



City of **HOBART**

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Via Email: LGReview@dpac.tas.gov.au

Dear Mr Tay

LOCAL GOVERNMENT LEGISLATIVE FRAMEWORK REVIEW - SUBMISSION FROM CITY OF HOBART

Please find attached a submission from the City of Hobart in respect to the local government legislative framework review.

Yours sincerely

(N.D. Heath)
GENERAL MANAGER

Review of Tasmania's Local Government Legislation Framework

Discussion Paper Response



City of **HOBART**

February 2019

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Introduction

The Hobart City Council considered the Review of Tasmania's Local Government Legislation Framework Discussion Paper at its meeting of the 18th February 2019. In doing so it discussed the general outcomes sought from the review and also considered the strong principles that the Council would be seeking from the review.

The Hobart City Council acknowledges that the current *Local Government Act 1993* despite being drafted over 25 years ago, has served councils well with minor changes occurring mainly around the clarification of powers and more tools for councils to use.

In considering amendments to the Act it is vitally important that changes are not made in order to address individual council issues. In order for the Act to provide an effective framework for councils it needs to provide the basis for all councils to operate effectively. The general competence powers approach provides flexibility across councils to respond in a manner that reflects their area, community and capacity.

The diverse nature of local government in Tasmania requires a legislative framework that is flexible and acknowledges the differing scale and scope of councils across the state. Over specification with the Act would be a retrograde step.

Of specific concern to the Hobart City Council and other Greater Hobart Councils is the consideration of the current proposal for a Greater Hobart Act.

A draft Bill for a *Greater Hobart Act 2018* is in preparation for tabling in the Parliament early this year. The Objectives defined in the current draft are:

- (a) to encourage and promote strategic planning decisions, and decisions about land use, that consider potential benefits and implications across the Greater Hobart area;
- (b) to facilitate the efficient flow of transport in the Greater Hobart area;
- (c) to further the maintenance and accessibility of existing, and the development of new, cultural, sporting, recreational and community facilities that complement, link to, and contribute to, the cultural experiences able to be provided in, the Greater Hobart area;
- (d) to encourage, promote and provide for urban renewal and affordable housing and the creation, through higher density housing, of community clusters that enhance amenity, liveability, ease of access to places and facilities and the provision of passenger transport;
- (e) to encourage, promote and provide for the development of hubs for specialised purposes such as science, sport, recreation, social activity, economic activity, technology, industry, education or the arts;
- (f) to encourage, promote and provide for, where suitable, the efficient and effective integration and co-location of the transport infrastructure, cultural, sporting, recreational and community facilities, community clusters, and hubs for specialised purposes, referred to in the other paragraphs of these objectives.

It would be appropriate for the New Act to recognise the *Greater Hobart Act 2018* and its objectives to ensure the two pieces of legislation work together and do not compromise or conflict with each other.

In developing a response to the Discussion Paper input has been obtained from elected members, a management workshop and a review of the Victorian Draft *Local Government Bill 2018*. The Council has considered each question put forward in the Discussion Paper and the following response is provided.

Section 1 - Overview of Local Government

1.(a) What do you think councils will be responsible for in the future?

The current Act provides Councils with general competence powers, a wide scope in which to act, it is imperative that any new legislation retains the autonomy for Councils to continue to determine their future in conjunction with their community and within the scope of their electoral mandate.

In its simplest terms the Council has previously acknowledged (2012) that the role of local government is to:

- Foster the unique character of the local government area;
- Be a strategic decision maker;
- Maximise the economic, social and environmental value of land;
- Promote economic development;
- Deliver services and manage assets;
- Undertake statutory responsibilities;
- Represent the needs of the community; and
- Engage with and understand communities.

In doing so the council also stated that this definition is general enough to cater for all local government areas and could be defined as the “lowest common denominator”, recognising that the descriptors fail to recognise any scale or scope of activities across the industry sector.

This is the dilemma for the review in providing sufficient scope for the larger councils to innovate, operate at scale and be flexible in their functions, activities and service delivery.

It would be the Councils view that any changes to the Act should not limit the scope of activities in which a council can engage provided it can demonstrate transparency, accountability and democratic process in its decision-making and operations.

1.(b) What council activities should be driven or determined by communities?

Long term vision setting and medium term strategic planning are central to community involvement. Without that engagement plans will fall short of understanding what a community values and what the aspirations are for families living and participating in the local area.

In addition to statutory responsibilities opportunities are also available for council to engage on any issue it wishes to gather feedback or engender participation.

It would not be prudent or efficient to burden councils with mandatory engagement responsibilities. Councils may wish to develop policies in relation to community engagement activities that best reflect their activities, democratic processes and extent of community participation available.

Within the scope of competence powers a council should determine what, how and when the community are engaged in decision making.

An example is the Councils own Community Engagement Policy.

1. The Hobart City Council recognises the right of the community members to be informed and have input into decisions which affect their lives.
2. Hobart City Council values effective engagement in developing a positive relationship with its community and recognises that community participation contributes to better decision-making.
3. Council seeks to take account of the views, needs, issues and aspirations expressed by the community and to balance these with other influences such as budgetary constraints to make informed decisions.

To this extent any provision in a new Act requiring Councils to engage with the community should include an expectation, but provide the councils with the opportunity to determine the extent and scope of engagement relative to their area and capacity.

1.(c) Given the varying sizes of councils, what consideration should be given to costs of services and the Councils' capacity to deliver these?

It is important that councils are able to define the costs of services and the impact on the budget and long term financial position.

The community expectation should be matched by the understanding of the short and long term implications of introducing, delivering and maintaining services across their lifecycle.

Understanding service costs and long term financial capacity can assist in priority setting, decision making, community understanding and managing expectations.

A sound long term financial plan is essential in understanding not only the community and budget impacts but also for the Council in maintaining the capacity and resourcing required to provide the services.

Long term planning can only be effective if councils have control over their service choices and service standards based on their understanding of the community.

External impacts have created pressures for councils in maintaining that control, leading to rating and revenue raising pressures. Sustainability has long been the concern of local government and to some extent has led to current debate around amalgamations.

The Commonwealth Grants Commission cites devolution of responsibilities, increased legislative and regulatory requirements and cost shifting as factors that are out of the control of Local Government contributing to the concerns around local government sustainability.

Section 1 Key Point Summary

- *Any changes to the Act should **not limit the scope of activities** in which a council can engage provided it can demonstrate transparency, accountability and democratic process in its decision-making and operations.*

- **Community involvement** is central to long term vision setting and medium term strategic planning.
- Any legislative requirement should include an expectation, but provide councils with the opportunity to determine the extent and scope of engagement relative to their area and capacity.
- A sound **long term financial plan** is essential in understanding not only the community and budget impacts but also for the Council in maintaining the capacity and resourcing required to provide the services.
- Long term planning can only be effective if councils have **control over their service choices and service standards** based on their understanding of the community.

Section 2 - Council Governance and Powers

2.(a) What is vital to good governance in local government?

The existing council position recognises that councils operate within a corporate governance model whereby elected members are responsible for setting the policy framework and strategic direction and the general manager and council staff are responsible for the operational activities of the council.

The expectation of elected members include;

- act with the highest ethical standards;
- understand their role and the role of others;
- foster trusting and respectful relationships;
- show a commitment to risk management;
- engage in effective strategic planning;
- follow a transparent and accountable decision making process;
- make good decisions that promote the interests of the community they serve;
- understand and abide by the law;
- commit to continuous improvement;
- have good judgment; and
- are well prepared and participate in meetings.

These criteria are effectively principles of good governance practices.

The Victorian *Local Government Act 2018* Draft Bill prescribes good governance as having the following principles:

- (a) Council decisions are to be made and actions taken in accordance with the relevant law;
- (b) priority is to be given to achieving the best outcomes for the municipal community, including future generations;
- (c) the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted;
- (d) the municipal community is to be engaged in strategic planning and strategic decision making;
- (e) innovation and continuous improvement is to be pursued;

- (f) collaboration with other Councils and Governments and statutory bodies is to be sought;
- (g) the ongoing financial viability of the Council is to be ensured;
- (h) regional, state and national plans and policies are to be taken into account in strategic planning and decision making;
- (i) the public accountability of the Council must be recognised and the transparency of Council decisions, actions and information is to be ensured.

It can be seen that there is similarity in the 2 approaches. If it was intended that a new Act would include a definition of good governance it would be appropriate for that they be drawn from the Hobart and Victorian models.

2.(b) What aspects of good governance should be prescribed in a legislative framework?

See 2 (A) above. If it is intended that “good governance” be defined in legislation it would be appropriate to establish the principles within the new Act with an expectation that each council would create a policy statement that aligns their approach to the principles.

Any detailed specification of the principles, procedure or accountability should be limited to regulation, best practice guide or procedures at an industry level to assist councils with limited capacity or resources.

2.(c) What statutory powers do councils need to deliver the services that communities require, or expect to receive, from councils now and into the future?

The Victorian *Local Government Act 2018* Draft Bill prescribes General Powers as:

- (1) Subject to any limitations or restrictions imposed by or under this Act or any other Act, a Council has the power to do all things necessary or convenient to be done in connection with the performance of its role.
- (2) The generality of this section is not limited by the conferring of specific powers by or under this Act or any other Act.

It would be the Councils view that the details or specific powers related to service delivery can be prescribed in regulation so as not to compromise the generality and flexibility within the Act through a time consuming and inefficient legislative amendment process.

General powers also allow for the impact of future change in service delivery or industry expectations such as climate change, risk and emergency management, enforcement powers, privacy in public spaces.

Flexibility is built into the broad powers allowing a council to be more agile and efficient in responding to change that may not have been apparent at the time of framing more specific, detailed legislative controls. This results in an Act that is constantly subject to review.

An issue to consider in the context of this question is questioning whether or not certain powers and responsibilities given to us by the State are appropriate to local government. An example is as nominated officers for the purpose of enforcing smoke-free areas under the Public Health Act,

officers don't have policing powers necessary to infringe offenders. This creates laws and regulations that are unenforceable and a waste of resources.

2.(d) How are the strategic decisions of councils best made?

Strategic decisions of councils should be made on the basis of sound advice, be reflective of community aspiration and within the capacity (financial) and capability (resources) of the council.

This requires a framework of planning from long term strategic (20 years plus) to short term operational (annual). The framework should provide a "line of sight" between what an organisation does on a daily basis and its contribution to the future of a community expressed through its strategic plan and long term vision.

The current Act requires a minimum 10 year strategic plan, which you could argue is not a long horizon in which to shape a community. Aspirational change requires time and a collective vision that the wider community and stakeholders can relate to and help shape.

Clear plans, based on consultation and engagement, aligned with financial management plans, service delivery and asset management strategies provide a sound basis on which to make decisions for the future. The current Act provides that framework but a longer planning horizon would be an improvement.

2.(e) What mechanisms best support strategic, operational and technical decisions and actions?

A strong planning framework that creates links between the operational and decision making arm of the council is essential.

A good strategic plan provides focus to an organisation and aids in the decision making. Operational planning executes strategic decisions at the organisational level.

The clearly defined separation between the Council and the organisation, through the General Manager, requires strong systems and clear processes that both inform decision making through the provision of qualified advice and translate the resulting decisions into actions.

This requires sound decision making/advisory structures supported with strong Terms of Reference, current and appropriate policies, effective delegations and reporting regimes that are reflective of the organisations direction and geared to understanding/reporting/advising performance and demonstrating accountabilities.

An organisational structure framed around the strategic planning outcomes is important in the alignment of daily actions and long term strategies. This provides a basis and focus for service delivery, workforce planning and capability, recruitment, training and organisational development.

The current Act provides for a strategic plan and an annual plan. The prescription for the annual plan in the Act is limited to the plan reflecting the strategic plan. It would be our view that this is appropriate for the Act, allowing scope for councils to create their own planning formats. If it is intended to propose any further prescription it should be the subject of best practice guidelines to assist council that require assistance.

Section 2 Key Point Summary

- *If it is intended that ‘good governance’ be defined in legislation it would be appropriate to establish the principles within the new Act with an expectation that each council would create a policy statement that aligns their approach to the principles.*
- *Details or specific powers related to service delivery can be prescribed in regulation so as not to compromise the generality and flexibility within the Act. **General powers** also allow for response to changes in the external environment or service delivery*
- *The current Act requires a minimum 10 year **strategic plan**. A longer planning horizon would be an improvement*

Section 3 - Democracy and Engagement

3.(a) What is the best way to engage Tasmanians in voting for local government?

The council has long held the view that compulsory voting is required in local government elections. This not only assists in engaging the community in local issues but also provides a wider franchise, or mandate for those elected.

In a non-compulsory voting environment significant local issues current at the time of an election can skew an election outcome through the mobilisation of specific interests while there remains a large non-voting cohort. Compulsory voting would assist in achieving a more balanced result representative of the community as a whole.

Compulsory voting will also provide a greater opportunity to engage with younger residents/ratepayers. It has been stated that in the 2014 election less than one third of voters aged between 18 and 34 voted, while voter participation for those above 65 was at 70 per cent. This underrepresentation has the potential to create a less representative council.

The Council’s view, expressed in the submission to the Legislative Council Government Administration Committee ‘B’ Inquiry into the operations of the Tasmanian Electoral Commission, identified the underlying principles that support compulsory voting to include;

- Increasing participation in democracy
- Engaging the full electorate
- Building the relevance of local government
- Providing consistency across all levels of government.

It is the Councils view that this issue is fundamental to any update of the Local Government Act and the outcomes sought by this review. It is also the Council’s view that the review should include consideration of the mechanisms for the election of the Lord Mayor and the Deputy Lord Mayor as well as consideration of electronic voting in elections and elector polls.

3.(b) Who should be allowed to participate in local government elections?

The Council’s recent submission to the Legislative Council Government Administration Committee ‘B’ Inquiry into the operations of the Tasmanian Electoral Commission called for a review of the

voting eligibility as well as undertaking the administration of the General Manager's Roll to avoid the potential for misuse.

The Inquiry noted General Manager's Rolls can provide opportunities for non-citizens with a genuine stakeholder interest in their local government electorate to participate in Local Government elections.

General Manager's Rolls may provide opportunities for voters with a limited genuine stakeholder interest in the local government electorate to participate in Local Government elections.

The Inquiry Findings stated;

A review of the criteria, processes and oversight of General Manager's Rolls be conducted.

It would be expected that the decision of the Inquiry be enacted and the results incorporated into the new Act. As part of the consideration of the eligibility for being enrolled on the General Manager's Roll the concept of one person, one vote ought to be included.

However this does not resolve the issue of who should administer the General Managers Roll. The Council decision requesting the Tasmanian Electoral Commission to be responsible for reviewing voting eligibility as well as undertaking the administration of the General Manager's Roll should be reinforced.

3.(c) How can local government attract skilled, diverse and representative electoral candidates?

It would be appropriate to acknowledge that skilled, diverse and representative electoral candidates will be attracted to local government where there are no barriers to standing.

The current Act states that a person is eligible to nominate as a candidate for the office of councillor in respect of a municipal area if the person—

- (a) is enrolled on an electoral roll in respect of the municipal area; and
- (ab) has his or her principal place of residence in Tasmania; and
- (b) is not a councillor of another council whose term of office is to end after the certificate of election is issued in respect of that other council's elections; and
- (c) has not been barred by a court under section 48(6) , 338A , 339 or 339A from nominating as a candidate at any election; and
- (d) is not an employee of the council in that municipal area; and
- (e) has not been removed from the office of councillor because of inadequacy or incompetency; and
- (f) is not a bankrupt; and
- (g) is not subject to an assessment order or treatment order under the Mental Health Act 2013 or an order under the Guardianship and Administration Act 1995 ; and
- (h) is not undergoing a term of imprisonment.

This statutory descriptor does not limit eligibility. The challenge is to create an industry that;

- is relevant to those that live in and enjoy their communities and want to participate in and be involved in shaping that community,
- can operate in a way where all prospective candidates can find the time and availability to participate.

The obligations of Council and committee meetings workshops, appointments, preparation time can be onerous, along with other obligations around work, business and families.

The challenge for local government both in attracting candidates that are skilled, diverse and representative is to create the opportunity where the potential barriers are minimised. Flexibility in the Act will allow councils to create policies that reflect their approach and responsive practices to attracting a wider range of candidates.

3.(d) What should be required of candidates in local government elections before, during and after elections?

Before

Prior to an election it would be expected that candidates take the opportunity to fully understand the role and expectations of office, have read and understand the good governance guide and acknowledge the criteria of the Oath of Office to which they are obliged to take on election to the council.

During

In relation to electoral donations the council has requested consideration of;

- an open and transparent process in relation to reporting electoral donations needs to be included in the Act. This ought to require disclosure of the source of donations, the quantum and how it is spent; and
- the expenditure of donations be within the electoral spending limits.

These changes has been picked up in the review and the provision is administered through the Gifts and Donations Register by the General Manager. It would be more appropriate if the Tasmanian Electoral Commission took on this function particularly in dealing with those candidates that are not elected to office.

The findings of the Legislative Council Government Administration Committee 'B' Inquiry into the operations of the Tasmanian Electoral Commission in response to electoral donations were that;

- *The Government legislate for the compulsory disclosure of campaign donations from all sources.*
- *Greater clarity be provided as to the status of in-kind donations and whether they should be disclosed.*

It would be expected that these findings be incorporated into any new Act as well as the disclosures being made in "real time".

In regard to campaign advertising limits and application Council has previously endorsed a position to;

- retain electoral expenditure limits but increase the current levels by CPI;

- include all electoral expenditure within the limits;
- not allowing candidates to use the names of other candidates in electoral advertising.

It is noted that these changes have been picked up in the review.

In regard to electoral campaign advertising expenditure reporting it would be appropriate for this be linked to the timeframe for the reporting of electoral expenses.

After

In response to the 2016 review of the Local Government Act council endorsed a position that;

- Newly elected and returning councillors and mayors participate in induction programs following elections;
- Newly elected councillors and mayors be required to undertake mandatory training and induction programs, with it being optional for returning councillors and mayors – a specific focus should be councils role as a planning authority;
- Annual professional development plans are developed and participation by councillors in induction and professional development programs be reported in a council's annual report; and
- Clarify how mayors are to oversee councillors in relation to the performance of their functions and exercise of their responsibilities.

3.(e) What decisions should councils continue to be able to make during an election period?

The Victorian Local Government Act 2018 Draft Bill addresses this issue requiring a council to develop an "election period policy" which must include:

- (1) A prohibition on any Council decision during the election period for a general election that—
 - (a) relates to the appointment or remuneration of the Chief Executive Officer but not to the appointment or remuneration of an Acting Chief Executive Officer; or
 - (b) commits the Council to expenditure exceeding one per cent of the Council's income from municipal rates and service charges in the preceding financial year; or
 - (c) the Council considers could be reasonably deferred until the next Council is in place; or
 - (d) the Council considers should not be made during an election period.
- (2) An election period policy must prohibit any Council decision during the election period for a general election or a by-election that would enable the use of Council's resources in a way that is intended to influence, or is likely to influence, voting at the election.
- (3) A Council decision made in contravention of subsection (1)(a) or (b) is invalid.
- (4) Any person who suffers any loss or damage as a result of acting in good faith on a Council decision that is invalid by virtue of subsection (3) is entitled to compensation from the Council for that loss or damage.

With the inclusion of an “election period” definition this approach would generally allow the operations of the Council to continue while providing some scope and flexibility for the sitting council to make, or not make decision within these controls.

3.(f) In what ways should councillors engage with, and represent, communities in the digital age?

It is stated in the HCC Community Engagement Framework “that in accordance with the Act, each alderman has the function of representing and acting in the best interests of the community and to facilitate communication between the Council and the community. This open communication ensures that aldermen are representing the views of the residents of Hobart.”

Engagement for councillors should be the same as for staff in acknowledging that some members of the community may find it challenging to participate using standard engagement methods. This means that they need to explore new techniques and ways to talk to the community and offer a variety of opportunities, especially in light of the digital age.

3.(g) On what matters should councils engage with communities?

Councils should engage on any issues that may be of interest to the community to take into account the views, needs, issues and aspirations expressed by the community and to balance these with other influences, such as budgetary and legislative constraints to make informed decisions. The engagement methodology will depend on the matter being considered and will range from informing the community through to active collaboration.

3.(h) How can community engagement be strengthened and measured?

Community engagement can be strengthened by utilising a range of methodology to inform and bring the community and stakeholders into decision-making and the delivery of services. Engagement needs to be considered during the planning of any project and the promotion of the benefits (both financial and reputational) that can be achieved by clear and concise engagement methodologies.

Engagement success can be measured through the Your Say website, stakeholder surveys in addition to tracking staff hours on major projects. The best community outcomes through best practice engagement is evident in thriving and connected communities.

Section 3 Key Point Summary

- *The council has long held the view that **compulsory voting** is required in local government elections to assist in achieving a more balanced representation of the community as a whole*
- *The Tasmanian Electoral Commission should be responsible for reviewing voting eligibility as well as undertaking the administration of the **General Manager’s Roll**.*
- *The eligibility for being enrolled on the General Manager’s Roll, including the concept of one person, one vote, be reviewed.*
- *The challenge for local government both in **attracting candidates** that are skilled, diverse and representative is to create the opportunity where potential barriers are minimised.*
- *The Government legislate for the compulsory disclosure, in “real time”, of **campaign donations** from all sources.*

- *Greater clarity be provided as to the status of in-kind donations and whether they should be disclosed.*
- *The inclusion of an ‘election period policy’ would allow the operations of the Council to continue while providing scope for the decision making of the sitting council.*

Section 4 - Council Revenue and Expenditure

4.(a) How can councils ensure transparency in funding decisions; both how it is raised and spent?

All Council financial policies, strategies, plans and reports to be available to the public in manners which are understandable and ensure ease of accessibility, and on open Council agendas. These should include all sources of council revenue including rates (resolution, strategy, policy), fees and charges and price setting.

Council budgets to include forward estimates based on long-term financial management plans.

Quarterly financial performance reports made available to the public. And information on how rates will be spent provided to ratepayers.

Performance accountability is also demonstrated in the annual report.

Transparency can only be achieved through effective community and stakeholder engagement. Simply providing information will only inform the interested. Increasing public awareness and engaging communities will widen the area of interest and therefore widen the area of understanding of why and how council funding decisions are made.

4.(b) How can councils determine how best to raise revenue for specific purposes?

Council should have the ability to consider all available options to fund services. These could include revenue generation, cost savings, grants, debt and asset sales. Financial policies, such as rating policies, can be established to guide funding approaches. Ongoing financial sustainability must always be an overriding consideration in any funding decision.

The principles of taxation should guide rating decision making including capacity to pay considerations.

It is important that councils have legislative flexibility to determine the appropriate rating strategy for its own municipal area.

4.(c) How should councils engage communities when raising revenue?

It is important councils have sufficient autonomy to undertake their duties otherwise efficiency and value for money suffers. As has been stated, engagement in the form of council financial policies, strategies, plans and reports being available to the public, and on open Council agendas, and thus transparent, is appropriate.

4.(d) How should councils determine the services they deliver to their communities in exchange for rates and charges?

Having an understanding of the community goals and objectives is paramount. This understanding is expressed through a council's strategic plan, the preparation of which must involve meaningful community consultation and engagement. Long term planning can only be effective if councils have control over their service choices and service standards based on their understanding of the community.

The strategic plan is then executed via council annual plans which set out at a more detailed level.

4.(e) How should councils decide where to make trade-offs (more or less rates vs more or less services)?

Long term financial modelling and planning can assist a council to determine both present and future needs and plan for its financial sustainability. This is predicated on understanding the services it provides, the service level expectations of users, implementation and operation costs and the value provided to the community. Also, the importance of community engagement in understanding the vision for the community and strategic planning.

Local government history will demonstrate the impacts on councils through the introduction and understanding of asset management planning and funding. Historical short term operational budgeting has created a major liability and funding dilemma for many councils, creating in some case issues around long term viability.

The combination of modelling future budgets and revenue needs based on a good understanding of service performance and asset management requirements can provide a foundation on which to have conversations around priorities, trade-offs and future revenue expectations.

Long term planning can only be effective if councils have control over their service choices and service standards based on their understanding of community needs.

As noted earlier external impacts have created pressures for councils to maintain and increase service levels while at the same time keep rate rises to a minimum and have sound long-term financial management. Sustainability has long been the concern of local government and to some extent has led to current debate around amalgamations.

Section 4 Key Point Summary

- *All Council financial policies, strategies, plans and reports be **available publicly** in understandable and accessible formats.*
- *It is important that councils have legislative flexibility to determine the appropriate **rating strategy** for its own municipal area.*
- ***Long term planning financial planning** can only be effective if councils have control over their service choices and service standards based on their understanding of the community.*

Section 5 - Performance Transparency and Accountability

5.(a) How can the right balance between autonomy and accountability be delivered?

Autonomy within the scope of legislation requires broad powers that encourage, or do not constrict, flexibility, innovation and management of appropriate risk while promoting good governance practices.

Accountability comes through appropriate reporting, transparency of actions and decisions, sound policy frameworks, information provision and engagement. The community needs to have sufficient information and understanding to promote a level of confidence that the actions of the council are appropriate and relevant to the services they receive and their enjoyment of the community in which they live.

From a legislative perspective broad powers should be non-specific while controls around accountability can be promulgated in regulation to ensure an industry standard approach which can be monitored and audited if required.

A standardised industry approach to accountability could be framed around best practice guidelines to ensure small and large councils are consistent in their application.

5.(b) Who should have oversight and regulation of councils' performance and how should it occur?

The Director of Local Government is appointed by the Governor and has responsibility for the general administration of the Act.

The role includes investigating non-compliance and offences under the Act as well as the authority to undertake an investigation in response to a complaint or on his or her own initiative.

The Director can also recommend to the Minister that he or she issue a performance improvement direction to a council or councillor to take, refrain from taking or cease taking an action for the purpose of complying with the statutory obligations of the council or councillor under the Local Government Act or any other Act.

It is the council's view that the powers are appropriate with some amendment for the Act to be clearer in relation to the powers the Director of Local Government has to dismiss complaints that may be vexatious or frivolous in nature.

5.(c) What mechanisms should there be to respond or intervene when a council is not performing as required?

The recent introduction of Performance Improvement Directions whereby the Director of Local Government has the power to recommend to the Minister that a direction be issued to a council or councillor failing to comply with a statutory requirement under the local government act or any other act is considered a good initiative.

When considered in the suite of options available for the oversight of councils including Code of Conduct Panels, Boards of Inquiry, Tasmanian Integrity Commission and Ombudsman there is sufficient oversight and control of councils and councillors.

Beyond the statutory oversight of course is the more general oversight by the community and electoral processes.

It is the Councils view that there are sufficient controls and mechanisms to respond or intervene when a council is not performing as required.

5.(d) What information should councils make available to the public and how should they be able to access it?

The Victorian draft Bill creates a requirement for Councils to develop a Public Transparency Policy.

(1) The Policy is underpinned by the following principles:

- (a) Council decision making processes must be transparent except when the Council is dealing with information that is confidential by virtue of this Act or any other Act;
- (b) Council information must be publicly available unless—
 - (i) the information is confidential by virtue of this Act or any other Act; or
 - (ii) public availability of the information would be contrary to the public interest;
- (c) Council information must be understandable and accessible to members of the municipal community;

(2) For the purposes of the public transparency principles, information includes documents.

The Policy would also describe the ways in which Council documents and information are to be made publicly available; and

- specify which Council documents and information must be publicly available, including all policies, plans and reports required under this Act or any other Act,
- public awareness of the availability of Council information must be facilitated.

It would be the councils view that if specification of what information would be publically available and how it would be made available was to be specified in the new Act the approach proposed in Victoria would be appropriate.

It is also considered that the timing for distribution of agendas relating to meetings of councils and council committees ought to be considered as part of the review. It is important that both elected members and members of the public have sufficient opportunity to consider the content of agendas in order to ensure appropriate decisions are made and the opportunity to participated in meetings is afforded.

5.(e) What information would be useful to councils to drive performance improvements?

The diverse nature of local government in Tasmania is such that industry benchmarks and comparisons are pointless. Service levels are impacted by scale, scope and population density considerations. Capital projects are impacted by complexity, location and scale.

Industry comparisons of customer service, undertaken in the past were based on an extremely small sample size and purported to compare services provided in rural communities with services in major cities. You would argue that traffic management in a small rural council is hardly comparable with traffic management in a major city.

The majority of information that is useful to driving performance improvement in councils comes from within. Systems that measure performance, review the information and use the results as the basis for improvement is a normal part of any organisation that has a continuous improvement philosophy.

For the purposes of legislating provision of information for service improvement the most useful measures would be financial sustainability measures. A set of industry standards would provide a benchmark for councils in critical financial areas.

A key area for council learning and improvement is understanding the outcomes of Boards of Inquiry, investigations, court actions involving councils and councillors both local and interstate. Opportunities for improvement, risk management, legislative review could be identified and promoted across the industry creating changes as a result. There are a number of recent local and interstate examples that have had significant implications for individuals and communities and it would be appropriate to learn from those experiences.

Section 5 Key Point Summary

- *From a legislative perspective broad powers should be non-specific while **controls around accountability** can be promulgated in regulation to ensure an industry standard approach which can be monitored and audited, if required.*
- *• Clearer powers for the Director of Local Government to dismiss **complaints** that may be vexatious or frivolous.*
- *• There are sufficient controls and mechanisms to respond or intervene when a **council is not performing** as required.*
- *• The diverse nature of local government in Tasmania is such that **industry benchmarks** and comparisons are of limited value.*