

2 October 2019

Local Government Legislation Review Project Team
Local Government Division
Department of Premier and Cabinet
GPO Box 123
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Via email: lgreview@dpac.tas.gov.au

Consultation: Tasmanian Local Government Act

Thank you for the opportunity to provide a submission in response to the Reform Directions Paper: Phase Two of the Review of Tasmania's Local Government Legislation Framework (**Directions Paper**).

The Australian Institute of Company Directors (**AICD**) has a membership of more than 44,000 including directors and senior leaders from business, government and the not-for-profit sectors. The mission of the AICD is to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society.

It is evident through discussions with our members that the current legislative and regulatory framework needs improvement to address the performance and governance of Local Government.

This submission responds to governance related topics raised within your Directions Paper and is compiled with input from senior members with considerable experience in the governance of Local Councils.

Principles based legislation

The AICD notes that the Tasmanian Government seeks to create a new Local Government Act which will "achieve a flexible, innovative and future-focused Act which is less prescriptive and is principles based" and we support this aim.

In many instances legislation that is intended to be principles-based risks becoming prescriptive over time in terms of its application. This can create unnecessary rigidity and complexity.

As a general rule, the AICD considers that the use of codes or guidance is preferable to using legislation to impose governance-related standards. In particular, we note that codes (or equivalent) are likely to be more readily amended should the need arise, which provides greater flexibility to ensure that regulation keeps pace with evolving governance expectations than if the requirements were placed in formal legislation.

These can be particularly important in demonstrating accountability against the principles.

Candidate changes: Introduce a pre-nomination training package

The AICD supports the intent of this proposal but is concerned that the current proposal risks creating a 'tick the box' compliance exercise. To guard against this it is suggested that at minimum the training package should provide candidates with a fuller understanding of the role of an elected official, including community expectations, and requirements of the role.

Rather than this requirement being an information package, a level of interaction from candidates may assist in moving this beyond a 'tick the box' initiative.

Consideration could be given to further training and/or an assessment requirement for successful candidates after some time in the role. This could be a 12-month review for example.

Require the disclosure of gifts and donations by all local government candidates received during the electoral period

We support this measure.

All councils to develop and adopt a community engagement strategy

We support this proposal and commend the Government on its aim to provide flexibility to councils and communities. AICD members commented that councils should be cautious when developing this strategy that the balance of power in making decisions is retained by councils. While consultation is important for engagement the complexity of issues and diversity of views within the community means that simple polling exercise is inappropriate.

The Government may wish to develop terms of reference, as well as the principles proposed, for creation of these strategies.

Finally, Government should consider reporting requirements for engagement strategies so that councils and communities can gauge their effectiveness.

Removing prescriptive consultation requirements

The AICD agrees that councils should have flexibility to consult communities in ways that are flexible, and that are relevant and effective for those communities.

The proposal for Councils to develop community engagement strategies aligns with this goal.

Given the extensive consultation frameworks already in place, the AICD supports the removal of a mandatory Annual General Meeting within the Act.

Remove prescriptive requirements for public meetings and elector polls

The AICD supports the proposal to remove the requirements currently in legislation. We agree that current requirements are overly prescriptive and pre-date the availability of online and other consultation opportunities. We note that under the proposed Community Engagement Strategy each council will have greater flexibility to establish consultation that works for their communities (including, should they choose, public meetings and elector polls). AICD members

have noted in feedback that, in their experience, elector polls have not proved an effective community engagement tool.

Good Governance: legislate the eight good governance principles

We commend the Government's work in promoting and enhancing the practice of good governance across the state including through the development of the *Good Governance Guide for Local Government in Tasmania* and through promotion of the Good Government Principles contained within.

We note the proposal to legislate the eight good governance principles and while we support the spirit and aim of this proposal, we would strongly suggest the Government pursues alternative measures to achieve this aim.

The practice of governance continues to evolve, and as such rather than legislating the Good Governance Principles, Government may wish to instead reference the Good Governance Guide in the legislation. This would allow Government to update the guide as needed, and the Principles, without the need to amend legislation.

For example, the AICD suggests that the Government considers updating the current Principles to more adequately reflect the role of Councillors and senior management in the oversight of organisational culture.

A strong principles-based ethical framework that clearly sets out a desired culture is critical to improved outcomes. Culture is at the heart of how an organisation and its staff think and behave. The Council (as a whole) is ultimately responsible for the definition and oversight of culture within the local government authority. Setting the culture and embedding this within the organisation is the collective role of both the Council and senior management and needs to be recognised within their respective role descriptions.

The Government could also consider mandating a reporting requirement against the Principles in the Act using an "if not why not" approach. This would be consistent with the requirements of Listed companies as set out in the ASX Corporate Governance Council's Principles and Recommendations (**ASX Principles**). This could be required of each Council on a yearly basis.

As emphasised by the ASX Principles, which governance practices a listed entity chooses to adopt is fundamentally a matter for its board. Under the ASX Principles, if the board of a listed entity considers that a recommendation is not appropriate to its particular circumstances, it is entitled not to adopt it. If it does so, however, it must explain why it has not adopted the recommendation – the "if not, why not" approach. This approach ensures an appropriate balance between transparency and flexibility, and is fundamental to the operation of the ASX Principles.

The AICD also suggests that clear synergies between the revised Act, the Principles, and Code/s should be clear and easy to navigate. The importance of sections 20 and 28 of the existing Act are important in this regard. These provide an apparatus for good governance

and any doubling up with the Good Governance Guide and Codes under the Act should be avoided.

Establish core capability requirements for elected members

The AICD would support a broad non-prescriptive capability framework for elected members to guide professional development, induction and upskilling.

We support the Government's view that mandated training requirements at this point in time are not required.

Include principles on complaints management in legislation

We support the consultation paper statement that "Best-practice complaints management is independent, unbiased and removes conflict."

Given the inherent conflicts of interest often associated with managing complaints, AICD members suggested the use of an independent panel for complaints against councillors and senior staff.

Require electronic recording of council meetings to be made publicly available

The AICD notes the common practice of live streaming for other levels of government and the provision of transcripts such as Hansard. It is vital that the community has the opportunity to access the work of elected officials. In the local government context - given the technological requirements to deliver and access live streaming, and the practical barriers to developing transcripts – the provision of electronic recordings is supported.

However, given the unique circumstances and cost implications for individual councils this requirement should be promoted on an 'if not why not' basis as opposed to a mandatory requirement.

Simplify what is a conflict of interest

Demonstrating transparency and accountability is vital in securing the trust of communities. Measures to assist elected officials in identifying and declaring conflicts are supported.

Require councils to publish a compliance statement in the Annual Report

This measure aims to "drive a culture in councils of checking that they have indeed met their statutory obligations". AICD members supported this proposal, while also noting that auditing may support its effectiveness.

Mandatory Councillor Training

The AICD supports the view of the consultation paper, and notes that mandatory training is not required for other levels of government.

Governance training should however be strongly encouraged to provide elected officials with information and tools to support them in their role. The AICD provides a range of governance training and has worked with all levels of government in delivering programs for elected officials.

Clarity between role of the general manager and the council, especially the mayor

The AICD advocates for clarity in the split of responsibilities for senior roles in governing effectively. AICD members noted that there is a need for greater clarification between the role of the General Manager and councillors and supported the position of the consultation paper.

Next steps

We hope our comments will of assistance. If you would like to discuss any aspect of this submission further, please contact Amber O'Connell, Advocacy Manager via aconnell@aicd.com.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Louise', with a long horizontal flourish extending to the right.

LOUISE PETSCHLER
General Manager, Advocacy