



SUBMISSION - REFORM DIRECTIONS PAPER – PHASE 2

Review of Tasmania’s Local Government Legislation Framework

Submissions close Monday 30 September 2019

PART A – A flexible, innovative and future-focused legislative framework

Reform	Comments
1. Principles –based legislation	<p>The levels of the legislative framework need to be clear, for example:</p> <ol style="list-style-type: none"> 1. Local Government Act 2. Regulations 3. Guidance (Best Practice) Notes <p>This enables there to be clarity around where a matter best sits within the framework.</p> <p>The Legislation needs to focus on enabling local Government to get on and provide the services which it’s community requires and only include prescription where it is absolutely necessary. The Act needs to enable innovation and creativity.</p> <p>Principles of good governance, community engagement and financial management are sound but equally there needs to be a focus on enabling flexibility in the way that local government is structured and operates.</p> <p>The use of subordinate legislation such as Regulations provides an element of risk as there is typically less oversight and consultation in regards to their development. Existing consultative mechanisms of the State Government need to be reviewed to ensure that the Local Government sector is appropriately engaged in this process.</p> <p>The next level of the legislative framework, Guidance (Best Practice) Notes provide a manner in which to deal with matters which do not really need to be part of a legislative process.</p>
2. Accessible, easy-to-read legislation	<p>Critical, however close involvement of those most affected by the Act (Local Government and the legal profession) in reviewing the workability of draft legislation must occur to ensure that the requirement for unnecessary amendments is minimised. We cite the Building Act as an example of legislation being drafted and introduced which has substantial flaws in its operational effectiveness – these could have been minimised through better engagement with practitioners.</p>
3. A new Act for electoral provisions	<p>Logical change</p>
4. Consolidating related local government legislation	<p>Consequential part of the work program. This should be extended to addressing other Local Government related legislation such as the Local Government Highways Act for example.</p>

PART B – Representative and Democratic Councils

1. ELECTIONS

Area	Reform	Comments
Eligibility to vote	5. Reform eligibility for the General Manager's Roll	The continuation of the General Manager's Roll is logical as this provides a mechanism for those non-resident property owners to participate in the election of Councillors etc. The proposed criteria are logical as this brings the eligibility into line with other jurisdictions.
	6. Reform the voting franchise to reflect 'one person, one vote' principle in any one municipality	Reduction in the number of votes a single person can have to one vote reflects an equality of position in the election process for individuals. This is a logical situation.
Increasing voter participation	7. Simplify the election process for the positions of mayor and deputy mayor	Break O'Day Council believes the current approach to community election of Mayor and Deputy Mayor is appropriate and should be retained unchanged
	8. Make alternative voting methods available	Seems logical as providing flexibility means that the Legislation has the capacity to move with the change in time.
	9. Simplify the voting process to reduce informal voting rates	Any changes which make it simpler for a voter to cast a formal vote should be supported. As noted by the Tasmanian Electoral Commission, interestingly, voting beyond 1-5 on the ballot paper does not have a material impact.
Electoral Integrity	10. Introduce caretaker provisions to reduce major policy and contractual decisions that may bind an incoming council, and avoid the inappropriate use of ratepayer resources during an election	<p>A logical position to take. The concern is that if a significant, unforeseen and extraordinary matter arises which Council needs to address relating to contractual matters then scope needs to exist for this to occur.</p> <p>The situation in relation to Planning Authority decisions needs to be considered. For example, a major development with some contentious elements and a degree of community sentiment against or for it may need to be considered during this period even though the community feeling is not based on planning considerations. Councillors who are candidates in the forthcoming election will be susceptible to pressure from the community. This may impact the final decision. During the caretaker period should alternative arrangements exist for Planning Authority matters?</p> <p>Operational matters would encompass approved Budgets and the Annual Plan.</p>

	11. Move administration of the General Manager's Roll from councils to the Tasmanian Electoral Commission	<p>This would ensure consistency in the management of Rolls across all Councils.</p> <p>The statements in the Reform Directions Paper are incorrect. Currently the additional 'cash' cost to Councils cost is postage and some stationery as officer time is already budgeted. In this situation Councils will also have to pay the TEC for their time to undertake the activity. Clear parameters need to be established as there are elements of the current charging by the TEC which seem higher than necessary or avoidable.</p>
Candidate Changes	12. Introduce a pre-nomination training package	Merit exists with this suggestion as candidates can be unaware of the requirements of the role of Councillor.
	13. Introduce a candidate nomination fee	Council do not agree with this as it could become a stumbling block if it was other than quite a nominal fee
	14. Require the disclosure of gifts and donations by all local government candidates received during the electoral period	This increases transparency associated with the election process and is a requirement for all candidates. What measures are going to be put in place to ensure that disclosures are full and accurate?
	15. Align eligibility requirements to nominate as a candidate with State eligibility requirements	Seems logical to be consistent with State requirements.
Modern councillor titles	16. Remove the title of 'Alderman'	Seems logical.

PART C – Councils Connected to their Communities

2. COMMUNITY ENGAGEMENT

Area	Reform	Comments
Community Engagement	17. All councils will develop and adopt a community engagement strategy	<p>Development and adoption of a Community Engagement Strategy (framework) is logical and would clearly establish the parameters around when/why/how engagement with the community would occur. It would avoid prescriptive requirements being included in the Act in relation to specific matters.</p> <p>Once this has been developed and adopted, the Council then has a clearly defined set of minimum parameters which they will comply with in relation to community engagement on decisions. It also enables a Strategy to reflect the circumstances and expectations of individual councils and communities without taking a ‘cookie cutter’ approach and applying it to all Councils.</p> <p>The inclusion of any prescription on items for consultation which should be in a strategy should be in a strategy should be avoided. That is part of the process for developing the strategy.</p> <p>The Reform Directions Paper provides two situation examples “determining their service delivery priorities and when setting their budget (including rating decisions)”. This prescription should be avoided as this is effectively predetermining the content of the strategy.</p>
Removing prescription and giving councils autonomy and flexibility	18. Removing prescriptive consultation requirements	<p>Reflects the need for flexibility in relation to notifications etc. For example, we have numerous requirements to advertise by Public Notice in a daily newspaper. Whilst this might have been the most logical method 25 years ago when the current Act was developed, it is now questionable, and in 25 years will newspapers exist.....</p> <p>Flexibility needs to exist so that the people who need to be reached can be reached in the most effective and logical manner rather than spending several thousand dollars on advertisements a small minority see.</p>
	19. Remove requirements for public meetings and elector polls	Support the removal.

PART D – Responsible and Effective Councils

3. ETHICS AND STANDARDS

Area	Reform	Comments
Good Governance	20. Legislate the eight good governance principles	<p>Seems logical, care needs to be taken that there is clarity around the validity of a Council decision if a good governance principle may not have been complied with.</p> <p>Whether compliance with good governance principles has occurred or not can be subjective and depend on personal views. This would then naturally lead to potential grey areas in relation to Council decisions which would not be an acceptable situation from an operational perspective.</p>
Financial Governance	21. Set high-level financial management principles that encourage efficiency and value for money in council service delivery	<p>The high level financial management principles identified are too narrow as they are just focussed on efficiency and performance.</p> <p>The principles from Victoria’s Local Government Review are broader and better capture what the new Act should reflect, particularly the alignment with strategic planning documents.</p>
Elected Member Development	22. Establish core capability requirements for elected members	The components identified in the Reform Directions Paper fairly closely reflect the Newly Elected Councillor training package which is provided by BODC after each Council election. Meeting procedure training has been identified as something which would be useful for new Councillors to assist with settling into the role.
	23. Require councils to publicly report the core capability training that each elected member has completed annually	Break O’Day Council had mixed views. Several were concerned that the priority for Council is representing their constituents. Councillors also have varying levels of pre-existing experience and training which they believe reduces the requirement for annual training. Some Councillors however see merit in regular professional development and reporting this to the community.
Council Staff Accountability	24. Establish principles for all council staff that set minimum standards of behaviour	<p>Each Council has a Staff Code of Conduct and there is definite merit in a level of consistency. However, a prescribed code of conduct does not allow the culture and values of the individual council to be reflected.</p> <p>A level of prescription is appropriate but how this is done is the question. Potentially it could be in some form of guidance notes and not included in the Legislation.</p>

General Manager Performance	25. Prescribe minimum standards for general manager recruitment, contracts, performance management and termination	It needs to be questioned at which level this sits within the legislative framework. Logically this should be occurring at the Guidance Note level and not as part of legislation.
Complaints Management	26. Include principles on complaints management in legislation	<p>Avoiding unnecessary prescription in legislation is something which should be underpinning the approach in the new Act.</p> <p>The Reform Directions Paper is deficient in relation to what it is seeking to achieve with this item. What complaints are we talking about here? Most complaints received by Council are operational in nature, e.g. a problem with a barking dog; a particular road needs maintenance; the public toilet has a mess which needs cleaning up etc etc. Surely the Act is not going to include principles to address this when Councils have an adopted Customer Service Charter which is reviewed on a regular basis.</p> <p>The broader issue is the lack of clarity in relation to the mechanisms which the State Government have in place. There is jurisdictional confusion, duplication and overlap involving Local Government Division, Integrity Commission, and the Ombudsman. A member of the community needs to have clarity about where complaints should go and whom to complain to on various matters. This would reduce the duplicated effort where a Council could end up responding to the same complaint through different agencies.</p> <p>Looking for comparative options, how do the complaint management processes of the State Government address a similar situation?</p>

4. TRANSPARENCY AND FLEXIBILITY IN BUDGET MANAGEMENT

Area	Reform	Comments
Rating Policies	27. Ensure council rating policies consider taxation principles and align with their budget and financial planning documents	No comment on this
	28. Introduce more flexibility for councils to easily transition from one rating approach to another, to manage rating impacts on ratepayers	<p>The current legislation provides flexibility and mechanisms to transition between methods if a Council chooses and to address the impact of the change.</p> <p>The Reform Directions Paper appears to indicate a preference for Capital Value rating which is something that a few years ago was being pushed by Local Government Division. Yes, transitioning to CV would create shocks which need to be mitigated and smoothed over time just like shifting to a fixed rate situation which exists in Glamorgan-Spring Bay Council. This can happen under existing legislation.</p> <p>The imposition of a preferred rating methodology such as Capital Value rating through the legislation should be avoided.</p>
Transparent and accountable rate setting	29. Establish an independent rates oversight mechanism	<p>Councils currently establish a Long Term Financial Plan which provides the framework for the rating policy which Council needs to implement to achieve the financial outcomes of this Plan.</p> <p>The focus needs to be on the financial sustainability of Councils and what is needed to achieve this.</p> <p>The proposal to introduce a role for the Economic Regulator will impose unnecessary additional prescription and regulation on Councils. We already have the Auditor General monitoring rating policies, publishing performance data, and making comments in this respect.</p> <p>The content of the Reforms Direction Paper infers that Council and Council staff are less than diligent in looking at alternatives to rate increases to address financial sustainability. Apparently the Economic Regulator is in a position to provide independent expertise on Local Government and its operations thereby providing insights which Councils and their staff are blind to.</p>

		<p>This proposed 'reform' does not recognise the impact of things beyond Local Government control such as the continued erosion of the Financial Assistance Grants and the ongoing devolution of responsibility from State Government to Local Government.</p> <p>A more logical approach, related to a broader oversight approach, would be to consider how Local Government Division could provide oversight on rating policies and monitoring Council financial sustainability.</p> <p>Providing a more comprehensive financial benchmarking system would be more meaningful, particularly if issues arising from the application of Accounting Standards can be addressed to ensure that comparative results are truly comparative. For example the significant variations which can accrue in asset depreciation strategies and the impact on financial results.</p>
Transparent and accountable fees and charges	30. Set principles or guidelines for setting fees and charges	Principles and guidelines could be included in Regulations and this should lead to consistency in approach without prescribing what fees and charges should be.
Budget Management	31. Provide for a more autonomous and less prescriptive budget process	<p>This is not generally seen as a problem under the existing legislation.</p> <p>More clarity would be required around what is meant by a "formal half-yearly financial report stating actual expenditure against budget". Something like this should not actually need to be prescribed as I would expect every Council in the State is doing this more often than what is suggested here. Seems to be unnecessary prescription.</p>
Significant Business Activities	32. Clarify significant business activities	<p>Agree that greater clarity may be required and also that where activities are competing with the private market that this needs to 'reflect a level playing field' with a full attribution of costs.</p> <p>Concerns exist around the definition of significant business activities and how it is applied. The situation with Council operated free camping sites and the 'purist' approach of the Economic Regulator causes some degree of concern.</p>

5. COUNCIL DECISION-MAKING

Area	Reform	Comments
Council Meetings	33. Require electronic recording of council meetings to be made publicly available	Council has considered this in depth in recent months and has now moved to this process.
Conflict of Interest Framework	34. Simplify what is a conflict of interest	Agree that greater clarity in this area needs to occur within the new Act.
Managing Conflicts in the Exercise of Statutory Functions	35. Enhance the integrity of council decisions made when exercising statutory powers	Council currently has in place practices which it uses which relate to when it is exercising its statutory powers. This is logical and should be included as a Guidance Note

6. OVERSIGHT AND INTERVENTIONS

Area	Reform	Comments
Independent Oversight	36. Strengthen the information gathering powers of the Director of Local Government	The detail in the Reforms Direction Paper is limited in focus, just to the Audit Panel and provision of reports to the Director of Local Government. This seems a minor and basically superfluous increase given the Minutes and Reports form part of the public Agenda at a Council meeting.
	37. Create a power for the Director of Local Government to require an undertaking from a council as a measure to address compliance issues	Creating a more proactive approach from the Director of Local Government in relation to addressing operational situations within a Council is worthy of consideration. This would provide a way in which to reduce the likelihood of significant breakdowns in Council operations/management and enable a proactive early intervention approach. An increase in the oversight and intervention powers needs to be supported with powers to address non-compliance with a direction. Consideration also needs to be given to a review/appeal mechanism being in place to address the situation of a fundamental disagreement with the actions of the Director.
	38. Establish a Monitor/ Advisor role	Has some merit as part of improvements to governance and oversight
	39. Establish the power to appoint a Financial Controller	Needs to be very good clarity around when this might occur. As mentioned before a review/appeal mechanism should be in place to allow for a fundamental disagreement to be addressed.
	40. Continue to conduct formal investigations by the Director of Local Government	Seems logical
Ministerial Intervention	41. Provide for the Minister to dismiss a council or individual councillor	Seems logical, not much change from current situation

Maladministration	42. Create offences for mismanagement and to address poor governance (maladministration)	Seems logical
Complaints Management	43. Simplify the complaints framework	<p>Extension of comments made in Item 26 above.</p> <p>The lack of clarity in relation to the mechanisms which the State Government have in place. There is jurisdictional confusion, duplication and overlap involving Local Government Division, Integrity Commission, and the Ombudsman. A member of the community needs to have clarity about where complaints should go and whom to complain to on various matters. This would reduce the duplicated effort where a Council could end up responding to the same complaint through different agencies.</p>

7. COUNCIL PERFORMANCE REPORTING

Area	Reform	Comments
Performance Reporting Framework	44. Introduce a local government performance reporting framework	This is a logical extension of transparency in operations. The key issue which exists now and in any new framework is ensuring comparability of data and that the idiosyncrasies of individual Council areas are adequately explained and understood in relation to the data.
	45. Require councils to publish a compliance statement in the Annual Report	<p>The Reforms Direction Paper does not provide sufficient detail to determine whether this is supported. Depending on the nature of this statement there could be practical challenges with determining compliance. Council's do have a wide range of statutory obligations under a myriad of pieces of legislation.</p> <p>Even though a Council may have a culture of compliance with statutory obligations, the General Manager will need to make extensive enquiries on an ongoing basis to determine compliance. The lack of clarity in this concept is a concern, for example (depending on detail) the General manager might have to check that the Quarry they operate is statutorily compliant with the Licence issue under the Mineral Resources Development Act.</p>
	46. Remove prescription around Annual Report	Seems logical

PART E – Adaptable Councils

8. COLLABORATION

Area	Reform	Comments
Collaboration across councils	47. Introduce provisions that support efficient and high-quality council operations and collaborative shared service opportunities	Seems logical
	48. Introduce the option to create Regional Councils	Council do not support this. It is questionable whether this approach is needed given existing Joint Authority powers which may be carried though into the new Act.

9. MODEL BY-LAWS

Area	Reform	Comments
Consistent By-laws	49. Create model by-laws for common issues, with streamlined administrative processes	Logical and something which Council would strongly support

PART F – Strategic Reviews

10. LOCAL GOVERNMENT BOARD

Area	Reform	Comments
Local Government Board	50. Strategic reviews of councils	A matter of concern in this proposed change is that the Local Government Board would no longer be responsible for reviewing the operations of a Council, this would be carried out by the Director of Local Government. This change is not supported as the Local Government Board is an independently appointed Board who discharges their duties and reports accordingly. With all due respect to the Director of Local Government, placing this obligation on a single person is not appropriate, particularly when that person is an employee of the State Government and is appointed by the Minister for Local Government. The potential for political influence is increased.
	51. Voluntary amalgamation	Seems logical

CHAPTER 3 – Consideration of other key issues raised

Key Issues Raised	Comments
Mandatory Councillor Training	Council agrees that a certain level of mandatory training is appropriate, particularly immediately post-election
Maximum Councillor Terms	Council generally feels that the community is able to determine, by election, the appropriate duration of a Councillor's representation and this is therefore unwarranted
General Manager Performance and Contracts	No
Electronic attendance at council meetings	No consensus on this item therefore no comment is made
Compulsory Voting	No consensus on this item therefore no comment is made
Clarity between role of the general manager and the council, especially the mayor	No – this is more a relationship role and legislation would not assist in this matter.