

Review of Tasmania's Local Government Legislation Framework

# Reform Directions Paper: Phase Two

## *Tasmanian Greens' Submission*

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## Foreword

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Thank you for the opportunity to contribute to this significant and important review process. Thus far, we believe this process has been exemplary and should be a model for future consultations.

By and large, the Greens are very supportive of the reform directions paper. We note that in a number of areas the review team has not shied away from ambitious reforms, and for that the team is to be commended.

We believe many of these recommendations are in line with community expectations and are in the public interest, and are hopeful that powerful interest groups do not derail or water-down critical reforms.

We support the majority of the 51 reform directions in principle, and confine our submission to matters we oppose, or to those we make suggestions for refinement.

## Reform Direction 1. Principles-based legislation

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We support principles-based legislation – although we consider the three proposed are too few. We note, as we did in our original submission, that other jurisdictions have a wider range of guiding provisions.

We are of the view that “good governance, community engagement and financial management” are too small a number of principles, and will not stand councils in good stead to respond and prepare for the future. We consider there should be other principles around intergenerational equity and sustainability, community leadership, and land stewardship.

We are also of the view the functions of councillors could be modernised. Making planning decisions, for example, is a significant function of councillors, and this should be explicitly named up in the Act.

Recent commentary has suggested that many candidates run for council elections without fully understanding the functions of a councillor. There is also a degree of public debate around exactly what the function of a councillor is. Outlining this in a clear way with reference to contemporary practices and expectations in the Legislation will assist in clarifying this matter.

In relation to the use of regulations, we have no strong objection to matters that may be subject to regular change being detailed in regulations. We are, however, dubious about being too reliant on regulations. Regulations do not receive the same degree of scrutiny as bills, and require other members who have access to significantly limited time to initiate debate.

We are of the view that if provisions can be framed in a way so they can remain relevant then they should appear in the Act rather than in regulations.

## Reform Direction 5. Reform eligibility for the General Manager’s Roll, and

## Reform Direction 6. Reform the voting franchise to reflect ‘one person, one vote’ principle in any one municipality

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We strongly support the requirement to be an Australian citizen in order to vote. We also support only allowing an individual to have a single vote in a Local Government Area.

However, we fail to see a rationale to allow corporations to vote, or to allow individuals to vote in multiple Local Government Areas. Fundamentally, this provides individuals who have more wealth with more political power as well. It violates a basic principle of equal participation in democratic decision-making.

No rationale is provided for this position, and we can only assume this compromise is to mitigate backlash from wealthy interest groups. We contend the vast majority of people would not be happy with this arrangement. The fact that this recommended position would favour asset-rich voters over the majority view – which is also the reasonable and equitable view – reflects poorly on the level of influence wealthy individuals have over politics.

We also note that under this scheme a business or corporation could nominate a representative to vote in a council election, and that person does not even have to live in the State of Tasmania. We don't believe the majority of Tasmanians would support this position.

We urge for reconsideration of these issues – to allow an individual to vote only once in one local government election, and to not provide businesses with a proxy vote.

## Reform Direction 7. Election process for mayor and deputy mayor

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After careful consideration we are of the view that Option 7A (i.e. retaining the status quo) is the most desirable option. We acknowledge the flaws of the current system that have led to consideration of alternative options, but upon consideration of the other options proposed (B, C and D) we believe none of these are suitable, or better, than what exists:

- Option 7B would provide a disincentive for candidates to run as mayor, which is not desirable as it would limit the options of voters, and would also decrease the quality of public discussion about the future of the community by providing fewer competing visions for a municipality.
- Option 7C has some merit. We note that in the vast majority (23 out of 28) of cases across Tasmanian municipalities at the last election, the person elected mayor was also the first person elected as a councillor. This indicates that, in the majority of cases, option 7C might provide similar outcomes to the current system. However, we are of the view that option 7C – which could encourage ‘a cast of thousands’ to put their hand up for mayor – would stifle the opportunity for effective public scrutiny of mayoral candidates during the campaign process. Mayoral debates, typically organised by community groups for the few people who commit to standing for mayor, might become meaningless and non-functional exercises. Conceivably if every candidate had the *potential* to be elected mayor, it might make the nature of a candidate’s election platform more uncertain. For these concerns, we don’t support this option.
- Option 7D, where a mayor is determined by a vote at the council table, would give less opportunity for voters to determine a council’s composition. It could also make it more difficult to shift an incumbent mayor, even where there might have been majority voter support for that change.

## Reform Direction 8. Make alternative voting methods available

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We are of the view that compulsory, at the ballot-box, voting would be the best democratic outcome. The paper notes that few submission responses in Phase One raised this issue, and therefore it is not a significant community concern. However, we note that the people who engaged with this review process are themselves likely to be voters – and compulsory voting is not for their benefit. It is for the benefit of individuals who are not likely to be politically engaged, and the benefit of society as a whole, to require people to participate in our democracy at this most basic level.

Given the strong support and national pride in Australia for compulsory voting in federal and state elections, we believe the same would exist for local government elections. We would like to hear the government's argument for why council voting should *not* be made compulsory. We urge reconsideration on this issue.

Should compulsory voting at council elections not be adopted, we have serious reservations about the proposal for a *minister* to make the decision about suitable voting methods. A minister would be a member of a political party, and by definition would be of a certain political persuasion. There is a risk that this person could prescribe a method that may skew the demographics of those people who would vote. We suggest this recommendation be reconsidered to provide a definitively unbiased voting outcome.

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

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Part of the rationale for allowing the voting from preferences 1-5 only to constitute a valid vote is to conform with the current House of Assembly vote counting process. It is worth noting that the *House of Assembly Restoration Bill 2018*, currently before a committee of the House, would increase that number to seven.

This potential inconsistency should be borne in mind when drafting any future local government bill. The progress of the *House of Assembly Restoration Bill 2018* should be considered in any final bill brought before Parliament.

## Reform Direction 10. Caretaker provisions

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We support this recommendation and reiterate our position on this matter in our original submission. Most significantly, we believe a mechanism to overturn major decisions made in contravention of caretaker provisions should exist in legislation.

## Reform Direction 12. Introduce a pre-nomination training package

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We have no objections to this, so long as it is not designed in a way that is too onerous or time consuming, that it sticks to factual content, and is free of charge.

## Reform Direction 13. Introduce a candidate nomination fee

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We have serious reservations about this reform direction, as it is not in the interests of democracy to exclude candidates or make determinations about who is or is not a “serious” candidate. This reform would also create a barrier to stand for election for people who simply cannot afford to pay \$100.

Furthermore, we note that some *successful* candidates in the recent Hobart City Council elections did not receive 4% of the vote (and thus would be ineligible for a refund under the proposal) while some *unsuccessful* candidates did (and thus would be eligible). We believe there were numerous candidates who stood at the last election who were, by any reasonable definition, “serious” yet did not receive 4% of the vote.

It is also a concern that some recent council elections had a small number of candidates who stood for election, comparative to the number of positions available on the council. For example, Sorrell had exactly the same number of candidates as positions available, and all were elected uncontested. Two other councils only had one additional candidate stand, comparative to the number of seats. Seven councils did not have enough candidates who stood to allow for a replacement of half the sitting councillors. With several notable exceptions, the vast majority of councils did not have enough candidates who stood in the election to enable a complete replacement of the sitting councillors.

Therefore, in some municipalities, attracting candidates to run for election already appears to be challenging. Requiring people to pay a registration fee may discourage even more potential candidates from running. Our view is that local government elections in Tasmania face a problem of a *lack* of candidates running, not one of too many candidates running, and therefore the risks associated with these provisions would significantly outweigh any benefits.

Excluding candidates is not in the spirit of a democracy, nor are provisions that discourage participation by individuals in a lower wage bracket than those in a higher wage bracket.

## Reform Direction 17. Community engagement strategy

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We support this reform, and believe that timeframes should be prescribed in legislation.

## Reform Direction 18. Removing prescriptive consultation requirements

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We are very concerned about this reform direction. Robust, minimum standards for consultation must be maintained in legislation. We could only support this proposal if the removal of prescriptive provisions would not leave the door open to watering-down consultation.

## Reform Direction 19. Remove requirement for a public meeting or elector poll

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We are naturally cautious about the removal or downgrading of democratic rights. We agree there is merit to re-evaluating the provisions relating to citizen-initiated elector polls and to public meetings. However, we believe this can and should be achieved without removing democratic rights.

We would support provisions to reduce the costs associated with citizen-initiated elector polls and public meetings, as well as raising the threshold for when these can be called depending on the size of the municipality.

We would also support mechanisms that allowed a council to negotiate details with a petition sponsor on a voluntary basis, to examine issues such as dates and phrasing.

## Reform Direction 26. Include principles on complaints' management

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We support the independent management of complaints. Management should be independent of the whole local government system, to control for systemic biases and issues.

We also note that complaints which may be viewed as, or objectively may be, vexatious or frivolous must still be taken seriously, and the complainants must be treated with respect. Such complaints can sometimes stem from a person's broad disillusionment with a council due to a history of genuine grievances that have been poorly or disrespectfully managed. Some of these in the past have ultimately resulted in Boards of Inquiry investigations into a particular council, and "annoyance" complaints have been proven to have had a valid basis. As

well, some complaints can stem from mental health issues or cognitive impairments, and the manner in which the complaint is handled can have a material impact on a person's wellbeing.

### Reform Direction 29. Establish an independent rates' oversight mechanism

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We do not support this power to be given to the minister, but would support a council being able to seek advice from the OER on a voluntary basis.

Under the proposal, a minister could seek to gain political approval by directing a council to be assessed by the economic regulator to appease constituents. The Minister does not have the responsibility of balancing a council's budget, but would nonetheless be able to capitalise on a politically-motivated decision – and to pass the costs (both politically and financially) onto a council.

This provision would have too much capacity for abuse.

### Reform Direction 30. Set principles or guidelines for setting fees and charges

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We support this reform direction, so long as the guidelines are not binding.

### Reform Direction 31. A more autonomous and less prescriptive budget process

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This is a risky proposition and we cannot support it without further detail. As such, we are opposed to this recommendation. We also note that a general manager already has the capacity to request changes to budget allocations.

### Reform Direction 34. Simplify what is a 'conflict of interest'

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We would need to see more detail on this proposal before commenting.

## Reform Direction 35. Council decisions when exercising statutory powers

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We would need to see more detail on this proposal before commenting. However we note there are cost and practical challenges with appointing a genuinely independent planner.

Both the options proposed, in our view, would not satisfy the test of independence. If a private planner is employed by council, in all likelihood they would provide their client with a report that suits the client (i.e. the council) in order for the private planner to keep future business options. Other councils are also likely to be compromised in their assessment, as they would want to have positive planning decisions reciprocated.

Given these, we consider the proposals given for independent planning assessment would cost councils more money, would take more time, would involve a lot of extra paperwork, and would be no more independent than current arrangements are.

Providing for an independent body, as discussed on page 48 of the reforms directions paper, may be a suitable method for achieving the intention of this reform.

## Reform Direction 41. Provide for the Minister to dismiss a council or councillor

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We oppose this reform direction. We believe the current provisions allowing for dismissal of a council or councillor *after* a board of inquiry are sufficient. Not enough detail has been provided to suggest that inappropriate and potentially politically-motivated dismissals could not occur under the arrangement proposed.

## Reform Direction 42. Create offences for mismanagement and poor governance

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While we support this reform direction, we note the offence of misconduct in public office should be established to capture *all* individuals who hold public office. We further note that the excuse proffered to not create this offence of misconduct for members of state parliament is that adequate provisions already exist.

Clearly, this reform direction indicates that a new offence *is* in fact required. We believe there is no logic to creating such a new offence, and then applying it to councillors and council staff only. In fact, the message this sends is that maladministration is acceptable in state government, but not in local government. A double standard is being proposed and we don't support it.

We hope you carefully consider these matters when preparing the draft bill. Please contact my office if you would like to clarify any matters raised.

Yours sincerely,

A handwritten signature in black ink that reads "Rosalie Woodruff". The signature is written in a cursive style with a large initial 'R' and a stylized 'W'.

Rosalie Woodruff MP, Greens Local Government spokesperson