

**LOCAL GOVERNMENT BOARD
OF TASMANIA**

**GUIDELINES FOR REVIEWS OF SINGLE & JOINT
AUTHORITIES**

JULY 2007

The Local Government Board of Tasmania is an independent Board established under the Local Government Act 1993 to carry out reviews of Councils and to advise the Minister on any other matters the Minister may determine.

The Board members, appointed by the Minister, are:

- Mr John Gibson (Chairperson);
- Ms Mary Binks, OAM, nominated by the Local Government Association of Tasmania;
- Mr Brian Inches, nominated by the Local Government Managers Australia;
- Ms Helen Cooper, who has experience in local government; and
- Mr Alistair Scott, Director of Local Government.

The Local Government Office provides the Board with necessary secretarial support. Please contact the office at:

Local Government Board
C/o GPO Box 123
Hobart Tasmania 7001

Location:
Level 14
39 Murray St
Hobart

E-mail: lgboard@dpac.tas.gov.au

Phone: (03) 6233 2307

Fax: (03) 6233 5602

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Glossary

'Authorities'	Single and Joint Authorities in Tasmania
'Board of Management'	Board of Management including the CEO (SWSA and STCA do not have Board's of Management)
Bulk Water Authorities	Hobart Regional Water Authority, Cradle Coast Water, Esk Water Authority
'LGB'	Local Government Board as appointed under the Act
'LGO'	Local Government Office
'Member Councils'	A Council that establishes or is part of a group of Councils that establishes a single or joint Authority
'PCR'	Participating Council Representatives. Representatives from member Councils.
STCA	Southern Tasmania Councils Association
'SWSA'	Southern Waste Strategy Authority
'The Act'	<i>Local Government Act 1993</i>

I Preamble

The Local Government Board (LGB) has determined to conduct a review of Single and Joint Authorities¹ (Authorities) in accordance with paragraph 1(b) of section 214I of the *Local Government Act 1993* (the Act).

The LGB is concluding its first round of Council general reviews. This is therefore an opportune time to initiate its first round of reviews of Authorities. The LGB is responsible for providing advice to the Minister on the performance of Councils and Authorities in Tasmania. Whilst the LGB has extensive powers to conduct a review, it has a recommendatory role in relation to Local Government reform. The reviews will enable the Minister to be provided with an appropriate level of advice.

The Act provides that the LGB's written report to the Minister *may* contain recommendations on section 214I matters, on the structure of an Authority and compliance with the rules of an Authority, on the relationship between the Authority and the participating Council(s), the management and operations of the Authority or any other relevant matter.

The LGB has determined that the primary focus of this round of reviews will be on the relationship between the Authority and the Member Councils. The LGB proposes to focus on this area because it is through robust processes for good governance that Councils will ensure that Authorities:

- Remain accountable;
- Perform in accordance with set functions and objectives; and
- Ensure that public money is spent effectively.

The LGB takes all care to give proper weight to evidence received in the course of a review both by submission and during hearings and has regard to the necessity for sensitive materials to remain confidential. For example commercially sensitive or legally privileged information may be provided on this basis and will be kept confidential by the LGB.

The LGB has developed the following guidelines for the review process after consultation with representatives from Authorities and communication with the Office of the Auditor-General.

¹ The Board is not responsible for reviews of controlling Authorities.

2 Background: Single and Joint Authorities

Councils are empowered under Part 3 of the Act to establish an Authority with one or more other Councils. An Authority is a corporation and is therefore legally independent of the constituent Councils.

The rules of the Authority determine the powers and functions of that Authority but the rules cannot give an Authority greater power than a Council.

Authorities have become more important in recent times because they provide a mechanism for Councils to corporatise some Council enterprises and, in the case of Joint Authorities, to proceed with other Councils to form a corporation for some joint activity.

An Authority may be established to:

- Carry out any scheme, work or undertaking;
- Provide facilities or services; and
- Perform any functions or exercise any powers of a Council under the Act or any other legislation.

Currently there are eight Joint Authorities and one single Authority operating in Tasmania:

1. Hobart Regional Water Authority (Hobart Water)
2. Cradle Coast Water
3. Esk Water Authority
4. Dulverton Regional Waste Management Authority
5. Copping Refuse Disposal Site Joint Authority
6. Southern Waste Strategy Authority (SWSA)
7. Southern Tasmania Councils Authority
8. Cradle Coast Authority
9. Coal River Water Recycling Authority (Clarence Recycled Water) (Single Authority)

Two further Authorities, the 'Tasmania Central Regional Authority' and 'Hobart Metropolitan Councils Association' (HMCA) have been established but, though these Authorities have not been wound up, they are not currently operational.

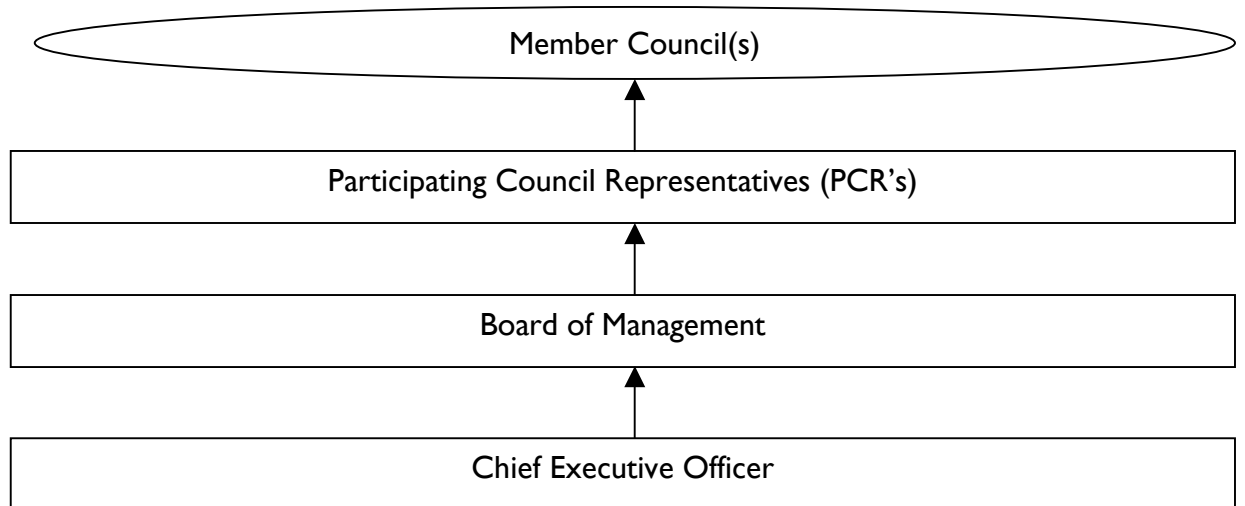
Most Authorities, excluding SWSA and STCA, are managed by a Board of Management that is ultimately accountable to the constituent Councils through Participating Council Representatives (PCR's). The degree of accountability is largely determined by the rules of the Authority.

The Board of Management reports to the PCR's through regular meetings, reports, plans, strategies, budgets and annual and quarterly reports. Some Boards of Management also provide information to General Managers of the Member Councils.

PCR's usually set the corporate priorities and approve the budget, strategic and business plans for the Authority.

In addition to the Act, some Authorities have responsibilities in other legislation such as the *Retirement Benefits Act 1993*, *Government Prices Oversight Act 1995*, the *Water Management Act 1999*, the *Waterworks Clauses Act 1952* as well as other statutory instruments and industry standards.

3 Most Common Authority Structure



4 Process for the Review

The LGB proposes to undertake reviews of Authorities in three stages and accordingly Authorities have been divided into three groups based on similarity of either size or function. It is proposed that Authorities within each of the undermentioned groups would be reviewed concurrently, in the sequence of Group 1 to Group 3.

- Group 1. Dulverton Regional Waste Management Authority & Copping Refuse Disposal Site Joint Authority.
- Group 2. Southern Waste Strategy Authority, Southern Tasmania Councils Authority, Cradle Coast Authority (Regional and Strategic Authorities).
- Group 3. Hobart Water, Esk Water and Cradle Coast Water and Coal River Water Recycling Authority (Authorities that may be affected by the Water and Sewerage Review).

The LGB proposes to commence the review process of Group 1 Authorities in July 2007. Review dates will be announced for Group 2 and Group 3 in due course. The LGB is required to give Authorities at least 30 days notice of the date on which the review is to start.

Section 214J(3) provides that the LGB may carry out a review in any manner it considers appropriate but that it must provide '*reasonable opportunity*' for:

1. Public consultation; and
2. The relevant authorities and Councils to make any submissions.

As this is the first time that the LGB has conducted reviews of Authorities, it has set out below the proposed procedure for the review, as well as the areas of focus of the review, for the information of all stakeholders.

The LGB will commence reviews by requesting submissions from the relevant Authorities on the matters set out in the guidelines to Authorities at 6.1 to 6.4. It will then review other relevant information and documentation available to it and if necessary request supplementary or supporting information from the Authorities. This might include for example:

- The rules of the Authority
- Charters, guideline documents,
- Strategies and/or business plans
- Other key documents

In the course of undertaking a review the LGB will conduct a hearing with the PCR's. Although hearings will not be open to the public, the Board of Management and representatives from the Member Councils will be invited to attend,

The LGB will then conduct consultation with the public and other stakeholders on key issues arising from the review, which will be set out in a discussion paper inviting written submissions. The PCR's will be given the opportunity to comment on any public submissions received.

Following the conclusion of the consultation process & hearing, the LGB makes a written report on each Authority under review to the Minister. This Report would be provided to the relevant PCR's for comment before being sent to the Minister.

This report may contain recommendations on section 214I matters including:

- On the structure and rules of an Authority,
- On the relationship between the Authority and the single Authority Council or a participating Council,
- The management and operations of the Authority, or
- Any other relevant matter.

The LGB will offer Authorities involved in the Report the opportunity to discuss the report with them fully before submitting it to the Minister. This may serve to prevent misunderstandings and enable useful discussion of specific sections of a report.

The Act requires that the Minister provide the preliminary Report, on a confidential basis, to the Authority concerned and to the relevant Member Councils, inviting submissions on any matter in the Report.

The Minister may accept, reject or ask the LGB to review their recommendations following any requests from the relevant Authorities or Councils. The Report is published once it has been approved by the Minister.

5 Outcomes of the Review

The LGB will provide the Minister with a Report on whether Authorities are performing in accordance with their rules of establishment and the requirements of the Act. It will also look at whether Member Councils are fulfilling their monitoring and strategic responsibilities adequately. The Report will provide for:

1. Improved awareness for all stakeholders of compliance responsibilities and areas for improvement;
2. Advice to the Minister of any issues in the reporting or management structure of Authorities;
3. Recommendations for areas in which improvements can be made; and
4. Increased awareness within the community of innovations and best practice in the sector.

6 Scope of the Review

The Act provides that the LGB's review may cover any one or more of the following areas (s214I):

- a) The structure and rules of a single Authority or joint Authority;
- b) The relationship between the Authority and the single Authority Council or a participating Council;
- c) The management and operations of the Authority; and
- d) Any other relevant matter.

The matters that the LGB will consider in the course of its review are set out below under the subject areas as detailed in s214I.

The LGB expects an Authority to address all matters set out in the Guidelines in its submission to the LGB. To assist in this process the LGB has developed a pro forma document. Authorities and Councils may wish to add to the list or to highlight difficulties in providing a response.

If a matter is not applicable to a particular Authority, the Authority should provide the reasons for this in its submission. Authorities are reminded that material of a confidential nature should be included in the submission but be suitably identified in order that it does not form part of the published Report.

The LGB proposes to address requests for information and submissions to the PCR's in each Authority with the expectation that the PCR's will liaise as necessary with the relevant Board of Management and Member Councils.

The LGB will be interested in evidence of strategic policy, planning and evaluation matters rather than detailed operational information. Where possible policy and planning documents should be provided. Relevant Documentation may include copies of:

- Rules (& amendments to Rules);
- Annual and Quarterly Reports;
- Pecuniary Interest Registrations; and
- Corporate, Strategic and Annual Plans as well as Statutory Audit Reports.

6.1 Relationship between the Authority and the participating Council(s)

A basic principle of the Act is that Councils are accountable to the community. Authorities are bodies created by Councils either singly or jointly to perform functions or exercise powers that would otherwise have been performed or exercised by the Council. Councils retain responsibilities for the strategic direction of the Authorities, monitoring the activities of the Authority through the reporting and consultation arrangements and the power to wind-up Authorities if necessary.

Good reporting and oversight arrangements should ensure that Member Councils are made aware of areas of concern in management and operations.

The LGB will be interested in the following

1. The current role undertaken by PCR's;
2. The background and relevant experience of the current PCR's;
3. Arrangements for reporting by the Board of Management to the PCR's and/or Member Councils, including regularity of provision of reports and of information provided in annual and quarterly reports;
4. Arrangements for reporting by the PCR's to the Member Councils;
5. The process within Member Councils for review of material submitted to it by the PCR's or the Board of Management;
6. Degree of feedback provided by the Council in response to reporting;
7. Processes for reporting and monitoring by the PCR's as to how the Authority is meeting its stated objectives and functions, charters plans and strategies and assessing performance against these;
8. Any additional reporting processes in place;
9. Processes for complying with the strategies, budgets and plans agreed by the PCR's;
10. Level of attendance by the PCR's at the Authority's annual general meeting;
11. Whether annual and quarterly reports are formally tabled through Council meeting agendas for the information of the public (excluding commercial-in confidence information); and
12. Policies, codes of practice and processes in place to ensure transparency, accountability, openness and responsiveness to the participating Councils.

6.2 *The structure and rules of an Authority*

The rules of Authorities are required to be lodged with the Local Government Office (LGO). The LGB considers that the review of the structure and rules of the Authority would largely be a matter of statutory compliance and therefore a matter for the LGO.

Where it appears that the requirements of the rules of the Authority or statutory requirements of the Authority were not being met, the LGB would limit its involvement to referring matters to the LGO.

The LGB proposes to look at the following areas:

1. The functions and objectives set for the Authority, whether the Authority is currently fulfilling these and the strategies for doing so in the future.
2. Codes of conduct or induction process notifying PCR's and/or relevant employees of their statutory responsibilities.
3. The operation of any committees or advisory groups established under the rules and any reporting structures in relation to these.
4. Processes to ensure that ongoing statutory obligations are met including referral of adverse developments, pecuniary interest, misuse of office and misuse of information.

6.3 *The Management and Operations of the Authority*

The LGB notes that the Management and Operations of an Authority, led by the Board of Management, is in some authorities subject to a range of existing legislative and regulatory scrutiny. Some authorities have also voluntarily adopted external standards and best practice business processes that cover core operations. Many of these governance systems may involve external supervision, audits or reviews.

The LGB is interested in:

1. The governance role of the Board of Management of the Authority.
2. Processes for ensuring that referrals of adverse developments are occurring (s35A).
3. Monitoring of competitive neutrality issues.

6.4 Other relevant matters

The LGB is interested in:

1. Communications and education programmes.
2. Community engagement programmes and feedback processes.
3. Marketing and media processes.
4. Policies and processes in place to ensure transparency, accountability, openness and responsiveness directly or indirectly to the community (e.g. protocols or codes of practice on key issues).

Authorities may choose, under this section, to provide information of particular interest that has not been addressed in other sections of the guidelines.

The LGB will also be interested in any innovative examples of best practice, particular successes or of action that demonstrates how the Authority has met or is meeting the interests of the Member Councils.