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Local Government Legislation Review

Thank you for the opportunity to provide a submission on the Directions Paper for the Review of Tasmania's Local Government Legislation Framework (the Directions Paper).

The Local Government Association of Tasmania (LGAT) is incorporated under the *Local Government Act 1993*, our functions being:

- (a) To protect and represent the interests and rights of councils in Tasmania;
- (b) To promote an efficient and effective system of local government in Tasmania; and
- (c) To provide services to member councils, councillors and employees of councils.

The views and opinions expressed in this submission are representative of the Local Government sector and take into account the views of LGAT's Members. LGAT fully supports councils who have made individual submissions to the consultation process and in turn, supports the content and opinions expressed within those submissions.

General Comments

Governance and Oversight

Feedback from the sector indicates strong support for a principles-based approach to Local Government legislation, with removal of unnecessary prescription. However, there is a disconnect between this goal and a number of the proposed reform directions that mean this is unlikely to be achieved. For example, the reform directions to establish minimum standards of behaviour for staff, prescribing standards for General Manager recruitment, setting guidelines for fees and charges and publishing a compliance statement are prescriptive in nature and at odds with a principles based approach. There is also concern that prescription will be merely pushed to Regulations with the related concerns of reduced transparency and engagement in their formulation as well as unnecessary complexity through a need to refer to multiple statutory instruments.

It is important that the significant legislative changes being proposed are weighed against the risks around cost, disruption, loss of proven and effective mechanisms, unworkable provisions and confusion. In many cases the feedback from the Local Government sector has been – “what problem are we trying to solve”?

There is concern that many of the oversight and intervention mechanisms proposed in the Directions Paper seem to be a reaction to previous individual or isolated incidents of poor performance and not reflective of how the sector as a whole is performing. It has further been noted that in the previous isolated circumstances specific powers to intervene already existed in the *Local Government Act* and that these were either not utilised or were used too late to be effective in preventing issues escalating. The proposed increases in oversight abilities of the State Government appear to come at the cost of good proactive policy and support. There are generally two ways that the State Government can support councils, as the democratically elected local representatives, in delivering for their communities. This can be via policy support, in the form of resources, tools and guidance or via a more punitive regulatory and compliance focussed pathway. The Directions Paper unnecessarily favours the latter approach.

The sector has previously indicated the importance of and need for increased guidance on appropriate processes and behaviours, but that guidance does not need to sit in the legislation itself or via a third-party oversight mechanism. There should be stronger powers in the Act for the Director of Local Government to provide interpretative advice on legislation as necessary and that such advice be then made available to all councils. However, the Directions Paper has not found the appropriate balance between policy advice and support and regulatory oversight.

The new Local Government Act should establish expectations of a culture of good governance rather than be overly prescriptive in approach. It is not possible to legislate for personality and behaviour; it is possible to set standards.

Transparency and Performance

With the introduction of the financial and asset reform legislation in 2014, including new financial sustainability indicators and the introduction of Audit panels, LGAT believes there is already a high degree of transparency and accountability for councils. In addition to the publication of annual reports, open council meetings, a raft of strategic documents which are available to the public and the annual consolidated data collection, there is also oversight by the Auditor General. It has not been demonstrated that these existing mechanisms are failing or resulting in systemic financial management issues, so the need for additional measures such as a financial controller is questionable. However, our Members feel this would be a good opportunity to review and refine the role of Audit Panels and how they support performance monitoring more generally.

At this stage of the process to review the Local Government Legislative Framework, it is fair to say that councillors and council staff, who are in the thick of the day to day requirements of their roles, found it difficult to engage with the high-level paper. One of the consistent messages we have received from the sector on many of their reform directions is the need for more detail prior to a considered response being possible. Therefore, there is an keenness to be involved, particularly in practically and robustly testing the next stage of the reform. LGAT will continue to work with the Local Government Division to ensure this is possible.

It should be remembered that the current Act was introduced as general competency legislation and has enabled councils to undertake a broad range of roles and functions and to be able to determine how those roles and functions should be undertaken. There must be care taken to not 'throw the baby out with the bathwater'. The balance between general competency powers and good governance requirements must be consolidated and improved, not lost.

This submission provides a brief overview of feedback related to each of the major reform areas with further detail provided in the table at Appendix 1.

Theme 1: A Flexible, Innovative and Future-Focused Legislative Framework

As noted earlier, Tasmanian councils generally support principles-based legislation, which is written in plain English and easy to follow and which consolidates related Local Government legislation. There is also widespread support for separating out the electoral provisions into a new Local Government Elections Act.

A greater focus on principles-based legislation does bring with it concerns that prescription will be introduced through related regulatory instruments without the same level of engagement or consultation with councils. Inclusion of a provision such as currently exists at Section 28AA would go some way to addressing this concern. Further, pushing much of the detail into separate instruments would be at odds with an accessible, easy to read legislative approach. A balance is required.

Theme 2: Representative and Democratic Councils – Elections

Under this theme, there was relatively strong support from councils for reform to the General Manager's Roll. This includes restricting voting to citizens and permanent residents, management of the role by the Tasmanian Electoral Commission, and only allowing one vote per person in any municipality. There were no articulated concerns of significance related to making alternative voting methods available once technology is in a position to support that.

More contentious however, were the proposals related to reducing informal votes, particularly those related to Mayoral and Deputy Mayoral elections. On that issue, the diversity of pros and cons generated by each option resulted in a strong leaning towards

the status quo, with a focus on improving the clarity of the ballot paper, community education and the ability to accept a minimum ballot.

There was strong support for aligning the eligibility requirements of candidates with State requirements, with the exception of including permanent residents of more than two years. However, suggestions of a pre-nomination training package and candidate nomination fees were met with mixed feedback. There was some concern that those initiatives could deter candidates and were setting a higher standard for Local Government than exists at other levels of government.

Theme 3: Councils Connected To Their Communities - Community Engagement

The issue of requiring all councils to develop and adopt a community engagement strategy received some strongly negative reactions largely related to a lack of underlying detail and concern that this was an overly prescriptive move given that most councils already have community engagement strategies. For most councils it felt a step too far. Instead, there was a preference that the Act set minimum requirements for consultation and information, to improve clarity and consistency for all councils. It was deemed vital that councils be able to take a flexible approach in consultation which recognises both community needs and resourcing constraints. This desire, for flexibility appropriate to the needs of the local community and Council, manifested in support for removal of prescriptive consultation requirements, including those around public meetings and elector polls (although it should be noted there was some support for retaining those tools with different higher trigger thresholds in place).

Theme 4: Responsible and Effective Councils – Ethics and Standards

A recurring theme in this section, was the preference for a range of matters to be developed as best practice guidance by the Local Government Division, rather than incorporated within the legislation. This includes good governance principles, financial management principles, core capability requirements for councillors, staff behaviour principles, standards for General Manager recruitment and performance management, and complaints management.

There is a strong desire for greater clarity on conflict of interest, particularly on the treatment of perceived interests. It is noted that the outcome of some recent code of conduct processes has raised concerns that any association, or perceived association, a councillor might have with an industry, community organisation or person, may be perceived as a conflict of interest, even if there is no real prospect of benefit for anyone. This has the potential to cause particular difficulty in smaller councils where it is likely that a councillor has an association with a large proportion of the community.

The concept of capability requirements for elected members generated the most discussion in this theme area. While some councils expressed limited support, others were strongly opposed on the basis that there is no similar requirement of those elected to State and Federal Government. Even where there was support, there were questions

as to how the requirements would be applied - particularly where a councillor was returned rather than new to Council.

Theme 4: Responsible and Effective Councils – Transparency and Flexibility in Budget Management

There was support for a number of proposals in this section. In particular, councils would welcome a clear articulation that rates are a tax, more flexibility in transitioning between rating approaches and better clarification of significant business activities.

There was negligible support for the concept of an independent rates oversight mechanism and for legislated principles or guidelines for setting fees and charges.

Feedback on the independent rates oversight mechanism was hampered by a lack of detail in the context of considerable existing oversight of council's financial management.

When it comes to fees and charges there was concern that the driver of this proposed reform is consistency as opposed to appropriate cost recovery.

Theme 4: Responsible and Effective Councils – Council Decision-Making

The proposals to require electronic recording of council meetings, simplify conflict of interest provisions and to require councils to allocate their own development applications to another council were generally supported pending refinement of the detail. For example, it was felt that a threshold needs to be established in relation to proposal 35 so that minor works, such as footpaths, aren't captured.

Theme 4: Responsible and Effective Councils – Oversight and Interventions

For many councils, the directions outlined (36 to 41) represent a potential overreach by the Director of Local Government. On this basis, there was not strong support without being able to view the detail behind each suggestion. While recognising the issues that may have led to these directions being proposed, there are concerns that significant decisions about democratically elected councillors would fall to an employee of the State Government. Further, there was no articulation of any appeal mechanisms and the potential for significant new costs to be imposed on councils.

Theme 4: Responsible and Effective Councils – Council Performance Reporting

In general, there was support for a Local Government performance monitoring framework. This is subject to further detail, and ensuring that the data is easily comparable, meaningful and not overly onerous for councils to produce.

Theme 5: Adaptable Councils – Collaboration/Model By-Laws

Councils are supportive of the introduction of provisions which would better enable collaborative service models and the development of model by-laws. The idea of

providing for the creation of regional councils received mixed feedback. Some councils feel that the reform would allow communities to maintain their own identity while achieving economy of scale benefits through working with other councils. Some did not support this reform idea, fearing the risks were too high and the benefits too difficult to quantify. Any support was largely predicated on participation not being compulsory.

Theme 6: Strategic Reviews – Local Government Board

While there was general support for this proposition, it was felt that an eight-yearly cycle for review of councillor allowances was far too long. Further there is a need to have clear and transparent assessment criteria for allowances and to contemplate the impact of distance on councillors working in a rural area. The notion that the Local Government Board would no longer be responsible for reviewing the operations of a Council was of concern to some who feel that placing the obligation on a single person is not appropriate.

Other Issues

Councils raised a number of other issues including:

- The need to consider what statutory powers councils require to deliver the expected services to communities now and into the future;
- The difficulty of General Manager responsibility for Elected Members given limited legislative and practical control; and
- Councillor numbers – what is the appropriate number for each council?

LGAT has also had motions carried through formal vote at a General Meeting and which are relevant to this review including:

- A) That councils and the Local Government Association of Tasmania work with the Local Government Division of Premier and Cabinet to review the various accounting methodologies being used by some councils with a view to developing standardise reporting; and
- B) Address some of the complexities such as the volume/length of reporting driven by disclosures required in the Local Government Act and international accounting standards which are not necessarily relevant to council operations and reporting.

That LGAT pursue legislative changes which would require a councillor who is standing for State or Federal parliament to take a leave of absence from Council for the period between issuing of the writ and declaration of the poll.

That LGAT pursue legislative changes which would require a councillor who is elected to State or Federal parliament to resign their council position following declaration of the poll.

That the Local Government Association Of Tasmania recommends that the *Local Government Act 1993* be amended to allow a mayor (or their delegate) to qualify a council or council committee agenda item that relates to the performance of, or contractual arrangements with, the general manager.

That LGAT lobby for a change to the *Local Government Act 1993* to remove the word alderman from the act entirely, leaving only councillor.

There are two other matters which will be fleshed out in more detail. These relate to charitable rating exemptions and code of conduct provisions.

Charitable Rating Exemptions

In 2018 the Supreme Court determined that Independent Living Units (ILU) owned by charities met the requirements for rating exemptions under the *Local Government Act 1993*, regardless of the personal circumstances of the occupants. That is, even wealthy self-funded retirees were exempt from rates if living in an ILU owned by a charity.

The Local Government Association of Tasmania's would like to see the legislation amended to clarify the legislation in relation to ILUs.

The Supreme Court judgement noted Tasmanian Legislation differs from legislation in other jurisdictions, with reference to 'occupation' in Tasmania and 'use' in other jurisdictions. [Section 87\(1\)\(d\)](#) is silent as to the identity of the owner or occupier, focused on the purpose of ownership and occupation (and) the requirement is satisfied if the occupation is exclusively on account of the owner's charitable purpose, whether or not the owner is in occupation.

Independent Living Units are by their very definition, accommodation units designed for independent, active retirees who do not require special assistance with day-to-day living. What distinguishes them from aged-care facilities is that independent living units are used as normal and private residences, just like a standard home.

Councils had not been rating aged-care facilities, short-term welfare housing, administrative offices and other facilities associated with these providers' operations. These have always remained exempt from paying general rates and there is no intent to change this.

This issue is a question of equity. Is it acceptable or equitable that residents of these residential village units do not pay rates and therefore do not contribute to the services and facilities of their respective cities communities, while low income pensioners in their own homes do pay?

There are three key outcomes sought by the Local Government sector through amendment to the Local Government Act (section 87(1)d):

1. The delivery of equitable rating outcomes.
2. Returning the ability of councils to rate Independent Living Units when the occupant when the occupant is not a beneficiary of charitable services above and beyond that provided to the community at large, including to people in their own home.
3. Clarifying the process required of charities seeking an exemption.

Item 3 is in response to advice from TasCOSS that varying practices across Tasmanian councils was leading to confusion for charities. Minimum application requirements in legislation would improve clarity for all.

In order to confine the reach of any amendment to independent living units we propose a link to the Retirement Villages Act and a specific exemption when the ILUs are used to support genuine direct charitable intent (eg highly subsidised or services). We believe this minimises the risk of unintended consequences.

Code of Conduct

While noting that the code of conduct provisions in the *Local Government Act* have gone through significant review over the last few years at the request of the Local Government sector, it is clear that the changes implemented are delivering some unforeseen and less than positive outcomes.

Through feedback from LGAT's Peer Advisors as well as directly from some Elected Members LGAT believes that, in some cases, code of conduct is being used inappropriately to threaten councillors into doing/not doing or saying/not saying something as part of their role. This is clearly not a desirable outcome and one which perversely could affect the ability of genuine complainants to get a fair hearing.

There is also some concern remaining that there have been deficiencies in both administrative processes and Panel decision-making at various times.

In LGAT's 2017 submissions on code of conduct, we noted the following:

- Some residents have chosen to 'weaponise' the Code (leaving) councillors seriously exposed to persons holding personal grudges against councillors because of who they are or what they represent.
- The extent (or lack of) to which Chairs are determining at an early stage not to proceed based on a complaint being frivolous and vexatious (is of concern, as is) the weight given to unsubstantiated claims.
- (There is a need to) remove the ability for a complainant to amend the complaint once the Panel has commenced its investigation (28X (2)).

- The lack of interaction/advice from General Managers in relation to complaints being determined.

On this last point, LGAT has previously noted that, “the legislation does not provide the Chair with the power to take into consideration other matters, such as a report from the General Manager, when undertaking the initial assessment. The General Manager can provide information during the investigation process along with the relevant parties to the complaint”.

“There has been strong suggestion that the Chair should be able to seek preliminary advice from the General Manager to consider other matters before dismissing or proceeding with a complaint. It will be important though to ensure that any further matters considered are to be done so generally in exercise of a discretion and not conclusive simply on the view of the General Manager. This ensures the decision-making responsibilities still rests with the Chair”.

The importance of consideration of mediation efforts by Panel Chairs may need to be more explicit in legislation. LGAT has heard of cases where the first time a councillor has heard about an issue is when they have received notification that a code of conduct complaint has been lodged. The sector feels the complainant should have to clearly meet 28V (3) (fb) before a complaint will be progressed, that is they must state how they have tried to resolve the issue at hand through the many mechanisms available directly with councils.

Recently Members have raised concerns that the Panel Members may be overreaching in their decisions. In one case - *“The Panel determined that an elected member is beholden to maintain a high standard of behaviour as a representative of Council. To that extent, a Councillor must avoid making public comment that can be seen to take a particular side in a debate on an issue, or express negative views about a ratepayer.”*

Key concerns related to this determination include:

- It is up to the Panel to uphold the code of conduct, not make statements that may or may not appropriately paraphrase the Code;
- The Code of Conduct does not say a Councillor must avoid expressing a negative view about a ratepayer; and
- The Code does not say that a Councillor must avoid expressing a negative view about a ratepayer. The test should be - ‘Has a Councillor treated a person unfairly?’

In any democracy, elected members routinely make public comment that expresses a view and in fact training and advice from the Director has made it clear that the critical aspect is not stating a view, but being able to still objectively listen to debate and evidence in making a decision. It is noted that not all Panel decisions have been aligned to the one outlined above with one other report clearly stating *“Councillors may be assumed to hold and to express views on a variety of matters relevant to the exercise of the functions of*

the council. Expressing such views is part of the electoral process. Provided that expressions of opinion do not go so far as to evince an intention to exercise a discretion conferred by statute without regard to the terms in which it is conferred or without being prepared to listen to any contrary argument, it ought not be taken to disqualify the councillor from participating in a relevant decision-making process.”

What this example suggests is that not only is improved consistency across Panels required, but also legislative clarity about the reach of panels in undertaking code of conduct inquiries.

Please do not hesitate to contact me should you have any queries about this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Katrena Stephenson', written in a cursive style.

Dr Katrena Stephenson
CHIEF EXECUTIVE OFFICER

cc - Alex Tay, Director of Local Government

Attachment – Appendix 1

Appendix 1: Review of Tasmania’s Local Government Legislation Framework

Theme 1: A Flexible, Innovative, and Future-Focused Legislative Framework

Reform	Council Feedback
1. Principles-based legislation	Generally supported
2. Accessible, easy-to-read legislation	Supported
3. A new Act for electoral provisions	Supported
4. Consolidating related Local Government legislation	Supported. LGAT has previously advocated that the <i>Local Government (Building And Miscellaneous Provisions) Act 1993</i> and the <i>Local Government (Highways) Act 1982</i> should be repealed and the necessary provisions captured in other legislation. This includes Local Government long service leave provisions.

Theme 2: Representative and Democratic Councils – Elections

Area	Reform	Council Feedback
Eligibility to vote	5. Reform eligibility for the General Manager’s Roll	<p>Generally supported although a number of councils felt that permanent residents should also be allowed to vote, reflecting our growing migrant population.</p> <p>One Council suggested that inclusion on the House of Assembly electoral roll be an additional criterion for inclusion on the General Manager’s Roll.</p> <p>One Council felt the General Manager’s Roll should be removed entirely.</p> <p>At the July 2015 General meeting the following motion was carried: <i>That the LGAT urge the State Government to support the transfer of the administration of the General Manager’s Roll to the Tasmanian Electoral Commission. Further members also agreed, via motion, That the Local Government Association of Tasmania urge the State Government to review the eligibility for inclusion on the General Manager’s Roll by reviewing the definition of occupier to better catch all citizens inclusive of refugees and permanent residents living in local government area.</i></p>

	6. Reform the voting franchise to reflect 'one person, one vote' principle in any one municipality	Supported although a minority thought up to 2 votes could be allowed.
Increasing voter participation	7. Simplify the election process for the positions of Mayor and Deputy Mayor	<p>While LGAT Member's supported the proposition that the election process for Mayor's and Deputy Mayor's be simplified, there was not consensus on how that might be achieved. The majority leant towards option 7A with 7B running a relatively close second. Only one Council supported 7C and none supported 7D.</p> <p>It was clear that in general, Members believe that it is best in terms of a democratic system, for the community to have the opportunity to elect not just Councillors but to vote on who takes up the roles of both Mayor and Deputy Mayor.</p> <p>It was noted that if the driver for change was a high level of informal votes then this could be rectified by improvements to the ballot paper, see response to reform direction 9.</p> <p>For the Deputy Mayor, the status quo is favoured. However, feedback indicated a need to improve the rules regarding a runoff when selection is required around table.</p> <p>Members noted that 7B, C and D might deliver serious issues around electing people who aren't in a position to take up the role, may create divisions within the Council, and may have a detrimental impact in small electorates by reducing the number of candidates/Councillors.</p> <p>The feedback on this area is consistent with LGAT resolutions in 2014 when electoral changes were introduced.</p>
	8. Make alternative voting methods available	<p>Supported, but only when viable. One suggestion is that the Minister, in determining the preferred method, does so on advice from the Tasmanian Electoral Commission.</p> <p>It is also important to consider that technological voting which may be appropriate for some areas may not be appropriate for others – given poor technological access (e.g. Islands).</p> <p>A few councils, while supportive of this reform, would prefer compulsory elections undertaken at the ballot box in the same manner as State and Federal elections. It should be noted that this does not reflect the formal position of LGAT as determined through a vote at a General Meeting.</p>

	9. Simplify the voting process to reduce informal voting rates	<p>Generally supported.</p> <p>Options/suggestions raised include:</p> <ul style="list-style-type: none"> • That the number of preferences should be equal to the number of positions available; • That the ballot papers still instruct voters to number 1 – 10, but if a minimum of up 1 – 5 votes are correctly marked then this is a valid vote. <p>The positive impact of an engaged community in reducing informal votes was noted.</p>
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>Generally supported, however clarity is required in the drafting of the provisions recognising the statutory responsibilities of councils to make decisions, particularly when acting as a Planning Authority. This is about not making major discretionary decisions which bind a new Council.</p> <p>'Election period provisions' is suggested to be a more appropriate title for the provisions described in this reform.</p>
	11. Move administration of the General Manager's Roll from councils to the Tasmanian Electoral Commission	<p>Supported, if there is minimal additional cost. It was noted such a move would improve consistency but does require consideration of access by the Electoral Commission to ratepayer and ownership information if it is to work.</p>
Candidate changes	12. Introduce a pre-nomination training package	<p>This was supported by most councils although a few raised concerns that it might prove a barrier or obstruction if not accessible in multiple formats.</p> <p>Suggestions included:</p> <ul style="list-style-type: none"> • That training be optional or only be required for candidates not already on Council; • That training be simple, interactive, and accessible via multiple platforms; and • That training be used to support, rather than replace, regional face-to-face sessions. <p>One Council submitted the continued availability of induction and training resources to be sufficient and did not support this reform. Another Council suggested a standard code of conduct be developed for candidates.</p>
	13. Introduce a candidate nomination fee	<p>There was no clear position from the sector on this proposal. Some councils support this reform in order to deter candidates who are not serious, whilst others do not – labelling it as an anti-democratic, stumbling block which limits the socioeconomically disadvantaged.</p>

		<p>One Council noted that the suggested nomination fee is potentially not high enough to achieve the desired outcome. Another Council suggested that the scale of fees should be based on the level of allowances relative to the position.</p> <p>There was a greater level of support for a Mayoral candidate fee.</p>
	14. Require the disclosure of gifts and donations by all Local Government candidates received during the electoral period	Supported for ensuring a level playing field, however Members questioned what measures would be put in place to ensure that disclosures are full and accurate? Further clarification is needed.
	15. Align eligibility requirements to nominate as a candidate with State eligibility requirements	Supported with the suggestion by some councils, that it be open to permanent residents. Some additional suggestions were that the candidate should be an elector for the municipal area for which they are standing and/or should have been a permanent resident for at least 2 years.
Modern Councillor titles	16. Remove the title of 'Alderman'	Supported and aligned to a formal vote at a LGAT General Meeting. One Council (City of Hobart) has nominated to give each elected representative a choice between titles, as opposed to simply removing the title of Alderman. Burnie City Council has made this change already as suggested in the Directions Paper.

Theme 3: Councils Connected to their Communities – Community Engagement

Area	Reform	Council Feedback
Community engagement	17. All councils will develop and adopt a community engagement strategy	<p>While most written submissions to LGAT supported this proposal, there was a strong opposition expressed in face to face forums. Much of this may be related to the lack of underlying detail and a concern that this was an overly prescriptive move, especially when most councils already have community engagement strategies.</p> <p>Councils generally agreed that more flexibility around engagement processes is needed.</p> <p>If it does proceed it is imperative that engagement requirements are not prescribed in an overly detailed way, thus creating more administration, delays, and red-tape. The strategy should reflect the circumstances and expectations of individual councils who themselves decide what will/won't be engaged on.</p> <p>Some councils view this as a step too far and would prefer that the Act set minimum requirements for</p>

		<p>consultation and information, so that these are clear and consistent for all councils. Councils can then meet those requirements and still be flexible in their consultation approach beyond the minimum standards.</p> <p>It was also raised that there is a risk, particularly for small councils, of the requirements creating an unsustainable administrative burden not aligned with the services the community expect.</p> <p>A formal requirement to renew after each election was considered overreach.</p>
Removing prescription and giving councils autonomy and flexibility	18. Removing prescriptive consultation requirements	<p>Supported - flexibility needs to exist so that people who need to be reached can be reached in the most effective and logical manner.</p> <p>The preferred approach is for statutory requirements to remain with Council, and for each council's engagement strategy to supplement these.</p>
	19. Remove requirements for public meetings and elector polls	<p>Supported - One Council noted that public meetings and elector polls could be addressed within the adopted community engagement strategy.</p> <p>The retention of community initiated public meetings is supported by a small number of councils but only on the basis that the threshold number of electors are increased.</p> <p>It was suggested by one Council that elector polls only be capable of being held in conjunction with an election and LGAT feels, based on anecdotal evidence, that there would be support for that.</p>

Theme 4: Responsible and Effective Councils – Ethics and Standards

Area	Reform	Council Feedback
Good governance	20. Legislate the eight good governance principles	Mostly supported by the sector although in general it was felt by LGAT Members that it would be sufficient to maintain these principles as guidelines due to their subjectivity and likely restrictiveness. The 'consensus oriented' principle was particularly problematic for one Council, being seen to be contrary to good governance. In all, the Act should establish expectations of a culture of governments rather than be overly prescriptive in approach.
Financial governance	21. Set high-level financial management principles that encourage efficiency and value for money in council service delivery	Council largely felt hamstrung in commenting on this proposal because of the lack of detail. While not strongly opposing, it was suggested that additional policy tools, such as guidelines, would be sufficient. It was hard to elicit what the major benefit over s28 (1) to (4) would be.

		<p>Even those cautiously supportive felt the principles identified might be too narrow and did not capture the need for alignment of strategic planning documents.</p> <p>One suggestion arising from face to face discussions was that a practical and useful action would be to review the various accounting methodologies being used by councils and develop standardised reporting. This would address some of the complexities such as volume/length of reporting driven by disclosures currently required in the Local Government Act and International Accounting standards, which are not necessarily relevant to Council operation.</p>
Elected member development	22. Establish core capability requirements for elected members	<p>There was no consensus on this matter and particularly during workshops this was described as an overly prescriptive direction.</p> <p>It was noted by some that because Local Government is no different to State and Federal Governments in that the elected members are democratically elected, at most this should take the form of guidelines.</p> <p>Others suggested that training extend beyond Planning and Local Government to include topics directly relevant to the role of an elected member (e.g. meeting procedure training).</p> <p>One Council raised concern around the term ‘core capability’ as it implies there may be a pass or fail scenario for elected members. This Council therefore suggested it be changed to ‘professional development’.</p> <p>It was uncertain how weight would be given to experience both on and off Council.</p> <p>Noting that training needs to be delivered in Plain English and accessible via multiple platforms, questions were raised as to how it would be implemented and how it would be affordable and accessible relative to the Councillors role and allowances.</p>
	23. Require councils to publicly report the core capability training that each elected member has completed annually	<p>This was not strongly supported although there was less concern about broader reporting on training participation. One reason given by councils for not supporting this reform is the different level of training required by each elected member, according to their skills, background and experience (i.e. yearly reports will not provide a complete picture of capability and/or existing qualifications, thus creating an unnecessary compliance burden). Others, however, see merit in reporting core capability training and in</p>

		extending this reform to all Councillor professional development.
Council staff accountability	24. Establish principles for all Council staff that set minimum standards of behaviour	<p>Not supported without further detail.</p> <p>Most councils feel that it is not necessary to include these principles within legislation as Local Government staff are employed and managed under an Enterprise Bargaining Agreement and all councils already have workplace policies to manage behaviour.</p> <p>It is suggested that overly prescriptive legislation often causes more problems than it solves and that setting minimum standards would disempower the relationship between a council's General Manager and staff.</p> <p>Some Members feel that a level of prescription is appropriate and that there is merit in enhanced consistency.</p> <p>How these principles are applied to engagement with Council employee groups and/or contracts under commonwealth approved enterprise agreements requires clarification.</p>
General manager performance	25. Prescribe minimum standards for General Manager recruitment, contracts, performance management and termination	<p>Not generally supported.</p> <p>While several councils support this reform it was only to the extent that best-practice recruitment practices (i.e. tools and support materials) are contained within Ministerial Orders. However, for these councils, prescription within the Act is not supported. It was noted that councils need flexibility in order to recruit staff that best suit their needs/situation.</p> <p>It was suggested by a number of Members that such a reform overreaches on one of the main responsibilities of Councillors and can open channels for an aggrieved individual to mount legal challenges.</p>
Complaints management	26. Include principles on complaints management in legislation	<p>No clear sectorial position. It is suggested that this reform does not achieve the aim of avoiding unnecessary prescription and that minimum standards around complaints management may be sufficient.</p> <p>While there is support for establishing a mechanism to deal with frivolous and vexatious complainants, most feel councils already have appropriate processes in place.</p> <p>Clarity in relation to the mechanisms which the State Government have in place, as well as looking for comparative options (e.g. how the State would address similar situations), could be beneficial.</p>

Theme 4: Responsible and Effective Councils – Transparency and Flexibility in Budget Management

Area	Reform	Council Feedback
Rating policies	27. Ensure Council rating policies consider taxation principles and align with their budget and financial planning documents	Supported, especially clearly articulating that Council rates are a tax. Mention of sound financial management that delivers sustainable councils is also needed.
	28. Introduce more flexibility for councils to easily transition from one rating approach to another, to manage rating impacts on ratepayers	Mostly supported, however the imposition of a preferred rating methodology (e.g. Capital Value) through the legislation should be avoided.
Transparent and accountable rate setting	29. Establish an independent rates oversight mechanism	<p>Generally not supported, although this is another proposal on which councils were frustrated by a lack of detail.</p> <p>It was noted that appropriate oversight already exists for councils' financial management and that Local Government is not confident that the Economic Regulator has the experience or capacity to undertake this role.</p> <p>Councils should be given discretion and be guided by their community's needs which change over time.</p> <p>Other reasons for a lack of support include that:</p> <ul style="list-style-type: none"> • Councils already have the Auditor General monitoring rating policies – this reform will therefore impose unnecessary additional prescription; and • Overuse may place unnecessary financial hardship on councils if they are required to pay for these interventions – an option for the State to resource any intervention measures should therefore be available. <p>A more logical approach, according to one Council, would be to consider how the Local Government Division could provide oversight on rating policies and monitor Council financial sustainability. Providing a more comprehensive financial benchmarking system has also been suggested.</p>
Transparent and accountable fees and charges	30. Set principles or guidelines for setting fees and charges	<p>Not supported.</p> <p>While several councils are supportive of a more transparent and consistent approach to the setting of fees and charges there was concern that this approach is overly prescriptive and does not recognise the different scales and nature of councils business operations. For example, technology now</p>

		<p>allows differential and flexible parking meter charges to influence behaviour and improve traffic.</p> <p>Fee setting should be done on a true cost recovery basis with flexibility for local circumstances. There is no clear benefit to the proposed bureaucratic requirements.</p> <p>Reform which is only for purpose of consistency does not properly reflect the financial plans, practices and costs of an individual Council in providing the service for which the fees and charges apply, instead, the focus should be on providing principles or guidelines as a tool to assist councils.</p>
Budget management	31. Provide for a more autonomous and less prescriptive budget process	<p>No consensus, many deemed unnecessary given this is not generally seen as a problem under existing legislation.</p> <p>Some felt this should be determined by individual councils based on local circumstances.</p> <p>One Council notes that the ability to reallocate may subject the General Manager to pressure from Councillors and/or members of the public.</p> <p>Other councils question the need to prescribe a half-yearly financial report and suggest that flexibility should apply to the operating <i>and</i> capital budget.</p>
Significant business activities	32. Clarify significant business activities	<p>Supported, for clarity and transparency the Government should consider a defined monetary threshold for what constitutes a significant business activity.</p>

Theme 4: Responsible and Effective Councils – Council Decision-Making

Area	Reform	Council Feedback
Council meetings	33. Require electronic recording of Council meetings to be made publicly available	<p>Mostly supported, however clarification around mandatory publication is required. One Council for example, makes recordings available to the public on request and believes this to be sufficient.</p> <p>Other areas that require clarification and/or consideration include:</p> <ul style="list-style-type: none"> • Provisions for dealing with the publication of defamatory and related statements; • Live streaming for those councils that wish to do so; and • The time period for which recordings should be retained. <p>Some of the concerns raised include that this proposal could stifle debate and open councils to liability claims in the absence of protectionist</p>

		measures similar to parliamentary privilege relied upon within the State.
Conflict of interest framework	34. Simplify what is a conflict of interest	<p>Supported. There is a strong desire for greater clarity, particularly on the treatment of perceived interests.</p> <p>It is noted that the outcome of some recent code of conduct processes has raised concerns that any association, or perceived association, a councillor might have with an industry, community organisation or person, may be perceived as a conflict of interest, even if there is no real prospect of benefit for anyone. This has the potential to cause particular difficulty in smaller councils - where it is likely that a councillor has an association with a large proportion of the community.</p> <p>It was felt that the Director's advice on conflict of interest should have more weight in relation to councillor declarations and actions around interests.</p>
Managing conflicts in the exercise of statutory functions	35. Enhance the integrity of Council decisions made when exercising statutory powers	Supported, however consideration is needed in circumstances where Council is not the applicant but the landowner. A lower end threshold may also need to be established. For example, it would be costly for most councils if this captured minor works such as footpaths. This should only apply to more significant capital expenditure projects.

Theme 4: Responsible and Effective Councils – Oversight and Interventions

Area	Reform	Council Feedback
Independent oversight	36. Strengthen the information gathering powers of the Director of Local Government	<p>Generally supported – for audit panel reports only.</p> <p>A few councils noted that this seems a minor and basically superfluous increase given the Minutes and Reports form part of the public Agenda at a Council meeting.</p> <p>One Council strongly disagreed with any increase of power to the Director (36-41).</p>
	37. Create a power for the Director of Local Government to require an undertaking from a Council as a measure to address compliance issues	<p>Not generally supported without further detail.</p> <p>An increase in oversight and intervention powers needs to be supported by powers to address non-compliance. Consideration must also be given to a review/appeal mechanism to address disagreement with the actions of the Director.</p> <p>Other comments include:</p> <ul style="list-style-type: none"> That such a direction should only be issued by the Minister (an elected representative);

		<ul style="list-style-type: none"> • That such a direction should be directed to Council for Council to ensure the General Manager corrects the non-compliance; and • That direction should only be able to be issued once Council agrees there is an instance of non-compliance.
	38. Establish a Monitor/Advisor role	<p>Not generally supported.</p> <p>It is suggested that only the Director should be able to recommend the engagement of a Monitor (and Financial Controller), and that functions of elected councils should only be used in overridden by Ministerial decision.</p> <p>An alternative suggestion is that all Closed Session Agendas be sent to the Director of Local Government in order to monitor the information being discussed.</p> <p>Of the councils supporting this reform, it was suggested by one that it be extended to include a Mentor role.</p>
	39. Establish the power to appoint a Financial Controller	<p>Not strongly supported. If progressed, there needs to be clarity around when this might occur. As mentioned previously, a review mechanism will need to be in place to allow for disagreements to be addressed.</p>
	40. Continue to conduct formal investigations by the Director of Local Government	<p>While some support, equally as many responses referred to existing mechanisms (via a Board of Inquiry) that provide this function. The current Board process is sufficiently transparent and legally robust.</p> <p>An alternative is to strengthen the processes around the Board of Enquiry to enable it to act quickly and with enhanced procedural fairness.</p> <p>One Council notes that recommendations made by the Director should at best be considered advisory.</p>
Ministerial intervention	41. Provide for the Minister to dismiss a Council or individual Councillor	<p>Mostly supported. Several councils feel that the current system of the Minister only having the power to dismiss the whole and not individual Councillors needs amendment, however a number of issues need to be considered and detail is not available.</p> <p>The concerns with this proposal relate to the role of the Director vs that of a Board.</p> <p>One Council feels very strongly that the powers of the Director should be reduced (not strengthened). This Council states that advice from the Director often conflicts with their own legal advice and that Local Government Officers are biased and at times incompetent in their investigations.</p>

Maladministration	42. Create offences for mismanagement and to address poor governance (maladministration)	<p>While further detail is required, as a concept this is mostly supported. The following concerns/comments were raised:</p> <ul style="list-style-type: none"> • The performance of councils should be left to councils (as much as possible), intervention should only occur when there is a clear breach of the Act; • The need for clarity around the role of Mayor in managing the elected body, General Manager in managing the organisation, and relationship between the General Manager and elected members; • A potential detrimental effect on Local Government management, those with management skills will seek positions with greater financial reward and less potential for criminal prosecution; and • This must relate only to those areas which the General Manager has control over, not to decisions by or actions of councillors. <p>Such provisions, both for the Council and individual Councillors, would need to be tested through the courts. One Council endorsed the Tasmanian Audit Office as the current means of potentially identifying any financial mismanagement.</p>
Complaints management	43. Simplify the complaints framework	<p>Further detail is required, however there was support for a one stop shop approach to complaints to State agencies. Clarification around the powers of various bodies (e.g. Local Government Division, Integrity Commission, Ombudsman), as well as the process for investigations, is needed.</p>

Theme 4: Responsible and Effective Councils – Council Performance Reporting

Area	Reform	Council Feedback
Performance reporting framework	44. Introduce a Local Government performance monitoring framework	<p>Supported, subject to understanding the detail, reporting criteria, and method for addressing the criteria.</p> <p>While presenting data in an easily comparative way may be of interest, the business case for investment in this space must include consideration of both the cost (not just technology costs, but time to provide, validate and explain the data) and outcomes – how will it drive improvement? It must be meaningful and useful to councils if there is to be performance driven change.</p> <p>Some councils raised concerns in relation to creating a meaningful set of statewide performance measures (i.e. idiosyncrasies of individual Council areas must be</p>

		adequately explained/understood). There is also a risk that such a framework may be overly onerous for some councils.
	45. Require councils to publish a compliance statement in the Annual Report	<p>No clear sectorial position. Some councils feel that this reform is unnecessary and that existing audit panel requirements are sufficient to ensure compliance.</p> <p>Other councils feel that the Directions Paper does not provide sufficient detail in order to determine whether this reform is supported. Depending on the nature of this statement, there could be practical challenges with determining compliance – for example.</p> <p>If this reform was to be introduced, a compliance certificate would need to be developed so there is consistency, according to one Council.</p>
	46. Remove prescription around Annual Report	Supported.

Theme 5: Adaptable Councils – Collaboration

Area	Reform	Council Feedback
Collaboration across councils	47. Introduce provisions that support efficient and high-quality Council operations and collaborative shared service opportunities	<p>Supported, however collaborative service models should be entered into at the decision of councils.</p> <p>Consideration must be given to the interface with the Greater Hobart Act 2019.</p>
	48. Introduce the option to create Regional Councils	<p>No clear sectorial position. Some councils feel that this reform would allow communities to maintain their own identity while achieving economy of scale benefits of working with other councils.</p> <p>Support was largely predicated on participation in a regional Council not being compulsory and where there is no preferential treatment granted to a regional Council over individual councils.</p> <p>More information (re. establishment processes, governance arrangements, funding, accountability, and dissolution) is required before many councils can support this reform.</p> <p>Those who do not support this reform site the following as concerns:</p> <ul style="list-style-type: none"> • The implementation risks are considered too high and benefits difficult to identify/quantify; • The impracticality of councils needing to deliver and operate in the same or similar manner; and

- The potential unnecessary of this approach given existing Joint Authority powers.

Theme 5: Adaptable Councils – Model By-Laws

Area	Reform	Council Feedback
Consistent by-laws	49. Create model by-laws for common issues, with streamlined administrative processes	<p>Supported, in addition to any process that reduces the timeframes associated with by-law development and review. Suggested provisions include:</p> <ul style="list-style-type: none"> • That model by-laws are not compulsory; and • That resourcing to facilitate this be provided by the Local Government Division.

Theme 6: Strategic Reviews – Local Government Board

Area	Reform	Council Feedback
Local Government Board	50. Strategic reviews of councils	<p>Mostly supported, however the review of Councillor allowances every eight (8) years is potentially too long a time period. It is suggested that this review should be undertaken every election cycle at the four (4) year mark with clear and transparent assessment criteria. Board Membership should be also set (i.e. not be discretionary), according to one Council (King Island).</p> <p>As indicated by the Tasmanian Industrial Commission at the time of the last review. Issues related to rural Councillors who predominantly work with smaller populations but much larger areas needs more detailed contemplation.</p> <p>The notion that the Local Government Board would no longer be responsible for reviewing the operations of a Council is a matter of concern for some who feel that 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.</p>