prosecute persons who deposit, or caused to be deposited, litter onto any land or into any waters in certain circumstances.

Environmental Protection Act 1986 - Illegal dumping of waste

The *Environmental Protection Act 1986* creates an offence of discharging or abandoning, or causing to be discharged or abandoned, solid or liquid waste. Local Governments, with the consent of the CEO of the Department of Water and Environmental Regulation, can prosecute this offence. Limited Local Government action has been taken under the EP Act.

Table 1 compares the key elements of the Acts and identifies considerations of the circumstances in which they can be used. Local Government seeking further assistance or guidance in relation to use of the *Litter Act 1979* or the *Environmental Protection Act 1986* can contact the Department of Water and Environmental Regulation.

Table 1: Comparison of the Litter Act and EP Act.

Factor	Litter Act 1979	Environmental Protection Act 1986
When to use?	<p>Generally, the Litter Act is used for less serious offences. As long as the material deposited contrary to section 23 satisfies the definition of 'litter', the Local Government can take action under that Act.</p> <p>An example of where a Local Government may choose to issue an infringement or prosecute under the Litter Act rather than the EP Act is in the case of non-hazardous waste weighing less than one tonne.</p>	<p>Generally, the EP Act is used for more serious offences. As long as the material deposited contrary to section 49A satisfies the definition of 'waste', the Local Government, with the consent of the DWER CEO, can prosecute.</p> <p>An example of where a Local Government may choose to prosecute under the EP Act rather than the Litter Act is in the case of hazardous materials or materials weighing greater than a tonne.</p>
Who can use?	<p>Authorised officers under section 26(1) (being members of the Council or employees of the Local Government in whose Local Government area the offence occurred) can issue infringements.</p>	<p>Authorised officers have various powers under the EP Act. Local Government employees must apply to the Director General of the DWER to be appointed as authorised officers under section 87.</p>
Process for prosecution	<p>Gather, record and store evidence ensuring chain of custody in accordance with contemporary investigative practice.</p>	<p>Gather, record and store evidence ensuring chain of custody in accordance with contemporary investigative practice.</p> <p>The CEO of a Local Government must obtain the consent of the CEO of the DWER to commence a prosecution under section 49A of the EP Act.</p>
Penalties	<p>Littering - \$200 individual, \$500 for corporations.</p> <p>Littering creating public risk - \$500 individual, \$2000 for corporations.</p>	<p>Prosecution Section 49A provides that the unauthorised discharging or abandonment of waste is an offence.</p>

	<p>Prosecution Various penalties for specific offences, up to \$5,000.</p>	<p>Maximum penalty \$62,500 for individuals, \$125,000 for corporations.</p> <p>Modified penalty notices to be issued for the offence of dumping waste.</p> <p>Remediation costs can be imposed by the court for those instances where a Local Government has managed illegally dumped material on its land.</p>
Funds from penalties	<p>If Local Government issues the infringement or undertakes the prosecution, any monies recovered in the form of fines are returned to the Local Government.</p>	<p>If Local Government undertakes the prosecution, any moneys recovered in the form of fines are returned to the Local Government. If the DWER undertakes the prosecution the funds go to consolidated revenue.</p>
Other considerations	<p>If infringements are issued, they must be supported by sufficient evidence to prove each element of the offence. This is to ensure if the infringement is contested, the Local Government can defend the matter in court.</p>	
Resources	<p><i>Litter Regulations 1981</i> Schedule 1 includes a list of types of litter that can create public risk.</p> <p>Schedule 2 includes the format of a Litter Infringement Notice.</p>	<p>DWER can offer Local Governments assistance to undertake prosecutions, such as advising on evidence requirements or, if necessary, undertaking the prosecution.</p>

Planning and Development Act 2005

The *Planning and Development Act 2005* (P&D Act) can be used to address non-conforming land uses such as illegal landfills. The storage or dumping of items on private land without a development approval may constitute an offence under s.214 of the P&D Act.

Where the Local Government believes that a contravention of s.214 has occurred, discretion exists to issue a direction (s.124 (3)) to *inter alia*, remove, pull down, take up, or alter the development'. In determining whether or not to issue a direction, the Local Government should be cognisant of the practical difficulties that could arise, the period of time elapsed since the offence occurred, and whether or not a direction is a suitable response. It is advisable to seek legal advice on these matters. A direction should only be given to a landowner who undertook the unlawful development or to any other person who undertook the same. A direction should not be given to a landowner who acquired ownership after unlawful development was undertaken and who did not themselves undertake the unlawful development.

Waste Local Law

The [WALGA Template Waste Local Law](#) provides Local Government with the ability to issue modified penalties for material left on the verge:

2.10 Verge collections

- (1) *Where the local government has advertised a verge waste collection (such as a green waste, or a bulk waste, verge collection) a person, unless with and in accordance with the approval of the local government or an authorised person—*
 - (a) *must deposit waste only during the period of time, and in accordance with other terms and conditions, as advertised by the local government in relation to that verge waste collection; and*
 - (b) *must otherwise comply with those terms and conditions.*
- (2) *Where waste has been deposited on a verge for a verge waste collection, a person must not remove any of that waste for a commercial purpose but may remove it for any other purpose.*

- (3) Except where waste is lawfully removed from a verge under this clause, a person must not disassemble or tamper with any waste deposited on a verge for a verge waste collection so as to increase the risk of harm to any person.
- (4) Clause 2.10(2) does not apply to the local government or a person engaged or contracted by the local government in relation to the verge waste collection.

Other Local Laws

Local Government Property Local Laws and Public Places Local Laws may provide Local Governments with enforcement powers in respect to materials dumped on Local Government property and in public places. For example, the City of Swan [Consolidated Local Laws 2005](#) contains specific provisions on rubbish on building sites. This Local Law requires bins to have covers, and for building sites and any adjoining verge or public place to be kept free of rubbish or offensive matter at all times.

4.0 Roles and Responsibilities

In responding to illegal dumping, roles and responsibilities must be clearly identified and communicated. This applies for interactions on a range of issues between Local Government and external parties (reporting party, state/federal agencies, private land owners), and internal business units of a Local Government. The Model Process outlined in Figure 1 has been developed as a tool that can assist Local Governments in formalising roles and responsibilities for the completion of distinct activities. It also provides an avenue through which to formalise the approach a Local Government will use to address illegal dumping at private property and State/Federal Government property (Section 4.1). An expanded Model Process is provided in Appendix 1.

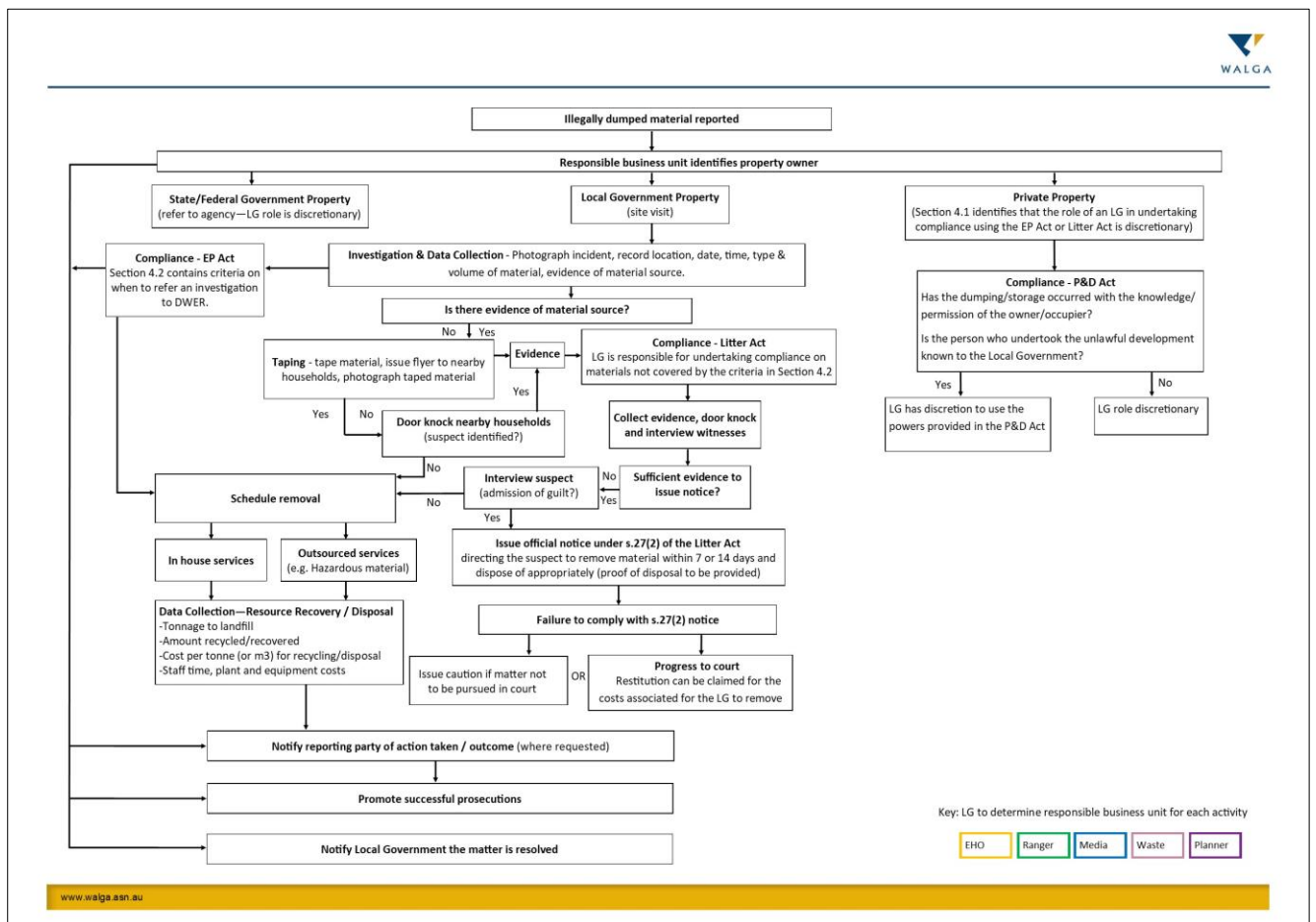


Figure 1: Model process for illegal dumping.

4.1 Property ownership

The action that a Local Government takes to address illegally dumped material is primarily dependent on who owns or manages the property.

State/Federal Government Property

Material that is illegally dumped on property owned or managed by a state/federal agency is the responsibility of the relevant agency. As such, the approach taken to compliance, data collection, community engagement and removal is at the discretion of the affected agency.

A Local Government may, at its discretion, offer assistance to the affected agency with responsibility for responding to the illegal dumping. For example, a Local Government may enter into an arrangement with a state agency to investigate an illegal dumping incident / issue an infringement and request that a suspect removes illegally dumped material. In this instance, the agency would retain responsibility for the removal of remaining material. Alternatively, a Local Government may enter into an agreement with a state agency (e.g. Housing) to remove illegally dumped material on a fee for service basis.

Local Government Property

Material that is illegally dumped on land owned or managed by Local Government is the responsibility of the Local Government. In this instance, it is suggested that a combination of approaches is adopted, where compliance, data collection and community engagement occurs.

In situations where the suspect that illegally dumped material cannot be found, or refuses to remove and dispose of the material in a lawful manner, a Local Government is responsible for the physical management and/or removal of this material.

The management of hazardous material on Local Government managed land must be expedited. Hazardous materials are defined those likely to have an adverse impact on human health and/or the environment. The legislative frameworks established by the *Dangerous Goods Safety Act 2004* and the *Occupational Safety and Health Act 1984* provide definitions for *dangerous goods* and *hazardous substances*. Common examples of hazardous materials that are likely to have an adverse impact on human health and/or the environment include chemicals, fuel, oil and asbestos.

Private Property

Material that is illegally dumped on privately owned or managed land is the responsibility of the owner. A Local Government may, at its discretion, offer assistance to a private land owner in responding to illegal dumping, by entering into an arrangement to investigate an illegal dumping incident and request that a suspect removes illegally dumped material. In this instance, the private land owner would retain responsibility for the removal of any remaining material.

There are options available to issue a direction under the *Planning and Development Act 2005* for unlawful development. Refer to *Section 3.0 Overview of the Legislative Framework* to ascertain the type of situations where it would be appropriate to use such an approach.

4.2 Compliance

A Local Government must make a decision on the approach that will be taken to compliance. The Local Government has the opportunity to undertake these activities themselves or to partner with the DWER.

Partner with DWER

Local Governments can partner with the DWER to undertake various activities in responding to illegal dumping, including:

- Training: to assist Local Governments to enforce the *Litter Act 1979* and the *Environmental Protection Act 1986*
- Assistance on prosecutions: DWER is able to provide advice to Local Governments to ensure that the required evidence has been gathered, stored and recorded in accordance with the rules of evidence
- Equipment: DWER can partner with the Local Government to use Optical Surveillance Devices (OSD) to identify those responsible for littering or illegally dumping.

As a first step, DWER can loan OSDs, check surveillance imagery, undertake the prosecutions (under the *Environmental Protection Act 1986*) and publicise any successful prosecutions. As the partnership develops Local Government can assist by reviewing imagery captured by OSD and providing statements on the timing, nature and location of littering or dumping offences.

This partnership approach would require that a Local Government:

- Suggests littering or illegal dumping 'hot spots' for OSD installations
- Commits to at least a weekly drive by of the site(s)
- Takes photos and notifies DWER if littering and or illegal dumping occurs at the site.

As identified in Section 3, different legislative tools can be used to address litter and illegal dumping. The DWER has dedicated resources available to investigate serious illegal dumping incidents.

Thresholds for referring a matter to the DWER include:

- Whether the material illegally disposed of appears to be commercial
- The quantity of material illegally disposed of
- How hazardous the material is (to human health or the environment).

4.3 Data Collection

There is a need for data to be collected on material which is illegally dumped. The data collected should include the amount of material reported, location, date, time, type and volume of material, any evidence of material source and photographic evidence. The collection of this information for all instances of illegal dumping will assist in determining current levels of illegal dumping in a Local Government area and the success of interventions the Local Government undertakes, such as compliance, community engagement and removal of the material.

This information can also be used to determine the cost of illegal dumping to the community. Dependent on the type of enforcement action taken, there is a possibility that the costs associated with investigation and removal of material (plant, equipment, staff time) could potentially be recouped.

4.4 Community Engagement

Complaint received and entered into customer service system

Illegal dumping can be reported through a variety of internal and external channels. Reporting mechanisms can be designed to ensure information is collected in a consistent manner that informs the future activity of multiple business units. Information can be received online (web / social media / app), by phone or reported by internal Local Government staff. For example, residents in the City of Joondalup can report illegal dumping [online](#).

A best practice approach to customer service is to contact the reporting party initially to confirm details. However, resourcing constraints may limit the level of engagement that occurs. How incidents are allocated to various teams within a Local Government differs. The process used in some Local Governments is to self-allocate responsibility– dependent on severity or the availability of evidence. Another approach is for one person / team to use a consistent screening approach to allocate responsibility.

Taping process

The process used in the City of Wanneroo has been incorporated into the Model Process suggested in Figure 1. Illegally dumped material is taped as a means of notifying nearby residents that an investigation is underway. Material is left material on the verge and re-checked within one week.

Material is taped even if evidence identifying a suspect exists, as it encourages the removal of illegally dumped material.

Refer to Figure 2-4 for examples of the materials used to notify residents that illegal dumping has occurred.

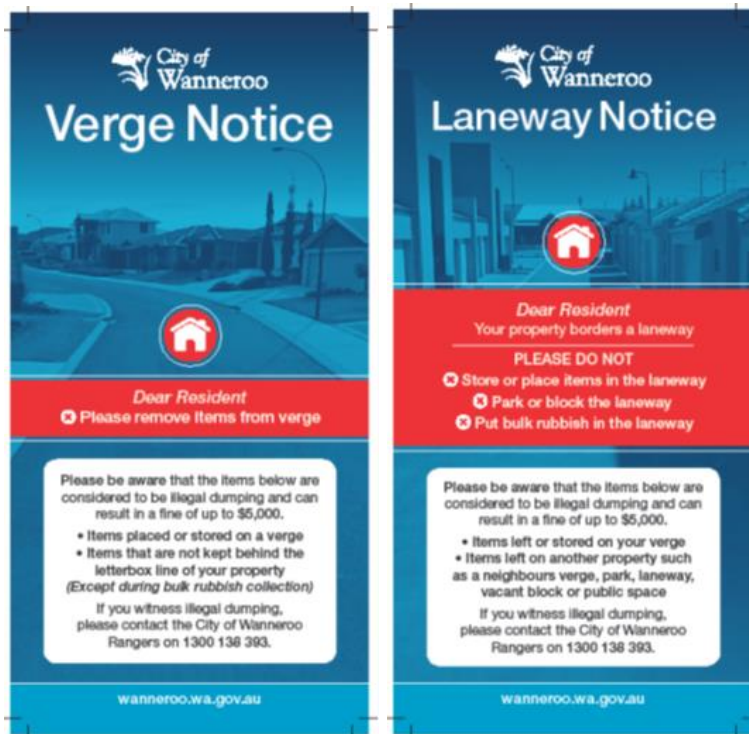


Figure 2: Example of material used to notify residents (City of Wanneroo).



Every year, an average of 225 tonnes of rubbish is illegally dumped in the City of Stirling.
That's equal to...

A truck full of rubbish every day



More than 2,000 fridges



More than 2,500 couches



More than 8,000 mattresses



Costing ratepayers money and putting our environment and health at risk.

Get rid of your rubbish for free with the City of Stirling

Many items that can be recycled can be taken to the Recycling Centre Balcatta for free, including:

- Aluminium and steel cans
- Household furniture in good condition (acceptance is decided by the tip shop)
- Landscaping and garden items
- Jars, containers and bottles
- Scrap metals and white goods (does not include fridges and freezers).

Hazardous Waste can be taken to the Recycling Centre Balcatta, including:

- Electronics and mobile phones
- Household and car batteries
- Motor oil, coolants and filters

- Household chemicals
- Paints and solvents (dry and empty tins also accepted).

On-Demand Collection Services

People who live in Stirling can access these collections once every year:

- 1 x electronic waste (a total of six items)
- 1 x skip bin (3m³)
- 1 x mattress/base (six pieces– does not include bed frames and headboards)
- 1 x white goods (four items – fridge/freezer doors must be removed).

Book on the City's website www.stirling.wa.gov.au/waste

Tip Passes

Each ratepayer receives tip passes for:

- Household bulk junk up to one tonne (includes two mattresses and two fridges)
- Clean green garden waste up to one tonne
- Clean sand, bricks and concrete up to one tonne.

With services available for people who live in the City of Stirling, there is no excuse for illegal dumping.

With increased cameras and patrolling, those who are caught will be issued with a fine.

If you see it, report it by calling (08) 9205 8555.

Figure 3: Example of material used to notify residents of other disposal options (City of Stirling).



Figure 4: Example of signage used when taping illegally dumped materials (City of Wanneroo).

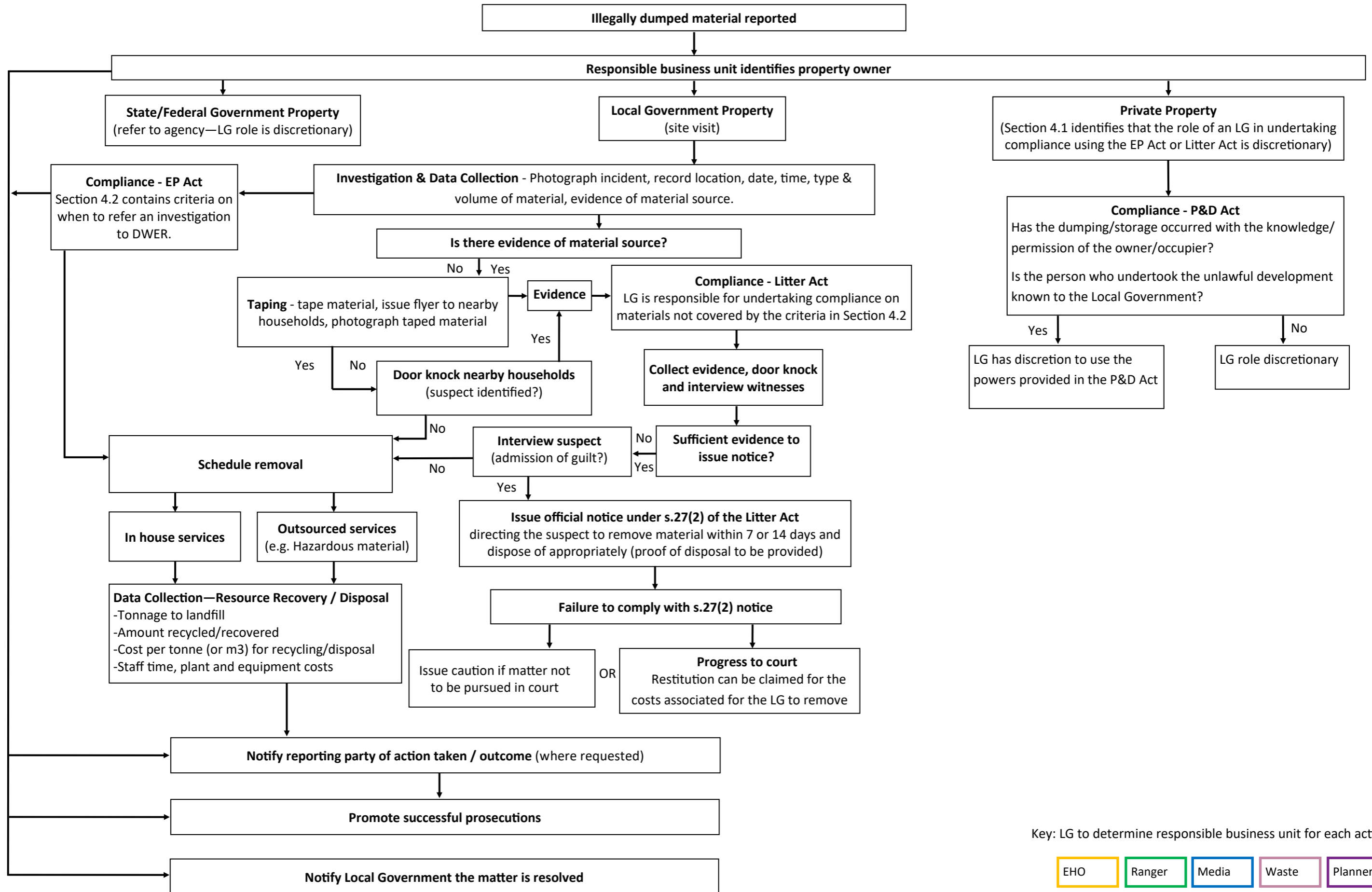
Promotion of successful prosecutions

The promotion of successful prosecutions is an important community engagement activity that complements and supports compliance. For compliance activity to effectively deter illegal dumping, the community needs to be understood that action will be taken if material is illegally dumped. Local Governments can promote successful prosecutions through a number of channels, including websites, social media and community newsletters.

4.5 Removal of Material

Management of any material that is not removed after undertaking community engagement remains the responsibility of the owner or manager of the land. For Local Government, this comes at a substantial cost. There is an opportunity to lower these costs by undertaking resource recovery, where appropriate. It is important that Local Governments undertake an assessment of the viability of resource recovery activities.

Where resource recovery is found to be viable, the WALGA Preferred Supplier Panels for [Waste Collection Goods and Services](#), and [Hazardous & Emergency Event Services](#) can be used to assist Local Governments in the procurement of resource recovery services. The contractors on these Panels can provide a range of resource recovery services, including e-waste recycling, mattress recycling, and disposal of hazardous material. To arrange for a quote, use the [eQuotes](#) system.



Key: LG to determine responsible business unit for each activity

