



Helen Burnet MP
Greens Member for Clark

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The Honourable Kerry Vincent MLC
Minister for Local Government
Legislative Council
Parliament House
Hobart 7000

By email: kerry.vincent@parliament.tas.gov.au

Tasmanian Parliamentary Greens Response to the Local Government Review


Dear Minister Vincent,

Thank you for the opportunity to respond to the latest paper on local government reform.

At the outset, the Greens recognise the significant work undertaken over many years through the Local Government Legislation Review and Future of Local Government Review and acknowledge the work of the Board and others involved.

It has taken a considerable amount of time for these reviews to be progressed. While it is good to see reforms take shape, it is important that the reforms are done right.

Local government is the closest government to the people and community they represent, and the public has the right to expect good behaviour from their elected representatives and local government sector.

Whilst we recognise the purpose of these reforms, and acknowledge they must start somewhere, it is regrettable that the first two reforms being progressed are punitive in nature and tone. Given the significant delay in commencing reforms, it may have been better to start on more positive and empowering areas of reform.

Included in these proposed reforms are significant examples of powers and decision-making being vested in the Director and Minister. The Greens do not

believe that this is justified in all circumstances but rather as a last resort when all other avenues of repair fail.

We are concerned that these reforms may signal a shift towards more frequent intervention and fail to recognise that serious poor behaviour is the exception, and not the norm. In this context, the Greens are of the view that the bill should avoid provisions that allow for further requirements to be imposed on Local Government without appropriate oversight (for example, disallowance provisions).

We acknowledge the limitations of the current Act. For example, whilst it allows the Director to investigate complaints, when frivolous and vexatious complaints occur, they can undermine the intent of the processes and legislation.

It also must be acknowledged that this Government has increasingly been wading into political criticism of councils and councillors.

In this context, vesting powers in the Minister and public servants directly answerable to the Minister creates a risk of action being taken, or perceived to be taken, for political purposes.

The Greens submit that provisions should be introduced that provide that some of the powers of the Director of Local Government are not subject to Ministerial direction, and that some of the proposed Ministerial powers (including appointment of Temporary Advisors and issuing Performance Improvement Directions) be powers of the Director instead.

The Greens are also concerned about the mandatory nature of learning modules, and overly prescriptive universal requirements. This is heavy-handed and somewhat patronising.

Instead, we are of the view that, to address many of the issues raised such as education, standardised reporting and audit processes for councils, the Local Government Association of Tasmania (LGAT) should be funded and empowered to develop and provide learning programs and resources, templates, and model rules. These should also specifically allow for regional differences and recognise that some councils will have more resources than others.

Other Matters

There are several matters not directly covered in this discussion paper, that nevertheless should take priority sometimes over other reforms listed:

- A clear focus on reducing corruption in local government, which could include a Register of interests to clarify councillors' property interests and to clarify any pecuniary and conflicts of interest.
- The Government's broader agenda for planning, including the proposal to provide an alternative assessment pathway using Development Assessment Panels, serves to undermine the autonomy of Local

Government. The Greens believe that empowerment of the community rather than weakening their say in planning is fundamental to maintain Tasmania's robust democracy.

- The Greens strongly oppose a mandatory amalgamation process, and encourage the Government to not pursue this in the later stages of reforms.

Other reforms that could be pursued to strengthen Local Government include:

- The Local Government sector's call for recognition in the Australian Constitution – to provide greater clarity in roles and relationship between other tiers of government and the community.
- Strengthening civics programs in school and colleges, that include the role of local government, should be on the agenda of the Tasmanian government.

The review paper outlines 11 strategic priorities to be progressed through this process. Our response to these priorities. Comments and recommendations on each reform proposed in this paper is outlined below.

1. Legislating the good governance principles

The [Good governance in Local Government guide](#) contains very sound principles, and the Greens support using this document as a basis for council standards.

However, it needs to be recognised that the capacity of some councils is limited – they may not have the resources or knowledge required to implement these principles in a timely way. While the production of interpretive material by the Government is welcome, additional resourcing for councils would also go a long way to ensure the transition to the new Act is manageable for some councils.

The Greens also submit that good behaviour starts at the top. While this review has focused much on councillor behaviour, many of the standards and complaint avenues proposed are not available at other levels of Government.

The Government should be cognisant of the standards they expect from others when considering proposals to improve oversight of Members of Parliament, such as the long overdue Integrity Commission reforms.

Recommendations:

- a) The Government should ensure that smaller councils are provided with additional resourcing to meet new and changing requirements introduced by these reforms.

2. Introducing serious councillor misconduct provisions

From the outset, it should be acknowledged that there are only a handful of Councillors who behave poorly. It is important that legislation provides a standard of behaviour, as well as avenues to address behaviour. It should be designed in a manner that does not restrict free and fair debate.

It is important to recognise that legislation alone won't entirely prevent poor behaviour. Reforms must be backed up by commensurate funding and training.

The discussion paper outlines that only the Director will have the power to refer serious misconduct to TASCAT. However, it is not clear what the pathways way for a complaint to be referred to the Director of Local Government. It should be made clear who can refer, and in what circumstances.

Provisions should also be drafted to make it clear that several of the functions of the Direction are not subject to the direction of the Minister, including the serious misconduct provisions, on similar terms to section 7(2) of the *Tasmanian Planning Commission Act 1997*.

The serious misconduct provisions should not be introduced in a vacuum. The current code of conduct process can see poor behaviour go unremedied, can often take a long time to reach an opinion, and can make poor use of available sanctions. Provisions to prevent vexatious complaints through the code of conduct process should also be tightened.

The complaints process should also be designed to prevent duplication with existing avenues. For example, provision should be made to ensure that if conduct would best be addressed under the *Work Health and Safety Act 2012* or the *Anti-Discrimination Act 1998*, investigation of the same matters is not duplicated through a local government complaints process unless good reason for this can be demonstrated.

Consideration should also be given to allowing the results of a process under other Acts to be actionable under Local Government processes without the need for further or concurrent investigation.

Recommendations:

- b) It should be made clear who can refer complaints of serious misconduct to the Director, and in what circumstances this can occur.
- c) Provisions should be included, on similar terms to section 7(2) of the *Tasmanian Planning Commission Act 1997*, that the Director is not subject to direction of the Minister in relation to serious misconduct referrals, and other matters related to the investigation of complaints against councillors.
- d) Further work should be done on existing code of conduct provisions, including consideration of introducing or tightening statutory timeframes for processing, and mechanisms to prevention of frivolous and vexatious complaints.

- e) Provision should be made to prevent duplication by prioritising or leveraging complaint or investigation process under other legislation, unless good reason for a duplicate process can be demonstrated.

3. Broadening performance improvement direction provisions

The Greens support improving the Performance Improvement Direction process. However, we are of the view that this power should not be vested in the Minister.

Instead, the Greens believe that the powers should be vested in the Director.

Recommendations:

- f) Powers to issue a Performance Improvement Direction should be vested in the Director, rather than the Minister. These powers should not be subject to Ministerial direction, consistent with recommendation 3.

4. Introducing temporary advisors for councils

The Greens are of the view that the introduction of Temporary Advisors should be approached with caution, and that avoiding an adversarial approach should be a priority in considering the deployment of them.

The legislation should make it clear that their purpose is to avoid more heavy-handed interventions. It should also be clear that they are not to be used in circumstances where there is a subjective difference in opinion on appropriate governance, and only in circumstances where there has been an objective breach in a material duty.

The Greens note that the State Government currently has record levels of deficit. For good or for ill, in a democracy, it is the electors who make decisions about the acceptability of subjective governance practices when they cast their ballot.

Temporary Advisors should be appointed by the Office of Local Government, rather than the Minister, and this power should not be subject to Ministerial direction.

The legislation should also make it clear in which circumstances the appointment of a Temporary Advisor should, and should not be, considered.

In circumstances where the purpose of the appointment is to support new Councils, this should only be able to occur if requested by the council. Furthermore, in these circumstances the Council should have the final say in who the appointee is – or at a minimum have a veto power.

In circumstances where the appointment of a Temporary Advisor is not at the request of a Council, the Council should at least be consulted about a proposed appointee.

Recommendations:

- g) The principles for when Temporary Advisors should be appointed should be clearly spelled out in the legislation. Emphasis should be placed on their purpose being to prevent more heavy-handed intervention. It should also be clear that they should only be used in circumstances where there has been an objective breach of a material duty.
- h) Temporary Advisors should be appointed by the Office of Local Government, rather than the Minister, and this power should not be subject to Ministerial direction, consistent with recommendation 3.
- i) In circumstances where the purpose of the appointment of a Temporary Advisor is to support new Councils, this should only be able to occur if requested by the council.
- j) If a Temporary Advisor is being appointed on request of a Council, the Council should be actively involved in determining the appointee. In other circumstances, the Council should be consulted before an appointment is made.

5. Clarifying work health and safety obligations

The Greens support simplification of information for Councils and Elected Members as to their obligations under *Work Health and Safety Act 2012*. Current ambiguities must be addressed, particularly regarding responsibilities.

Whilst we have no additional recommendations specific to this priority, we emphasise recommendation 5 as relevant to this priority.

6. Mandating council learning and development obligations

Local Government, arguably more than any other level of government, involves people from all walks of life that are thrust together to make decisions for their local community. The Greens believe in and also welcome diversity in local representation as fundamental in a functioning democracy.

Whilst there are, and should be, many learning and development opportunities, there should not be a mandatory pre-requisite for people nominating for council elections.

Rather, information on the roles and functions of the position should be available for those interested in standing, with training materials either available online or in person.

The Australian Local Government Women's Association (ALGWA) has run education campaigns before local government elections for women, and supporting other programs aimed at improving diversity should be a priority for the state government. Pathways to Politics and information from LGAT and the Tasmanian Electoral Commission have also been useful explainers.

However, there is an expectation that once elected, councillors should have the tools available to undertake their roles, to represent their community, and to understand their rights and obligations.

Skillsets of councillors will vary, as will individual circumstances and learning preferences.

In some circumstances where a representative has materially breached their duties, it may be appropriate for training and development to be mandated, particularly where a lack of knowledge or experience may have contributed to that failing.

Recommendations:

- k) There should be no mandatory training for candidates but supported information sessions available for those nominating for election.
- l) While greater investment should be made in training and development for councillors, participation should not be mandated except in circumstances where there has been a material breach of duties, and a lack of knowledge or experience may have contributed to that breach.

7. Introducing a contemporary role statement and a charter for local government

The Greens question the benefit of both a contemporary role statement and charter. Each Council already develops then adopts strategic plans. These should cover the aims and goals of the council according to its elected representatives and guided by council staff.

It is no secret that some conservative commentators have views about the role a council should be limited to. We are very concerned that this proposal is a mechanism to impose this ideology across all councils.

The contemporary role statement and charter for local government is unnecessary. Rather, the Greens believe that strengthening strategic outcomes should be achieved through a as a central repository of information – particularly for the benefit of smaller councils with limited capacity.

Recommendations:

- m) That a contemporary role statement and a charter for local government be abandoned, and focus instead be put on empowering all councils, especially poorly-resourced councils, by providing more resources and information to assist with strategic planning through an adequately resourced LGAT.

8. Improving the strategic planning and reporting frameworks

By virtue of recommendation 13, we do not support the proposal to tie strategic plans to a charter.

Regarding the proposed additional planning processes, we note the resource constraints of many councils. Any new reporting and planning requirements should be drafted in a way that, as far as practicable, minimises additional burden on council, and should be accompanied with appropriate supports through the Local Government Association of Tasmania (LGAT).

There should also be appropriate statutory timeframes for reporting.

Recommendations:

- n) Ensure that new strategic plans and reporting requirements are designed in a way to minimise burden on councils, and are required to be undertaken within a statutory timeframe. LGAT should be resourced to provide support for councils that require assistance.

9. Improving consistency in data collection and reporting methodologies

Data consistency is an ongoing desire of the local government sector. However, this could be a huge undertaking. For example, the life or depreciation of assets are measured differently from council to council.

It should also be recognised that capacity will vary significantly from council to council, and the requirements will need to be realistically achieved by the least resourced councils.

Recommendations:

- o) Any standardisation of reporting requirements should be based on the capacity of the lowest resourced councils, and an appropriate lead in time for these changes would need to take place.

10. Enhancing transparency of information in council rates notices

The Greens question whether this is a high priority for local government reform. It may come with significant cost to councils depending on the abilities of existing software.

This information regarding the percentage spent on specific areas could more appropriately and realistically be made available in the Annual Report in standardised format.

In any case, if the state government wants to impose this requirement on councils, they should be willing to pay for the associated costs.

Recommendations:

- p) Consideration should be given to this information being provided in the annual report, rather than rates notices. If the Government does pursue this requirement, they should be willing to pay the associated costs.

11. Mandating internal audit for councils

The Greens support robust audit functions, which provide the checks and balances that are useful to build and maintain community trust. This should extend to environmental, social, financial and economic accountability.

Tools such as templates, or regional programs such as the council mitigation and adaptation audits undertaken by the Southern Tasmanian Councils Authority's Regional Climate Change Initiative can help make this work more achievable and meaningful.

The emphasis should be on capacity building and providing resourced and tools to assist councils.

Recommendations:

- q) Audits should encompass environmental, social, financial and economic matters. Results and undertakings should be reported in Annual reports or websites, and standardised tools should be available through a properly resourced LGAT.

Concluding remarks

The Greens look forward to reform that will benefit local communities, by improving governance and equipping councillors with resources to undertake their roles and to fulfill their obligations. Any reform must be realistic, and should provide resources and advice through LGAT for councils with less capacity to undertake any onerous requirements from government.

The Greens believe that if there are any targeted amendments to the *Local Government Act 1993* or any draft legislation adequate time must be provided – 8 weeks for community and sector feedback. This legislative reform process has already taken a long, long time, and there is no need to rush through the final stretches.

Yours sincerely,

A handwritten signature in green ink that reads "Helen Burnet". The script is cursive and fluid, with the first name "Helen" and the surname "Burnet" clearly distinguishable.

Helen Burnet MP

Tasmanian Greens Spokesperson for Local Government