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### **Local Government Legislation Review**

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

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. In developing this submission, we have also included matters which have been subject to voting by Members at LGAT General Meetings.<sup>1</sup> 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.

Feedback from the sector indicates strong support for a principles-based approach to Local Government legislation, particularly the *Local Government Act*, with removal of unnecessary prescription. It is considered vital that the Review recognise the diversity of resources, scale and priorities across councils and importantly in community expectations. To that end the legislation should allow for flexibility to accommodate local circumstances and context.

It has been noted that the prescription in the current Act is at times limiting and not simple nor cost effective in areas such as service levels, setting rating regimes (e.g. service rates), public land leasing, elector polls and also in establishing shared services arrangements between councils. Despite that, significant legislative changes do need to be weighed against the risks around cost, disruption, loss of proven and effective mechanisms,

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<sup>1</sup> Further information is available on each matter which has been subject to a vote at a LGAT General Meeting, within the publicly available papers and minutes ([www.lgat.tas.gov.au](http://www.lgat.tas.gov.au)).

unworkable provisions and confusion. 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. The structure of new legislation must be logical and consistent. Further changes should reflect the current and future business environment and enable councils to do business in both current and emerging ways.

Through LGAT's discussions with councils and observation of the regional sessions, a number of themes emerged that do not rest with the primary legislative framework for Local Government (that is, the *Local Government Act*, the *Local Government (General) Regulations*, the *Local Government (Meeting Procedures) Regulations* and Orders) but with associated pieces of legislation or which are out of scope of this review. In particular, these comments referenced:

- The *Local Government (Building and Miscellaneous Provisions) Act 1993* (LGBMP);
- The *Local Government (Highways) Act 1982* (the Highways Act); and
- Councils role as a Planning Authority under the *Land Use Planning and Approvals Act 1993* (LUPAA).

It has been expressed that the both LGBMP and the Highways Act should be repealed and the necessary provisions captured in other legislation, such as LUPAA and the *Roads and Jetties Act* respectively. In fact, the repeal of LGBMP in relation to subdivision provisions, accompanied by the necessary amendments to LUPAA is an endorsed sector position.

In relation to a council's role as a Planning Authority, a number of contributors have questioned whether this should remain as is or whether alternative options should be explored, noting the limitations imposed on elected members around representing their community when acting as a Planning Authority. It is worth noting that LGAT has tested this view with Members historically and received limited support. However, while not a unanimous opinion across the sector, there does seem to be a growing desire to discuss this matter further which LGAT will explore.

The remainder of this submission is organised around the broad themes explored in the discussion paper, noting that we have not attempted to address every question specifically.

## **1. Overview of Local Government**

As noted in the paper, the roles and functions of councils, and the expectations of communities of councils, have increased significantly over the past few decades. The breadth and diversity of responsibilities are rarely well recognised outside the sector. Many of these new roles are driven by the policies and legislation of Federal and State Government or as a result of gaps in services from those levels of Government. The broad functions of the *Local Government Act 1993* (the Act) do little to promote what it is that councils must deliver to their communities and perhaps fail to acknowledge the importance of councils in place-based activities such as regional economic development, tourism, preventative health, social inclusion, emergency management and community recovery, to name a few areas. While wanting to avoid legislation that is too specific, which does not allow councils to adapt to emerging needs, perhaps there is a better opportunity in the legislation to clarify and promote the broad range of activities that councils are involved in.

When considering the roles and functions of councils, there must be parallel discussions on what communities are wanting in terms of engagement and representation, including the issues around the Planning Authority role as raised earlier.

## **2. Council Governance and Powers**

There have been several recent significant reviews of the current Act and Regulations and as a result of this previous work it should be recognized that there is a solid base to move forward into a new legislative framework without major or wholesale changes. Any changes or additions made should reflect the ability of a council to do business within a new environment of technology, to remove unnecessary cost and requirements, and to address existing gaps within the principles of good governance. As stated earlier, a principles-based approach is supported, and the 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. The Good Governance Guide is well supported and provides a valuable resource when it comes to thinking about key governance principles.

As with the Targeted Review of the Local Government Act (2016) most of LGAT's Members feel that any new legislation should not be created to fix issues specific with individual councils rather than the sector as a whole and further that it is critical that the contemporary board style of governance is retained with a clear divide between the strategic (councillors) and operational (staff) components of council activity. Having said that, this style of governance should not allow elected members to abrogate their strategic and oversight responsibilities.

Relevant to this section is the following motion carried by LGAT Members:

- *That the sector wide recommendations arising from the Glenorchy City Council Board of Inquiry (below) are not system issues and a legislative response is not supported:*
  - *Provide the Mayor with the power to approve the agenda prior to its release by the General Meeting;*
  - *Provide the Mayor with the power to approve the release of draft minutes to other councillors;*
  - *Provide the power to the Mayor to approve the General Manager's leave;*
  - *Mandatory requirement for all council meetings to have audio recordings;*
  - *The Minister may direct a council to terminate the employment of a General Manager; and*
  - *The General Manager is to consult with the Mayor and Councillors on senior executive appointments.*

As was also raised during the 2016 review, the importance of and need for increased guidance on appropriate processes and behaviours is clear but that guidance does not need to sit in the legislation itself. It has been suggested that 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.

It is worth noting that while Code of Conduct matters are out of scope, there has been a strong suggestion to remove the requirement to review the Code of Conduct within three months of an election owing to the largely prescriptive nature of the Code under current legislation. LGAT does note however that the original intent of the 'review' was to ensure that new councillors had a conversation around Code of Conduct obligations to build a common understanding in the early period following an election. It is possible the legislation could be amended to better reflect this purpose.

### **3. Democracy and Engagement**

In relation to the themes outlined in the discussion paper, it is perhaps not surprising, given the proximity to Local Government elections, that there is significant commentary around democracy and engagement. This was evidenced before, during and after the election in the media and at LGAT Meetings and continued to feature in the face-to-face forums and submissions to LGAT from Member Councils.

It is LGAT's view that community and candidate education is vital to strong election outcomes. This requires support across a broad range of stakeholders. The partnership work between State Government, the Electoral Commission and LGAT in relation to candidate sessions, resources and messaging, the advertising campaign and the strong

media encouragement to vote saw increases in candidate number and improved voter turnout last October. It is hoped that this work has also led to better informed candidates, more prepared to take on their new role, however only time will tell. LGAT believes there would be support from our Members for candidates to at least engage with some online training prior to nominating, to cover the basics of their roles, and in particular to help them better understand what will be required when they act as a Planning Authority.

The broader question of mandatory training for councillors which is often raised was considered as part of the Targeted Review and at that time, LGAT's submission noted:

*“The majority of responding councils felt there should be compulsory induction following elections and that even returning councillors should participate. Others felt that returning councillors might not require the full induction, more a tighter, tailored briefing in recognition of their experience. The focus of any compulsory training should be on governance, planning and meeting procedures and supported by an ongoing professional development program. At the July 2015 LGAT General Meeting a motion regarding compulsory training for councillors was amended and carried as follows:*

*That all councillors be encouraged to undertake training courses i.e. Planning, Legislation, Code of Conduct, Meeting Procedures etc.”*

One council raised the suggestion that requiring a minimum number of electors to endorse a candidate nomination may have a positive impact through filtering out less committed individuals and reducing the size of ballot forms but this suggestion has not been tested more broadly. Anecdotally there would be support for standardisation of information contained in candidate's statements. Another council raised the need to give some further consideration to the eligibility of councillors noting for example that the ASIC requirements for Directors prohibits those who have been convicted of various dishonesty related offences. There has also been significant conversation about how to treat accidental informal votes (such as double numbering) in the context of much longer ballot forms with a view that if the first 5 or 6 votes are compliant, they should be counted.

The Local Government sector has spent some time talking about how to encourage diversity of candidates. This is best summed up by our submission in relation to Councillor Allowances, included below:

*It must be remembered that the role of councillor carries significant responsibility. It is complex with significant statutory, financial, custodial, representative and governance requirements. Communities have increasingly high expectations of those elected to Local Government as relates to their availability and skills set, what they*

*will deliver, how they will perform, and how much time they will give without expectation of recompense....*

*Councils are constantly evolving. Some changes don't fundamentally affect the role of the councillor. They lose assets and gain assets, lose services and gain services, lose statutory roles and gain them....*

*Questions around attraction and retention are not confined to councillors but apply broadly to other "volunteers". Councillors are often equated with volunteers in terms of motivation and ethos. The 2016 State of Volunteering Report noted that volunteers are deterred because of lack of flexibility, personal expenses incurred, lack of reimbursement and burdensome administrative requirements. Research on volunteering shows that other calls on a person's time is the key barrier to volunteering uptake and that particularly applied to those in paid work. Other research on altruistic or volunteer behaviours clearly signals that there are non-financial rewards that are critically important. Factors which influence a person's self-worth are highly influential (recognition programs) and the high level of ill-informed public criticism of councillors, particularly through social media, is just as likely to be a barrier to running for council as other factors....*

*The majority of councillor respondents (44.8 per cent) to the 2015 census spent, on average, more than 15 hours a week on council business. 26.7 per cent spent between 6 and 10 hours per week and a further 22.9 per cent spent between 11 and 15 hours each week on council matters. Given that just over 60 per cent of respondents were self-employed or working full-time, council activity represented a considerable workload in addition to their other paid employment. Further, combined with high levels of involvement with organisations other than council, the commitment of respondents to their communities is exceptional....These figures suggest that the barriers to participation on council, such as available time, influence the demographic make up of council. In general, it is easier for those who are retired, working part time or self-employed, and for those who don't have caring responsibilities, to manage the time demands of a councillor's role.*

The matter of compulsory voting as a mechanism to enhance engagement with Local Government has been considered by Tasmanian Councils through LGAT General Meetings on a number of occasions over the last decade. Each time there has been insufficient support, and this has been particularly the case when compulsory voting has been considered in conjunction with ballot box voting. LGAT Members have, during those debates, expressed a number of concerns around compulsory voting, largely focused on a desire to keep voting meaningful and about true local representation. There has been concern that compulsory voting may potentially lead to a rise in party politics as well as in informal voting. There is also the matter of compliance and enforcement to consider; with

Members concerned about the potential cost impacts of making sure people do vote. Members are concerned that these compliance costs may drive up the cost of elections for communities, as Local Government pays for its own elections. However, when this matter was voted on in July 2016, the vote was extremely close.

While the majority of councils have shown a strong preference for postal voting over ballot box voting, an enabling facility for future electronic voting should be included in any new legislation.

As part of the Targeted Review of the Act councils provided significant feedback on the General Manager's Roll. LGAT noted at that time that there was support for retaining the roll but with a review of eligibility criteria to minimise the risk of misuse. One strong theme was that while the General Manager's Roll should ensure fairness and inclusion and maximise potential participation in the electoral process there should be application of a one vote, one value process and consideration of residency status going forward. There was also strong support for the review and ultimate management of the General Manager's Roll to be undertaken by the Tasmanian Electoral Commission.

At the July 2015 LGAT General Meeting, the following motion was carried by Tasmanian Councils:

*That the Local Government Association of Tasmania 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 capture all citizens, inclusive of refugees and permanent residents living in a Local Government area.*

In considering proposed amendments to the electoral provisions in the Local Government Act (2013-14) councils supported removal of the requirements of a mayoral candidate to have first had a minimum of twelve months experience on council. This was in response to the shift from two yearly to four yearly elections, with four years seen to be a long apprenticeship. With two elections since those changes, there does seem to be a mood to re-introduce the requirement across a number of councils.

At that time, councils also contemplated matters related to popularly elected Mayors and the election of Deputy Mayors. While changes have not emerged as a strong formal theme during this initial process, anecdotally two issues arise regularly:

- The risk of a successful Mayoral /Deputy Mayoral candidate failing to be elected because they are not also elected as a councillor. LGAT believes there would be

strong support for the automatic election as a councillor of the Mayor and Deputy Mayor.

- The need to consider whether there are pathways around the election of Mayor and Deputy Mayor which would ensure a stronger leadership team for Council. This might include revisiting the idea of electing the Deputy Mayor from around the table or allowing Mayoral Candidates to also stand for Deputy Mayor.

In addition, the Local Government sector has a number of established policy positions, through endorsed motions, that we wish to be considered here. They are:

- Removal of the world alderman from the Act entirely, leaving only councillor;
- A Mayoral vacancy should not trigger a by-election if the vacancy occurs within twelve months of an election;
- Provisions should be included in the Act to enable a councillor to better access the electoral roll for their Local Government Area;
- All candidates should be required to disclose political donations; and
- A councillor who is standing for State or Federal Parliament should take a leave of absence from council for the period between issuing of the writ and declaration of the poll.

There also appears to be increasing support with the Local Government sector for introduction of some form of caretaker provisions, although the design of what this might look like has not been widely tested. It is noted that Queensland legislation provides that, except in exceptional circumstances with approval from the Minister, a Council must not make a major policy decision during the election of caretaker period.

Caretaker provisions must be carefully designed to allow business to continue and must be particularly nuanced around land use planning decision making requirements under LUPPA.

LGAT Members also raised a number of concerns around the conduct of elections, and while these are more procedural than legislative they are worth noting:

- Administrative delays in posting of Local Government results;
- The speed of vote counting;
- Ballot sheet layout which lead to a high number of informal votes in some municipalities (A contemporary review of the instruction on the ballot form for clarity is also considered important);
- Compliance on advertising; and
- Election conduct of candidates, including disclosures.

Finally, a number of prescriptive provisions within the current Act are not contemporary and the Review should consider more modern and flexible approaches. For example, councils have raised that the public notification and community engagement processes (e.g. AGMs) do not reflect modern community expectations and engagement methodology. Similarly, the requirement to advertise in newspapers for a wide range of matters is seen as outdated.

#### **4. Council Revenue and Expenditure**

It is important to state here that LGAT does not support the concept of rate capping. In 2014, legislation to improve councils long-term financial and asset management planning was introduced and as can be seen through the annual reports of the Auditor General, there has been continuous improvement in the financial sustainability of councils since that time. Councils must be able to work with communities to determine how best to deliver and fund what is needed and wanted. Please see Attachment 1 (Rate Capping) for further information. The training and practice notes provided to councils through the federally funded LGAT Local Government Asset and Finance Reform Project has a strong focus on engaging communities in determining financial and asset pathways and LGAT is of the view that there is sufficient robustness in the legislation in this regard. We also note that a significant review of rating legislation was concluded in 2013 and would urge that strong consideration be given to the learnings of that process.

It must be remembered that rates are not a fee for service. The Valuation and Local Government Rating Review Reports comprehensively considered the principles and mechanisms around the collection of rates and should be given due consideration during this process.

Another pressing issue for LGAT Members is the issue of rates exemptions in relation to the new business models of charities which appear to be shifting the rates burden in a way which is inequitable and which was unintended when this legislation was written. Further information on this issue is at Attachment 2 (Rating Charitable Properties).

LGAT Members have resolved that there should be:

- An immediate review of Section 87(1)(d) of the *Local Government Act 1993* relating to the provision of exemptions for payment of rates for land owned or occupied exclusively for charitable purposes.
- Section 87 of the *Local Government Act 1993* should be amended to make commercial development in the exempt areas in sub-section (1) subject to the payment of general rates, special rates or averaged area rates and be specifically excluded from the exemption.

## **5. Performance Transparency and Accountability**

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. The information is available for those who are interested, albeit in a voluminous form (when it comes to the consolidated data collection). 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 and 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.

Having said that, our Members feel this would be a good opportunity to review and refine the role Audit Panels and performance monitoring more generally, including a review of the compliance process timeframes and offence provisions.

Previous relevant motions include:

- Review the various accounting methodologies being used by councils and develop standardised reporting, which addresses some of the complexities such as volume/length of reporting driven by disclosures required in the Local Government Act and International Accounting standards which are not necessarily relevant to Council operation.
- 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.

In regard to this section, it has been noted that while “the suite of contemporary council planning and financial management arrangements” are out of scope of the review, if a key purpose of the review, namely to enhance accountability and transparency, is to be met then there must be consistent, transparent and effective monitoring of underpinning asset and financial data and assumptions that inform a council’s long-term financial plan. In addition to limiting the ability to compare across councils, deficits in these areas also impact on the ability to test the feasibility of council mergers effectively.

## **6. Other Matters**

One other matter that has emerged through the consultation is the role of the General Manager as a “Person Conducting a Business or Undertaking” under Workplace Health and Safety legislation and how this relates to elected representatives (noting this matter has previously been raised with the Director of Local Government).

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. There is however a keenness to be involved, particularly in robustly testing ideas that come forward from the consultation. LGAT will continue to work with the Local Government Division to ensure that is possible.

Yours sincerely

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

Dr Katrena Stephenson  
**CHIEF EXECUTIVE OFFICER**

## **Attachment 1: Rate Capping (from General Meeting November 2016)**

### **Background**

There has been some media speculation about the introduction of rate capping in Tasmania, particularly as it has recently been rolled out in Victoria and strongly canvassed in South Australia.

Rate capping has been suggested as a measure to improve the efficiency of councils but interstate experiences would suggest that it is not an appropriate mechanism for yielding efficiency dividends.

Evidence compiled by the Local Government Associations of New South Wales, Victoria and South Australia as well as ALGA suggest the following consequences:

- Loss of autonomy and flexibility in relation to determining local infrastructure and service requirements;
- A propensity to develop a back log of infrastructure maintenance and renewal requirements; and
- The potential for inter-generational transfer or burden.

While many services provided by Councils are legislatively mandated there are also distinct differences in services reflecting both needs and preferences of local communities. What councils are providing will vary according to:

- Demographic factors;
- Geography;
- Council's financial circumstances;
- The offerings of other levels of government (and conversely service gaps); and
- The community's ability and willingness to pay.

The independent Local Government review panel in NSW found that rate capping comes at a significant cost to the Councils and involves unwarranted complexity, costs and constraints at both Council and State level to administer.

Further it has led to various other unintended consequences including:

- Unrealistic community expectations that rates should be contained indefinitely;
- Excessive cuts in expenditure on infrastructure leading to mounting asset renewal and maintenance backlogs;
- Despite the ability to apply to the independent pricing and regulatory tribunal (IPART) for a special rates variation over and above the rate cap, there is a

reluctance amongst Councils to do so as it is seen as politically risky and the process is too costly and complex, requiring a disproportionate effort for an uncertain gain; and

- Under utilisation of borrowing finances due in part to the uncertainty whether any increases in rates, needed to repay loans, would be approved by IPART (Comrie, 2015).

The review panel concluded that:

*"whilst there is certainly a case for improving efficiency and keeping rate increases to affordable levels, the rate [capping] system in its present form impacts adversely on sound financial management. It creates unwarranted political difficulties for councils that really can and should raise rates above the peg to meet genuine expenditure needs and ensure their long-term sustainability. The Panel can find no evidence from experience in other states, or from the pattern and content of submissions for Special Rate Variations, to suggest that councils would subject their ratepayers to grossly excessive or unreasonable imposts if rate [capping] were relaxed (Independent Local Government Review Panel, 2013. Page 42)."*

The panel was of the view that rate capping is very costly relative to the benefits it delivers. Millions of dollars are spent each year by Councils and state agencies on preparing, reviewing and determining applications when the actual cost impact of the proposed rate increases on households would often have been no more than one dollar per week (Independent Local Government Review Panel, 2013 - Page 43).

It concluded that as a result of rate capping the financial sustainability of many Councils in NSW and their capacity to deliver the services that their communities need, had declined and a significant number were near crisis point (Independent Local Government Review Panel, 2013. Page 7).

There is considerable evidence to show that in NSW rate capping has produced decaying infrastructure with costs shifted to the next generation and additionally that councils have much higher fees and charges than are found in other States.

In Tasmania, and through LGAT, there has been significant investment in improving the sector's approach to Long Term Financial and Asset Management planning, including new legislated requirements and a focus by the Auditor General. This in itself improves transparency, accountability and efficiency to a large extent.

A long term financial plan is a useful tool that enables a council to understand the impact on its rates and borrowings for the level of affordable services (including infrastructure renewal) that its community expects.

It is through those processes and in consideration of strategic goals and the communities ability to pay that rates should be set. Providing the Minister an unfettered power over councils financial management practices and assuming a one size fits all is not the best approach.

In general, councils follow a thorough and formal process to weigh up the range and level of services that residents and ratepayers want and are willing to pay for.

No one likes paying more than necessary but Councils strive through transparent consultative processes to get the balance right between services and revenue-raising.

In addition, because Councils undertake their activities at the local level, the efficiency and value of what they do is far more visible and open to scrutiny and feedback. Their ratepayers (who are also their electors) ensure that Councils are necessarily constantly vigilant to opportunities to improve productivity and reduce costs and thus keep rates at levels no higher than necessary.

Limiting any tax may seem a good idea but at a local level, councillors are elected and Council pays the costs of those elections and ongoing governance. In essence this would be wasted as councils would lose accountability for revenue and community services.

The pressure on councils to perform and become more efficient may actually be removed as there is no longer control on rates and local accountability is largely gone.

The Henry Tax Review found the following in relation to Local Government:

*"Local Governments are generally established under State legislation and have access to one tax — Local Government rates levied on properties within their municipality. Unlike State governments, Local Governments fund the majority of their expenditures through own-source revenue (83 per cent in 2005–06), with Local Government rates making up around 45 per cent of this.*

*The immobility of land makes rates based on land value an appropriate tax base for Local Governments. States should allow Local Governments a substantial degree of autonomy to set the tax rate applicable to property within their municipality."*

See also:

[http://www.lga.sa.gov.au/webdata/resources/files/Rate%20Capping%20Information%20Pack\\_web.pdf](http://www.lga.sa.gov.au/webdata/resources/files/Rate%20Capping%20Information%20Pack_web.pdf)

## Attachment 2: Rating Charitable Properties (from General Meeting December 2018)

### Background

At the February 2016 LGAT General Meeting, the following motions were carried.

- 1. That Members note recent case law which suggests that although a property may be owned by a charitable institution, occupancy by private residents is not a charitable purpose; and*
- 2. That Members agree to take a common and equitable approach to the rating of independent living units which takes as a core assumption that private residential occupancy is not a charitable purpose and is not exempt from general rates.*

LGAT has continued to advocate for equity in the application of rating formulas.

A number of councils commenced charging rates on full cost independent living units operated by charitable organisations in 2016 based on established legal precedent. Southern Cross Care took the matter to the Magistrates Court involving Hobart City, Clarence City, Kingborough and Meander Valley Councils. The court upheld councils' rights to charge rates on such properties on the basis that the land was not both owned and occupied exclusively for charitable purposes. Southern Cross Care then escalated action to the Full Court of the Supreme Court and on 12 November the court handed down its judgement finding that Southern Cross Care did not have to pay rates on the ILUs and ordering councils to pay back rates collected.

The Supreme Court Judgement notes there is different language in play in state legislation, with reference to 'occupation' in Tasmania and 'use' in other jurisdictions meaning that case law established in other parts of Australia is not necessarily applicable or supportive of councils' arguments in Tasmania. "[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".

This judgment raises concerns in relation to other types of properties such as social housing, particularly in light of the significant transfer of public housing dwellings to charitable providers. However, LGAT has been informally advised by Housing Tasmania that the Residential Management Agreement in such cases does confer an obligation to pay rates. Formal advice will be sought in due course, pending the decision of the four councils involved in court action. Regardless of the legal outcomes, the judgement suggests this is a matter that should be clarified in legislation going forward and LGAT will advocate on that basis as appropriate.

There is a common misconception that council rates represent charges for services provided but under the Local Government Act 1993, rates are clearly identified as a form of taxation. As such they must balance the key taxation principles of efficiency and simplicity, sustainability, competitive neutrality and equity. Sometimes there are exemptions from paying rates but these decisions must be made carefully as they ultimately affect the burden of others in the community.

Removal of the general rates exemption from properties not used exclusively for charitable purposes is both a matter of law and equity. Until this recent judgement, under Tasmanian law, it was simply not enough that the landowner is a charitable institution if the purpose for the occupancy is also not charitable. It was deemed that the exemption provisions of the Local Government Act 1993 were not satisfied unless a property is not only owned by a charitable organisation but also occupied exclusively for charitable purposes.

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 anyone else's home.

Importantly, councils are not applying this change of policy to aged-care facilities, short-term welfare housing, administrative offices and other facilities associated with these providers' operations, these will remain exempt from paying general rates. Further we would note pensioners can apply to receive a rates rebate like any other pensioner residing in their own home. Exactly the same principle applies to lifestyle villages, community housing and the transfer of public housing to charitable organisations.

The need for councils to ensure that general rate exemptions are appropriately applied is good governance. It is important for councils to implement up-to-date and equitable policies that consider the entire community and ensure ratepayers are being treated fairly and equally.