

+GCC File: LGA reform bill
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1 October 2019

Emailed: lgreview@dpac.tas.gov.au

Local Government Legislation Review Project Team
Local Government Division
Dept of Premier and Cabinet
GPO Box 123,
Hobart, TAS 7001

Dear Sir/Madam,

RE: Submission for Stage Two Local Government Legislation Review

Thank you for the opportunity to provide feedback in this matter. Any opportunities for constructive dialogue between local government and the State are a valued.

Our Aldermen and officers have considered the proposed reforms.

The Stage Two Directions Paper contains many useful suggestions, but we also note that further refinement may be required to avoid overreach and duplication in respect of some of the proposed measures.

Our detailed comments on the Stage Two Reform Directions Paper are provided in Appendix A attached.

We look forward to the opportunity to see these proposals specified in more detail when the draft bill is ready for review.

Please contact me on 6216 6000 or Jenny.Self@gcc.tas.gov.au if you have any further questions.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Jenny Self', written over a circular stamp or watermark.

Jenny Self
A/General Manager

Local Government Reform Directions Paper – Phase 2

Response from Glenorchy City Council

Part A: Legislative Framework setting principles for good governance and electoral provisions:

Glenorchy City Council agrees these changes are beneficial.

Part B: Representative and Democratic Councils

Reforms 5. Reform eligibility for the General Manager's Roll; and

Reform 6. Reform the voting franchise to reflect 'one person one vote' principle in any one municipality.

Council is in favour of this proposal.

Reform 7. Simplify the election process for the positions of Mayor and Deputy Mayor

The majority of Aldermen were in favour of retaining the status quo. This was seen as the best way to retain a talent pool of potential candidates. Models from mainland States were not seen as being directly transferrable as we do not have party-dominated Councils.

One Alderman was in favour of the first part of option 7B, but not the latter section where an unsuccessful Mayoral/Deputy Mayor candidate could not then stand for another Council position.

Reform 8. Make alternative voting methods available

Council were in favour of this proposal.

Reform 9. Simplify the voting process to reduce informal voting rates

Aldermen were generally in favour of retaining the status quo. There are possible unforeseen consequences for redistribution if the numbers are limited to numbering 1 to 5 on ballot papers. Some voting complexity is unavoidable, and the community are experienced with the current system.

Reform 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.

Some safeguards are needed to ensure that this doesn't fetter the normal flow of operational decision-making. Greater clarity of what is considered a significant or potentially binding decision is required.

Reform 11. Move administration of the General Manager's roll from councils to the Tasmanian Electoral Commission

Council were in favour of this suggestion, with some reservations about the unknown likely costs.

Reform 12 Introduce a pre-nomination training package; and 13 Introduce a candidate nomination fee.

There were some concerns in Council about requiring fees/deposits from candidates. It would be better to instead require candidates to obtain a higher number of nominations from community members.

There is no objection to candidate training prior to an election.

Reforms 14 Require the disclosure of gifts and donations; 15 Align eligibility requirements to nominate with State eligibility requirements; and 16 Remove the title of "Alderman"

Council were in favour of these reforms.

Part C: Councils Connected to their Communities

(covering elector polls and community engagement expectations including public meetings)

Council was generally in favour of any proposed measures that reduced prescriptiveness. The system is working well in Glenorchy and is adapting quickly to changing needs in the community. How extensive the consultation process should be is a matter that Council can discuss and agree with the community on an ongoing basis. Council already has a Community Engagement Framework and an extensive Community Plan in place. Prescriptive consultation beyond what is required by the community will lead to excessive costs and resources for Council.

Part D: Responsible and Effective Councils

(including core capabilities of Council members and staff, complaints management, new powers for the Director of Local Government, new offence of maladministration).

In general terms, the council accepts the need for new enforcement measures. However, Council is also concerned about the flavour of the reform areas, and that they are overreaching in to areas that are traditionally managed by councils. Council works in consultation with its community and is subject, ultimately, to the ability of the voters to punish underperformance.

The proposals often require bureaucratic 'red tape' to manage, contrary to the State Government's own policy initiatives to make public service delivery more adaptive and flexible.

Reforms: 20. Legislate the eight good governance principles; 21. Set high level financial management principles that encourage efficiency and value for money in council service delivery; 22. Establish core capability requirements for elected members; 23. Require councils to publicly report the core capability training that each elected member has completed annually; 24. Establish principles for all council staff that set minimum standards of behaviour; 25. Prescribe minimum standards for general manager recruitment, contracts, performance management and termination; and 26. Include principles on complaints management in legislation.

The Council believes the above reform proposals to be very prescriptive and may not be flexible and adaptive enough to deal with the changing service delivery needs of the community.

Many of the proposed reforms duplicate general principles and standards that are not disputed and have been in place for a long time. There are already guides, codes of conduct and other similar measures in place across the sector. It is not clear how these reform proposals would have resolved past issues in local government had they been in place at the relevant time, or what gap is being filled.

It is not clear how the principles from the State public service will lead to improved service delivery to the community in a practical sense, compared to the standards that already exist and that may simply not have been properly applied.

Reform 27. Ensure council rating policies consider taxation principles and align with their budget and financial planning documents

Council has no objection to this reform.

Reform 28. Introduce more flexibility for councils to easily transition from one rating approach to another, to manage rating impacts on ratepayers; and 31. Provide for a more autonomous and less prescriptive budget process.

In general terms the Council agrees with these reforms as they provide for more flexibility and responsiveness to our community in the provision of services.

Reforms 29. Establish an independent rates oversight mechanism; and 30. Set principles or guidelines for setting fees and charges.

No changes are required in this area. Council are concerned that the Economic Regulator will lack the resources and expertise to provide for a meaningful review. In other sectors where this type of price regulation/review is used, such as energy and water, it is very cumbersome and expensive to administer and does not necessarily result in lower charges.

The ratepayers make their concerns about rates and fees very clear. The Council is ready and willing to explain the logic of its decisions to ratepayers without an intermediary. Ratepayers have the ultimate power at the ballot box to express their disapproval if they are not satisfied with the consultation they receive. Gaining a consensus for tax measures is already very difficult and the proposed reform will simply bind the process in inefficient 'red tape'.

Reform 32. Clarify significant business activities

Council agrees with this reform.

Reforms 33. Require electronic recording of council meetings to be made publicly available; 34. Simplify what is a conflict of interest; and 35. Enhance the integrity of council decisions made when exercising statutory powers.

Council already meets many of these criteria and agrees with these reforms.

Reforms 38. Establish a Monitor/Advisor role; and 39. Establish the power to appoint a Financial Controller.

There is a lack of detail about how a Monitor or Financial Controller would provide more information than would already be available either from the public domain, or using the Director's investigative

powers. There is a lack of detail about when this form of intervention would be triggered, and what useful role such persons could perform when they are not a decision-maker and are merely reporting back to the State Government.

The power could be used prematurely to create a public perception that the Council is incompetent before that is properly established and the affected parties are afforded natural justice.

The measures are also potentially costly if the benefits and controls around its use are unclear.

While there is a need for strengthened enforcement measures, there also needs to be an emphasis on genuine training and support when requested by a Council experiencing difficulties.

Reforms 37. Create a power for the Director of Local Government to require an undertaking from a council as a measure to address compliance issues; 40. Continue to conduct formal investigations by the Director of Local Government; 41. Provide for the Minister to dismiss a council or individual Aldermen; and 42. Create offences for mismanagement and to address poor governance (maladministration)

The models suggested provide for very broad offences that have arisen after mainland corruption inquiries. The emphasis is on punishment of acts that are either already crimes (such as fraud) or relate to breaches of duty arising from negligence and incompetence. The emphasis appears to be on creating offences so broadly expressed that there is little to prove to gain a conviction. The natural justice protections are not as evident in the suggested South Australian legislative model. Some of the measures, such as the power to compel attendance of witnesses, appear potentially heavy-handed.

In some respects, the Council is not unlike a corporation with directors who have duties and can be criminally sanctioned for breaches of duty where lapses have been proven. Across the whole corporate sector there are uniform standards of behaviour that are relatively concisely expressed and well-understood because they are so broadly applied. It may be more useful to think in terms of a broad-based standard of behaviour across the State covering many types of activity, where a director (or the public service equivalent) has a duty for the conduct of the organisation, defined around the extent to which they could reasonably should have controlled its activities. Is it recommended that the Government provide for a more concise general offence across all State government institutions and elected officers. Council believes this is not just a Local Government issue.

Reform 43. Simplify the complaints framework

The reform proposal does not really address the deficiencies in the current Code of Conduct complaint process, which has at times facilitated frivolous and vexatious complaints with little advantage to the public interest.

Reforms 44. Introduce a local government performance reporting framework; 45. Require councils to publish a compliance statement in the Annual Report; and 46. Require councils to publish a compliance statement in the Annual Report.

Council has no objection to these reforms.

Part E: Adaptable Councils

Reforms 47. Introduce provisions that support efficient and high-quality council operations and collaborative shared service opportunities; and 48. Introduce the option to create Regional Councils.

It is noted that the proposals are based on facilitating voluntary resource sharing and amalgamation. The Council is interested in how this initiative will be further detailed.

Reform 49. Create model by-laws for common issues, with streamlined administrative processes.

Council notes the current difficulties in getting by-laws passed promptly.

Some uniformity is possible in core provisions, but the power to make by-laws is part of the flexible way that Councils can adapt to changing local conditions, or to clarify unintended gaps in State legislation. The emphasis should not be on being required to “justify the need” for additional requirements, even if in practice such a review is undertaken.

Part F Strategic Reviews

Reforms 50. Strategic reviews of councils; and 51. Voluntary amalgamation

There is insufficient detail for Council to form an opinion. The Council is interested in how this initiative will be further detailed.

