

Targeted review of the *Local Government Act 1993*

Consultation Feedback Report

JUNE 2016

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Introduction

On 15 July 2015, the Minister for Planning and Local Government, the Hon Peter Gutwein MP announced a targeted review of the *Local Government Act 1993* (the Act). The review has the following objectives:

- improve governance in local government and make the Act less prescriptive where possible;
- clarify certain functions and powers of statutory bodies, councillors and general managers within the Act; and
- ensure fair and transparent local government elections.

The following areas are being considered under the targeted review:

- the functions of mayors, deputy mayors and elected members;
- the appointment, functions and powers of the general manager;
- financial management and reporting;
- the functions and powers of the Director of Local Government;
- the functions, powers and procedures of the Local Government Board;
- the functions, powers and procedures of a Board of Inquiry;
- local government elections – electoral rolls, funding and advertising;
- the recognition, structure and role of regional bodies; and
- the reduction of unnecessary administrative requirements.

On 29 April 2016, the Minister released a Discussion Paper as the basis for public consultation on the targeted review. The Discussion Paper identified issues associated with the Act, summarised different approaches from across the country, and suggested some opportunities for changes to the Act.

The Discussion Paper contained 44 questions in relation to the areas of the Act that are under review. Local government, interested parties, peak bodies and members of the public were all invited and encouraged to participate and have their say on the Discussion Paper. Public consultation closed on 10 June 2016. A total of 64 submissions were received.

This Consultation Feedback Paper summarises the responses to the questions outlined within the Discussion Paper as well as key points raised in submissions received during the consultation. This Paper should be read in conjunction with the Discussion Paper.

Thank you to all those who took the time to read the paper and participate in the process by making a submission to the targeted review.

DISCLOSURE ABOUT INFORMATION CONTAINED IN THIS PAPER

It is important to note that not all submissions received answered all questions under the Discussion Paper, in fact, some submissions did not provide a response to any of the questions posed. Furthermore, there was some evidence through the responses that indicated that the respondent(s) may not have fully understood the question or the matter being discussed (for example, respondents commenting on the general manager's "role" as opposed to "electoral roll"). For these reasons, while efforts have been made to ensure that such submission responses are accurately reflected within this paper, any figures contained within are approximate only.

This paper seeks to honestly and transparently reflect comments, suggestions and ideas that were put forward through the consultation process. Some of the suggestions contained in this paper were made and/or supported by multiple submissions, others were made in a single submission. The paper does not seek to support any particular agenda, nor does it aim to show any preference for specific ideas. It aims to present arguments for and against each of the propositions contained in the Discussion Paper on the basis of comments received through the consultation process.

Finally, while the Steering Committee is to consider the consultation feedback that has been received during this process it is ultimately tasked with determining whether recommendations or amendments put forward to the Minister are in fact necessary and sound in rationale, practical and able to be implemented, as well as fair and equitable in the circumstances.

Executive Summary

During a six-week consultation period, approximately 64 submissions were received in response to the Discussion Paper for the targeted review of the Act. The responses received were from members of the public; councillors; individual councils; peak bodies such as the Local Government Association of Tasmania (LGAT); advocate organisations; and State Government Agencies.

KEY FINDINGS

There was strong support among submissions for the review of the Act to result in reduced prescription and improved governance. Many submissions agreed with issues identified in the Discussion Paper but proposed that the solution was not through changes to the Act but through improved guidance and information.

The general view among submissions was that clarification on the roles of mayors, councillors and general managers would be beneficial. However, most were in favour of mechanisms such as protocols or guidelines rather than amendments to the Act. Most submissions also supported induction and training for elected officials.

The majority of submissions found that there was a need to have two separate bodies (being the Local Government Board and Boards of Inquiry) to monitor how effectively councils serve our communities. However, submissions identified there was room for improvement in the bodies' operation and processes. Submissions generally agreed that the potential outcomes from a review or inquiry were insufficient and that the Act should provide for additional potential outcomes. Furthermore, respondents generally agreed that the Director of Local Government may require further or increased powers to fulfil the role.

The majority of submissions found that the general manager's roll should be retained but that there should be a further review into the administration, eligibility criteria and their application. There was strong support for electoral advertising limits to remain with the possibility of indexation or a regular increase to the limits to be considered, and support for further clarification and more transparency around political donations.

The majority of submissions were supportive of maintaining a flexible approach to how regional bodies operate. A number of submissions were in favour of a mechanism to define roles and functions of such bodies, but not within the Act or legislation.

Several submissions identified sections and areas within the Act, which could present opportunities to reduce red tape, if reviewed and amended.

A number of other matters were raised in the submissions to the targeted review. While these matters fell outside the ambit of the Discussion Paper, these have been acknowledged in the "Other Matters" section.

The people who lead and serve our community

The general view among submissions was that clarification on the roles of those who lead and serve the community would be beneficial. However, most were in favour of mechanisms such as protocols or guidelines to clarify roles rather than amendments to the Act. Most submissions also supported induction and training for elected officials.

What is the role of the mayor?

Question 1: What should the leadership role of the mayor include?

Thirty eight submissions responded to this question. There were diverse views within the submissions on how the leadership role of the mayor should be defined in the Act. There was strong support to require mayors to promote good governance, build a united team, and to mentor newly elected members.¹ A number of other 'soft' skills were identified as being important for the role of mayor such as communication skills; being honest and approachable; and promoting a consultative approach.

Some submissions indicated that the mayor should play a more executive role: directing the general manager², overseeing budget setting and overseeing operations. There was a suggestion that mayors should have the capacity to refer a matter to council for resolution when the general manager does not agree with or respond to the mayor's requests or instructions.³ A further suggestion was to provide mayors with powers such as referral to the code of conduct panel or other authorities where appropriate.⁴

The LGAT submission indicated that, among councils, there was not a strong desire for change. If the role of the mayor as defined in the Act were to change, the LGAT response indicated general support for the roles presented in the Discussion Paper, except for the requirement for mayors to be members of all standing committees as this may be impractical. LGAT also noted that the role of the mayor as 'spokesperson' required clarification but councils did not have a unified position on how it could best be clarified.

Overall the view from the submissions was that the Act should provide a framework and that there was a need for guidance and information to support the intentions of the Act.⁵

In the report of the Huon Valley Council Board of Inquiry⁶ several relevant recommendations (Recommendations 9 -14) were made regarding the role of the Mayor:

- When making public statements on issues that are the subject of a formal council decision, the Mayor should only speak on behalf of the Council's decisions

¹ Submissions 6, 10, 13, 15, 19, 21, 26, 48, 49, 54

² Submissions 7, 9, 19, 30

³ Submission 7

⁴ Submission 49

⁵ Submission 34

⁶ Huon Valley Council Board of Inquiry Report to the Minister for Planning and Local Government (June 2016)

(Recommendation 9) or refer the media or public enquiries to the minutes or audio recording⁷ of the relevant council meeting (Recommendation 12).

- When the Mayor's view differs from a Council decision, their view should be put on record in the Council's meeting minutes (Recommendation 10).
- Recommendations 9 and 12 should not apply during the period of a Council election (Recommendation 13).

The Board of Inquiry referred the following to the Targeted Review to consider:

- the broader application of a mayor speaking only on behalf of council, and the use of audio-recordings for council meetings (Recommendation 14); and
- additional legislative powers for mayors of Tasmanian councils (Recommendation 15).

Question 2: What should the requirement for the mayor to liaise with the general manager include?

Thirty three submissions responded to this question. There were diverse and often opposing views among the responses on requirements for the mayor to liaise with the general manager. For example, there were those respondents who thought that there should be specifications around the regularity with which mayors and general managers met and suggested that meetings should be required weekly or twice a month⁸, and others who felt that such specifications would be overly prescriptive.⁹ There were those who felt there should be a close working relationship between the mayor and the general manager, while another submission argued that there should remain a professional distance between the mayor and the general manager to avoid potential blurring of roles.¹⁰

The LGAT submission proposed that guidance and examples would be more appropriate than legislative specifications as the Act already provided an effective framework in this respect. LGAT also highlighted the importance of focusing on outcomes, noting that regular meetings may not be sufficient at critical times such as during major weather events, and equally may not help to resolve issues when they arise between mayors and general managers. As an alternative to specifying meeting schedules, it could be a requirement to meet as regularly as is required to support efficient operations and effective outcomes.¹¹

The Huon Valley Council Board of Inquiry recommended that a *Statement of Expectations* to govern the relationship between the general manager and the Mayor be developed. This statement would include the scope of information that could be requested, timelines for the provision of requested information, regular meetings, how outcomes were recorded, authorisation processes, dealing with disagreements and so forth. Recommendation 4c of the Board recommended that the statement also include agreed protocols to fulfil their respective roles and functions under the Act, for endorsement by the full Council (Recommendation 7). It also recommended that the Mayor should be consulted by the general manager when setting council meeting agendas (Recommendation 27).

⁷ Recommendation 11 was that Council meetings should be audio-recorded and audio-recordings made accessible to the public.

⁸ Submissions 9, 15, 46, 26, 54

⁹ Submissions 31, 40, 42,

¹⁰ Submission 17

¹¹ Submission 13

Question 3: Should mayors be required to undertake induction and training, particularly in the development of leadership skills?

Thirty two submissions provided a response to this question. Approximately 87 per cent of respondents to this question submitted that mayors should be required to undertake induction and training, particularly in the development of leadership skills, nine per cent submitted that induction and training should not be mandatory, and three per cent were unsure.

Of those in support of mandatory training, it was suggested by some respondents that training should focus on good governance, the roles of elected members and administration, the role of the mayor as chair, ethical conduct, and decision making¹². In that regard, two submissions suggested that training be local government specific¹³ rather than leadership specific. While it was not stated explicitly, there was a general view from the submissions that some people may be experienced leaders in a certain field but those leadership skills are only partly transferrable to the role of mayor.¹⁴

A range of other suggestions were put forward in submissions such as:

- requiring experience as a deputy mayor prior to being eligible to stand for mayor;¹⁵
- encouraging training rather than requiring it;¹⁶
- mayors could undertake a self-assessment to help them identify what training would be best suited to their needs;¹⁷ and
- training should be mandatory just for new mayors, not returning mayors¹⁸.

The LGAT submission reported that there was broad support among councils for mandatory training but that councils had raised questions around who would deliver the training, who would fund it, and what the penalties would be for non-compliance. LGAT supported the idea of increased investment by the State Government in online and face-to-face training.¹⁹ LGAT also highlighted comments from councils related to the removal of the requirement for mayors to have experience as councillors prior to being eligible to stand for mayor. This comment was mirrored in a number of individual submissions. These respondents felt that prior experience as a councillor was more valuable than training once elected as a mayor.²⁰

The Huon Valley Council Board of Inquiry recommended that mandatory training on roles and responsibilities under the Act for all newly elected councillors, with an additional leadership module for first time Mayors (Recommendation 16). It also noted particular types of training, under Recommendations 26 (regarding behavioural expectations and meeting conduct) and 35 (regarding conflicts of interest).

¹² Submissions 33, 54 and 49

¹³ Submissions 15, 19

¹⁴ Submission 1, 11, 15, 24, 30 and 45

¹⁵ Submission 1

¹⁶ Submission 33

¹⁷ Submission 24

¹⁸ Submission 17

¹⁹ Submission 31

²⁰ Submissions 1,40, 47 and 54

Question 4: Should mayors be given a casting vote when decisions are tied, so that tied decisions are not automatically determined in the negative?

Thirty two submissions provided a response to this question. Approximately 75 per cent of respondents submitted that mayors should not be given a casting vote when the vote is tied, while 25 per cent submitted that mayors should be given a casting vote in such circumstances.

Of the submissions in support of current arrangements, whereby a tied vote is deemed to be a vote in the negative, some made arguments against a casting vote being granted to the mayor²¹, including that a casting vote would jeopardise a mayor's independence²², reinforce power blocks and petty politicking, and that it may remove the focus from consensus decision-making.²³ An argument in support of a casting vote was that mayors would have the community's best interests at heart and would make a fair decision²⁴.

The LGAT submission indicated that there was generally no support for a mayoral casting vote. LGAT also noted, however, that a casting vote may assist with planning matters when the council is acting as a planning authority.

Question 5: Should the provisions requiring a person to be both mayor and councillor candidate remain?

Thirty two submissions responded to this question. Approximately 81 per cent, of respondents submitted that a person should be required to stand for both mayor or deputy mayor and councillor, while 19 per cent submitted that a person should only be allowed to stand for mayor, deputy mayor or councillor.

The comments received in relation to this question argued against a change from the existing system as such a change would deter competent individuals from standing for mayor because the likelihood of winning a general seat is greater than winning the seat of mayor.²⁵ The LGAT submission reflected the view of the majority, noting that the predominant view among councils was that the existing requirement should remain.

There was some support, including from LGAT, for separate elections as is the system in Geelong (Victoria) and South Australia²⁶. This system sees the election for councillors run first, followed by the popular election of mayor from among the appointed councillors.

An associated proposal raised in the Legislative Council Government Administration Committee "B" Final Report on the Tasmanian Electoral Commission (the Final Report on the TEC) was that consideration should be given to whether individuals should have the opportunity to stand for both mayor and deputy mayor (Recommendation 17).

²¹ Submission 10, 15, 21, 30 and 31

²² Submission 18

²³ Submissions 21, 30, 31, 36

²⁴ Submission 32

²⁵ Submissions 33, 40, 41, 48, 51

²⁶ Submission 48

What is the role of deputy mayor?

Question 6: What should the role of deputy mayor include?

Thirty three submissions responded to this question. Across the majority of submissions the general view was that the role of the deputy mayor should be to act as the mayor in the mayor's absence, and in this regard, that the Act did not require a change.²⁷

The LGAT submission supported this view, but added that the deputy mayor should also be required to:

- support the mayor;²⁸
- share the role of mentor to newly elected members; and
- liaise regularly with the mayor and general manager.

LGAT further proposed that the role of deputy mayor should be more accurately described as acting as the mayor when the mayor is 'unavailable' (as opposed to 'absent') to acknowledge that events such as illness, and family and personal commitments that impact on the mayor can require the deputy mayor to act as mayor from time to time.

There were a number of submissions that proposed that there was no need for a permanent deputy mayor and that an elected member should be appointed by other elected members on an as-needs basis.²⁹

Question 7: Should deputy mayors be appointed by the council rather than popularly elected?

Thirty one responses were received to this question. Approximately 64 per cent of respondents submitted that deputy mayors should be popularly elected while 23 per cent submitted that deputy mayors should be appointed by the council and 13 per cent were not sure.

Of the submissions in support of current arrangements, one argued that if councillors were to elect the deputy mayor they may not select the best person³⁰ while another suggested that voting on a paid position could create conflict among elected members.³¹

Of those submissions favouring election among councillors, one suggested that the deputy mayor could be selected based on expertise³² and it was also noted that the councillors would know who among the group would work best with the mayor.³³

Other suggestions were that the mayor should select the deputy mayor³⁴, or that the second placeholder in the mayoral election could be awarded the position of deputy mayor.³⁵

²⁷ Submission 1

²⁸ Submission 3

²⁹ Submissions 9, 11, 17 and 18

³⁰ Submission 15

³¹ Submission 51

³² Submission 30

³³ Submissions 30, 48

³⁴ Submission 26

³⁵ Submission 21

The LGAT submission noted that there was no consensus on the issue among councils, but that the July 2012 General Meeting of the Association determined that a move to electing deputy mayors around the table was not supported.

What is the role of an individual councillor?

Question 8: How should mayors fulfil their role of overseeing councillors in the performance of their functions?

Thirty two submissions responded to this question. Submissions highlighted a number of challenges associated with oversight by mayors of the performance of councillors. The preferred approach from these submissions was to allow mayors the flexibility to apply their judgement and skills.³⁶

It was noted that in relation to the mayors role of overseeing councillors in the performance of their functions further definition of 'oversee councillors' is required³⁷ as there is inconsistent application of this requirement across the State.³⁸ Practically speaking, it is difficult for mayors to oversee the performance of councillors and that, if not carried out effectively, it could jeopardise relationships and the effective functioning of a council.³⁹ It is also hard to undertake this role when there is no requirement for elected members to take direction from mayors.⁴⁰

It was also noted that there may be some mayors who do not have the skill set required to oversee others in a positive and meaningful way, and that new mayors in particular may not have the local government experience to carry out this role effectively.⁴¹

There were also submissions that supported a standard approach to the oversight by mayors of the performance of elected members. Proposals included that mayors should:

- foster respect between councillors⁴²;
- meet with elected members periodically, for example every 2-4 months, to discuss performance⁴³;
- encourage elected members to participate in induction and training;⁴⁴
- provide guidance to councillors on their role and the framework within which the individual and the council operates;⁴⁵
- speak with elected members on a one-on-one basis as required;⁴⁶ and
- investigate and action complaints when received.⁴⁷

³⁶ Submissions 38, 42, 47, 48

³⁷ Submission 54

³⁸ Submission 49

³⁹ Submissions 11, 24

⁴⁰ Submission 13

⁴¹ Submissions 24 and 54

⁴² Submission 13

⁴³ Submission 19

⁴⁴ Submissions 18, 38 and 54

⁴⁵ Submission 49

⁴⁶ Submission 40

⁴⁷ Submissions 18 and 41

The LGAT position was that most councils preferred guidance and best practice advice regarding mayors' oversight of elected members over specific prescription in the Act. LGAT proposed that guidance might relate to behaviours such as having an open door policy and respecting all opinions around the table, and specific activities such as ensuring that councillors participate in inductions, developing an issues resolution process and communication protocols.

Question 9: What protocols should councils develop to guide interactions between council staff and councillors?

Thirty three submissions responded to this question. Respondents to this question suggested that an important factor for ensuring effective interactions between council staff and councillors is the need for elected members and those in council administrations to understand their respective roles and relationships⁴⁸. It was suggested that this is especially important in smaller communities where people are often connected in a number of different ways.⁴⁹

One submission proposed that an improved understanding of roles would help to reduce the need for protocols⁵⁰. Submissions also proposed that codes of conduct play a similar role to protocols that might be developed to guide interactions between council staff and councillors.⁵¹ There was a suggestion that model protocols could be prepared for councils to adapt and adopt if they felt it was necessary.⁵²

The LGAT submission proposed that protocols could be useful to guide interactions between council staff and councillors, but that such protocols are best developed on a council-by-council basis⁵³. Furthermore, LGAT proposed that any protocols should be developed in a consultative way to meet the particular needs of individual councils⁵⁴ and also noted that there needed to be alignment and integration of protocols and a council's code of conduct.

A number of submissions also proposed that the Act should allow for interactions between elected members and senior managers, rather than the current limitation of communication being between the mayor and the general manager⁵⁵. Another suggestion was that chairs of council committees should be free to contact relevant senior managers⁵⁶ within the council.

Question 10: Should elected members be required to participate in induction and professional development programs and, if so, what sort of training should they do?

There were 33 responses to this question. Approximately 83 per cent of respondents submitted that elected members should be required to participate in induction and professional development programs while 17 per cent submitted that elected members should not be required to participate in induction and professional development programs.

The arguments for mandatory training were that councillors may not be elected with the skills to fulfil the role, and that elected members may become stagnant over time if they are not

⁴⁸ Submission 11, 45, 43 and 13

⁴⁹ Submission 13

⁵⁰ Submission 13

⁵¹ Submissions 1, 22, 23 and 54

⁵² Submission 33

⁵³ Submission 11

⁵⁴ Submissions 18 and 54

⁵⁵ Submissions 9 and 15

⁵⁶ Submissions 23 and 15

exposed to professional development⁵⁷. It was pointed out in two submissions that individuals are often elected on the strength of their contribution to the community or commerce but, in spite of their strengths, they do not possess the knowledge and understanding of the local government sector to effectively fulfil the role of an elected member.⁵⁸

There were some submissions that proposed that candidates for election should be required to undertake some basic training prior to being eligible to nominate⁵⁹. The rationale for this position was that some people nominate with a misunderstanding of the role of an elected member and/or planning authority, and such misunderstandings can lead to frustration once elected. There were a number of suggestions on areas in which elected members should receive training including roles, responsibilities, decision making, conflict resolution, regulatory requirements, land-use planning, ethical conduct, and workplace health and safety.⁶⁰

As to how training and induction should occur, some submissions proposed that councils be responsible for their own induction programs⁶¹, but one noted that training should be provided by someone who is independent and expert in their field⁶². There was a suggestion that there should be a unit within the State Government that was dedicated to development of elected members across the State.⁶³ It was also noted that funding for mandatory training should be standard and applied transparently⁶⁴. There was also a suggestion that a continuing professional development points system could be introduced at a statewide level.⁶⁵

Arguments from individual submissions against mandatory training were that councillors learn best on the job⁶⁶ and seeking advice from mentors on the council. It was also proposed that experienced councillors were best placed to provide induction and training for new councillors⁶⁷. It was noted that mandatory training would add further complexity and administration as there would need to be a way to measure compliance as well as adequate penalties in place for non-compliance or failure to undertake mandatory training.

A number of submissions held the view that training should occur on a voluntary basis and that it should respond to the individual needs of councillors.⁶⁸ Furthermore, it was proposed in one submission that the most effective learning will occur where there is a culture of learning and that the focus should be on building a learning culture rather than imposing learning.⁶⁹

The LGAT submission stated that the majority of councils felt there should be compulsory induction following elections for new and returning elected members but that returning elected members should have a tailored program that took into account previous training and experience. LGAT advised that councils' general view was that compulsory training which focused on governance, planning and meeting procedures should be provided, and that the

⁵⁷ Submissions 3, 6, 8, 11 and 26

⁵⁸ Submission 8 and 26

⁵⁹ Submissions 6, 10 and 39

⁶⁰ Submissions 11, 19 30, 33, 37

⁶¹ Submission 21, 9 and 41

⁶² Submission 54

⁶³ Submission 31

⁶⁴ Submission 54

⁶⁵ Submission 38

⁶⁶ Submission 1

⁶⁷ Submission 3

⁶⁸ Submissions 15, 48, 33 and 11

⁶⁹ Submission 47

compulsory training should be supported by ongoing professional development. The LGAT submission further noted that the July 2015 general meeting determined that all councillors should be encouraged to undertake training courses.

As mentioned previously under Question 3, the Huon Valley Council Board of Inquiry supported mandatory training under Recommendation 8 and did specify particular types of training around meeting conduct, behavioural expectations and conflicts of interest (Recommendations 26 and 35).

How is the general manager appointed and managed?

Question 11: What role should mayors have in relation to the appointment and performance appraisal of general managers?

Thirty three submissions responded to this question. A number of submissions were of the view that the mayor should play the same role as other councillors in the appointment and performance appraisal of general managers and that there was no need to change the legislation as it stands⁷⁰. In terms of performance appraisal, there was a suggestion that all staff as well as all elected members should have the opportunity to have a say on the performance of the general manager via a survey.⁷¹

The LGAT submission indicated that most councils agreed that the mayor should have the lead in the appointment of general managers⁷². There was a suggestion among individual council responses that, given the importance of the relationship between the mayor and the general manager, the mayor should have a casting vote when it comes to the selection of a general manager.

In regards to the Huon Valley Council Board of Inquiry, Ministerial Direction 6(c) required the establishment of a General Manager Performance Review Committee and Recommendation 38 of the Board was that the Mayor can be appointed as ex-officio member of all Council committees (including such a performance review committee).

Question 12: Should the Act include principles for the selection, reappointment and performance appraisal of general managers?

There were 33 responses to this question. Approximately 47 per cent of respondents submitted that the Act should not include principles for the selection, reappointment and performance appraisal of general managers. Forty seven per cent of respondents submitted that the Act should contain such principles and six per cent were unsure.

A number of submissions commented that such principles may be useful but that they should not be specified through the Act and it should be up to individual councils to decide on principles that suited their particular circumstances.⁷³

The LGAT submission indicated that there was an even split among councils, with about half supporting the current legislative requirements and about half supporting the inclusion of principles. Consistent with other submissions received, LGAT indicated that some councils

⁷⁰ Submission 1, 3, 10, 15, 19, 24 and 33

⁷¹ Submission 1

⁷² Submission 18

⁷³ Submissions 11, 21, 22, 33, 38, 41, 42 and 54,

supported the idea of such principles but believed that they would be best presented as guidance rather than by legislative requirement. LGAT made a specific proposal that section 61(3) of the Act which requires councils to invite applicants for the position of general manager in a daily newspaper, be removed.⁷⁴

What is the role of the general manager?

Question 13: What should the requirement for general managers to liaise with mayors include?

Thirty three submissions responded to this question. There were some submissions that supported specific liaison requirements⁷⁵ such as meetings twice a month.⁷⁶ Other submissions identified behaviours that should guide interactions between general managers and mayors such as open communication, being unbiased, and focussing on the best interests of the community⁷⁷. There were also suggestions around specific matters that the general manager should report on to the mayor such as major projects; meeting agendas; legal advice; budgets; emergency management and planning; service standards; and strategic staffing matters.⁷⁸

There was a suggestion that if a general manager forms the view that the relationship with the mayor is or could be detrimental to the proper functioning of the office of the general manager, the general manager should report in writing to the full council on those concerns with the mayor having the opportunity to provide a written response.⁷⁹

In contrast, there were submissions that opposed legislating specific requirements for general managers to liaise with mayors. These submissions were of the view that there should be flexibility for general managers and mayors to engage as much or as little as necessary to ensure the effective operation of the council.⁸⁰

In its submission, LGAT indicated that councils in general did not support amendments to the existing provisions. It advised that councils felt that further prescription would not improve the Act in this regard, and that it is not possible to legislate for situations where there may be a personality conflict.

The Huon Valley Council Board of Inquiry recommendations are reflected under Question 2 of this Discussion Paper.

Question 14: What level of information should be provided to the council by the general manager?

Thirty three submissions responded to this question. In the submissions that responded to this question, it was acknowledged in a few submissions that it was difficult to specify a particular level of information that should be provided and that a general statement would provide sufficient guidance as well as flexibility.⁸¹ Therefore, the view held among submissions was that

⁷⁴ Submission 49

⁷⁵ Submissions 46, 9 and 15

⁷⁶ Submission 15

⁷⁷ Submissions 15 and 33

⁷⁸ Submissions 21, 24, 27 and 32

⁷⁹ Submission 7

⁸⁰ Submissions 33, 38, 45, 34

⁸¹ Submissions 11, 25 and 22

information and advice should be provided to a level that is necessary for the effective discharge of councillors' responsibilities in a timely fashion.⁸²

The LGAT submission reflected that of the individual submissions. It noted that councils largely felt that the current provisions were sufficient and the level of information provided by a general manager in a well-functioning council was not an issue. Furthermore, further prescription may create an unnecessary compliance burden. LGAT proposed that section 65 of the Act could be amended to make it clear that qualified advice is to be provided to a council in an officer's report to ensure decisions are not made without proper consideration.

Recommendation 17 of the Huon Valley Council Board of Inquiry was that a General Manager should ensure fair and equitable treatment, including the provision of information to all councillors and that the Council develop a communication and consultation plan, including behavioural protocols, to cover internal (and external) communications (Recommendations 32 and 33).

Question 15: Is a council's organisational structure a strategic or operational matter?

Twenty nine submissions responded to this question. The majority of submissions, approximately 69 per cent, submitted that a council's organisational structure is an operational matter, 24 per cent answered it was strategic, while seven per cent were unsure.

Among the submissions received, there was general agreement that a council's organisational structure is operational but that elected members should be familiar with the structure and informed of any changes.⁸³

The LGAT submission reported that councils largely agreed that a council's organisational structure was an operational matter. However, LGAT reported that there was some support for the South Australian model whereby general managers are required to consult with the council when determining or 'significantly' changing the organisational structure for the staff of the council.⁸⁴ LGAT noted that it would be difficult to define 'significant'.

Some submissions argued that the organisational structure was both operational and strategic⁸⁵. As such, these submissions proposed that the council should have some say in determining the organisational structure in certain circumstances⁸⁶. One proposal was that councils should endorse the organisational structure each year as part of annual planning and budgeting processes⁸⁷. One respondent suggested that elected members should be involved in staff decisions to one level below the general manager.⁸⁸

⁸² Submissions 13, 21, 22, 23, 38, 39, 42, 46

⁸³ Submissions 3, 9, 10, 45, 34, 21 and 19

⁸⁴ Submission 13

⁸⁵ Submissions 17, 21, 55 and 30

⁸⁶ Submissions 21, 45, 34, 19, 13 and 9

⁸⁷ Submission 21

⁸⁸ Submission 39

Question 16: Should the strategic matters that are the responsibility of the council and the operational matters that are the responsibility of the general manager be clarified?

Twenty eight submissions responded to this question. The majority of respondents, approximately 57 per cent, submitted that there should be clarification around the strategic roles of councils and the operational role of the general manager, while 32 per cent submitted the roles should not be clarified, and 11 per cent were unsure.

There was acknowledgement among some of the submissions that it is not always clear whether an issue is strategic or operational which would make meaningful clarification difficult to achieve⁸⁹. In this light, most of the comments in relation to this question argued against legislative clarification of strategic and operational issues. Two submissions commented that it should be up to individual councils to decide if a particular matter was strategic or operational.⁹⁰

It was also argued that the Act was already sufficiently clear,⁹¹ and that efforts to further clarify may result in unnecessary prescription and uncertainty where matters were omitted from a category. As an alternative to legislative clarification, there were suggestions that another instrument, such as a model policy, could help to clarify some areas. It was also noted that governance training may help to resolve some confusion.⁹²

An argument used to support legislative clarification was that general managers would not be able to keep information from councillors claiming that it is operational.⁹³

The LGAT position was that among councils there was some desire for clarification but acknowledgement that such matters are nearly impossible to define legislatively. LGAT proposed that case studies and guidance notes may be more appropriate.

⁸⁹ Submissions 30, 23 and 38

⁹⁰ Submissions 24, 32

⁹¹ Submission 38

⁹² Submission 54

⁹³ Submission 10

Monitoring how effectively councils serve our community

The majority of submissions found that there was a need to have two separate bodies (being the Local Government Board and Boards of Inquiry) to monitor how effectively councils serve our communities. However, submissions also identified there was room for improvement in these bodies' operation and processes. Submissions generally agreed that the potential outcomes from a review or inquiry were insufficient and that the Act should provide for additional potential outcomes. Furthermore, respondents agreed that the Director of Local Government should have the power to summons councillors and staff as part of an investigation.

What is the difference between the Local Government Board and a Board of Inquiry?

Question 17: Is it necessary to have two separate bodies to perform the functions of conducting strategic reviews of and investigations into councils, or should the two be combined?

Thirty two submissions responded to this question. A majority of respondents, approximately 63 per cent, submitted that it was necessary to have two separate bodies to perform the functions of conducting strategic reviews of, and investigations into, councils. Thirty four per cent of submissions submitted that the two should be combined and approximately three per cent were unsure.

The submissions in favour of keeping the two bodies noted that both bodies appeared to have distinct and separate roles and matters for review and investigation⁹⁴. Of the submissions that supported that the two separate bodies be combined, it was argued that in doing so there was potential to streamline and simplify the processes to reduce any duplication that may arise under the current processes⁹⁵.

The LGAT position was that there was little support for change and noted that the Local Government Board and the Board of Inquiry have distinct and different roles. The submission noted the Local Government Board has largely been inactive and it was suggested that there should be a review of its roles and functions.

Question 18: How can the processes for a Local Government Board review or Board of Inquiry investigation be improved?

Twenty seven submissions responded to this question. Of the submissions that provided a response to this question, several noted that a general principle in relation to both the Local Government Board review and Board of Inquiry should be that persons involved in a review or inquiry are afforded procedural fairness (natural justice).

⁹⁴ Submissions 33,7,10 and 19

⁹⁵ Submissions 38, 30, 23 and 22

The LGAT submission noted that most councils did not make comment in relation to this question. However, LGAT proposed that there may be benefit from strengthening and clarifying the investigative powers of the Board of Inquiry to ensure that any inquiry can proceed without questioning of process and procedures.

In respect of the Board of Inquiry processes, a number of respondents submitted that current processes were inadequate and highlighted the following areas for improvement:

- **Appointment:** several submissions proposed that in addition to current membership, a legal practitioner with suitable experience should also be appointed to a Board of Inquiry⁹⁶.
- **Conduct and process:** submissions noted that the conduct of a Board of Inquiry should be transparent, follow an established procedure and afford procedural fairness. Some submissions proposed that Tasmania consider investigating models used in other jurisdictions such as New South Wales. One respondent proposed that, for simplicity, a Board of Inquiry should conduct itself as if it were a commission of inquiry under the *Commissions of Inquiry Act 1995* (Tas), in particular highlighting the need to accurately record interviews of persons appearing before an Inquiry and assess the entitlement to legal representation on a case-by-case basis by applying relevant legal principles⁹⁷.
- **Resourcing:** one respondent noted that Boards of Inquiry should be properly resourced and proposed that future Boards of Inquiry could potentially benefit from utilising the facilities of the Local Government Board or a Tribunal as required⁹⁸.

In relation to how Boards of Inquiry have operated in practice, the decision of *Branch-Allen v Easter* [2016] TASSC 29 was handed down on 10 June 2016 and made a number of findings in relation to the operation of the Glenorchy City Council Board of Inquiry. These findings are relevant for the purposes of clarifying the operation of a Board of Inquiry more generally and are relevant to how the process can be improved and are worth noting in the context of this Discussion Paper:

- **Section 222(1)(C) access to documents** – a Board of Inquiry can request, but not require, a person or others to provide written responses to allegations or questions. The power to require assistance should be interpreted as extending only to assistance relating to the obtaining, inspecting and copying of documents and records, or copies thereof. If the person fails to respond, the Board can always exercise powers under section 217(1)(a) to summons the individual to appear before it and give evidence.
- **Section 217(a) powers of a Board of Inquiry** – a Board of Inquiry may summons any person to appear before it to give evidence. In providing notice to a person, a Board may wish to reconsider its use of the word ‘interview’ as it may be misleading where the proceedings could instead constitute a formal ‘judicial proceeding’ during which a person could be prosecuted for perjury based on their responses.
- **Section 220(1) representation** – a Board of Inquiry cannot impose a general prohibition on legal representation. It has a duty to allow individual witnesses to make applications

⁹⁶ Submissions 36,50, 57 and 33

⁹⁷ Submission 50

⁹⁸ Submission 50

for approval for legal representation. However, it may be permissible for the Board to decide that, unless persuaded to the contrary, approval would not be given.

- **Procedural fairness** - when applying procedural fairness to the proceedings of a Board of Inquiry:
 - Councillors must be provided with an opportunity to respond to any relevant allegations, evidence and recommendations or findings that would prejudice a councillor's interests. This may include allegations made against another councillor which, if taken into account by the Board in making its findings and recommendations, would have an impact on all councillors. A Board must consider any response received.
 - While Boards of Inquiry do not have an implied statutory obligation to conduct an oral hearing in all proceedings, it may be appropriate in some circumstances and the Board must consider a number of factors.
 - Audio recordings of evidence provided by witnesses should be considered when councillors appear or are summoned in front of a Board of Inquiry.

Question 19: Are the potential outcomes of a review or inquiry sufficient? Or should the Act provide additional potential outcomes following an inquiry or review, such as the suspension or dismissal of an individual councillor?

Thirty four submissions responded to this question. The majority of respondents to this question, approximately 76 per cent, believed that the potential outcomes of an inquiry or a review were insufficient and the Act should provide additional potential outcomes following an inquiry or a review. Fifteen per cent submitted the current outcomes were sufficient, while nine per cent were unsure.

In several of the submissions supporting additional potential outcomes of reviews and inquiries, it was noted that the provision in the Act⁹⁹ was limiting and that in some cases it could be an unsatisfactory outcome to dismiss or penalise an entire council of councillors who were democratically¹⁰⁰ elected by the public to their positions. Furthermore, of these submissions, some commented that it was unfair on other councillors who could potentially be dismissed where the dysfunction was the result an individual councillor. In this regard, one submission proposed amending current provisions within the Act to allow for the ability to¹⁰¹:

- suspend councillors and appoint an administrator until certain events occur; and
- suspend or dismiss an individual councillor in certain circumstances.

Of those submissions that were supportive of no change, one noted that outcomes were both significant and adequate¹⁰².

The LGAT submission advised that a number of councils did not specifically comment on this issue, but noted that where the dysfunction can be clearly attributed to an individual councillor, it would be reasonable that the Minister should have the power to deal with that individual

⁹⁹ Section 266

¹⁰⁰ Submission 33

¹⁰¹ Submission 50

¹⁰² Submission 21

specifically. One council also raised that there should be provisions for appeal rights in regards to such sanctions.

What is the role of the Director of Local Government?

Question 20: Should the Director of Local Government have the power to summons councillors and council staff as part of his/her investigation?

Thirty one submissions responded to this question. The majority of respondents, approximately 68 per cent, submitted that the Director should have the power to summons councillors and council staff as part of an investigation. Twenty two per cent of submitted that the Director should not have this power, while 10 per cent were unsure.

Submissions not in support of such a power questioned the appropriateness of providing the Director with coercive powers for such investigations. The Integrity Commission submission noted that, in relation to such matters as coercive powers, there should be a well-developed and understood relationship between the Integrity Commission's functions and those of the Director, particularly where matters could be referred between the two bodies. For example, the Integrity Commission's jurisdiction includes mayors and councillors and, as the Director does not currently have coercive powers, it may be considered appropriate to refer some matters to the Integrity Commission to investigate as it has coercive powers available to it¹⁰³.

LGAT advised that there was no consensus among councils on this issue.

Question 21: Does the Director of Local Government have sufficient power to enable him/her to support councils and councillors to practice good governance and comply with the Act (especially following an investigation)?

Twenty nine submissions responded to this question. A majority of respondents, approximately 45 per cent, submitted that the Director does not have sufficient power to enable him/her to support councils in good governance and compliance. Thirty eight per cent submitted that the powers were adequate and 17 per cent were unsure.

Of the submissions that supported no change to the current powers available to the Director, one noted that the Director should rather be adequately resourced to fulfil the role¹⁰⁴. Another submission argued that the primary role of the Director should be the education of councillors in regards to good governance and compliance with the Act¹⁰⁵.

The LGAT submission noted that it was generally regarded by councils that the Director had enough powers but some further clarification around this matter may be beneficial. It concluded that ultimately the resourcing of the Director was critical in his/her ability to undertake the above functions.

¹⁰³ Submission 54

¹⁰⁴ Submission 38

¹⁰⁵ Submission 50

Question 22: Should the Act contain a mechanism to dismiss a council and/or individual councillor following an investigation by the Director of Local Government?

Thirty three submissions responded to this question. The majority of respondents, approximately 49 per cent submitted that the Act should contain a mechanism to dismiss a council or an individual councillor following an investigation by the Director. Forty five per cent were not supportive of such a mechanism and approximately six per cent were unsure.

The majority of submissions that supported that the Act have a mechanism to dismiss a council/an individual councillor qualified that the exercise of such a provision should be reserved to the Minister and based on evidence and a thorough investigation, for example, by a Board of Inquiry. Several submissions noted it would not be appropriate for an appointed official such as the Director to exercise a power to dismiss a council or individual councillor. Some submissions questioned the necessity for such a mechanism, noting there were already some powers and more appropriate avenues to dismiss an entire council under the Act¹⁰⁶. Two submissions raised whether there should be an ability of a councillor to appeal such a decision if the mechanism was legislated¹⁰⁷.

LGAT's submission did not support such an amendment and felt that this was a matter for the Minister, based on the recommendation from a Board of Inquiry. Consistent with the views of other submissions, LGAT noted that this highlighted a need for an ability of the Board of Inquiry to make recommendations in relation to individual councillors (rather than the whole council) in question.

Question 23: Should the Act provide a mechanism for more rapid intervention (such as a performance improvement order) in the instance where it is evident a council and/or individual councillor's performance is significantly impacting on the governance of the council and/or the service provided to the community?

Thirty four submissions responded to this question. A majority of approximately 82 per cent of respondents submitted that the Act should contain mechanisms for more rapid intervention in certain circumstances. Twelve per cent submitted that there was no need for more rapid intervention mechanisms and six per cent were unsure.

Of the submissions supporting a more rapid mechanism, some argued that it would save time and the early intervention would lessen the impact of the council's ability to function¹⁰⁸.

Of the submissions not in support or unsure of whether rapid mechanisms were required, two noted that it was difficult to determine how such matters could be properly investigated under such mechanisms. These submissions proposed that more discussion and details about how the potential mechanisms would operate would be required before such a proposal could be supported¹⁰⁹.

The LGAT submission noted there was general support among councils for a timely resolution process, but there was no agreement on what form that resolution should take. It also noted

¹⁰⁶ Submissions 23, 45, 41, 39, 36, 40, 34, 50 and 57

¹⁰⁷ Submissions 23 and 11

¹⁰⁸ Submissions 23, 32, 38 and 32

¹⁰⁹ Submissions 50 and 57

possible mechanisms such as Performance Improvement Orders or a stand down provision while the Director undertakes an investigation.

Question 24: Does the Act provide sufficient powers to suspend or dismiss an individual councillor for breaches of the Act?

Thirty two submissions provided a response to this question. A majority of respondents, approximately 72 per cent, submitted that the Act did not provide sufficient powers to suspend or dismiss an individual councillor for breaches of the Act. Twenty five per cent submitted that the powers were sufficient, while three per cent were unsure.

It was noted that there were mechanisms to dismiss individual councillors after, for example, committing an offence under the Act¹¹⁰ or successive suspensions from a Code of Conduct Panel investigation. However, these methods were not timely as they are reliant on successful prosecution or multiple suspensions¹¹¹ which could take several years to occur.

Once again some submissions highlighted the inability of a Board of Inquiry to recommend that an individual councillor be dismissed rather than the whole council and that a provision in the Act for the Minister to dismiss an individual councillor following an investigation should be examined¹¹².

The LGAT position was similar to that of the submission responses in that there was a division in stakeholder responses with a slight majority suggesting that the powers were insufficient.

Are there any other potential outcomes for breaching the Act?

Question 25 : Do the penalty provisions in the Act need to be both increased and broadened to include other important sections of the Act?

Thirty one submissions responded to this question. A majority of respondents, approximately 71 per cent, submitted that penalty provisions in the Act needed to be increased and broadened to include other important sections of the Act. Nineteen per cent submitted that no change was required while ten per cent were unsure.

Of the submissions which supported increasing or broadening penalties¹¹³ within the Act one suggested that the existence of penalties would encourage elected members to comply with the Act¹¹⁴. Of those in favour of no change one submission argued that increased or broadened penalties might act as a disincentive for people to participate or run for council¹¹⁵.

Other submissions noted that the provisions for penalties under the Act and the need for any increases or broadening of penalties should be reviewed and demonstrated before considering any changes¹¹⁶.

The LGAT submission noted that there was no support for either increasing or broadening penalty provisions.

¹¹⁰ For example subsection 48(6)(b) or section 339

¹¹¹ Submissions 33, 36, 50 and 57

¹¹² Submission 33

¹¹³ Submissions 7, 50, 45 and 43

¹¹⁴ Submissions 50, 57, 33 and 45

¹¹⁵ Submission 15

¹¹⁶ Submission 33, 40, 41, 44, 47 and 48

How is the financial performance of councils monitored?

Question 26 : Should councils be required to report to the Minister on the actions taken in response to the Auditor-General's findings on their financial statements?

Thirty one submissions responded to this question. The majority of respondents, approximately 55 per cent, agreed that councils should be required to report to the Minister on the actions taken in response to the Auditor-General's findings on their financial statements while 45 per cent said they should not. Currently, councils' actions on the Auditor-General's recommendations are followed up through subsequent audits and these results are reported to the Minister by the Tasmanian Audit Office.

Individual submissions which supported the involvement of the Minister in such a process suggested:

- requiring councils to develop a plan which proposed actions and timelines to address issues identified by the Auditor-General and having the plan signed off by the Minister;¹¹⁷
- requiring councils to report to the Minister to encourage councils to act in a timely manner;¹¹⁸
- requiring councils to include the Auditor-General's recommendations and actions taken by council in line with the recommendations in their respective annual reports¹¹⁹; and
- requiring a council to report to the Minister if subsequent audits find that a council has not actioned recommendations¹²⁰.

The LGAT submission did not support reporting to the Minister and stated it would be duplicating what councils already report upon to the Auditor-General. This position was also supported by other submissions.¹²¹

Question 27 : Does the Act provide for best practice in relation to keeping records of and reporting financial activities and transactions?

Thirty submissions responded to this question. The majority of respondents to this question, approximately 70 per cent, submitted that the Act does provide for best practice in relation to keeping records of and reporting financial activities and transactions, while 17 per cent submitted that it did not and 13 per cent were unsure.

The LGAT submission reflected the majority of submissions, stating the Act provides enough information to promote best practice and that further changes were unnecessary.

¹¹⁷ Submission 11

¹¹⁸ Submission 10

¹¹⁹ Submission 22

¹²⁰ Submission 22

¹²¹ Submission 27, 19, 33, 38, 40, 42, 43, 44, 45 and 47

The Tasmanian Audit Office provided detailed recommendations in their submission. The following is a high-level summary of their recommendations:

- Remove section 84(1) which requires general managers to prepare and forward to the Auditor-General a copy of the council's financial statements for each financial year as councils are required to submit financial statements under the *Audit Act 2008*.
- Provide that all councils must prepare their annual financial statement in accordance with model statements issued by, for example, the Director of Local Government. This would reduce red tape by having prescriptive measures in the Act and would enable changes to be made to the model financial statement without having to change legislation.
- Remove or modify section 84(2)(b) which requires financial statements to specify any interests as notified to the general manager of any councillor in respect of any body or organisation with which the council has major financial dealings as under AASB 124 councils are required to report transactions between council and its related parties which includes related parties of elected members or their close family members.
- In the absence of prescribed and provided model financial statements the following are suggested:
 - Modify section 72(cb) which requires annual reports to contain a statement of the total allowances and expenses paid to the mayor, deputy mayor and councillors if it is intended that expenses reimbursed to elected members are disclosed in the annual report as these will not be reported under AASB 124 (*Related Party Disclosures*).
 - Modify section 72(4) which requires a statement relating to the total annual remuneration paid to employees who hold senior positions to list the number of employees in groups according to the total annual remuneration where each group has a maximum of \$20 000 between the highest and lowest total annual remuneration if remuneration paid to key personnel is to be disclosed in bands showing the number of employees. Specific information relating to remuneration of each member of key management personnel should be disclosed to promote best practice.
 - Amend section 84(2)(c) to require a council to disclose original budgeted financial statements (estimates) and explanations of major variances in line with AASB 1055 (*Budgetary Reporting*).
- Move disclosure requirements based on Significant Business Activities from financial statements in section 84 to the Annual Report section 72.
- Consideration should be given to including additional authorisation rules to ensure probity and regularity of higher risk transactions when credit card purchases are made by the general manager. These could be authorised by a suitably senior employee and then scrutinised by an appropriate committee (such as an audit panel) on a regular basis.

One respondent submitted that benchmarking the performance of councils using an external organisation and not just the Auditor-General would be fairer¹²² while another submitted that all rate setting, budget, budget reviews and financial reporting should be held in open council meetings with full disclosure of all documentation and detail and that 'councils should not be able to hold workshops as a means of avoiding public scrutiny.'¹²³

Question 28 : Has recent reform of Part 7 (Administration) and Part 8 (Financial Management) of the Act achieved the desired outcomes in relation to financial management and reporting?

Thirty submissions responded to this question. The majority of the respondents, approximately 53 per cent, submitted that the recent reforms had achieved the desired outcomes while 10 per cent of respondents disagreed. Approximately 37 per cent were unsure.

One respondent disagreed with the focus in the Act on audit panels because they were perceived to duplicate activities and complicate processes that already exist.¹²⁴ Another submission suggested a requirement for councils to have a four-year plan to promote a long-term direction which aligns with the strategic plan and its review. This submission also suggested that there should be a requirement for work force planning to be included in Part 7 of the Act to assist with achievement of strategic outcomes.¹²⁵

The LGAT submission considered that these parts of the Act seemed to be working well and that they are consistent with contemporary financial management. It suggested any additional requirements in this regard should be subject to a cost benefit analysis as the compliance costs may exceed the benefits.

¹²² Submission 36

¹²³ Submission 7

¹²⁴ Submission 13

¹²⁵ Submission 22

Fair and transparent local government elections

The majority of submissions found that the general manager's roll should be retained but that the administration, eligibility criteria and the application of the eligibility criteria should be further reviewed. There was strong support for electoral advertising limits to remain with the possibility of indexation or a regular increase to be considered and that there be some further clarification and more transparency around political donations.

Question 29: Should the general manager's roll be retained or abolished?

Thirty four submissions responded to this question. The majority of respondents, approximately 79 per cent, submitted that the general manager's roll should be retained, while approximately 15 per cent submitted that it should be abolished. Six per cent were unsure.

Several of the respondents in support of retaining the general manager's roll submitted that, if the roll is retained, the eligibility criteria and operation of the roll should be reviewed to ensure that it is applied consistently and equitably¹²⁶ and there be a mechanism for the rolls to be regularly reviewed to ensure they are kept up to date¹²⁷. The LGAT submission was consistent with the above position and suggested that such a review be undertaken by the Tasmanian Electoral Commission.

Question 30 : If it is retained, should the general manager's roll be amended so it includes only Australian citizens or permanent residents living in the municipality, not non-permanent residents?

Thirty one submissions responded to this question. The majority of respondents, approximately 58 per cent, submitted that the roll should continue to include non-permanent residents. Thirty nine per cent of respondents submitted that the roll be amended to only include Australian citizens or permanent residents living in the municipality. Approximately three per cent of submissions were unsure.

Of those submissions in support of retaining the current eligibility criteria, it was argued that in their current form, they support inclusion and recognise that some non-permanent citizens may already be in the process of becoming permanent or Australian citizens¹²⁸. In those submissions in favour of amending the roll, two commented that eligibility to be on the roll should be based purely on interest or ownership of property (or payments of rates) within the municipality¹²⁹.

The LGAT submission advised that the roll "should ensure fairness and inclusion and maximise potential participation in the electoral process". Furthermore, it noted that at the July 2015 LGAT General Meeting, a motion was carried by Tasmanian councils which supported that LGAT should urge the State Government to:

¹²⁶ Submissions 19, 40, 41, 42, 44, 47 and 49

¹²⁷ Submissions 3, 8, 40, 41, 42, 45, 47, 49

¹²⁸ Submissions 21 and 45

¹²⁹ Submissions 32 and 23

- support the transfer of the administration of the general manager's roll to the Tasmanian Electoral Commission; and
- review the eligibility for inclusion on the general manager's roll by reviewing the definition of occupier to better capture all citizens, inclusive of refugees and permanent residents living in a Local Government Area¹³⁰.

The second motion is consistent with Recommendation 15 of the *Final Report No. 11 on the Tasmanian Electoral Commission* as released by the Legislative Council Government Administration Committee "B" (Final Report on the TEC), which concluded that a review of the criteria, processes and oversight of the general manager's rolls be conducted¹³¹.

In its submission, LGAT proposed that the Tasmanian Electoral Commission be the body tasked with such a review.

Question 31: If it is retained, should the general manager's roll continue to include people who own or occupy a property in the municipality or are the nominee of a corporate body in the municipality?

Thirty one submissions responded to this question. The majority of respondents, approximately 61 per cent, submitted that it remain as it is currently, including both people who own or occupy a property in the municipality or are a nominee of a corporate body in the municipality. Twenty nine per cent submitted that the general manager's roll should only include people who own or occupy property in the municipality. Ten per cent were unsure.

Of the submissions supporting that the roll should only include people who own or occupy a property, the concerns were that the ability for a single person to have two votes during a local government election gives the perception that the process is undemocratic and it should be one vote per person¹³².

The views of those in favour of retaining the eligibility criteria in their current form were reflected in the LGAT submission which noted that the current eligibility criteria demonstrates that the votes represent two different and direct interests within the municipal area: one being a corporate interest the other being a personal or property interest. Individual submissions had commented that without this ability for a corporate body to vote through a nominee it would have no other mechanism to demonstrate its interest in a local government election¹³³.

Question 32 : If the general manager's roll is retained, should it be amended so a person cannot vote in their own right as well as on behalf of a corporate body in a single municipality?

Thirty two submissions responded to this question. The majority of respondents, approximately 53 per cent, submitted that a person should be able to vote in their own right as well as on behalf of a corporate body in a single municipality. Thirty eight per cent submitted that a person should not be able to vote in their own right as well as on behalf of a corporate body in a single municipality. Nine per cent were unsure.

¹³⁰ Submission 34

¹³¹ Page 26 of the Final Report on the TEC

¹³² Submissions 51, 33, 23 and 3

¹³³ Submissions 38 and 45

Once again, submissions highlighted issues of fairness if one person had the ability to vote twice in the same municipality¹³⁴. Some submissions commented that the current eligibility criteria would be difficult to administer in their current form and if they were to continue to be applied there should be a review¹³⁵ into their administration and operation.

The LGAT submission noted that while there was majority support for the “one vote, one value” principle it was not unanimous across the councils.

Question 33: If the general manager’s roll is retained, should it be amended so a person may only vote in one municipality, rather than in any municipality where they own or occupy a property?

Thirty one submissions responded to this question. The majority of respondents, approximately 74 per cent, submitted that, should the general manager’s roll be retained, a person should be able to vote in any municipality in which they own or occupy property. Nineteen per cent submitted that a person should be only able to vote in one municipality and seven per cent were unsure.

The LGAT submission reflected the majority view above, in that there should be no change to the current arrangements in this regard, and that a person should be able to vote in any municipality in which they own property.

How much can electoral candidates spend on advertising?

Question 34: Should electoral campaign advertising expenditure limits be abolished, retained or increased?

Thirty three submissions responded to this question. The majority of the respondents, approximately 70 per cent, submitted that the current advertising limits be retained. Fifteen per cent submitted they be increased while nine per cent submitted they be abolished and a further six per cent were unsure.

A number of submissions suggested the possibility that the limit be tied to Consumer Price Index (CPI) increases¹³⁶ to allow a slight increase.

The LGAT submission indicated that there was general agreement that the limits should be retained. However, there was interest from a number of councils in determining a basis for reviewing the limits in relation to future increases. It was noted that if spending thresholds were raised, unless the Australian Taxation Office also increased what can be deducted, there would be restriction on what many candidates could afford to spend.

Recommendation 9 of the Final Report on TEC found that “there was no compelling evidence that the current system of limits on Legislative Council and Local Government election spending should be changed¹³⁷” and recommended that current limits remain in place.

¹³⁴ Submissions 51, 33, 23 and 3

¹³⁵ Submissions 19, 40, 41, 42, 44, 47 and 49

¹³⁶ Submissions 27, 33, 49, 40, 41, 42, 44, 45, 47 and 48

¹³⁷ Page 19 of the Final Report on the TEC

Can a candidate receive donations for an election campaign?

Question 35: Should there be restrictions on the donations local government electoral candidates are permitted to receive? If so, what should the restrictions include?

Thirty one submissions responded to this question. The majority of respondents, approximately 81 per cent submitted that there should be restrictions on the donations candidates are permitted to receive while 19 per cent submitted there should be no restrictions.

The majority of submissions did not object to candidates receiving donations provided there was transparency about the donations. There were a number of comments that it was not appropriate that candidates received donations from building developers as this could lead to a clear conflict of interest¹³⁸. One submission commented that other groups such as liquor or gambling interests should not be able to donate¹³⁹. Another submission recommended that any legislative changes to electoral donations should be consistent with section 162 of the *Electoral Act 2004* (Party not to incur election expenditure)¹⁴⁰. A number of submissions commented that donations should be disclosed in real-time or prior to the election so that the electorate were aware and could vote accordingly.¹⁴¹

The LGAT submission stated that there was general agreement that there should be restrictions on donations, with limits that are reasonable in the context of spending limits. One council noted that local government candidates should not be able to receive donations as this may lead to potential conflicts of interest.

Question 36: Should local government electoral candidates disclose who they receive election campaign donations from and the monetary value of the donations?

Thirty four submissions responded to this question. The majority of respondents, approximately 94 per cent, supported disclosure of donations, including who made the donation and the amount. Three per cent of respondents submitted that candidates should disclose who they receive campaign donations from, but not the monetary value. Three per cent of respondents submitted that candidates did not need to disclose who they receive campaign donations from.

The LGAT submission supported that local government candidates should disclose who they received campaign donations from and the monetary value. This issue was the subject of a decision made at the LGAT General Meeting in July 2015.

The Final Report on TEC made two recommendations relevant to this question¹⁴²:

- Recommendation 10: that the State Government legislate for the compulsory disclosure of campaign donations from all sources; and
- Recommendation 11: greater clarity be provided as to the status of in-kind donations and whether they should be disclosed.

¹³⁸ Submissions 44, 51, 22 and 1

¹³⁹ Submission 22

¹⁴⁰ Submission 43

¹⁴¹ Submissions 6, 22, 28, 51 and 38

¹⁴² Page 21 of the Final Report on the TEC

Question 37: If candidates are required to disclose donations received, should there still be limits on campaign advertising expenditure?

Thirty submissions responded to this question. The majority of respondents, approximately 83 per cent, supported disclosure of donations but limiting campaign advertising expenditure while 17 per cent of respondents did not. Two submissions commented that limits should be retained to avoid the “buying” of an election outcome¹⁴³. The LGAT submission supported disclosure but retaining limits: “It was agreed that irrespective of donation disclosure that limits on expenditure should be retained to avoid the ‘buying’ of an election outcome.”

Is electoral campaign advertising regulated?

Question 38: Should online electoral campaign advertising be included in the existing advertising regulations?

Thirty one submissions responded to this question. A majority of respondents, approximately 90 per cent, submitted that online electoral campaign advertising be included in existing advertising regulations while 10 per cent submitted that it should not be included.

The LGAT position was that online advertising should be regulated through clarification of what constituted advertising costs and what needed to be provided. It was raised that such regulation of online electoral campaign advertising would be difficult to monitor.

Recommendation 6 of the Final Report on TEC recommended that “the Government further considers the matter of social media to ensure compliance with relevant Acts.¹⁴⁴”

Question 39: Should internet advertising be included in the expenditure limit (if there is a limit)?

Twenty seven submissions responded to this question. The majority of respondents, approximately 92 per cent, submitted that online advertising be included in the expenditure limit, while four per cent said it should not, and four per cent were unsure.

While supportive, comments were made by two submissions that monitoring of social media campaigns would be difficult¹⁴⁵ and guidelines would need to be provided.

The LGAT submission position was that internet advertising should be in the limit though clarification would be required as to what was included and how costs are determined.

Question 40: Should an electoral candidate be able to name another candidate in campaign advertising?

Thirty submissions responded to this question. The majority of respondents to this question, approximately 50 per cent, submitted that an electoral candidate should be able to name another candidate in campaign advertising, while 43 per cent said they should not, and seven per cent were unsure.

Submissions which disagreed commented that the restriction on naming another candidate had been introduced to prevent abuse of other candidates¹⁴⁶. The comments in some of these

¹⁴³ Submissions 3 and 28

¹⁴⁴ Page 14 of the Final Report on the TEC

¹⁴⁵ Submissions 43 and 45

¹⁴⁶ Submissions 49, 43, 38 and 23

submissions raised concern that it would be open to abuse again and also that it was contrary to restrictions on State Parliament candidates.

Submissions that supported a change did so on the proviso that it was only with the other candidate's permission¹⁴⁷.

The LGAT position was that in general a candidate should be able to name other candidates in campaign advertising but not without the other candidate's permission.

¹⁴⁷ Submissions 21, 33, 39, 40, 42, 44, 45 and 48

Regional bodies

The majority of submissions were supportive of maintaining a flexible approach to how regional bodies operate. A number of submissions were in favour of a mechanism to define roles and functions of such bodies, but not within the Act or legislation.

Question 41: Should the regional bodies have a common governance structure or should there be a flexible approach on how they operate?

Twenty nine submissions responded to this question. The majority of respondents, approximately 69 per cent, submitted that regional bodies should have a flexible governance structure, on the basis that this allowed them to be responsive to the needs of the region. Twenty one per cent of respondents were in favour of a common governance structure across all regional bodies, while others did not support regional bodies, arguing that they can be seen as adding to the number of council bodies. Ten per cent of respondents were unsure.

Of the submissions that supported a common structure, it was suggested that this would help with decision making by providing clarity about expected regional outcomes and may help strategic planning for land use and infrastructure¹⁴⁸. One submission also suggested a common Terms of Reference would also be useful¹⁴⁹.

The LGAT submission reflected the position of the majority of submissions, and supported a flexible structure. One council did believe there would be benefit from a common structure, while a few councils believed current provisions in the Act were sufficient.

One submission included comments in support of the financial participation of all councils in the region to ensure change and sustainability¹⁵⁰ while one respondent commented that participation by a council in the regional bodies should remain voluntary¹⁵¹.

Question 42: How will legislative recognition and prescription of common over-riding functions add value to regional decision making? How will it add value to the sector as a whole?

Nineteen submissions provided comments about legislative recognition and prescription of common over-riding functions and whether this would add value to regional decision making and/or the sector as a whole.

Submissions that supported legislative recognition argued that it would help to add value to the regional decision making processes by providing greater clarity around the over-riding function and role of the bodies¹⁵². Two submissions specifically noted that it could also add value by:

- supporting the provision of adequate resourcing and funding¹⁵³;
- clarifying roles and responsibilities¹⁵⁴;

¹⁴⁸ Submissions 45 and 29

¹⁴⁹ Submission 29

¹⁵⁰ Submission 62

¹⁵¹ Submission 23

¹⁵² Submissions 29, 35 and 45

¹⁵³ Submission 29

¹⁵⁴ Submission 29

- supporting the development of key regional centres to facilitate the efficient use of infrastructure and community services¹⁵⁵; and
- encouraging employment growth and business development.¹⁵⁶

One submission supported recognition of regional bodies in legislation without being too prescriptive about how they work.¹⁵⁷

The LGAT response was not in support of legislative recognition and prescription, noting that further legislation would not add value. Other submissions which also supported this position noted that further prescription would have the potential to increase costs, decrease performance and¹⁵⁸ create additional burden by adding another layer of governance.¹⁵⁹ One respondent did not wish for regional bodies to be legislated as they did not believe they were currently performing well¹⁶⁰ while another submission stated that training could help provide good leadership in regional bodies.¹⁶¹

Question 43: What roles and functions of regional bodies should be specified in the Act?

Eighteen submissions provided comments on what roles and functions of regional bodies should be specified in the Act.

The LGAT submission stated that, generally, there was no support for prescription and this was supported by the majority of comments in the submissions received.

Comments within some of the submissions received supported the need for clarification of roles and approaches to economic development¹⁶². In this regard, it is noted that LGAT is currently working with regional bodies to clarify roles and responsibilities and identify opportunities to collaborate. LGAT reported that progress has been made with consultation occurring between the local government bodies.

Submissions provided suggestions about what the roles and functions of regional bodies could entail, but did not necessarily believe that such level of prescription should be included in the Act. These included:

- operating under the provisions of good governance and openness¹⁶³;
- focusing on promoting the interests¹⁶⁴ of the region;
- cooperation, collaboration and partnership across government, private industry and other organisations¹⁶⁵;
- identification of regional projects;¹⁶⁶

¹⁵⁵ Submission 29

¹⁵⁶ Submission 29

¹⁵⁷ Submission 45

¹⁵⁸ Submission 27

¹⁵⁹ Submission 36

¹⁶⁰ Submission 23

¹⁶¹ Submission 30

¹⁶² Submissions 27, 35 and 45

¹⁶³ Submission 27

¹⁶⁴ Submissions 35 and 45

¹⁶⁵ Submission 35

¹⁶⁶ Submission 35

- economic focus as a priority and then to include social and environmental outcomes on projects which are measured against key performance indicators;¹⁶⁷
- considering the implications of infrastructure and community services in relation to who uses it and who pays for it;¹⁶⁸ and
- having a local government committee who could consider projects that are multi-jurisdictional such as planning and shared services.¹⁶⁹

One respondent noted that the role of regional bodies should exclude rates, taxes or other forms of revenue raising.¹⁷⁰

¹⁶⁷ Submission 62

¹⁶⁸ Submission 36

¹⁶⁹ Submission 62

¹⁷⁰ Submission 27

Reducing red tape

Several submissions identified sections within the Act which could present opportunities to reduce red tape if reviewed and amended.

Question 44: Are there any opportunities for reducing red tape in the Act to enable councils to more effectively govern themselves?

Twenty six submissions provided a response to this question.

The LGAT submission offered several suggestions for the reduction of red tape which included:

- amending the Act to provide that documents can be published on a council website or made available electronically and are not required to be provided in hard copy;
- amending sections 28A to 28D in relation to information provision so that there is a single process to access information that is consistent with what is already articulated in the *Right to Information Act 2009*; and
- the adoption of common standards and protocols used across councils such as access to information, allowances, credit card use, and building access. This would reduce duplication of effort and potentially support governance improvements.

Other submissions included the following suggestions:

- amending section 57 of the Act to cater for online petitions¹⁷¹;
- reviewing the operational provisions in the Act, such as Part 12¹⁷², to ensure effective administration;
- amending the Act to provide that the need to conduct Annual General Meetings is discretionary¹⁷³;
- auditing all legislation prior to tabling in Parliament to ensure it does not increase red tape¹⁷⁴; and
- reviewing other areas such as by-laws; town nomenclature; special/local rating provisions; sale/disposal of council land; general managers electoral roll closure requirements; and sale of land for unpaid rates.¹⁷⁵

The comments of one respondent were in favour of maintaining red tape as it provides guidance as to strong governance and therefore assists councils and councillors to carry out their roles effectively.¹⁷⁶ A respondent submitted that most council complaints around red tape may stem from planning schemes and building issues and the corresponding legislation, rather than the Act.¹⁷⁷ Another respondent argued that moving prescription from the Act

¹⁷¹ Submission 49

¹⁷² Submission 42

¹⁷³ Submission 39

¹⁷⁴ Submission 36

¹⁷⁵ Submission 43

¹⁷⁶ Submission 26

¹⁷⁷ Submissions 32, 23

into other mechanisms such as guidelines and Ministerial Orders does not necessarily reduce red tape.¹⁷⁸

¹⁷⁸ Submission 27

Other Matters

A number of other matters were raised in the submissions to the targeted review. While these matters fell outside the ambit of the Discussion Paper, these have been acknowledged in the following section.

Capital City Act

- It is noted that a Capital City Act¹⁷⁹ in one form or another exists in the capital city of every state, except Tasmania. It was suggested something similar to the current arrangements of the *City of Adelaide Act 1998 (SA)* could be adopted.

Local government elections

- Recommendation 16 of the Final Report on the TEC recommended that voters should be encouraged to vote preferentially in elections for Mayors and Deputy Mayors and Recommendation 17 was that the Government pursue with the TEC, in consultation with local government, whether candidates should be given the opportunity to stand for both Mayor and Deputy Mayor¹⁸⁰.
- One submission noted that one of the greatest obstacles to fair local government elections in Tasmania was the strict application of the formality rule (where a person incorrectly completes their ballot paper which leads to their vote being discarded)¹⁸¹. This was also raised in the Final Report on the TEC at page 12, which recommended that the State Government investigate adopting a provision to ensure that a ballot paper that is not fully compliant, but where the voter intention is clear, be counted as a formal vote (Recommendation 4)¹⁸².
- The point of compulsory voting for local government elections was raised. The Final Report into the TEC found that while there were different views both in favour and against compulsory voting recommended, that the current voting system should remain unchanged, that is voting should remain not compulsory for local government elections (Recommendation 13)¹⁸³.

Elected officials

- A submission suggested that the serving terms for elected officials should be reviewed to be shorter, for example two term periods. This same submission also noted that the roles should be “honorary” or unpaid¹⁸⁴.

Functions of councils

- The LGAT submission noted that:
 - some individual councils had submitted possible changes to councillor expenses, rates exemptions and online petitions. It noted that if these issues were pursued

¹⁷⁹ Submission 56

¹⁸⁰ Page 27 of the Final Report on the TEC

¹⁸¹ Submission 51

¹⁸² Page 13 of the Final Report on the TEC

¹⁸³ Page 23 of the Final Report on the TEC

¹⁸⁴ Submission 7

under the targeted “review that they would need to be tested with the sector more broadly”.

- there needed to be further consideration (depending on the outcome of feedback on the regional bodies) on the “functions of councils under the Act with respect to both economic development and health and welfare and the need to ensure manageable and realistic expectations on what councils can and cannot do”.

Audio-recording of council meetings

- A submission proposed that there should be recording of all council proceedings similar to written Hansard that covers council debates¹⁸⁵. It suggested that a publicly accessible written document of all of the public proceedings of council may help to moderate some behaviour during meetings.
- The Huon Valley Council Board of Inquiry also recommended that Council meetings should be audio-recorded and those recordings made available to the public (Recommendation 11 and Recommendation 24). Recommendation 25 of the Board was that the broader application of these transparency and accountability issues should be considered by the targeted review.

Community engagement

- One submission noted that there was a need for councils to provide more windows of opportunity for public debate¹⁸⁶.
- The Act requires community consultation but “community engagement” is a more meaningful process.
- One submission raised the level of information that is provided by the council to the community should be considered¹⁸⁷.
- Recommendation 22 of the Huon Valley Council Board of Inquiry recommended that Regulations 15(2) and 15(8) of the *Local Government (Meeting Procedures) Regulations 2015* be referred to the review of the Act to ensure that councils maximise both the use of open council to consider agenda items and the public release of information considered in closed council meetings.

Sections within the Act

- One submission¹⁸⁸ raised that there should be more clarity around the following provisions:
 - Section 338A(4) dealing with confidentiality of information, the submission recommended that the term “employee” should be defined under section 3 of Act to ensure that it captures all employees, including general manager. It was also recommended clarifying the meaning of the wording “on the condition” in this context.

¹⁸⁵ Submission 33

¹⁸⁶ Submission 24

¹⁸⁷ Submission 24

¹⁸⁸ Submission 54

- Section 48 dealing with declaration of pecuniary interest by a councillor, the submission recommended that “council workshops” be specified in this section as the respondent believed there were instances where pecuniary and non-pecuniary conflicts of interest are apparent in the context of a councillor workshop.
- Another submission suggested¹⁸⁹:
 - clarifying the intent of section 62(c) in terms of day-to-day operations.

By-laws

- One submission suggested¹⁹⁰ that section 148(2) should be reviewed to provide that recovery of expenses is possible if related to a contravention of a by-law. Section 152(2) could be amended to allow police to be authorised to enforce a by-law rather than requiring the by-law to do so.

Rates

- A submission suggested that clarity should be provided around councils’ capacity to raise rates where a commercial development is on Commonwealth owned land¹⁹¹.
- Another submission suggested that there be some explanation of rate charges across councils to ensure equity in service provision across the state.¹⁹²

Work, Health and Safety

- The LGAT submission raised the general manager’s responsibility under the *Work Health and Safety Act 2012* (Tas) should not include responsibility for councillors as is the case with the Act.
- One submission suggested that there may need to be further enforcement of work, health and safety training¹⁹³.
- One submission suggested that sections of Act that affect role, functions or powers of the general manager be reviewed to ensure they are cognisant of the responsibilities of a general manager within the *Building Bill 2016*¹⁹⁴.

¹⁸⁹ Submission 49

¹⁹⁰ Submission 49

¹⁹¹ Submission 45

¹⁹² Submission 36

¹⁹³ Submission 37

¹⁹⁴ Submission 37



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