



Clarence... a brighter place

38 Bligh Street Rosny Park
Tasmania Australia
Address correspondence to:
General Manager
PO Box 96 Rosny Park 7018
Telephone (03) 6217 9500
Facsimile (03) 6245 8700
Dx: 70402
Email clarence@ccc.tas.gov.au
Website www.ccc.tas.gov.au

Enquiries:

Your ref: I Nelson:JE

In reply please quote:

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Local Government Legislation Review Project Team
Local Government Division
Department of Premier and Cabinet

By email: lgareview@dpac.tas.gov.au

To whom it may concern

**REVIEW OF TASMANIA'S LOCAL GOVERNMENT LEGISLATIVE
FRAMEWORK**

I refer to the Tasmanian Government's review of the Local Government Legislative Framework currently being undertaken. Council at its Meeting of 25 February 2019 considered its response to the discussion paper and a copy of the endorsed submission is attached.

Yours sincerely

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

Ian Nelson
MANAGER CORPORATE SUPPORT/LEGAL COUNSEL

QUESTIONS	RESPONSE
Overview of Local Government	
<p>What do you think Councils will be responsible for in the future?</p>	<p>Section 20 of the Local Government Act 1993 (Act) currently provides three broad functions, namely:</p> <ul style="list-style-type: none"> (a) to provide for the health, safety and welfare of the community; (b) to represent and promote the interests of the community; (c) to provide for the peace, order and good government of the municipal area <p>These functions, coupled with existing functions (such as acting as a Planning Authority under LUPAA and having responsibility for certain road infrastructure, drainage, etc) reflect a broad ranging responsibility that covers amenity, safety and other key aspects relevant to a healthy community.</p> <p>Given the above, and acknowledging that some refinement or clarification of Council responsibilities may be appropriate, there is no identifiable need for substantive change. Any amendment to current functions and responsibilities should only occur on the basis that the changes are enabling rather than prescriptive, and to permit Council to provide services within a range of broad purposes (areas) according to community demand, budget capacity, etc.</p> <p>Noting the comments above, it is also important to recognise that additional responsibilities must be appropriately funded to ensure councils remain financially viable.</p>
<p>What Council activities should be driven or determined by communities?</p>	<p>Councils currently engage with its community in a variety of ways including via special and other committees. Council uses these consultation and engagement methods to inform itself and then make decisions in the usual democratic manner.</p> <p>Councils are elected to represent their community and to respond to issues affecting that community. There currently exists a range of actions available (such as ability to petition for a public meeting and/or an elector poll) that permit community members to engage on specific</p>

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	<p>issues with the relevant Council and to some extent drive council actions. While refinement of these engagement processes may be in order, care should be taken when considering what, if any, activities should be 'determined' by communities. There is a risk that the democratic processes that have underpinned council and community interactions for decades could be eroded with unforeseen consequences.</p>
<p>Given the varying sizes of Councils, what consideration should be given to costs of services and the Councils' capacity to deliver these?</p>	<p>Each council has a different demographic, circumstances, rate base and financial capacity. The ability to benchmark the cost of basic services would assist communities to understand the cost of services provided, whether their council is delivering basic services economically and assist to understand the likely financial burden of additional services (or increased levels of service). Benchmarking the cost of basic services could also assist to guide funding decisions (such as via the Grants Commission) and consequently provide a more level playing field from a financial capacity perspective.</p> <p>Councils need to be financially sustainable. Financial sustainability requires a sufficient rate base. Councils therefore ought be of sufficient size to be sustainable. Creation of a mechanism to promote transparent service benchmarking may be helpful. For example, see www.knowyourcouncil.vic.gov.au</p> <p>Notwithstanding the benchmarking comments above, councils should also be able to step beyond minimum levels of benchmark services to provide additional services valued by their community - such as provision of health and aged care services in areas where commercial operators are not present or meeting demand. Such decisions should be at the prerogative of the relevant council.</p> <p>An important issue relevant to the cost of services and capacity to delivery is insurance and indemnity. Councils should be provided with a level of legislated indemnity in respect to services and service delivery. An indemnity of this nature would assist to minimise insurance cost and in turn have a positive financial benefit to the relevant community.</p>

QUESTIONS	RESPONSE
Council Governance and Powers	
<p>What is vital to good governance in local government?</p>	<p>Broadly, councils aim to apply the same governance standards and practices as State and Federal government departments.</p> <p>As a matter of general community expectation, councils should also seek to meet the same good governance requirements and practices that apply to commercial boards. After all, councils are complex businesses commonly working alongside commercial businesses. It is however important to note that councils are ‘representative boards’ rather than ‘skills based’ like many boards, so some differences must also be recognised.</p> <p>Over the past few years the Act has been amended to include provisions aimed at establishing and managing governance expectations. For example, introduction of a Model Code of Conduct. While conduct is a fundamental requirement for good governance, other elements may be appropriate for inclusion (for example, risk and financial governance elements). The ‘Good Governance Guide for Local Councils’ is a worthy start point for consideration in this area.</p>
<p>What aspects of good governance should be prescribed in a legislative framework?</p>	<p>The Act currently includes requirements relevant to conduct, disclosure of pecuniary interests, gifts and donations, as well as requirements related to information confidentiality and disclosure. These requirements set out a basic level of governance practice for councillors and council staff.</p> <p>Inclusion of higher level governance considerations that are consistent with the governance practices of other tiers of government may be helpful and create a consistent ‘playing field’ that assists community members and local government participants to undertake functions in a ‘best practice’ way.</p> <p>Rather than prescribing further ‘good governance’ requirements in legislation, a ‘principles based approach’ may offer a better solution based on defined standards.</p>

QUESTIONS	RESPONSE
<p>What statutory power do Councils need to deliver the services that communities require, or expect to receive, from Councils now and into the future?</p>	<p>Councils are responsible for overseeing a wide range of services, with a key focus on planning, building and plumbing activities. Refinement of legislation in these areas to ensure it is efficient and effective, with a focus on more effective and timely statutory enforcement requirements, would be helpful.</p> <p>Councils may also benefit from greater legislative capability and protection in relation to coastal management including coastal management works. The ability to act and to be protected when acting in good faith and reasonably is fundamentally important. Provision of a statutory ‘shield of Crown’ when performing functions in good faith may be a suitable approach. For example, see NSW legislation in this area.</p> <p>Councils are increasingly experiencing an adverse financial impact from charitable organisations purchasing and/or developing property for commercial (rather than charitable) gain. The current LG Act provisions require updating to ensure that charities engaged in commercial development where a ‘third party’ is granted any form of ‘exclusive possession’ does not result in a decrease in rate revenue.</p> <p>Councils periodically engage the Valuer General to assess land values. In certain circumstances (such as in the case of leased Commonwealth land) the Valuer General cannot gain adequate access to conduct valuations in the same manner as for other property in the municipality. From the dual perspectives of transparency and efficiency, amendment of the legislation covering the Valuer General’s activities could be updated.</p>
<p>How are the strategic decisions of Councils best made?</p>	<p>Strategic planning needs to remain as a consultative process within the Act. Strategic decision making requirements should be principles based with clear community engagement requirements and decision making requirements by Council.</p> <p>Strategic decisions must represent the ‘best’ outcome for the community rather than the most popular outcome. The legislation must encourage and enable councils to adopt long term planning that addresses future issues that may be unpopular now (for example, some coastal</p>

QUESTIONS	RESPONSE
	management initiatives). Long term issues may be well in excess of the 10 year timeframes with some high level strategic planning focussed on 30 to 50 year horizons (for example, strategic urban planning).
What mechanisms best support strategic, operational and technical decisions and actions?	<p>Legislative certainty is the key element to ensuring effective council decision-making in these areas. Currently the Act provides a clear separation of roles and responsibilities between councillors, mayor and general manager. The amendments to the Act following the Boards of Inquiry into Glenorchy City Council and Huon Valley Council reflect an appropriate level of intervention that serves to assist councils that are not operating effectively.</p> <p>Within the context of legislative certainty, careful consideration should be given to the manner and nature of particular legislative provisions. Legislative provisions focussed on strategic outcomes should be drafted to reflect broad purposes and clearly enable wide ranging, high level initiatives. This approach should become more specific as provisions deal with operational and technical requirements, making clear where parliament expects a particular process or action to occur (for example, tendering requirements). Such prescriptive requirements should only be included within the legislation where absolutely necessary.</p>
Democracy and Engagement:	
What is the best way to engage Tasmanians in voting in local government?	This question is a matter for individual comment by councillors and the broader community.
Who should be allowed to participate in local government elections?	This question is a matter for individual comment by councillors and the broader community.
How can local government attract skilled, diverse and representative electoral candidates?	Ideally, electoral candidates should reflect the broad diversity of the relevant community. While the motivation of electoral candidates may differ, councils might reflect on the barriers they see or experience in a practical sense. That is, what pressures are evident in terms of

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	<p>elected member participation in council processes. Considerations may include:</p> <ul style="list-style-type: none"> • Whether the time and location of council meetings adversely impact on work and family obligations of elected members • Whether the support and assistance provided to elected members is sufficient. For example, should child care and other support be available? • Are council committees and other consultative activities efficient and effective. For example, are there committees with overlapping responsibilities and do those committees make an appropriate level of contribution to the business of council?
<p>What should be required of candidates in local government elections before, during and after elections?</p>	<p>The Act should continue to require that the candidate be and remain a resident or property owner or business representative (that is, on the relevant electoral roll or GM roll) within the municipality. This goes to the intrinsic nature of local government.</p> <p>As is currently the case, the Act (via the Declaration of Office) should require a commitment to ongoing continuing professional development. Continuing professional development has wide ranging benefits to the community, not just to the relevant councillor and their council.</p> <p>Consideration may be given to introducing a requirement that councillors declare the development activities they have undertaken at relevant designated reporting times. The LGAT and other organisations should be supported to provide opportunities for continuing professional development.</p>
<p>What decisions should Councils continue to be able to make during an election period?</p>	<p>Each council's core functions must continue during an election period. By necessity, this would include activities such as sitting as a planning authority and approval of tenders and/or expenditure that is in accordance with an approved budget. The business of council must continue as seamlessly as possible for the benefit of the relevant community.</p> <p>The Act should make it clear that a council, during a declared election period, must not make substantive changes to policies and/or budgets (other than for an emergency response).</p>

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	<p>During an election period each council should be precluded from awarding community grants or other benefits that may be regarded as ‘incentives’ to vote in a particular manner during the election period.</p> <p>Introduction of ‘caretaker’ guidelines during an election period, in the same manner as state and federal government, may be a worthwhile consideration - to promote consistency between the three levels of government. Careful consideration would be required in terms of legislative drafting to insure that such guidelines do not impact on the core functions of the council as set out above, and also permit the Mayor to carry out his or her functions in an appropriate manner.</p>
<p>In what ways should councillors engage with, and represent, communities in the digital age?</p>	<p>Councillors should be free to communicate and consult with their communities in any way that they choose, subject to any restrictions that may arise in terms of commercial, legal or confidentiality requirements.</p> <p>Consideration should be given to inclusion of a form of 'parliamentary privilege' that protects councillors and council staff from liability in respect to statements made during council meetings. Such provisions would assist the democratic process of a council and promote appropriate debate, particularly in respect to matters of significant community interest.</p>
<p>On what matters should Councils engage with communities?</p>	<p>The Act currently requires councils to consult in respect to a range of matters including leasing of public land, strategic plans, etc. This reflects an appropriate level of engagement on those matters. Other matters, such as decisions related to commercial transactions should not require engagement with the community in the first instance. The Act as currently structured reflects an appropriate balance and recognises that councillors are elected to make decisions on behalf of the communities they represent.</p> <p>As an overarching principle, the Act should not prescribe in detail the matters which councils should engage with communities. Notwithstanding, it should be clear that councils and individual councillors are free to consult on issues provided there isn't a prescribed reason</p>

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	prohibiting such action (for example, the reasons that underpin closed meeting processes). Ultimately the Act should not be prescriptive, it should be a matter for individual Councils to determine.
How can community engagement be strengthened and measured?	Councils should be encouraged and assisted to adopt modern community engagement techniques utilising a range of media and methods. Community engagement should be in accordance with an established policy to guide those actions and processes. A council's community engagement policy should be widely communicated and in a form that is easily understood by the community and the various actors involved.
Council Revenue and Expenditure:	
How can Councils ensure transparency in funding decisions; both how it is raised and spent?	<p>Councils are constantly challenged by the need to balance the costs associated with 'the things we must do' and the 'things that are discretionary but valued by the community'. For example, in respect to waste: collecting putrescible waste would be regarded as mandatory. Collecting recycling and hard waste collection would be discretionary. What costs are acceptable in respect to each?</p> <p>Councils are currently required to develop budgets, apply tendering and contract requirements to their procurements and report on performance at least quarterly. These activities include opportunities for the community to be engaged, informed and to make submissions, but ultimately how money is raised and spent must be a matter for decision by the relevant councillors. It is also important that Council publish annually a budget that has sufficient detail to enable the general community to understand the sources of revenue/funds and where those funds are being spent.</p>
How can Councils determine how best to raise revenue for specific purposes?	A constructive review and discussion of how the Act addresses rating should be a key focus of the review process. Rating models should be reviewed and discussed, including assessment of their suitability and fairness in a Tasmanian context.

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	<p>Further attention should be given to special rate provisions with a focus on simplifying current processes contained within the Act to make the special rate processes efficient and effective as a tool for raising revenue for a particular project. In addition, a mechanism to allow a council to work with specified communities to provide specific additional infrastructure via a levy mechanism would be beneficial.</p> <p>As a principle within the legislative framework, a council's core services to residents should be covered by the general rate levy. Specialised services required by legislation (such as building permits) should be based on the cost of providing the service.</p>
<p>How should Councils engage communities when raising revenue?</p>	<p>In conjunction with the response provided above, councils should be encouraged to develop a clear and concise rating policy that is capable of being publicly communicated and consulted. Councils should still be able to conduct budgeting processes in a manner determined by them; however, the budgeting and consequential revenue raising should occur in a manner consistent with an established policy.</p>
<p>How should Councils determine the services they deliver to their communities in exchange for rates and charges?</p>	<p>The core services councils deliver should be referenced back to functions and powers contained in the Act, or in other legislation.</p> <p>There is also a need for the legislation to consider the discretionary services provided by councils. That is, the discretionary spend on community events and support services that help make a community cohesive and supportive.</p> <p>Ultimately, councils should have a wide discretion to determine the discretionary services they provide according to their financial capacity and identified community need.</p>
<p>How should Councils decide where to make trade-offs (more or less rates vs more or less services)?</p>	<p>This area should not be subject to legislative control. Each council should have capacity to determine the priorities and levels of expenditure for their community, and to seek to balance their budgets within the parameters relevant to that council.</p>

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	<p>The current budget process, while somewhat resource hungry and time consuming, provides the best opportunity for councillors to test proposals for expenditure and to set priorities through a democratic process.</p>
<p>Performance Transparency and Accountability:</p>	
<p>How can the right balance between autonomy and accountability be delivered?</p>	<p>The LG Act currently strikes a balance between the functions required of councils and a range of expectations and reporting requirements.</p> <p>It should be clear that additional reporting requirements present an additional burden on each council that contributes to operational cost and can sometimes reduce service capability. Balance is important.</p> <p>Financial, strategic and operational reporting should be aligned, as far as reasonably possible, with the requirements of other levels of government and/or commercial entities. Additional local government specific reporting should only be required in circumstances where there is a clear, identifiable and significant reason for doing so.</p>
<p>Who should have oversight and regulation of Councils' performance and how should it occur</p>	<p>Councils should be responsible for managing and overseeing their own performance other than in exceptional circumstances where Ministerial intervention is warranted. Councillors are subject to a 4 yearly election cycle, which intuitively provides the community with an opportunity to have its say 'at the ballot box' in relation to council performance. Budget processes, annual general meetings and committee processes also provide opportunities for performance oversight and feedback.</p>
<p>What mechanisms should there be to respond or intervene when a Council is not performing as required?</p>	<p>The LG Act has recently been amended to provide additional capabilities in this area. These additional capabilities are largely untested at this time.</p>

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	<p>The Local Government Division has from time to time intervened on an informal basis in circumstances where there have been concerns regarding the performance or conduct of a particular council, councillors or others. This is also regarded as appropriate, particularly as an initial, low key response and opportunity to address an issue. A formal option enabling the Director of Local Government to require mediation in certain circumstances may be an appropriate additional measure to sit between informal support / guidance and intervention by the Minister.</p>
<p>What information should Councils make available to the public and how should they be able to access it?</p>	<p>Councils are currently subject to a limited number of circumstances in which information is not made available to the public. For example, legal and commercial matters. These restrictions are regarded as appropriate.</p> <p>There are a number of circumstances where Council is permitted to allow a person to 'view' a document or register but is not permitted to provide a copy. This approach, given modern technology, is something of a nonsense. If a document or register is able to be viewed, it should be able to be communicated by email or other means.</p>
<p>What information would be useful to Councils to drive performance improvements?</p>	<p>At a macro level across Tasmanian councils, development and reporting of standardised performance benchmarks would be useful. For reasons set out in earlier responses, the ability to compare councils of a similar size (noting that 'size' could be a number of indicators in its own right) could assist to drive performance improvements. Consideration of the Victorian website knowyourcouncil.vic.gov.au may assist.</p>

QUESTIONS	RESPONSE

Other Matters:	
What is one thing you would change about the current local government legislative framework and why?	This question is most appropriately answered by individual councillors or other individual respondents.