

# Review of Tasmania's Local Government Legislation Framework

## Tasmanian Greens' Submission

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Local Government Legislation Review  
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## Foreword

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Thank you for the opportunity to contribute to this significant and important review process.

Local Government is an essential and often overlooked level of government, and this review is a perfect opportunity to address some of the current inadequacies in the statutory framework.

The Greens believe Local Government should be formally recognised in the constitution as an essential level of government. This view has informed many aspects of this submission, especially that the electoral rules should resemble electoral rules in other levels of government far more closely.

Finally, given the massive environmental changes occurring at the planetary level, there has never been a more important time to review the Functions and Powers of this Act, to ensure local governments pivot strategic and operational priorities to providing communities with the skills, facilities and preparation needed for flourishing in our changing climate.

## General Manager's Roll

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Generally speaking, Australian Local Government jurisdictions fall into two categories with respect to who has the right to vote:

- those that only allow voters enrolled on the **Electoral Roll** (*Queensland, Northern Territory and Western Australia*)
- those that allow any resident or ratepayer to vote through a **General Manager's Roll** or equivalent (*South Australia, New South Wales and Tasmania*).

Victoria allows anyone on the electoral roll plus any ratepayer – but not a resident who does not pay rates and is not on the roll. Victoria also has explicit provisions only allowing an individual to vote once.

State	Electoral Roll only	Only one vote	Any Resident	Any Ratepayer
Victoria	No	Yes	No	Yes
Queensland	Yes	Yes	No	No
Northern Territory	Yes	Yes	No	No
Western Australia	Yes	Yes	No	No
South Australia	No	No	Yes	Yes
New South Wales	No	No	Yes	Yes
<b>Tasmania</b>	<b>No</b>	<b>No</b>	<b>Yes</b>	<b>Yes</b>

We are unable to see a compelling argument for allowing broader voting rights, beyond those of the electoral roll, in Local Government elections compared to State and Federal elections. The argument for Local Government to have broader voting rights typically relates to the right of ratepayers to have a say in how their rates are spent. However, rates are but a part of a person’s total taxation requirements and taxation is not linked to democratic rights in other levels of government.

The other argument posited is that Local Government is more relevant to people’s lives, and the decisions made at this level are therefore more important for people to be actively involved in. We see healthcare, education, welfare and a myriad of other services as being equally relevant to people’s day to day lives. We consider Local Government is as important a level of government as State and Federal – not more so or less than – and therefore it should be accorded the same democratic status as these other levels, with elections and the electoral roll managed by the Electoral Commission.

The extension of voting rights beyond the electoral roll poses a range of problematic democratic issue, and the General Manager’s Roll in particular has been criticised for countless reasons. It has been alleged it is subject to abuse, and that individuals have enrolled more times than they are allowed to.

In addition, people must be aware of their rights and actively take steps to enrol each election in order to vote. This requirement skews the Roll in favour of well-educated, affluent, and literate people taking the necessary steps to enrol. It also means that interest groups can be targeted, selectively educated on this voting right, and mobilised to skew an electoral result.

This sort of electoral biases are ones Australia chooses to avoid through the use of compulsory voting systems for State and Federal elections. We are of the view these biases are unavoidable unless voting is restricted to the electoral roll.

We are also of the view that tying voting rights to whether a person is a ratepayer effectively provides wealthier property-owning members of our society with more votes than other people, which is an anachronistic and undemocratic model. People who own property or businesses in multiple states still have to select a principal place of residence in the electoral roll, and are not afforded multiple votes in state or federal elections based on their taxation interests.

The Greens hold the view that it is against the principles of contemporary democracy to allow individuals to vote more than once. We are also of the view that business entities should not be provided with a vote, as a business is not a person. Allowing businesses a vote effectively provides an individual with more votes than other people, which offends the principle of one vote per person. If a person wishes to vote based on their own business interests, they can cast their individual vote along with everyone else.

**We recommend that:**

- **The General Manager's Roll should be abolished, and voters should be drawn from principal place of residence on the Electoral Roll only. Each individual should only have one vote in one Local Government Area, and businesses should not be afforded voting rights.**
- **Local Government electoral provisions should be written into the *Electoral Act 2004* rather than the *Local Government Act 1993* to ensure that provisions remain as consistent across different levels of government as is practicable and desirable.**

## **Compulsory Voting**

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There has been a broad push for compulsory voting in Local Government elections by councillors and by the media, and compulsory voting is widely considered a positive contribution to democracy in Australia. We understand that, at the ballot box, there is a better participation rate when voting is compulsory.

**We recommend that compulsory, at-the-ballot box, voting be established for Local Government elections.**

## Caretaker Provisions

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[Victoria](#), [South Australia](#), [Queensland](#), [New South Wales](#), the [Northern Territory](#) all have explicit provisions in their legislation requiring councils to have caretaker policies. Western Australia does not have mandatory caretaker provisions, however [some councils](#) have voluntarily created caretaker policies. The ACT has no Local Government.

The Northern Territory requires councils to draft caretaker policies. Their Act itself does not stipulate what must be contained in these policies, but empowers the Minister for Local Government to make guidelines that the policies must follow.

Victoria, South Australia, Queensland and New South Wales all have fairly similar provisions. Common rules include the following –

- a requirement that no major policy decisions be made, which is commonly defined as an appointment, termination or salary variation of the CEO, or a contract/expenditure greater than 1% of council revenue;
- a process that allows councils to apply to the Minister for Local Government for an exemption allowing for major policy decisions;
- provisions allowing for the invalidation of major policy decisions made in contravention of the Act;
- provisions for compensation for damage caused by decisions that are made in contravention of the relevant section.

The [Victorian legislation](#) requires advertisements, handbills, pamphlets and notices to be certified by the General Manager. The Queensland legislation disallows publication of election materials. Caretaker policies in some councils go further, and require that all announcements and publications are handled by council staff and are limited to operational matters only, and do not spruik council projects or events. Other prohibitions include holding events that were not previously scheduled.

**We recommend that Tasmania adopt a legislative requirement for councils to establish caretaker policies. We recommend that the minimum requirement for caretaker provisions be the following –**

- the standard provisions relating to major policy decisions found in the majority of Australian jurisdictions that do not allow for an appointment, termination or salary variation of the GM, or a contract/expenditure greater than 1% of council revenue;
- a process that allows councils to apply to the Minister for Local Government for an exemption allowing for major policy decisions;
- provisions allowing for the invalidation of major policy decisions made in contravention of the Act;

- provisions for compensation for damage caused by decisions that are made in contravention of the relevant section;
- Ensuring that councillors have no involvement in printed (including digital) materials and that materials printed by council be limited to operational matters only; and
- Suspending notices of motions from councillors during election periods.

## Guiding Provisions

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Section 20 of the Act, Functions and Powers, is currently very brief compared to the legislation in other jurisdictions.

As it currently stands, the functions of council described in the Act can more accurately be described as objectives rather than functions, and do not provide a description of the functions that council actually provide. Furthermore, the three parts under this section omit principles and objectives that many people would expect from contemporary councils.

Most other jurisdictions (New South Wales, Victoria, South Australia and the Northern Territory) have a range of other guiding provisions.

**We recommend:**

- **splitting Section 20, Functions and Powers, into two sections;**
- **establishing three new sections: Object of Act, Objectives of Councils, and Guiding Principles for councils.**

An **example** of the sorts of changes that should be made is below. (We have drawn this example from the local government legislation of other jurisdictions) –

### **Object of Act (example)**

The purposes of this Act are as follows:

- (a) to provide for a system of Local Government for Tasmania;
- (b) to set out the responsibilities and powers of councils, councillors and other persons and bodies that constitute the system of Local Government;
- (c) to provide for governing bodies of councils that are democratically elected;
- (d) to facilitate engagement with the local community by councils, councillors and other persons and bodies that constitute the system of Local Government;
- (e) to provide for a system of Local Government that is accountable to the community and that is sustainable, flexible and effective.

### **Objectives of Councils (example)**

- (1) Councils have the following objectives;
  - a) to promote the social, economic and environmental viability and sustainability of the municipal area;
  - b) to ensure that resources are used efficiently and effectively and services are provided sustainably in order to best meet the needs of the local community;
  - c) to improve the overall quality of life of people in the local community;
  - d) to foster community engagement with government and to empower members of the community;
- (2) In seeking to achieve its objectives, a Council must have regard to the guiding principles for councils.

### **Guiding principles for councils (example)**

- (1) In exercising their functions and powers, Councils should:
  - a) provide *strong and effective* representation, leadership, planning and decision-making;
  - b) ensure expenditure provides the best possible value for residents and ratepayers;
  - c) provide effective and efficient services and bylaws that are equitable and meet the diverse needs of the local community;
  - d) work co-operatively with other councils and the State government to achieve desired outcomes for the local community;
  - e) manage lands, resources and other assets so that current and future local community needs can be met in an affordable way;
  - f) act fairly, ethically and without bias in the interests of the local community;
  - g) be responsible employers and provide a consultative and supportive working environment for staff;
  - h) consider sustainability of decisions as well as the long-term and cumulative effects of actions on future generations;
  - i) ensure decision-making is transparent and decision-makers are accountable for decisions and omissions;
  - j) actively engage with their local communities and incorporate community views and feedback into their decisions;
  - k) spend responsibly and sustainably, and have effective financial and asset management.

### **Functions of Council (example)**

- (1) The functions of a Council include –
  - a) advocating for, and liaising and collaborating with other levels of government on, proposals which are in the best interests of the local community;
  - b) planning for and providing services and facilities for the local community;
  - c) providing and maintaining community infrastructure in the municipal area;
  - d) discharge of duties as a local planning authority;
  - e) imposing rates and charges and raising revenue to enable the Council to perform its functions;
  - f) making and enforcing local by-laws;

- g) emergency response;
  - h) exercising, performing and discharging the duties, functions and powers conferred to Councils under this Act or any other Acts.
- (2) In performing its functions a Council must have regard to the objectives and guiding principles for councils.

#### **Powers of Council (example)**

- (1) Subject to any limitations or restrictions imposed by or under this Act or any other Act, A council may do anything necessary or convenient to be done in connection with the achievement of its objectives and the performance of its functions, either within or outside its municipal area.
- (2) A council may transfer to a single authority or a joint authority –
- (a) any of its assets and liabilities on any condition it determines; or
  - (b) any of its employees.
- (3) A council may –
- (a) acquire, hold, dispose of and otherwise deal with property; and
  - (b) sue and be sued in its corporate name.

## **Replacing ‘Alderman’ with ‘Councillor’**

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The term ‘alderman’ is outdated, and of little contemporary relevance. The title is adapted from the Old English *ealdorman*, applying to a local leader of noble status or appointed by the Crown. The term literally means ‘elder man’ and has mostly been discarded around the world.

Last year, the Local Government Association of Tasmania voted on a motion to replace the antiquated term with councillor. The motion was successful with 48 votes in favour and four against.

**We recommend amending Section 25 to replace the term Alderman with Councillor.**

## **By-Law Provisions**

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Section 156A(2)(f) requires that councils must prepare Regulatory Impact Statements to assess, among other things, any economic, social and environmental impacts of a proposed by-law. A Regulatory Impact Statement must also address whether there are any costs and benefits of restrictions on competition or impact on the conduct of business (s.156A(2)(c)). However, a council only has to write a statement of reasons for the assessment its made of the impacts on competition and business (s.156A(3) and (4)). In our view this is too narrow, given the importance of considering economic, social and environmental impacts properly and transparently.

Despite there being a provision for establishing **Model By-laws** in the Act (Part 11, Division 4), no such model by-laws have ever been written in Tasmania. On the legal advice we have received, a number of councils have unconstitutional public places by-laws. A number of councils have no public places by-laws at all. These issues could be significantly improved if model by-laws were developed as a minimum consistent standard. It would provide a high level of scrutiny, input and research in developing by-laws, and would assist smaller councils with resourcing barriers in developing by-laws.

We recommend that:

- Section 156A of the Act be amended to introduce subsection (3) and (4) equivalents for subsection (2) paragraph (f).
- the Directions Paper consider amendments to the Local Government Act 1993 that set statutory timeframes for the development and ongoing review of a number of key model by-laws, one of which being the a public places bylaw.

## Publication of Key Documents

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Elements of the *Local Government Act 1993* are somewhat dated, and do not require online publication of key documents. Unfortunately, the Act leaves room for councils to select the option of only allowing draft By-laws and Development Applications to be available by visual inspection at council premises, or for purchase.

This only serves to hinder the access of citizens to documents they are entitled to view. It also unnecessarily inflames discussions.

We recommend extending [section 70G](#) of the *Local Government Act 1993* to apply to other key council documents including meeting minutes, draft By-laws and development applications, or provide provisions elsewhere if more appropriate.

## End the Rates Exemption for Marine Farming

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Section 87(1)(ba)(i) of the Act provides a rates exemption for leases granted under the Marine Farming Planning Act 1995.

We attest that there are no reasonable grounds on which to provide a specific exemption to fish farms for paying rates.

We recommend repealing Section 87(1)(ba)(i).

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## Board of Inquiry Costs

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Glenorchy and Huon Valley ratepayers have been the victims of financial mismanagement and governance dysfunction in their respective local councils. It adds insult to injury to lump the costs of a Board of Inquiry on to the ratepayers – many of whom have made valiant efforts to end the mismanagement and misconduct on their councils, and to have an earlier intervention on the part of the state government.

**We recommend repealing section 229 of the Act, which allows for the cost of inquiries to be passed on to councils.**

We hope you include these recommendations in the Directions Paper for Phase 2 of the Act's review, to enable wider discussion of these issues. We look forward to engaging with the next Phase of the Review.

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**

Tasmanian Greens Local Government spokesperson