

REFORM DIRECTIONS PAPER PHASE TWO

Review of Tasmania's Local Government Legislation Framework



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The Government recognises that local government has an essential – and increasingly demanding – role in serving and representing local Tasmanian communities. Local government makes important economic, social and environmental decisions that support the lives of all Tasmanians.

The legal framework (the framework) that governs the Tasmanian local government sector needs to reflect and support this and align with what other levels of Government and communities expect from their councils. Tasmania needs a framework that can adapt and change over time to remain contemporary. It also needs to minimise the administrative burden on councils so they can focus on getting on with their job in providing for their communities. Of course, this must be balanced with ensuring the fundamental rights and protections for both the community and councils are enshrined in legislation.

The Government consulted on the principles that should underpin a contemporary legislative framework for local government from late 2018 through to early 2019. The initial consultation received 382 submissions and I have been impressed by the high degree of interest and feedback from the community, the local government sector and other interested stakeholders.

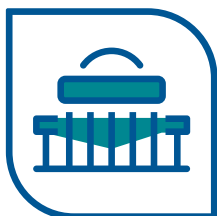
The proposed Reform Directions outlined in this Paper have been informed by research, practices in other Australian jurisdictions, feedback and submissions from Phase I, as well as discussions and advice from the Review Reference Group, who were appointed in February 2019.

I particularly wish to thank the members of the Review Reference Group, who dedicated their time, skills and knowledge to considering the issues raised in Phase I. They provided valuable advice to the Review Steering Committee on reforms to create a stronger, more effective legislative framework to support local government into the future. Similarly, I thank all those Tasmanians who responded to the initial Discussion Paper.

As a Government, we are committed to developing a modern, best-practice legislative framework for local government. As with Phase I, consultation on the proposed Reform Directions will offer opportunities for engagement, through public forums and stakeholder consultation. I encourage all those with an interest to have their say.

Mark Shelton

Minister for Local Government



Overview



Local government is one of the three tiers of government in Tasmania, together with Federal and State Government. Councils are made up of between seven to 12 members, elected by their communities. There are currently 263 elected members and nearly 4000 employees across Tasmania's 29 councils, who serve just over half a million constituents.



It is now 25 years since the introduction of the *Local Government Act 1993* (the Act), which is the primary component of the current legislative framework governing the local government sector in Tasmania. During this time, Tasmania has evolved economically, socially and technologically. Multiple amendments have been made to the Act in an effort to keep pace with these changes. The framework needs to support councils to be able to meet requirements and community expectations now, and into the future. Making continuous updates to the existing legislation is unsustainable and a more proactive, forward-looking approach is needed.



Overview

The intended outcome of this wholesale Local Government Legislative Review (the Review) is a contemporary, flexible and best-practice legislative framework that will support greater innovation, flexibility and productivity in the sector, to improve the overall efficiency and effectiveness of the services that councils provide to the Tasmanian community. It will enhance accountability and transparency across the sector and increase democratic and community engagement, participation and confidence in local government. In achieving these aims, it will also minimise the red tape and administrative burden on councils, businesses and the broader community.

There are fundamental community expectations that all councils must meet, such as maintaining good governance and being transparent and accountable for the decisions they make for their individual communities. The proposed Reform Directions in this Paper seek to embed these fundamental expectations in legislation, create a clear and efficient oversight structure and ensure that the rights and protections of both the community and councils are upheld. The reforms aim to deliver a legislative framework that will:

1. to the greatest extent possible, be practical and outcomes-focused;
2. be flexible and robust to future structural, technological and social change;
3. strike an appropriate balance between ensuring councils have sufficient operational and decision-making autonomy on the one hand, and having in place adequate checks and balances on the other;
4. establish clear accountabilities and provide for efficient and effective risk-based monitoring, compliance and enforcement activities;
5. be guided by best-practice regulatory, governance and legislative approaches and, where relevant and appropriate, lessons and outcomes from reviews of local government legislation in other jurisdictions; and
6. be drafted and presented in a way that is logically structured and easily understood by councils, businesses, and the broader Tasmanian community.

Purpose of this Paper

This Paper aims to provide an overview of the major policy reforms under consideration by the Government, particularly in response to those issues raised in Phase I of the Review (an overview of the Review process is provided at Appendix I). It seeks feedback on the level of support or otherwise for the proposed reforms which will then be considered by Government in determining its final position.

The Paper does not deal with every potential reform detail, but provides the key policy directions being considered. Additionally, reforms of a very technical nature are not considered in this Paper. These more detailed reforms will be publicly consulted on once they have been finalised through draft Bills in 2020.



Submissions

Submissions are invited on the proposed Reform Directions discussed in this Paper. You are not required to address all the proposed reforms when making your submission, if you do not wish to do so.

A survey supports this Paper which allows you to rate your support or otherwise for the proposed reforms. You may wish to complete this survey rather than make a submission, although both are welcome.

Submissions close on 30 September 2019.

Submissions can be made either by:

- completing the survey at www.dpac.tas.gov.au/lgreview or
- writing to or calling the Review Project team.

Email: lgreview@dpac.tas.gov.au

Post: Local Government Legislation Review Project Team
Local Government Division
Department of Premier and Cabinet
GPO Box 123
HOBART TAS 7001

Please provide your name and contact details with your submission. Submissions will be published on the Local Government Division's website in accordance with the Department of Premier and Cabinet's submission policy. Please advise if you do not wish your submission to be published, or if it is being provided confidentially.

Queries about the use of this Paper and lodgement of submissions can be made by contacting the Local Government Legislation Review Project Team on (03) 6232 7643 or by email at lgreview@dpac.tas.gov.au



Major Reform Areas

PART A A flexible, innovative and future-focused legislative framework

The new legislative framework needs to support councils to meet expectations both now and into the future. It will need to be able to accommodate future structural, technological and social change that might occur. The proposed Reform Directions aim to achieve a flexible, innovative and future-focused Act that will help to improve the overall efficiency and effectiveness of the services that councils provide to the Tasmanian community. This will also improve accountability and transparency of council decisions and performance. To the greatest extent that is possible, a new Act will be practical and outcomes-focused and well understood by councils, businesses, and the broader Tasmanian community.

To support this, a new Act will focus on principles that local government must meet. These will include principles for good governance, community engagement and financial management in delivering for their communities.

By setting principles in legislation, the level of prescriptive processes within legislation can be removed where possible, allowing councils to determine the best way to meet these principles according to the individual circumstances of their community.

For example, prescriptive processes currently require councils to advertise through public notices in daily newspapers. For some councils, public notices may still be the best way to consult with their communities, where for others, methods such as websites or social media may be more effective in reaching the majority of residents. Requiring councils to meet principles and removing the prescription on exactly how this is done will reduce unnecessary processes that create costs for councils and the community, while ensuring councils are still accountable for their decisions and actions.

Some prescription will be retained in the Act where necessary and appropriate, to ensure the rights and protections of both the community and councils. Process-driven provisions that may need to be amended more regularly over time will be set out in Regulations, allowing the legislative framework to move efficiently with societal and technology changes over time. Acknowledging that councils often seek guidance and advice in applying legislation, the legislative structure will be supported by non-legislative guidance material that will provide practical advice.

To ensure processes relating to local government elections are easier to understand and administer, the electoral provisions will be separated out as a stand-alone Act.

There will also be an examination of the provisions across related local government legislation, such as the *Local Government (Building and Miscellaneous Provisions) Act 1993*. To the extent that those provisions intersect and overlap with the current Act, they will be consolidated. This will be managed throughout the technical drafting stages of the Review in Phase 3.

Reform Directions

The following proposed Reform Directions outline the proposed new local government legislative framework.

Reform	Details
1. Principles-based legislation	<p>To the greatest extent possible, create legislation that sets principles for the governance and operations of local government. These principles are: good governance, community engagement and financial management.</p> <p>Some prescription will be necessary and appropriate in a new Act to protect the rights of both the community and councils. For example, a council's power to sell public land may require a minimum level of prescription to ensure community views are considered.</p> <p>Greater detail on processes to support the Act will generally be set in Regulations. This allows amendments to be made in a timely manner where processes or technology changes over time and legislation must accommodate this.</p> <p>This structure allows for legislation that can be flexible to move with changes over time without the need for constant changes to the Act.</p>
2. Accessible, easy-to-read legislation	<p>A new Act will be structured logically, be easy to read and understand, while still being legally effective.</p>
3. A new Act for electoral provisions	<p>Electoral provisions are typically used every four years or when a by-election is called. Separating out these provisions in a separate Act will make it easier to understand and administer these provisions. It may also help in aligning local government electoral provisions with the <i>State Electoral Act 2004</i> to create greater consistency in election processes in Tasmania.</p>
4. Consolidating related local government legislation	<p>Related local government legislation will be examined, such as the <i>Local Government (Building and Miscellaneous Provisions) Act 1993</i>, to identify where provisions intersect and overlap with the current Act. Duplication will be removed and provisions consolidated, where necessary. This will be managed throughout the technical drafting stages of the Review in Phase 3.</p>



Major Reform Areas

PART B Representative and Democratic Councils



I. Elections

Local government elections are an opportunity for communities to choose people to represent them and are a fundamental part of democracy. Electoral processes and legislation should be as clear, simple and understandable as possible. Elections should be conducted with integrity by an unbiased independent body in whom the community can have confidence. Maximising voter participation in local government elections helps to ensure that elected councils are representative of the local community as a whole.

Key Issues Raised

The following issues were raised in feedback, consultations and submissions during Phase I of the Review, as well as through Reference Group discussions and advice. They reflect issues that respondents would particularly like to see addressed or changed.

Simplify the voting processes including ballot papers and candidate numbers.

Improve candidacy requirements to attract candidates who are serious about standing for council and serving their community. Introduce basic training and require the disclosure of gifts and donations. Introduce measures to ensure a candidate is a fit-and-proper person to carry out the role of councillor.

Review the General Manager's Roll to:

- Limit eligibility to Australian citizens.
- Improve the integrity of the administration of the Roll.
- Move the administration of the General Manager's Roll to the Tasmanian Electoral Commission as an unbiased independent body with specific expertise in maintaining electoral rolls.

Increase voter participation while minimising the informal vote.

Consider introducing compulsory voting. Ensure that councils are truly representative of the local community.

Introduce caretaker provisions that prevent councils making major decisions immediately before an election that bind future councils.

Introduce alternative voting methods that respond to advances in technology and increase voter participation, such as electronic voting.

Entitlement to vote should be based on the principle of 'one vote, one value'.

Clarify the voting process for electing mayors and deputy mayors.

Reform Directions

The following proposed Reform Directions have been developed after taking into account the key issues raised.

Area	Reform	Details
Eligibility to vote	5. Reform eligibility for the General Manager's Roll	<p>Currently, a person is entitled to vote in a local government election if they are on the State House of Assembly roll, or if they are on what is known as the 'General Manager's Roll'. The General Manager's Roll generally allows persons to vote that are not on the House of Assembly roll but own or occupy a property (residential or business) in the municipality.</p> <p>No changes are proposed with regard to eligibility to vote based on enrolment on the House of Assembly roll. However, the following criteria are proposed to apply to the General Manager's Roll:</p> <p>Criteria 1: A person must be an Australian citizen to be eligible to vote in local government elections. This is consistent with the voting rights at a State level and with most other jurisdictions' local government voting rights. Non-citizens would no longer be entitled to vote.</p> <p>Criteria 2: Individuals who meet criteria 1 and also own or occupy property in a municipal area where they are not a resident, are eligible for enrolment.</p> <p>Criteria 3: A person is eligible for enrolment as the (sole) nominated representative of a corporation operating from a property in the municipal area, ONLY if the representative meets criteria 1 and is not already enrolled under any other entitlement in that municipal area.</p>
	6. Reform the voting franchise to reflect 'one person, one vote' principle in any one municipality	<p>No individual owner, occupier or corporation (or their delegate) will get more than one vote per municipality. Owners of corporations will no longer be entitled to a potential second vote within the same municipal area elections.</p>
Increasing voter participation	7. Simplify the election process for the positions of mayor and deputy mayor	<p>Currently, mayors and deputy mayors must also be concurrently elected as councillors. This requires voters to complete a ballot paper for all councillor candidates and then a second ballot paper for candidates also standing as mayor or deputy mayor, meaning these candidates must be voted for twice, once as councillor and once as mayor/deputy mayor. This process can be confusing and at times, can result in a candidate being elected as mayor or deputy mayor but not as councillor, meaning they are unable to accept the position of mayor or deputy mayor. The confusion can also increase informal voting.</p> <p>Several options have been identified that seek to assist in simplifying the voting process for the mayor, which are outlined below. It is acknowledged that there is no perfect solution to this challenge and therefore retaining the status quo is also an option.</p> <p>Mayoral Election</p> <p>Mayors have been popularly elected in all councils in Tasmania since 2000. Prior to this, the position of mayor was voted on by council, 'around the table'.</p> <p>7A: Retain the status quo as outlined above. If the status quo option is retained, a higher nomination fee would be charged in accordance with proposed Reform Direction 13.</p>

Area	Reform	Details
		<p>7B: Popularly elected - voters will popularly elect the mayor at the same time as the council elections are held. A successfully elected mayor will automatically be elected as councillor, removing the requirement to be concurrently elected as councillor. Candidates will be able to stand either for mayor or councillor but not both. Unsuccessful mayoral candidates will not be eligible for election as councillor. This process is in place in Queensland and South Australia.</p> <p>7C: Popularly elected - simplify the voting process for the position of mayor by providing that the candidate who is elected first, from the ballot for candidates, would automatically be elected as mayor. This reform retains the concept of a popularly elected mayor, without the necessity of voting twice. The Tasmanian Electoral Commission advises that this form of voting would be simple to administer and would reduce costs as there would only be one ballot.</p> <p>7D: Council votes - all candidates stand and are elected as councillors. Mayors are then elected 'around the table' by the council. This is an option in New South Wales, Western Australia, Victoria and for councils in regional Northern Territory.</p> <p>Deputy Mayor Election</p> <p>The deputy mayor would be voted on by the council 'around the table'. This would simplify the process for voters and allow the council to choose an appropriate person to support the mayor. This is consistent with deputy mayor processes in every other jurisdiction in Australia.</p>
	8. Make alternative voting methods available	<p>Enabling electronic voting when the technology becomes viable, as well as postal voting. The most appropriate voting method would be chosen by the Minister 12 months prior to the local government elections. This allows flexibility for election methods to adjust to social and technological changes over time, and to choose the most appropriate method as it becomes available. It improves accessibility for all voters, to increase voter participation.</p>
	9. Simplify the voting process to reduce informal voting rates	<p>The voting process will be amended to require a minimum ballot of 1-5 preferences to constitute a formal vote. This would remove the requirement to mark a preference for every available councillor position and/or candidate. This simplifies the process for voters and aligns formal vote requirements with State elections. Advice from the Tasmanian Electoral Commission is that a minimum of 1-5 preferences would not have a material impact on election results, as in most cases later preferences are not required during counting.</p> <p>The level of legislated prescription for ballot papers will be reduced. As with State elections, the Tasmanian Electoral Commission could then determine the best layout of the ballot paper. This will allow necessary changes to occur over time to ensure voting is as clear, simple and accessible as possible for voters.</p>

Area	Reform	Details
Electoral Integrity	10. Introduce caretaker provisions to reduce major policy and contractual decisions that may bind an incoming council, and avoid the inappropriate use of ratepayer resources during an election	<p>Caretaker provisions are commonplace in other levels of government and local government in other jurisdictions. Caretaker provisions would apply to all councils from the time candidate nominations open. They would limit councils making major policy or contractual decisions during an election period. The operational business of councils must still continue and caretaker provisions would provide for this, including where councils have to meet statutory timeframes and obligations.</p> <p>Caretaker provisions would also limit the use of council resources from being used to promote or support candidates, including sitting councillors. This is consistent with the notion that public funds should not be used to unfairly support one or more candidates over others.</p>
	11. Move administration of the General Manager's Roll from councils to the Tasmanian Electoral Commission	<p>This measure would improve the integrity of the democratic process by removing general managers and council staff from the electoral process. It would also reduce the administrative burden on general managers to maintain the accuracy and integrity of the Roll and achieve greater consistency across Tasmania.</p> <p>There will be resourcing impacts for the Tasmanian Electoral Commission in taking on administration of the Roll from councils. Costs will apply to councils for the transfer of this responsibility but should be cost neutral, or possibly result in a net overall cost reduction (given expected efficiency for the Tasmanian Electoral Commission as a single administering entity, compared with the current 29 separately administered rolls).</p>
Candidate Changes	12. Introduce a pre-nomination training package	<p>A training package must be completed in order to nominate as a candidate. This will help candidates understand the role and responsibilities they will take on should they be successfully elected. These information packages would be completed in a simple online format and will provide information rather than testing a potential candidate's knowledge. This is becoming increasingly common in other jurisdictions for local government candidates.</p>
	13. Introduce a candidate nomination fee	<p>Candidates for the office of councillor would pay a small fee to lodge their nomination, which would be refundable on receiving a percentage of the vote (typically 4%). Candidates standing for the position of mayor would pay a higher nomination fee, depending on the option adopted in Reform Direction 7. This principle is common in other local government jurisdictions and aims to attract serious candidates and reduce nominations by those without real intentions to be elected (having considered fees in other jurisdictions, the likely fee would be around \$100 for councillor nominations and \$250 for mayoral nominations). The Tasmanian Electoral Commission would administer the payment and retain fees not eligible to be refunded as a contribution toward the cost of elections.</p>

Area	Reform	Details
	14. Require the disclosure of gifts and donations by all local government candidates received during the electoral period	All candidates would be required to declare gifts and donations received during the electoral period. This will ensure an equitable platform for all candidates and the transparency and accountability expected by the public (published online). The Tasmanian Electoral Commission would administer the receipt of disclosures given the alignment with existing advertising returns. Tasmania is currently the only State not to require gifts and donations declarations by candidates in local government elections.
	15. Align eligibility requirements to nominate as a candidate with State eligibility requirements	<p>This direction is intended to bring the eligibility requirements into closer alignment with the current requirements for members of the House of Assembly and Legislative Council, as per the requirements of the <i>Electoral Act 2004</i> and the <i>Constitution Act 1934</i>, where appropriate.</p> <p>Eligibility to nominate as a candidate for the office of councillor will continue to include key existing provisions, including eligibility to vote and the candidate having their place of residence in Tasmania, as well as those applicable from the above legislation.</p>
Modern councillor titles	16. Remove the title of 'Alderman'	<p>Councillor titles would be modernised and made consistent by removing the title of 'Alderman', which is currently available to city councils, as the term is considered archaic and gender-biased. The local government sector supports this change, as voted on at the sector's Annual General Meeting in 2018.</p> <p>A contemporary Act should align language with community expectations.</p>



Major Reform Areas

PART C Councils Connected to their Communities



2. Community Engagement

Community engagement is the process by which public authorities provide opportunities for the community to participate in, and influence, government decision-making. Community engagement on major decisions ensures the local community has a voice in determining what their council will do and how it will affect them.

Community engagement and consultation is a rapidly evolving environment and it is clear that community expectations of engagement have changed. Traditional consultation methods that councils must provide under the current legislation are fast becoming less effective as society changes, particularly with new technologies. The community expects that councils will be more accessible and available to engage, mainly via online engagement methods, while still catering to the different communication needs of the community.

Community expectations of engagement are increasing, including the need for far greater community involvement in council decision-making. Evidence shows that, where communities are engaged in the decision-making process, they are more likely to trust and accept council decisions. These decisions are therefore more likely to deliver good public value, as they will better reflect the community's needs and priorities.

Key Issues Raised

Greater opportunity for community input into major council strategic and financial decisions that affect the community. The community want a say in how the financial resources of council, including rates, are managed to enable services to be delivered.

Reduce unnecessary reporting requirements and overly prescriptive public notification requirements. Remove the specific requirement for public notices to be published in daily newspapers.

A flexible approach to engagement is required as every council and community is different.

More effective methods of capturing community feedback about issues at both a local and regional level.

Councils should engage with the community when considering service trade-offs to meet funding challenges.

Provide more flexible options for councils to communicate with their community, allowing for technological and social changes into the future. Engagement via online methods as well as traditional methods.

Introduce satisfaction surveys from the community on council performance.

Meaningful community consultation on the services councils should provide (particularly newer, less traditional services). Services should be based on community needs identified through engagement and consultation.

The community should be consulted on and involved in decisions that relate to the revenue raising and expenditure activities of councils.

Elector polls are too costly, resource-intensive and time-consuming for a non-binding outcome.

A stronger focus on engagement, particularly in deciding and communicating the council's priorities and activities is desired. Engagement should inform the strategic plan and what services councils will provide.

Replace requirements for annual general meetings with alternative engagement methods that are more contemporary and accessible.

Greater access to council information on financial matters, planning and development, performance data and decisions that affect the community.

Councils should consider opportunities for significant change to involve the community in the consultation process and give feedback on how their input influenced council's decision.

Reform Directions

The following proposed Reform Directions aim to address the issues raised during consultation by introducing a Community Engagement Strategy that provides an overarching framework for how councils consult with the community at all levels. A Community Engagement Strategy would empower the community to have a say on policy proposals and be involved in some decision-making and the future direction of the council. The introduction of a Community Engagement Strategy allows for some prescriptive consultation requirements to be removed from the Act, giving autonomy to councils and the community which reflects the diversity of each municipal area.

Area	Reform	Details
Community Engagement	17. All councils will develop and adopt a community engagement strategy	<p>Councils would engage their communities in developing their Community Engagement Strategy after each election. This Community Engagement Strategy will then inform how council will engage, involve, consult and inform their communities on plans, projects and policies. Acknowledging that every council and municipality will have different needs, this allows the community and council to work together on their engagement plan, including how and when they will engage and what methods they will use. Minimum requirements will be set for developing the Community Engagement Strategy and would include:</p> <ul style="list-style-type: none"> - a genuine intent to engage the community; - a defined reason for consulting; - clearly defined timeframes; - use of plain English; and - clear advice for how the community will be informed of the outcome. <p>The final strategy should include:</p> <ul style="list-style-type: none"> - what matters the councils will engage the community on; - how it will engage with the community; - how it used the input from the community; and - when the community will be advised of outcomes. <p>Councils must then follow their Community Engagement Strategy when engaging the community on their Strategic Plan, determining their service delivery priorities and when setting their budget (including rating decisions).</p>

Area	Reform	Details
<p>Removing prescription and giving councils autonomy and flexibility</p>	<p>18. Removing prescriptive consultation requirements</p>	<p>Broaden the capacity for councils to engage with their communities in accordance with their Community Engagement Strategy, rather than through the current prescriptive consultation methods such as Annual General Meetings, public notices and formal submission processes. Instead, for example, when making financial and rating information available, councils could provide information, across a range of platforms that best suits their community's needs, such as council websites. This would allow them to make decisions at the appropriate time for the information being communicated, rather than through inflexible processes.</p> <p>Some specific consultation requirements will need to be maintained, where necessary, for the protection and rights of the community and councils.</p> <p>Wherever possible, prescriptive requirements to provide reports and information in a specified way, such as by post, will be removed. This will be replaced with a broad transparency principle that information published in the public domain must be accessible and driven by what the community wants to see.</p>
	<p>19. Remove requirements for public meetings and elector polls</p>	<p>The current requirements related to public meetings and elector polls are highly prescriptive and precede technologies such as the internet. There are now many alternative ways in today's society that people can make their views known to their council.</p> <p>Additionally, as the outcome of an elector poll or public meeting is non-binding, it does not compel a council to do anything. Councils, and subsequently ratepayers, incur a large cost for no clear outcome. It is also increasingly difficult for councils to confirm who the electors are in the local area who signed an online petition. It is therefore proposed that the provisions relating to public meetings and elector polls be removed from the Act.</p> <p>In line with the overarching principle of the Community Engagement Strategy, a council will still be able to initiate and hold an elector poll, if circumstances warrant one. If community members want to hold public meetings and submit petitions (and even have polls), it will be a matter for councils to determine the processes for that manner of engagement, in line with the Community Engagement Strategy.</p> <p>In addition, the capacity will be provided for the State to initiate a state-wide referendum on a particular issue, if required.</p>



Major Reform Areas

Part D: Responsible and Effective Councils



Local government is created through State legislation which sets out the functions and powers of councils. Therefore, the State has a responsibility to ensure local government operates responsibly and effectively, in accordance with legislation and in line with community expectations. This should be balanced between the State ensuring that councils are exercising their powers within the law, and the fact that councils are a democratically-elected, separate level of government.

3. Ethics and Standards

Governance is the processes and culture that guide the activities of an organisation.¹ Good governance is critical to effective, efficient and well-run local governments that deliver quality services in the best interests of the community. It underpins sound decision-making and ensures proper accountability and transparency.

Good governance allows organisations to manage their affairs with proper oversight and accountability, while maximising value for stakeholders and the community.² The current Tasmanian Local Government *Good Governance Guide* sets out characteristics for good governance, based on universally recognised principles developed by the United Nations Development Program.³ To meet the expectations of the community, a well-governed council should be:

- Accountable
- Transparent
- Law-abiding
- Responsive
- Equitable and Inclusive
- Participatory
- Effective and Efficient
- Consensus Orientated.

Good governance also promotes public trust, encourages council officers and elected members to be confident, and leads to better decisions.

1 Department of Premier and Cabinet, Local Government Division's *Good Governance Guide*

2 <http://www.companydirectors.com.au/~media/resources/director-resource-centre/governance-and-director-issues/guiding-principles-of-good-corporate-governance.ashx?la=en>

3 https://iog.ca/docs/2003_August_policybrief15.pdf

Key Issues Raised

General manager performance reviews can be perceived as political processes when conducted by councillors without a clear and agreed objective process.



Review internal mechanisms that councils have in place for handling complaints related to operational matters/administrative decisions.

Councils face challenges in recruiting general managers and managing their employment contracts and performance reviews. Elected members may not necessarily have expertise in executive recruitment.

Include good governance principles in legislation to highlight their importance, mandate compliance and reinforce community expectations of how councils should be governed.

Current legislative provisions make it difficult for councils to meet to deal with general manager contract and performance management issues without the involvement of the general manager themselves or other staff, which can place them in awkward positions.

Elected members should undertake training on their roles and responsibilities and the legal framework they operate within in serving their community. Training can improve decision-making and standards of behaviour.

The community expects council staff, as publicly funded employees, to uphold minimum standards of behaviour. There is no current framework that governs the behaviour or performance of council employees.

Reform Directions

The following proposed Reform Directions aim to address the issues raised during consultation by introducing a range of measures to improve the overall governance of councils.

Area	Reform	Details
Good Governance	20. Legislate the eight good governance principles	<p>The principles from the Local Government <i>Good Governance Guide</i> would be legislated and linked to the behaviours in the Code of Conduct.</p> <p>These principles will also inform the high-level functions and powers of a council, in providing municipal services for their local government area.</p>
Financial Governance	21. Set high-level financial management principles that encourage efficiency and value for money in council service delivery	<p>These principles would emphasise that councils make important decisions on the use of community funds, for the betterment of the community. Councils must regularly consider improvements to operational efficiency and assess services for their value to the community, not just their cost. They must also consider the risk they expose ratepayers to, and ensure that their decisions are affordable and fair across different generations of ratepayers.</p> <p>Victoria's Local Government Review has taken this approach. It intends to create a set of high-level financial management principles that focus on transparency, accountability and sound financial management. For example:</p> <ul style="list-style-type: none"> – managing financial risks prudently in light of economic circumstances; – aligning income and expenditure policies with strategic planning documents; – responsible spending and investment; and – ensuring full, accurate and timely disclosure of financial information about the council.⁴ <p>Similar principles are proposed for Tasmania and in practice would provide a clear expectation for councils when developing their strategic plans and budgets.</p>
Elected Member Development	22. Establish core capability requirements for elected members	<p>Setting core capability requirements would build capacity for all elected members and have positive impacts on standards of behaviour, sound decision-making and better relationships, as councillors would have a better understanding of the framework their role fits within.</p> <p>Core capability requirements may include:</p> <ul style="list-style-type: none"> • the roles and responsibilities of elected members under the Act and regulations, with specific reference to the Model Code of Conduct and the <i>Good Governance Guide</i>; • ethical decision-making; • financial fundamentals, including understanding of financial statements and budget preparation; • decision-making in reference to the <i>Land Use Planning and Approvals Act 1993</i>; and • meeting procedures. <p>The option to introduce mandatory training was considered however it is not proposed to mandate councillor training at this point. The Minister will retain the option to issue a Performance Improvement Direction to specific councils or councillors where it is needed. The exception to not implementing mandatory training for councillors, is that mandatory training for councillors in their role as a Planning Authority will be required.</p>

⁴ https://www.localgovernment.vic.gov.au/___data/assets/pdf_file/0042/397968/Act_for_the_Future_-_Directions_for_a_new_Local_Government_Act.pdf

Area	Reform	Details
	23. Require councils to publicly report the core capability training that each elected member has completed annually	This will introduce a greater level of transparency of councillors' professional development activities.
Council Staff Accountability	24. Establish principles for all council staff that set minimum standards of behaviour	<p>Setting principles on a minimum standard of behaviour for council employees will bring local government in line with other jurisdictions, other levels of government and community expectations for public officer behaviour.</p> <p>For example, under the <i>Tasmanian State Service Act 2000</i>, an employee must adhere to State Service principles including that:</p> <ul style="list-style-type: none"> • the State Service is apolitical, performing its functions in an impartial, ethical and professional manner; • the State Service is accountable for its actions and performance to the Government, the Parliament and the community; • the State Service is responsive to the Government in providing honest, comprehensive, accurate and timely advice and in implementing the Government's policies and programs; and • the State Service delivers services fairly and impartially to the community. <p>These principles inform the Tasmanian State Service Code of Conduct. A breach of the Code can result in real and serious consequences, including termination of employment. In recognition that local government staff operate under individual Enterprise Bargain Agreements, the consequences for a breach of minimum staff standards of behaviour would be a matter for each council to determine.</p>
General Manager Performance	25. Prescribe minimum standards for general manager recruitment, contracts, performance management and termination	<p>This aims to encourage best-practice recruitment practices in line with community expectations and ensure a consistent approach to general manager contracts.</p> <p>The current power to issue a Ministerial Order on the appointment and performance of general managers would remain, allowing the Minister to specify the principles and processes governing the selection of general managers and the monitoring of their performance by the council.</p>
Complaints Management	26. Include principles on complaints management in legislation	<p>A rigorous process must exist for complaints management, balancing the need to address genuine concerns of the community with processes that enable the dismissal of vexatious or frivolous complaints.</p> <p>Best-practice complaints management is independent, unbiased and removes conflict. Where councils are handling complaints about their own internal processes or staff (for example, the general manager), questions arise as to how independent and unbiased the complaints management process actually is. While it is appropriate that councils respond in the first instance to the majority of complaints, stronger provisions would seek to improve the independence of internal reviews of complaints.</p>

4. Transparency and Flexibility in Budget Management

In practice, the determination of expenditure, revenue, and rates is an iterative process in the development of a council's budget, with the final budget passed by a council representing how it balances expenditure needs with the community's capacity to pay. Councils are accountable to their communities for these decisions.

Revenue is essential to councils' financial sustainability and their ability to serve their local communities. Revenue is sourced through grants, general property rates and charges, or specific purpose rates, such as for infrastructure upgrades of a road. Fees and charges for services also contribute to revenue to meet the costs of those services.

Generally, revenue is largely drawn from rates, fees and charges, although smaller councils can be more reliant on grants. Councils can invest in business or commercial activities to derive a source of revenue, which may reduce rates, however, may also expose ratepayers to commercial risks.

Transparency and community engagement in the way council services are delivered and funded is essential to fostering and maintaining community trust and goodwill, and demonstrates that communities are receiving value for money in public spending. The financial sustainability of councils will depend on sound revenue raising and expenditure decisions, and strategic forward planning.

It is recognised that there is no 'one size fits all' approach - revenue raising will vary due to regional differences and the diversity and size of the communities that councils serve.

Key Issues Raised

The current rating system may not deliver equity and consistency for ratepayers across municipalities in Tasmania.

External oversight of rates increases should be considered to ensure significant rate increases are justified.

Greater consistency in rating methodology. Councils' autonomy to set rating methodology and rate increases should be considered.

As a form of tax, the principles of taxation should be considered when setting and raising rates.

Communities need to be confident that councils are operating with good financial discipline and are financially sustainable.

A more transparent and consistent approach to the setting of fees and charges is required. A lack of consultation with communities was noted on the way fees and charges are raised and spent, and a lack of consistency for similar services and service levels across councils.

Councils need to budget expenditure prudently and be able to provide sound justification for significant rate increases.

Clarify how and why councils operate significant business activities, which are sometimes seen as diverting councils away from providing 'core services'.

Reform Directions

The following proposed Reform Directions aim to address the issues raised during consultation by setting principles and introducing mechanisms to improve community engagement, transparency and accountability in the revenue raising processes of councils.

Area	Reform	Details
Rating Policies	27. Ensure council rating policies consider taxation principles and align with their budget and financial planning documents	<p>Councils have flexibility in determining how to distribute the rating burden among ratepayers. Rates are a form of general taxation and, therefore, taxation principles are relevant to how councils make their rating decisions. The taxation principles are: efficiency, simplicity, equity, capacity-to-pay, benefit principle, sustainability, cross-border competitiveness and competitive neutrality.</p> <p>Councils should reflect outcomes of consultation with the community on council budget and financial planning when developing rates and charges policies, as per the overarching Community Engagement Strategy. Communities want to understand the revenue councils are raising through rates and where it will be spent. This is closely linked to the councils' budgeting process. This would also apply where councils change their rating policies significantly or move to a different rating model.</p>
	28. Introduce more flexibility for councils to easily transition from one rating approach to another, to manage rating impacts on ratepayers	<p>Councils can use different valuation methods to determine their rates and this would not change. Historically, councils have generally used the Assessed Annual Value (AAV) method to determine their rates. This method is a proxy for rental returns on a property.</p> <p>Work done a few years ago suggests that using Capital Value (CV) would produce a more equitable and efficient rating outcome for the majority of ratepayers. However, very few councils have transitioned to a CV method because of the significant impacts this would have for some ratepayers.</p> <p>This direction would provide councils with greater ability to manage rating changes on ratepayers through transitional arrangements. For example, if a council wishes to transition from the AAV to CV rating basis, the legislation would give councils improved tools to mitigate shocks to individual ratepayers by smoothing the impacts over time.</p>
Transparent and accountable rate setting	29. Establish an independent rates oversight mechanism	<p>This would introduce a role for the Economic Regulator to provide independent expertise on, and oversight of, proposed rates increases that deviate from a council's Long-Term Financial Management Plan and are significantly greater than the Consumer Price Index. The Minister would have the power to refer a council to the Economic Regulator but not to veto the rating policy. The Economic Regulator would provide advice back to a council on proposed rating increases and whether other options to alleviate financial impacts on the community appear available. The Economic Regulator would be required to publish its report.</p> <p>This direction would give a council advice independent of council staff for such a significant decision, and provide the community with comfort that any proposed rate increase has been subject to rigorous testing.</p> <p>The cost of any rating increase investigation by the Economic Regulator would be met by the relevant council.</p>

Area	Reform	Details
Transparent and accountable fees and charges	30. Set principles or guidelines for setting fees and charges	<p>In response to issues raised regarding significant differences between councils in the fees and charges applied for similar services, this direction would promote greater consistency in the approach to setting fees and charges, without prescription around the amounts themselves. Fees and charges should be reflective of the cost of the service being delivered. They are not a tax to raise general revenue.</p> <p>The Department of Treasury and Finance has guidelines for State Agencies with regard to setting fees and charges and it is proposed that a similar discipline be introduced for local government.</p>
Budget Management	31. Provide for a more autonomous and less prescriptive budget process	<p>This will allow councils more flexibility to allocate resources as required. Councils should be accountable for outputs and outcomes, with transparency through reporting. Councils clearly set the budget and priorities, however general managers should have the flexibility to move resources around within the overall budget allocation to achieve priorities. This direction would relate to the operational budget, not the capital budget. It would also provide for a formal half-yearly financial report stating actual expenditure against budget.</p>
Significant Business Activities	32. Clarify significant business activities	<p>There is a need to better define 'significant business activities' so that the commercial operations of councils are transparently reported. Councils will be required to publish reports on the operations and performance of significant business activities.</p> <p>Councils may undertake significant business activities for a range of reasons in carrying out their functions. Some support resource sharing arrangements, some are commercial operations and some have elements of both. The Act currently enables councils to undertake these activities under enterprise powers. These powers are not well understood.</p> <p>If significant business activities are competing with the private market, they need to be operating on fair terms. If significant business activities are operating for a profit, they should not enjoy benefits not available to private enterprise, such as tendering exemptions, as is currently the case under the Act.</p>

5. Council Decision-making

Transparency is vital for good governance and is a core principle of all representative governments.

Council meetings and meeting papers are a key mechanism to engage and inform communities of council decisions. How councils account for what occurs at a council meeting is crucial to good governance. Councils have an obligation to report, explain and be answerable for the consequences of the decisions they have made on behalf of the community they represent and serve.

Community trust in, and the appropriate management of, conflicts of interest is a key element to ensuring public confidence in council decision-making. Councillors must be accountable for their decisions and make judgments about their ability to participate in any discussion or vote on a matter being considered by the council.

Key Issues Raised



Greater transparency in council meetings and minutes is needed. Open and transparent access to council decision-making processes, through video or audio recorded meetings, would build community trust.

The reasons for closing some or all of the council meeting are not always clear or transparent. This creates suspicion within the community and raises questions about the legitimacy of closing the meeting.

Conflicts of interest need to be better managed. Clarify the requirements for the disclosure of interests by councillors to increase transparency and accountability in decision-making. With Tasmania's small population, non-pecuniary conflicts of interest, perceived or actual, can regularly occur within local government.

Matters heard in the closed portion of a council meeting should be limited to where absolutely necessary.

A review and accountability mechanism is needed to ensure councils are accountable for how they exercise their statutory authority powers.

Technology increases accessibility by the community to the functions of council.

Reform Directions

The following proposed Reform Directions aim to address the issues raised during consultation by setting requirements in legislation that clarify the transparency requirements for councils and individual councillors in their decision-making processes.

Area	Reform	Details
Council Meetings	33. Require electronic recording of council meetings to be made publicly available	<p>This requirement is increasing in other jurisdictions across Australia, where councils are capturing recordings using a range of electronic devices.</p> <p>Council decisions are supported by agenda papers and the minutes of meetings. However, council minutes are often brief and record little more than the motion and voting decision. Unless a member of the community is present at the meeting, there is little public record of any debate that occurred.</p> <p>The current Act allows for audio recording and a number of councils make audio recordings available on their websites. A small number of councils also video record and live stream.</p> <p>Making electronic recording, and its publication, mandatory would improve public confidence in the integrity, transparency and accountability of council decision-making. It would increase the community's access to, and connection with, the council and could improve councillor conduct generally.</p> <p>Councils have raised the issue of not having legal immunity protections for statements they may make, which are available to State and Federal Parliament, such as Parliamentary Privilege. As council meetings are currently available to the public, recording these sessions does not change the status quo on protections. Councils can hold closed meetings where necessary, which is not available to Parliamentary debate. No other jurisdiction has offered councillors immunity protections in this context. Recognising, however, the concern of some councils, live streaming would not be mandated.</p>
Conflict of Interest Framework	34. Simplify what is a conflict of interest	<p>This will capture both what are currently termed 'pecuniary' and 'non-pecuniary' interests and remove overlap and confusion in declaring conflicts of interest at council meetings.</p> <p>Legislative provisions will be supported by clear, easy-to-read and understand guidelines to assist councillors in determining when it is appropriate to declare a conflict of interest and what further action to take, if any.</p>
Managing Conflicts in the Exercise of Statutory Functions	35. Enhance the integrity of council decisions made when exercising statutory powers	<p>This will require councils to manage perceived conflicts of interest by councils in exercising their statutory powers. For example, when a council is submitting and assessing its own development applications under the <i>Land Use Planning and Approvals Act 1993</i>, the assessment should be allocated to another council or private planner for assessment to reduce its conflict of interest. This would place the onus on councils to proactively remove themselves from any perceived conflict of interest. A number of councils already engage such practices in the interests of good governance.</p> <p>It is recognised that under the current planning legal framework, a council still needs to make the decision on its own Development Application, even if the assessment has been referred to an independent planner. There is some support to address this issue.</p>

6. Oversight and Interventions

Autonomy in council decision-making needs to be balanced with oversight and intervention powers to ensure accountability and stability. The broad rationale for regulation is to create an environment that encourages positive outcomes for communities and stakeholders. It is a mechanism for transparency and accountability and, when councils are performing well, can build trust and confidence between communities and their councils, between elected members and between council administrators and elected members.⁵

Councils generally self-regulate effectively through the use of good governance structures, however self-regulation needs to be balanced with external intervention powers when required. Significant dysfunction in a few councils in Tasmania in recent years has caused significant impacts for ratepayers and communities.

The proposed oversight model takes a risk-based approach, seeking first to ensure transparency in council performance and, where necessary, detect, respond to and manage poor performance.

Mechanisms, such as early intervention powers, should exist to effectively and swiftly manage non-compliance and breaches of the Act as they arise, without penalising high performing councils with additional red tape.

5 Victorian Ombudsman submission to the Victorian Government's Review of the Local Government Act 1989.

Key Issues Raised

Assistance should be provided to councils to build capability and capacity where issues have been identified.

Clarify the roles and responsibilities of the various oversight and investigatory bodies in Tasmania that deal with local government complaints. The current overlap in the roles of the Local Government Division, the Integrity Commission and the Code of Conduct Panel creates confusion and difficulty for both complainants and the bodies themselves in managing complaints effectively and efficiently.

There should be stricter penalties for breaches of the Act.

The consequences of poor management should be serious and dealt with swiftly to prevent ongoing issues that are ultimately paid for by the community.

Compliance measures need to be in place to detect and address breaches.

Introduce early intervention options that can be actioned quickly to respond to non-compliance and serious issues within a council.

The Minister should have power to dismiss a council that is not performing or where there is serious dysfunction.

Intervention powers should balance council autonomy with responsive, rigorous intervention measures.

Streamline the structure for managing local government complaints and investigations to remove overlap, provide clarity and increase efficiency.

Reform Directions

The following proposed reform directions aim to achieve an oversight and intervention framework, in response to issues raised.

Area	Reform	Details
Independent Oversight	36. Strengthen the information gathering powers of the Director of Local Government	The Director of Local Government already has the power to require information from councils and this would not change. What is currently not clear is the scope of the advice councils' audit panels are providing to councils, including what risks and mitigation actions are being identified and recommended. Similarly, it is not clear how well councils are responding to their audit panels' advice. Consequently, it is proposed that audit panels would be required to provide their reports to the Director of Local Government, upon the Director's request.
	37. Create a power for the Director of Local Government to require an undertaking from a council as a measure to address compliance issues	<p>Under the current Act, instances of non-compliance with the Act can occur but with little consequence. For example, the Act may set out requirements to be followed, but there is no express penalty for not doing so. Many of these do not warrant an offence, but there is a gap with regard to powers to remedy non-compliance.</p> <p>This direction would provide the power to the Director to require an undertaking to be given by a council, councillor or general manager to either correct an act of non-compliance, or to ensure there is no recurrence. The failure to observe an undertaking could result in further action, depending on the gravity of the non-compliance.</p> <p>An undertaking could also be used to require councils to address the Auditor-General's recommendations arising from its financial audits, particularly where responses to high risk area recommendations appear not to be acted upon in a timely manner.</p>
	38. Establish a Monitor/Advisor role	<p>There are circumstances where early intervention can assist a council before issues result in more serious outcomes. This direction would provide a power for a Monitor to enter a council to review its operations, request information from the council administration (and the Audit Panel), provide guidance to elected members and senior staff, and make recommendations to the council.</p> <p>A council would be able to decide to engage a Monitor, but the Director of Local Government would also have the power to require one if the circumstances clearly require a 'circuit breaker'. A council would pay the cost of a Monitor (where one has been required by the Director, costs would be determined in consultation with the council).</p>

Area	Reform	Details
	39. Establish the power to appoint a Financial Controller	<p>This direction would allow for a Financial Controller to be appointed to a council to manage serious, demonstrated financial challenges, without putting the council into administration. Similar powers exist in New South Wales. The equivalent position to the Director in New South Wales has the power to appoint a Financial Controller to councils in that state, and it is proposed the Director would have similar power in Tasmania. The cost of a Financial Controller would be borne by the council. While it is acknowledged this would be an additional cost, the benefit to ratepayers would be expected to be significantly greater through correcting the council's financial sustainability.</p>
	40. Continue to conduct formal investigations by the Director of Local Government	<p>The Director of Local Government would continue to have the power to investigate breaches of legislation. However, the outcomes of an investigation would be strengthened such that the Director can make a finding and provide recommendations to the Minister that the council or an individual councillor be suspended or dismissed.</p> <p>Natural justice and procedural fairness principles must apply to any investigation.</p> <p>To support the Director's investigatory powers, the Director would be able to appoint appropriately skilled and qualified persons to support them. Depending on the circumstances, this could include persons external to the Director's staff, such as persons with significant legal experience.</p>
Ministerial Intervention	41. Provide for the Minister to dismiss a council or individual councillor	<p>While the Director of Local Government will have significant powers to intervene when serious governance challenges arise, ultimately any action that results in the suspension or dismissal of a council or councillor must be taken by the Minister for Local Government.</p> <p>The Minister already has the power to impose a Performance Improvement Direction on a council or councillor (on a recommendation from the Director), and this will be retained. Suspension is a possible sanction for failure to adhere to a Performance Improvement Direction.</p> <p>In addition, the Minister could dismiss a council or councillor on recommendation of the Director. Alternatively, the Minister can establish a Board of Inquiry, and in response to findings, recommend the Governor dismiss a council or councillor, as is currently available.</p>

Area	Reform	Details
Maladministration	42. Create offences for mismanagement and to address poor governance (maladministration)	<p>This would create a maladministration offence provision that relates to the council as an entity, individual councillors and the general manager, for systemic failures or a major consequence resulting from a single act of impropriety, incompetence or neglect. This is another measure to address the current gap with regard to there being no sanction available for non-compliance with the Act.</p> <p>The responsibility to ensure operational good governance within a council rests with the general manager, as the person responsible for implementing the decisions of the council and the day-to-day operations of the council. A maladministration offence should apply solely to the general manager, rather than other senior executive staff. Council staff come under the employment of the general manager and are therefore the responsibility of the general manager.</p> <p>It is recognised that while the council itself is responsible for the management and performance of the general manager, there is a need to legislate consequences where there is a repeated issue in failing to discharge their duties or the conduct is so grave that it warrants intervention. If early intervention measures are introduced, this would provide many opportunities to improve governance before this measure was necessary.</p> <p>South Australia has an offence for ‘maladministration’, which relates to a public officer or entity failing to meet reasonable standards of performance in discharging their duties, including conduct resulting from incompetence or negligence. This relates to serious systematic failures, not isolated mistakes or errors. The South Australian Ombudsman can investigate any public officer or entity for this conduct. Where councils have been incompetently managed, resulting in maladministration, an administrator can be appointed to manage the council. The South Australian <i>Independent Commissioner Against Corruption Act 2012</i>⁶ defines maladministration in public administration as including conduct that results in the unauthorised use of public money or the substantial mismanagement of public resources; substantial mismanagement in the performance of official functions; and conduct resulting from impropriety, incompetence or negligence.</p>
Complaints Management	43. Simplify the complaints framework	<p>There is currently overlap between the oversight and regulatory roles of various bodies, which makes it difficult for people to know who to make their complaint to. This direction would provide clarity for complainants, increase efficiency and ensure prompt intervention in serious issues.</p> <p>The main focus of this direction will be to remove the overlap in the complaint process between the current Director of Local Government and the Integrity Commission.</p>

7. Council Performance Reporting

Performance reporting is another element of accountability. When monitored, measured and publicly reported, it has the capacity to enhance transparency and to drive improvement by, and within, councils. Performance monitoring and reporting increases awareness and accountability on public spending and decision-making and encourages performance improvements. It is a means by which the public can hold the council accountable against its own strategic plans and performance, including financial performance.

⁶ <https://www.legislation.sa.gov.au/LZ/C/A/INDEPENDENT%20COMMISSIONER%20AGAINST%20CORRUPTION%20ACT%202012/CURRENT/2012.52.AUTH.PDF>

Performance data can help inform councils in their planning decisions and service delivery. Useful data that is collected and presented in meaningful ways can allow comparisons between year-to-year performances of individual councils, as well as comparisons between councils. Consistently reported performance data, across councils and performance areas, is beneficial to both councils and the community. One example is Victoria's 'Know Your Council' online council performance information portal, which provides for easy comparison of council performance against key performance indicators.

Key Issues Raised

Financial and strategic planning documents are difficult to understand, do not provide clarity on service delivery and offer little value to the community. This information should be more meaningful, easier to understand and readily available (for example, published on council websites).

Greater transparency in budgets and financial information is required through financial reporting.

Increase transparency in council activities by requiring standardised performance reporting that focuses on the outcomes councils have delivered.

The strategic planning process should include a review of the current services a council is delivering, assessing the value of the services as well as the cost to ensure financial efficiency.

Access to meaningful and clear information on the services councils deliver.

Councils need to be accountable to the community for progress against their long-term plans.

Greater controls are required on council performance and accountability.

Access to consistent, reliable and user-friendly reporting that can be compared across councils. Data should be publicly available to enable benchmarking and continuous improvement.

An online reporting platform for local government performance assessed against key performance indicators, rather than simply through traditional annual reports.

Reform Directions

The following proposed Reform Directions aim to address the issues raised during consultation by introducing publicly available reporting measures that strengthen local government accountability and performance.

Area	Reform	Details
Performance Reporting Framework	44. Introduce a local government performance reporting framework	<p>There is already significant information and reporting on and by councils, but it is sometimes difficult to access and is not well consolidated. This direction would more clearly set a performance reporting framework that seeks to consolidate and make better use of existing data and information. It should reduce the reporting burden for councils, while improving public access to information.</p> <p>The reporting framework would also use existing key performance indicators as a basis for reporting, but have capacity to have additional key performance indicators over time where it is agreed the data required can be captured, and provides meaningful value to councils and the community.</p>
	45. Require councils to publish a compliance statement in the Annual Report	<p>Councils have a range of statutory obligations to meet but there is no clear reporting in all instances that they have met these obligations. This direction would require a general manager to sign-off and account for the council's compliance obligations under the Act and some associated legislation, and report to the community a formal attestation that council's compliance obligations have been met. By requiring such an attestation, it will drive a culture in councils of checking that they have indeed met their statutory obligations.</p>
	46. Remove prescription around Annual Report	<p>A council's Annual Report will still remain a key reporting mechanism, consistent with the requirements for other public entities. However, some of the current provisions for what is required to be reported are outdated. Future requirements for Annual Reports will reflect the directions, particularly what a council determines through its Community Engagement Strategy.</p>



Major Reform Areas

Part E: Adaptable Councils



8. Collaboration

As the closest level of government to the community, councils are in a unique position to identify community needs and make sure that those needs are met in the most appropriate and sustainable way. Communities value their councils for their capacity to adopt different approaches and solutions to meet the community's needs and priorities.

Contemporary councils need to be adaptable to change, including the capacity to collaborate with other councils, to deliver high quality and value-for-money services for their communities. Flexible approaches to collaboration are required to make it easier and more cost effective for councils to deliver outcomes for their communities, without stepping through unnecessary and time-consuming processes.

Key Issues Raised

It can be difficult for smaller councils to fund the same level of administrative support services that are available to larger councils, which may impact the service delivery and administrative costs on that municipality.

Increased use of shared service arrangements to improve service delivery and lower administrative costs.

Consideration of scale and scope of services and compliance standards, and councils' capacity to deliver.

Councils should place a greater focus on local needs and issues to deliver services that directly benefit local communities.

Reform Directions

The following proposed Reform Directions aim to address the issues raised during consultation by creating mechanisms that foster collaboration between councils.

Area	Reform	Details
Collaboration across councils	47. Introduce provisions that support efficient and high-quality council operations and collaborative shared service opportunities	<p>Councils are already engaging in various formal and informal collaborative service delivery models. The legislation should provide the flexibility for councils to collaborate and work across council boundaries to deliver outcomes for their communities, recognising that different communities want different things. This direction would seek to remove any legal and administrative barriers to collaboration across councils, such as concerns regarding the extent delegations can be given and exercised.</p> <p>Legislation would also provide the power for two or more councils to be serviced by one administrative organisation. Such flexibility is likely to be necessary for the sustainability of small councils. In particular, Latrobe and Kentish Councils have in practice adopted this model, and it is important that the legal framework allows such innovations to occur.</p>
	48. Introduce the option to create Regional Councils	<p>A 'Regional Council' would be able to be established to incorporate a number of individual 'local councils'. A Regional Council could be established through a Local Government Board review (the current mechanism for structural change), or as a result of the voluntary decision of a minimum of two councils to collaborate in such a manner. A Regional Council would be supported by a general manager and staff, with the individual local councils being serviced by one administrative organisation. The Regional Council would be responsible for region-wide planning and service delivery. Local councils would retain some local decisions and be the primary advocates for their communities to inform decisions made by the Regional Council. The Mayors of the local councils would be members of the Regional Council, with additional members to be determined by the respective local councils.</p> <p>A Regional Council would represent the strongest collaboration model that does not involve amalgamation.</p>

9. Model By-Laws

Councils have a range of important responsibilities in regulating social, economic and environmental activities within their local communities. Councils do this in their own right (for example, when making by-laws) or as a statutory authority empowered by State legislation.

Councils have the power to make by-laws, a form of subordinate legislation, to regulate local activities such as public parks and the environment, on-street parking, waste management and street dining. To make a by-law, a council must determine whether it is in the public interest to do so, which includes a public consultation process. Councils must release a Regulatory Impact Statement (RIS) for public consultation before making a by-law. A Regulatory Impact Statement states the nature and intent of the by-law but primarily looks at how the regulation would impact on competition and business, and its costs and benefits.

Key Issues Raised



Councils do not always sufficiently engage with relevant State Government agencies when making by-laws, which can lead to overlap and duplication. While State legislation will always override by-laws, duplication or overlap can create unnecessary confusion and frustration for the community.

The inconsistency in by-laws that are made to regulate the same issue, results in rules that can be slightly different in each municipality.

Some councils manage similar issues without by-laws, raising questions as to whether additional regulation is necessary.



Streamline by-law powers. Greater consistency across all councils on common by-laws would positively impact community awareness and compliance.

Disparity on common issues creates confusion, particularly for people operating businesses or living and working across multiple municipalities.



Reform Directions

The following proposed Reform Direction aims to address the issues raised during consultation by establishing model by-laws on the common issues that councils regulate.

Area	Reform	Details
Consistent By-laws	49. Create model by-laws for common issues, with streamlined administrative processes	<p>A model by-law would be subject to a rigorous assessment process and once approved, any council could adopt the model by-law without the need to go through the assessment process again. Councils would simply need to consult with the community on any municipality-specific issues before adopting the final by-law. For example, there could be a model public places by-law with common features, but a council would need to consult on where the by-law would be applied in its municipality.</p> <p>This would significantly reduce the administrative process councils must go through in developing by-laws and create greater State-wide consistency.</p> <p>Councils would retain the power to create their own bespoke by-laws if they so desire, but would need to go through the full Regulatory Impact Statement process, and be able to adequately justify the need for creating such a by-law.</p> <p>Consideration will also be given to aligning by-law processes with those that apply to State legislation.</p>



Strategic Reviews



10. Local Government Board

Currently, the Minister may convene the Local Government Board (the Board) to undertake an independent review of structural issues, including but not limited to: municipal boundaries, councillor numbers, the combining of two or more municipal areas, and any other matter the Minister may request.

It is proposed to retain the Board and introduce flexibility into the review process by removing prescription around nominations for membership of the Board and streamlining administrative processes to improve efficiency. The membership would be determined by the Minister, however must still include a member with significant local government expertise.

The current power that the Board holds to review the operation of a council would be removed, as this duplicates responsibility with the Director of Local Government's role. This will make it clear that the Board's focus is on strategic matters. The Minister would retain the power to convene the Board to undertake any strategic review at any time.

Key Issues Raised

The current make-up of the Local Government Board is heavily prescribed.

Some of the current functions of the Local Government Board duplicate functions of the Director of Local Government and can confuse the lines of responsibility.

The Local Government Board is responsible for undertaking structural reviews of the sector and making recommendations to the Minister for change. The tools and options available for structural change are currently limited.

Some of the administrative processes for the Local Government Board can be time-consuming and unnecessary.

Reform Directions

The following proposed Reform Directions aim to address the issues raised during consultation by shifting the focus of the Board to the review of strategic issues and streamlining processes for efficiency. The Board would remain an independent body, appointed by and reporting to the Minister directly.

Area	Reform	Details
Local Government Board	50. Strategic reviews of councils	<p>The Local Government Board will be retained, to be established and directed by the Minister to undertake strategic reviews of local government. The Local Government Board must contain a member with local government expertise but otherwise will be at the discretion of the Minister, allowing for appropriate persons with relevant skills and expertise to be appointed depending on the subject of the review.</p> <p>The Local Government Board must, at a minimum, undertake</p> <ul style="list-style-type: none"> • a review of councillor numbers and allowances every eight years, or two election cycles; and • a review of the 'State of the Sector' every five years. <p>The Local Government Board would no longer be able to review the operation of a council as its focus would be on local government sector strategic issues. Operational reviews would be carried out by the Director of Local Government as appropriate under the oversight and intervention framework.</p>
	51. Voluntary amalgamation	<p>A voluntary amalgamation will be able to occur, without the need for a Local Government Board review, if it is requested by two or more councils. If councils have undertaken a significant body of work to develop a business case on their own initiative to explore amalgamation options, they should be able to proceed without an additional report from the Local Government Board, which is time and resource intensive.</p>

Consideration of other key issues raised

Many issues were raised during consultation for consideration in developing potential reforms. These issues were reviewed and considered, and responses informed by research and advice. Following this process, it was determined that some issues would not be put forward as potential reforms. These areas and the rationale for why they have not been included is provided below.

Mandatory Councillor Training	<p>The option to introduce mandatory training was considered, however it is not proposed to mandate councillor training at this point. Mandatory training is not supported by the local government sector. However, the directions include proposed mandatory candidate training and the requirement for councillors to report professional development against set core competencies. The Minister will also retain the option to issue a Performance Improvement Direction to specific councils or councillors where it is needed.</p> <p>The exception to not implementing mandatory training for councillors, is that mandatory training for councillors in their role as a Planning Authority will be required.</p>
Maximum Councillor terms	<p>Limiting councillor terms was considered undemocratic and inconsistent with other levels of government and local government in other jurisdictions. The councillor turnover rate at the 2018 elections was around 40 per cent, indicating at a broad level that a reasonable balance between councillor renewal and stability is being achieved, without the need to set maximum terms.</p>
General Manager Performance and Contracts	<p>Requiring an independent provider to aid councils in the recruitment, performance management and contract management for general managers was considered. It was determined that there were alternative methods to achieve greater consistency, remove conflicts of interest, and have these processes professionally and objectively managed, without mandatorily imposing on councils the cost of an independent provider on a regular basis. Many councils voluntarily use the services of independent providers to manage general manager recruitment, performance management and contract management, but the cost for a number of smaller councils is often significant to regularly use these services.</p> <p>The Minister will retain the power to specify the principle and processes governing the selection of general managers and the monitoring of their performance by the council.</p>
Electronic attendance at council meetings	<p>It was considered and determined that the status quo would remain. In-person attendance is required at other levels of government when making publicly open decisions (in parliaments) and there is no compelling argument to support it in local government. Leaves of absence are available for councillors who cannot attend meetings.</p>
Compulsory Voting	<p>While there was a good level of support for compulsory voting, it was not enough to demonstrate that the majority of the community support this approach. Tasmania's local government elections already attract a high voter turn-out compared with other jurisdictions, and therefore the potential marginal increase in votes that compulsory voting may achieve is not considered enough justify the increase in the cost burden placed on the community.</p>
Clarity between role of the general manager and the council, especially the mayor	<p>A significant amount of work was undertaken on this issue during the Targeted Review of the Act and amendments were made in 2017. The Act is very specific about the functions of mayors, deputy mayors, councillors and general managers. The Act provides for the Minister to clarify the functions of mayor by order, as the Minister considers appropriate. In addition, the Minister, by order, may clarify the functions of general managers by specifying matters, or classes of matters, that are operational or administrative in nature and so are to be performed by general managers. These orders would apply to all councils.</p> <p>Effective working relationships require professionals to work collaboratively together, and this is the principle that should guide the working relationship between the general manager and the elected members. No further changes are proposed given this context.</p>

Out of Scope Issues

The following issues received significant comment during Phase I of the Review, even though they were out of scope.

Council's Role as Planning Authority

Consultation highlighted the inherent conflict in a council's role when acting as a statutory planning authority with a councillor's role in representing their communities. As councillors, elected members represent the community's views on issues and in council decision-making. When sitting as a planning authority, councillors cannot represent community views as they must make decisions strictly in accordance with the planning scheme. The planning authority can only consider community views (via representations) that relate to particular elements of the planning scheme. Where a council exceeds this scope of authority and determines an application on the basis of community feedback or sentiment rather than planning considerations, the decision is usually overturned when appealed to the Resource Management and Planning Appeal Tribunal, which can be costly to the council and ultimately the community.

Some councillors also raised concerns that the limitations on their ability to consider the community's views when making planning decisions was not well understood, making it difficult for them to manage community expectations.

This inherent conflict has arisen in other jurisdictions, resulting in a number of different models to assess planning applications.

There remains strong support for the planning scheme, strategic land use planning and policy development to remain with councils. It is the council's role in making planning decisions on development applications that has arisen as an issue during this Review, where there is some sentiment that this function could be removed from councils.

Further issues that have been raised include:

- A council's capacity to make objective decisions as the planning authority when considering applications where the council is also the developer. Some councils recognise this inherent conflict and attempt to manage it through contracting out these applications for assessment to an outside planning consultant (sometimes in another council). While direction 34 seeks to deal with this, some of the consultation feedback argued that an independent planning authority or arbiter is needed for such cases.
- The potential lack of quorum that can occur if several councillors declare a conflict of interest when a planning matter is being considered and step out of the meeting. This can have implications on the ability of council to meet its statutory timeframes, under the *Land Use Planning and Approvals Act 1993*, to assess and determine a planning application.
- Significant regional developments that can result in cross-council implications, but only one council makes the decision.

Response

The role of councils sitting as a Planning Authority is administered under separate legislation – the *Land Use Planning and Approvals Act 1993*. The matters raised during the initial consultation phase of this Review need to be considered within the broader context of the planning framework.

The Minister for Planning will consider the matters raised.

Amalgamations

A number of submissions and stakeholders advocated for fewer councils in Tasmania. The Government's position is no forced amalgamations. Structural reforms, particularly amalgamations, were specifically out of scope for this Review.

Response

Structural reforms outside of forced amalgamations have been considered, and the directions set out new ways that councils can work together to achieve significant benefits for communities across current council boundaries.

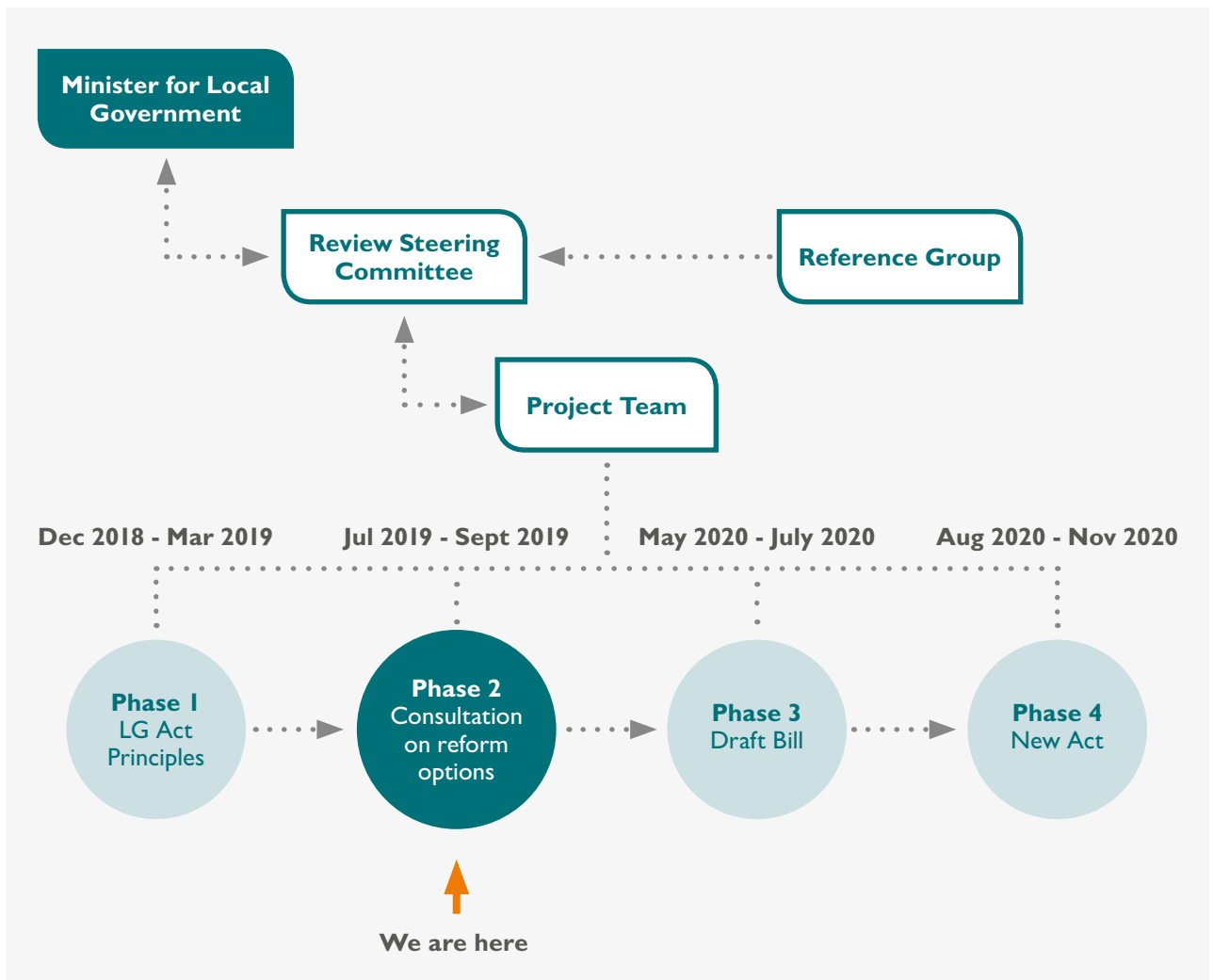
Review Process

This Reform Directions Paper is the second consultation phase in the Review which commenced in December 2018 with a Discussion Paper on the principles that should underpin a local government legislative framework.

The Discussion Paper was open to the public for submissions between 7 December 2018 and 1 March 2019 and received 382 submissions from the public, the local government sector and other interested stakeholders. Submissions can be viewed on the Review webpage at: www.dpac.tas.gov.au/lgreview

The proposed Reform Directions seek to address issues raised during Phase 1 and have been informed by feedback, submissions, research and practice in other jurisdictions.

Submissions and feedback received on the Reform Directions proposed will be provided to Government in late 2019 and will inform the legislative drafting process. The Government will consult further on the resulting draft legislation in 2020.





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