



Targeted Review of the Local Government Act

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Introduction

The Local Government Association of Tasmania (LGAT) is the representative body of Local Government in Tasmania. Established in 1911, the LGAT is incorporated under the *Local Government Act 1993* with membership comprising the 29 Tasmanian councils.

The objectives of the Association are: -

- To promote the efficient administration and operation of Local Government in the State of Tasmania;
- To watch over and protect the interests, rights and privileges of municipal Councils in the State of Tasmania;
- To foster and promote relationships between Local Government in the State of Tasmania with both the Government of Tasmania and the Government of the Commonwealth of Australia;
- To represent the interests of the members of the Association generally, and in such particular matters as may be referred to the Association by its members; and
- To provide such support services to the members of the Association as the Association may by resolution in meeting determine.

General Comments

This paper has been developed following collaboration with member councils via submissions, meetings and forums. However, given the nature of the review and the different stakeholders encompassed within the LGAT Membership, it has been difficult for councils to develop formal consensus views. Accordingly, officers and Elected Members have been encouraged to make individual submissions. Any omission in this submission of comments that councils have made directly should not be viewed as lack of support by the Association for that specific issue. Where councils or particular stakeholders are not in agreement on a particular aspect of the policy or implementation guide, this is reflected in the text.

Specific Comments

Don't throw the baby out with the bathwater

There has been consistent feedback from LGAT Members that the legislation should not be amended to deal with specific issues, such as those that have triggered the two Boards of Inquiry in the south.

Most have seen it as critical that the contemporary board style of governance is retained with a clear divide between the strategic (councillors) and operational (staff) components of council activity.

It was also seen as important by many, that the Act remain sufficiently flexible to deal with a range of contexts and it was noted that increasing rigidity might expose more issues rather than reduce issues in council governance.

Improved guidance

Finally, it was seen as important that there be an increased focus on guiding appropriate processes and behaviours but that this did not necessarily need to sit within the legislation itself. It was noted that use of guidelines may improve transparency on some matters, such as allowances and expenses.

Addressing the Questions

Role of the Mayor

Q1 What should the leadership role of the mayor include?

A few suggestions have emerged but in general there is not a strong desire for change in respect to the role of the mayor. Further a number of responding councils declared that defining the role would not necessarily provide for better outcomes.

Specifically there was some support for the 6 functions listed with the exception of attendance at all committees, which can be very time consuming for the large council mayors.

It was felt that there would be benefit from clarifying the role of 'spokesperson' but not agreement on what the role should be with some suggestion the mayor should only be representing the views of the council and others suggesting that the mayor is a community advocate and should have the right to express a personal view.

The leadership role of the mayor was seen as particularly difficult in the absence of either powers or guidance. It was suggested that some guidelines from the Director or Office of Local Government would be better than a change of provisions but these guidelines would need to have some weight under the Act.

It is seen as particularly problematic to undertake the functions relating to overseeing the performance of other councillors without any powers to direct them. One council suggested that providing the mayor with the capacity to refer matters to the Code of Conduct panel without becoming a complainant might allow them to better oversee the performance of councillors.

At least one council identified that further legislating the role of mayor could lead to a greater potential for disharmony within the council, particularly when there are strong personalities involved.

Q2 What should the requirement for the mayor to liaise with the general manager include?

Again, there was not a clear consensus position across the sector. Some felt that the Act is quite clear in the requirement to liaise but maybe guidance and specific examples of interactions would be a better approach than specifying a particular style or frequency. The act of meeting in itself does not necessarily resolve any difficulties between the two parties. One council suggested that the requirement around liaison should be outcome focussed such as "should liaise as required to ensure optimisation of the organisation".

As put by one council, "a functioning professional working relationship requires the parties to communicate and work together. The existing provisions provide the appropriate framework...making the Act more prescriptive will not necessarily solve any perceived or real problems".

Q3 Should mayors be required to undertake induction and training, particularly in the development of leadership skills?

There is broad support for introducing this requirement but no commentary on how and who should deliver such training and penalties for non compliance. LGAT notes that while we offer training, there would be resourcing difficulties in relation to offering it across a range of dates to accommodate all mayors. There is a need for State Government investment in online and face-to-face training. It was noted by one council that previously mayor's had been required to have had some exposure to council as a councillor before standing for mayor and this experience may have assisted leadership skills prior to assuming the role.

Any professional working relationship requires parties to communicate and work together and that legislating to fix specific issues, even a requirement to undertake training, may not cover all current or future issues.

It was also noted that as mayors are selected by the community, it is reasonable to assume leadership qualities exist. These can be further developed through offering professional development.

Q4 Should mayors be given a casting vote when decisions are tied, so that tied decisions are not automatically determined in the negative?

Generally there was not support for this, with the exception of planning matters which might reduce the risk of costs being awarded against council when by default, the council votes in the negative on a planning matter.

Q5 Should the provisions requiring a person to be both a mayor and councillor candidate remain?

The predominant view point was that this should remain but with an emphasis in the legislation that the mayor undertakes roles and functions as an individual councillor in relation to making decisions around the council table (and that aspect should be retained).

One council suggested there may be merit in holding separate elections such as is the model in South Australia and Geelong. The advantages perceived are a reduced potential for friction between the successful mayor and unsuccessful mayoral candidates. The risks perceived are a loss of skilled and dedicated councillors or a reduced pool of mayoral candidates.

Role of the Deputy Mayor

Q6 What should the role of deputy mayor include?

In addition to acting as mayor in the mayor's absence, it was suggested that the deputy mayor's role should be about supporting the mayor, sharing the role of mentoring new councillors and regular liaison with the mayor and general manager.

It was suggested that rather than use the word absent, the word unavailable be substituted to make it clear that the mayor may be unavailable from time to time for other reasons such as multiple events, illness, family and personal commitments.

Q7 Should deputy mayors be appointed by the council rather than popularly elected?

There was no consensus on this matter with some supporting the proposition of round the table election of deputy mayors, some against it and one suggestion that the mayoral candidate with the second highest votes after distribution of preferences become deputy mayor. However it was also noted that this might not provide the deputy mayor with the appropriate level of recognition or respect.

At the July 2012 General Meeting, LGAT Members considered a range of electoral reforms (many of which were introduced in 2014) and determined that a move to elected deputy mayors from around the table should not be supported.

The perceived advantage of election around the table is that it removes the requirement for a separate process for standing for mayor and deputy mayor but also does not compel someone to stand for mayor who is really only interested in deputy mayor (contrary the suggestion of 1st and 2nd past the post filling the offices).

Councillor Roles and Responsibilities

Q8 How should mayors fulfil their role of overseeing councillors in the performance of their functions?

Most of the suggestions related to guidance and best practice as opposed to legislative amendments. These included:

- Mayor has an open door policy
- Respect for all opinions around the table.
- Mayor to ensure councillors undertake induction.
- Development of communication protocols between mayor and councillors.
- Development of issues resolution processes with Code of Conduct as the final point.
- Mayors to work collegially with others.
- Informal get togethers from time to time.

It was also suggested that the performance of councillors be more specifically tied to the Code of Conduct provisions.

Q9 What protocols should councils develop to guide interactions between council staff and councillors?

There was general agreement that protocols could be useful but perhaps better suited to a council by council basis, involving all the processes. Further, any such protocols needed to be developed in a consultative way.

There was a suggestion that protocols be determined by the mayor and general manager and aligned with the Code of Conduct provisions and also that mayors and deputy mayors be able to contact managers directly.

Q10 Should elected members be required to participate in induction and professional development programs and, if so, what sort of training should they do?

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

General Manager Appointment and Review

Q11 What role should mayors have in relation to the appointment and performance appraisal of general managers?

Most councils agreed that the mayor should have the lead or chairing role in this process but this could be moderated in the event an external agency was used to undertake or lead the process.

Q12 Should the Act include principles for the selection, reappointment and performance appraisal of general managers?

The responses were fairly evenly split across no legislative change required verses support for inclusion of principles. A number of responding councils noted support for the concept but not support for it to be contained in the legislation. Instead it was suggested that a good practice guide or similar be developed to assist councils. Ultimately the contract was deemed as the appropriate place to put specific matters, not legislation.

It was suggested that the requirement to invite application in a daily newspaper s61(3) be removed.

Further, it was suggested that the general manager's responsibility under the *Work Health and Safety Act* should not include responsibility for councillors as the general manager is not responsible for them under the *Local Government Act*. Further, it was suggested that the Code of Conduct provisions might be enhanced to allow bully and harassment claims, involving elected members, to be better dealt with.

Role of the General Manager

Q13 What should the requirement for general managers to liaise with mayors include?

In general there was no support for amending the legislation in this regard as it was considered situationally specific. Ultimately the general manager and mayor should liaise as required to ensure optimal outcomes for and running of the council. Further changes were deemed to make the Act too prescriptive and doomed to failure where there were personality conflicts or breakdown in a working relationship. That is, legislative amendment would not be able to fix the identified problem.

Q14 What level of information should be provided to the council by the general manager?

Again, largely it felt the current provisions in the Act were sufficient. In a well functioning council this is not an issue and information is readily provided to council to assist in decision making. Providing further prescription may create an unnecessary compliance burden.

One specific suggestion to improve clarity was that *section 65* should be amended to make it clear that qualified advice is to be provided to council in an officer report to ensure decisions are not made without proper consideration.

Operational vs. Strategic

Q15 Is a council's organisational structure a strategic or operational matter?

While largely this was deemed an operational matter there was some support for the South Australian model of requiring consultation with council when determining significant change to the organisational structure. It was noted that it would be difficult to legislate for specific definition of strategic matters which can be context dependent – for example a change to organisational structure of the outdoor workforce may not be strategic in nature if it provides the ability to deliver the council asset management plans and service levels and is within budget.

Q16 Should the strategic matters that are the responsibility of the council and the operational matters that are the responsibility of the general manager be clarified?

While some councils expressed a desire to have better clarification of what constitutes 'day to day operations and affairs of the council' others suggested that such matters are almost impossible to define legislatively. Case studies and guidance notes may be a more appropriate mechanism.

Local Government Board

Q17 Is it necessary to have two separate bodies to perform the functions of conducting strategic reviews of and investigations into councils, or should the two be combined?

There was not support for change in this space, noting that the Local Government Board and Boards of Inquiry have distinct and different roles. Having said that the Local Government Board, largely because it has been inactive, is seen as ineffective and it was suggested that there be a review of the Local Government Board's roles and functions.

Q18 Can the processes for a Local Government Board review or Board of Inquiry investigation be improved?

Most councils did not make comment in relation to this question however it was noted that there may be benefit from strengthening and clarifying the investigative powers of the Board of Inquiry to ensure that any inquiry can proceed without questioning of process and procedures.

Q19 Are the potential outcomes of a review or inquiry sufficient? Or should the Act provide additional potential outcomes following an inquiry or review, such as the suspension or dismissal of an individual councillor?

A number of councils did not specifically comment on this issue however others noted that when dysfunction can clearly be attributed to an individual councillor that it would be reasonable that the Minister have the power to deal with that person specifically. This would limit the risk of disenfranchising a community by removing a whole council unnecessarily. Further it was raised by one council that there should be appeal rights provisions in relation to such sanctions.

Director of Local Government

Q20 Should the Director of Local Government have the power to summons councillors and council staff as part of his/her investigation?

There was no consensus on this issue with a number of councils suggesting no change is required and others noting that this seemed reasonable. One council noted that the Director should have the power to dismiss frivolous and vexatious complaints.

Q21 Does the Director of Local Government have sufficient power to enable him/her to support councils and councillors to practice good governance and comply with the Act (especially following an investigation)?

Generally it was felt the Act was sufficient in this regard and provided the Director with enough powers. Although, one council noted that further clarification may be beneficial but ultimately resourcing for the Director was critical in influencing ability to undertake the functions.

Sanctions

Q22 Should the Act contain a mechanism to dismiss a council and/or individual councillor following an investigation by the Director of Local Government?

This was not supported and it was strongly felt that this was a matter for the Minister, based on the recommendation of a Board of Inquiry. This highlighted the need to reconfigure the Board of Inquiry process to enable the Board to make recommendations in relation to individuals.

Q23 Should the Act provide a mechanism for more rapid intervention (such as a performance improvement order) in the instance where it is evident a council and/or individual councillor's performance is significantly impacting on the governance of the council and/or the service provided to the community?

There was general support for a timely resolution process but a lack of agreement on what form that should take. One suggestion was the issuing of performance improvement orders. Another was a stand down provision while the Director of Local Government undertakes the investigation.

Q24 Does the Act provide sufficient powers to suspend or dismiss an individual councillor for breaches of the Act?

Again there was division in responses but a slight majority suggested the powers were insufficient.

Q25 Do the penalty provisions in the Act need to be both increased and broadened to include other important sections of the Act?

There was no support for increasing or broadening penalty provisions.

Financial Management

Q26 Should councils be required to report to the Minister on the actions taken in response to the Auditor-General's findings on their financial statements?

Councils overwhelmingly indicated there was no support for this, noting they are already required to report to the Auditor-General and therefore this secondary reporting to the Minister is unnecessary and would likely lack the relevant context.

Q27 Does the Act provide for best practice in relation to keeping record of and reporting financial activities and transactions?

It is felt the Act provides sufficiently in this regard. No change is deemed necessary particularly given the recent (2014) amendments and the requirement to comply with the Australian Accounting Standards.

Q28 Has recent reform of Part 7 (Administration) and Part 8 (Financial Management) of the Act achieved the desired outcomes in relation to financial management and reporting?

Yes this is considered to be working well and is consistent with contemporary financial management. Any additional requirements in this regard should be subject to a cost benefit analysis as the compliance costs may exceed the benefits.

General Manager's Roll

Q29 Should the General Manager's Roll be retained in its current form, amended or abolished?

All responding councils supported retaining the General Manager's Roll but with a review of eligibility criteria to minimise the risk of misuse. It was suggested that this review would best be undertaken by the Tasmanian Electoral Commission.

Q30 If it is retained, should the General Manager's Roll be amended so it includes only Australian citizens or permanent residents living in the municipality, not non-permanent residents?

The General Manager's Roll should ensure fairness and inclusion and maximise potential participation in the electoral process.

At the July 2015 LGAT General Meeting, the following motion was carried by Tasmanian Councils: *That the Local Government Association of Tasmania urge the State Government to support the transfer of the administration of the General Manager's Roll to the Tasmanian Electoral Commission.* Further Members also agreed, via motion, that the *Local Government Association of Tasmania urge the State Government to review the eligibility for inclusion on the General Manager's Roll by reviewing the definition of occupier to better capture all citizens, inclusive of refugees and permanent residents living in a Local Government area.*

Q31 If it is retained, should the General Manager's Roll continue to include people who own or occupy a property in the municipality or are the nominee of a corporate body in the municipality?

Yes, these people do have a direct interest in the municipal area and should be able to vote in council elections.

Q32 If the General Manager's Roll is retained, should it be amended so a person cannot vote in their own right as well as on behalf of a corporate body in a single municipality?

There was majority support for the one vote, one value principle but it was not unanimous.

Q33 If the General Manager's Roll is retained, should it be amended so a person may only vote in one municipality, rather than in any municipality where they own or occupy a property?

There was NO support for such a change.

Election Advertising/ Donor Disclosure

Q34 Should electoral campaign advertising expenditure limits be abolished, retained or increased?

All agreed that limits of some form should be retained but a number of councils supported determining a basis for reviewing these in relation to future increases. A form of indexation was suggested.

It is worth noting that at the July 2012 General Meeting the following resolution was passed:

That the Local Government Association of Tasmania request that the Federal Government:

- *Review the current maximum thresholds set for Local Government candidate election expenses which it recognises as a legitimate deduction for income taxation purposes; and further,*
- *Consider the introduction of a suitable indexation mechanism to enable currency of the revised threshold to be maintained.*

That the Local Government Association of Tasmania urge the Australian Local Government Association (ALGA) to lobby the Australian Taxation Office to consider greater taxation relief for candidates who stand at Local Government elections.

It is also worth noting that should the spending thresholds be raised, that without a corresponding increase from the Australian Taxation Office in relation to what can be deducted, there would be a restriction on what many candidates could afford to spend.

Q35 Should there be restrictions on the donations local government electoral candidates are permitted to receive? If so, what should the restrictions include?

The majority of councils supported restrictions on donations, with limits that are reasonable in the context of spending limits. One council noted that because local government is largely not party based the context of donations is different and may lead to potential conflict of interest. As such they suggest that local government candidates should not be able to receive donations.

Q36 Should local government electoral candidates disclose who they receive election campaign donations from and the monetary value of the donations?

There was agreement that there should be full disclosure.

This echoes the decision made at the LGAT General Meeting in July 2015 where the following motion was carried by Members: *That the Local Government Association of Tasmania urge the State Government to support the expansion of the Local Government Act and Regulations to require candidates to disclose political donations.*

Further, it was also agreed by Members in October 2015 that: *That LGAT request the State Government to amend the Local Government Act and Regulations, consistent with legislation associated with the Legislative Council (Sect 162 of the Electoral Act 2004) to prevent donations to or expenditure by Local Government election candidates involving political parties which endorse and/or support that candidate.*

Q37 If candidates are required to disclose donations received, should there still be limits on campaign advertising expenditure?

It was agreed that irrespective of donation disclosure that limits on expenditure should be retained to avoid the 'buying' of an election outcome.

Q38 Should online electoral campaign advertising be included in the existing advertising regulations?

While generally it was agreed that online advertising should be included, at least one council suggested it would be too hard to monitor and that there would need to be clarification of what constituted advertising costs in this context. For example does this include data costs?

Q39 Should internet advertising be included in the expenditure limit (if there is a limit)?

Yes, if there is an expense incurred it should be included but note the comment above about clarifying what is included and how costs are determined. Certainly paid advertising should be treated in the same way as any other form of advertising.

Q40 Should an electoral candidate be able to name another candidate in campaign advertising?

Not without permission was the clear response.

Regional Bodies

Q41 Should the regional bodies have a common governance structure or should there be a flexible approach on how they operate?

It was agreed by the majority that there should be a flexible approach given the different roles and functions. One council did think there would be benefit from a common governance function, but in general there was little direction from responding councils with respect to the Regional Authorities. A few suggested the provisions in the Act around the establishment of joint authorities were sufficient.

In February 2015 LGAT raised with Members a range of issues relating to the current structures and functions of the regional bodies noting in particular that:

- LGAT is established under the *Local Government Act 1993* to represent the interests of councils in Tasmania; promote efficient and effective Local government and to provide services to our Members. LGAT is governed by an elected Board – the General Management Committee (GMC).
- Each of the three Tasmanian regions has established a body to represent the respective regional interests. The principle objectives and governance of these organisations is different.
- Each of the organisations has an important function in supporting the role and responsibilities of councils. LGAT provides a formal function for interaction between councils and the State Government whereas the regional bodies provide a voice and vehicle for activities on a regional scale.
- The CEOs of the organisations agree that there is a compatible and constructive functionality between them, however opportunities exist to improve the delivery of their services for the benefit of the councils.
- There is significant variance between the organisations scale, funding and governance arrangements as well as staffing and functions. Although common to the three regional organisations is a focus on regional cooperation and engagement, regional advocacy and regional development (in varying forms).
- Economic development has been a particular focus and is a potential strength, particularly in the north and northwest but overall role clarity is weak and there is a lack of consistency of approach.
- There is a new dialogue between the four local government organisations that has not previously existed.
- The State Government is focussed increasingly on economic activity but there is no longer a regional economic development role provided by the State Government.

- All four organisations (including LGAT) can be destabilised by Member withdrawal and must work in recognition of the financial pressures on councils.

At the LGAT Meeting Members noted the work being undertaken between LGAT and the regional authorities to clarify roles and responsibilities and identify opportunities to collaborate. Members also agreed to highlight issues for consideration in clarifying and enhancing the respective roles of the regional authorities but have struggled to coherently progress this.

Q42 How will legislative recognition and prescription of common over-riding functions add value to regional decision making? How will it add value to the sector as a whole?

It was not felt that legislation could add value in this regard.

Q43 What roles and functions of regional bodies should be specified in the Act?

Generally there was not support for prescription.

Red Tape

Q44 Are there any opportunities for reducing red tape in the Act to enable councils to more effectively govern themselves?

One suggestion was to amend the requirements under the Act to reflect that documents can be published on a council website or made available electronically.

Another suggestion was to amend Sections 28A to 28D in relation to information provision so that there was a single process to access information, which is already articulated in the *Right to Information Act*.

It was suggested that common standards and protocols used across councils with respect to areas such as access to information, allowances, credit card use, and building access would reduce duplication of effort and potentially support governance improvements.

Other

It is noted that some individual submissions have submitted possible changes to the Act which fall outside the broad scope of the review. For example in relation to councillor expenses, rates exemptions, online petitions and by-laws and the introduction of a Capital City Act. Some of these issues, if pursued under this review may need to be further tested with the sector more broadly.

There was also some commentary on the functions of councils under the Act, both with respect to economic development and health and welfare and the need to ensure manageable and realistic expectations on what councils can and cannot do. This issue may need further consideration depending on the outcome of feedback on the regional bodies.

The role of councillors in setting the strategic direction of the council was also raised noting that other than requiring the development of the strategic plan there is little to indicate how this is best achieved. It was suggested perhaps there should be some direction on the strategic planning process- even with regard to timing (e.g. within x months of a new council being sworn in).