

Response to Tasmanian Government 2019 review of Local Government Act (LGA)

Who we are: Our organisation is a community network that focusses on complex systems¹ and how their structures, internal systems and beliefs affect their viability and effectiveness in a changing world.

Our brief response is organised as follows:

- Some key characteristics of an LGA that supports the needs of the 21st century
- A discussion of difficulties that exist with the brief in light of its objectives
- A discussion of how a systemic change for a different Tasmanian future might look
- A typical future scenario and its characteristics
- Existing problems with the LGA and some organisational problems that it creates
- Ideas about how to correct LGA deficiencies

Our response is brief and does not include legal detail because there is both insufficient and contradictory information contained in the brief (see below). Furthermore the review structure for the brief appears to us to be excessively biased by a local government system that was created by the current outdated LGA. In our view, the result of employing a review structure based on a flawed legal system (LGA) is likely to be 'more of the same' and leave the government blindsided about important options for effective change and business development.

The purpose of our brief therefore is to inform both the government and the review group of systemic issues, and to provide a viewpoint that is not organised around the *status quo*.

An LGA for the future: To have a competent local government system would require:

- Staff and alderman having governance training coupled with vetting that assured competence in desired areas of knowledge.
- A council purpose & standards agreed by the communities whose needs are to be met.
- Clear service descriptions and standards supported by Councils.
- An independent means of policing/enforcing the service standards.
- Clear articulation of outputs and the services/objectives that Councils would deliver.
- Practical and enforced means of involving ratepayers in processes that affect them.
- Clear budget standards plus accessible and comprehensive reporting systems.
- Penalties and other means to assure that failure is discouraged.
- Council coercive powers policed by an independent body empowered to correct abuses.
- Citizen complaints procedures that are robust, fair, practical, quick and of no cost to the complainant(s).

¹ See overview of systems thinking on Page 6

As it stands, we see none of those characteristics in the current LGA which, to us, indicates that the current system is biased to suit the service providers (councils) while containing far too few democratic and impartial safeguards for rate and taxpayers. This review appears dominated by Council staff, aldermen, and government parties, many of whom could have conflicts of interest in many of the options that might emerge placing unfair pressures on participants.

Societal and system wide change is usually difficult and can take many years to achieve, even with careful planning and involvement of the population. From our perspective, a legal system that has the ability to support a society, must stem from a clear understanding of the role of the system along with the roles of the various systems that work with it. In this case, the future role of local government in serving communities needs to be clear, as does the means by which groups and individuals would be held to account. Various severe difficulties with local government acting improperly and against the interests of the communities, have occurred recently in Tasmania and are indications of major problems that need to be addressed. In our view, this can be done without making sweeping changes thereby delivering more time to address questions of future goals and issues (e.g. climate & technological change).

Scope and context difficulties: Elements of the brief appeared to be incompatible with legal or regulatory methods. For example, the notion that there can be laws to “support greater innovation” is highly questionable because:

- innovation is creative, pattern breaking and unconstrained, *whereas*
- laws are prescriptive, pattern making and constraining.

This is just one example of an elements set to either fail or be abandoned. We have learned that errors in any stage of a process will proliferate in unknown and unpredictable ways as the process proceeds, hence correcting such errors before completing a review would be a wise course of action.

The brief provides little help in understanding the context in which the finally agreed legal framework for local government will operate. For example, since amalgamations are specifically ruled out, there appears little opportunity for substantive cost reductions, marginal cost control or efficiency in future operations.

Creating a change program that has the greatest chance of success: Since there have been multiple disruptive changes in communications and information technologies since the local government act (LGA) was first published, we propose that the entire suite of functions of local government should be considered in order to stand the best chance of achieving the laudable goals of the study, and deliver a sustainable system into a future of accelerating disruption and complexity. We also suggest that the study goals be confined to goals that can be accomplished with laws and regulation. Further the traditional methods used by local government would merit deep questioning - e.g. does local government provide value to its various stakeholders and how can it deliver more value without increasing costs? Is the labor intensive nature of local government relevant in the 21st century? Can citizens represent themselves and can LG functions be automated?

A systemic approach to social and system wide change - A Better Way systems & structures

The LGA as it stands appears unfit to enable Tasmania to compete with the mainland in attracting world class businesses and providing globally competitive services to government, industry and Tasmanian citizenry.

Future scenarios: If the State government were interested in efficiency and innovation then a useful future scenario might include the following characteristics:

- Significantly reduced costs of operation coupled with increased efficiency and effectiveness
- Integrated information systems that supplied all parties with impartial and useful information about economic, social and economic affairs in Tasmania (e.g. costs of public projects, traffic intensities on roads along with costs of transportation, current state of water assets for human use, irrigation and power generation)
- Support for 21st century industries e.g. education levels, rural services quality and type (lower costs for start-ups is a key competitive factor) and infrastructure qualities.

Given that responses to government present organisations like ours with costs with no quantifiable benefits, absent a future scenario such as described above we are confined to restrict our response to purely a governance and management commentary.

Accountability and transparency

Error buried within the LGA: Given the variable nature of human conduct and the temptations involved when powers are provided over everyone else, we believe that the structure of the LGA needs urgent attention. Currently the LGA provides a means by which:

Councils can:

- Deem whether their actions are covered by the LGA, deem their work to be 'confidential' and
- Decide on how their performance is to be measured, and
- Demand more from ratepayers regardless of Council's performance.

These self-defining characteristics are made more serious because most public complaints are heard by the Council's own representative body, the LGAT. How long would a proposal that construction mistakes were heard by the CFMEU last?

Such structures defeat accountability and openness and would need to change to meet the requirements of the review objectives such as accountability and openness.

A way to achieve accountability

From a complex systems perspective, the needs of the various communities that Councils are supposed to serve would:

- Establish and verify the utility of Council's plans and actions and whether they will meet community and business priorities,
- Determine the basis upon which performance and success are to be measured, and
- Determine or approve the scope of reward to be provided for success along with any penalties for failure.

Self defining systems in current LGA defeat transparency

Transparency means being able to see what is, and has been, happening in such ways as to deter corrupt or unconscionable conduct and to help assure that monies are well spent and published priorities achieved. When organisations define their own standards, there is a real risk that they'll write something to their own advantage and or exclude information that would assist outsiders (e.g. the public) to reach useful conclusions about the organisation's actions and explanations. The benefits of transparency include early warning of problems, providing a means to prevent risky oversights and enabling politicians to see what their electors are seeing.

Since the current LGA gives the General Manager and Council permission to do 'whatever is convenient', councils can claim those powers without providing any real evidence. .With the LGAT acting to decide on Councils performance (a clear conflict of interest) there appears very little accountability in Council operations. In a pinch the General Manager can deem whoever to have the requisite expertise (Sec 62 & 65) to comment or decide authoritatively on any matter again removing any hope of independent public scrutiny, actual accountability or transparency of operations. Such outcomes from local government have a dampening effect on our economy.

Consequently we argue that the existing LGA is not fit for purpose (of delivering value to tax and ratepayers) and does not produce a structure that is either accountable or transparent, in part because (on the basis of their actions in the past) Councils in Tasmania can:

- Do 'whatever is convenient' which apparently includes defining what their role is and whether their actions are supported under the LGA,
- Hide behind the review shield of the Councils own representative organisation LGAT,
- Deem who has what expertise,
- Determine what rates the citizenry must pay regardless of the situation,
- Enforce rates payments by being able to sell rate-payer's property (coercion),
- Decide what ratepayers can know about Council operations,
- Favour 'mates' at the expense of other members of the community,
- Threaten businesses and others with higher costs,
- Hold businesses and others to ransom on approvals, planning and other matters.

A systemic approach to social and system wide change - A Better Way systems & structures

Correcting these weaknesses would be a high priority from the perspective of community value and corruption avoidance. In just about all cases, it would be wisest to prevent Councils from being able to coerce local businesses or citizens and assure that decisions about project purpose, objectives, performance, transparency, accountability and quality of community service were made by independent parties.

It is worth noting that those benefiting from a *status quo* are always likely to be suspicious of, even hostile to, changes that might affect their situation adversely. To achieve useful goals in the short term, given the flaws and dated nature of the existing LGA, it would make sense to change the objectives in the review to reflect needs for greater accountability and transparency, to provide skills training in governance to elected aldermen. It would also be useful to create structures in which the community can take an active part to help assure that government efforts are focussed on community outcomes by setting service and fiscal standards and creating an independent policing body for Councils.

We trust that you find our comments of value and different to those emanating from the *status quo*.

Thank you.

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About systems thinking

As our world becomes more complex and interconnected, it has become essential to develop thinking and knowledge tools and techniques that enable us to understand large scale systems. Whole systems behave differently to their parts, and focussing on parts can too easily divert us from understanding the whole system. This is equally true for systems of government, where sub-systems may be controlled by departments that are competing for resources for example. Attempting to deal with system parts too often means a loss of focus on the whole that produces suboptimal results.

Traditional hierarchical drawings show government with the various elements laid in a line below some higher level element. These displays originated to show how different specialties operated however such simple schema can be highly misleading.

A legal system, such as the LGA, may be drawn separately like a heart or lungs, but it is intimately embedded within other systems, such as the community, business, planning and social development. To optimise a legal system would mean to assure that it's inputs, means of operation and outputs were designed to match the requirements of all of the systems in which it was embedded. To this end, an overview of the entire system would be used and teams from each area of speciality would assist with the design for that area.

For the foregoing reasons, understanding law as just one element in a more complex system, helps us to appreciate that to get the most from the law we need to design it to meet the needs and constraints of the other systems in which it is embedded. Doing so will help inform us of design requirements that will provide the maximum value that can be obtained.

While systems approaches can deliver remarkable results (technological advances, lunar landings, robotics, architectures) they do require methods that are frequently difficult for people in government to appreciate. Much government is organised around assumptions that complex systems can usefully be managed in parts, whereas such an approach too often produces problems that are impossible for the participants to appreciate or understand (e.g. Brexit, climate disruption and repeated IT system failures).

Our advocacy for systemic approaches is based on our belief that Tasmania deserves the best and cannot afford expensive sub-optimal approaches.

Further reading relating to systems.

The Unbounded Mind; Mitroff & Linstone, *Oxford University Press*, 1993

The Logic of Failure; Dorner, *Basic Books*, 1996

Improving Performance; Rummler & Brache, *Jossey-Bass*, 1995

A Banquet of Consequences; Das, *Penguin*, 2015