

Review of Tasmania's Local Government Legislation

Terms of Reference

1. Context

On 26 June 2018, the Minister for Local Government, the Hon Peter Gutwein MP, announced a major review into Tasmania's local government legislation.

Local government has a crucial – and increasingly demanding – role in serving and representing local Tasmanian communities. The legislative and regulatory framework that governs the Tasmanian local government sector needs to reflect and support what communities expect from their local councils. It also needs to support councils to be able to meet these expectations now, and into the future.

2018 marks the 25th anniversary of the introduction of the *Local Government Act 1993* (the Act). The past quarter of a century has seen unprecedented social, economic and technological change. The role of councils and community expectations have expanded in line with these changes.

The Act has been amended and updated a number of times in recent years in an effort to keep pace in response to a range of emerging issues. A number of provisions have become outmoded or made redundant by more recent advances in telecommunications and digital technologies.

The current legislative framework has reached the point where continuous, reactive amendments are no longer desirable, efficient or sustainable. A fresh, contemporary approach is needed.

2. Objectives

The Review will deliver a contemporary, best-practice legislative framework for the Tasmanian local government sector which:

1. **Supports 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;**

2. Minimises the red tape and administrative burden on councils, business and the broader community;
3. Enhances accountability and transparency across the sector; and
4. Increases democratic and community engagement, participation and confidence in local government.

3. Guiding Principles

The new legislative framework for the local government sector will:

1. To the greatest extent that is possible and practical, be 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, business, and the broader Tasmanian community.

4. Scope

The scope of the Review will be broad, to ensure it is flexible enough to give due consideration to ideas and initiatives that emerge through consultation with the sector, other key stakeholders, and the Tasmanian community at large.

The Review will focus primarily on a new Local Government Act (or Acts) but will also identify any necessary consequential or supporting amendments to other Acts. The Review will seek to streamline and consolidate legislative provisions, as well as deal with anachronistic or legacy provisions that are no longer relevant to the core business of the local government sector.

The Review is to consider the following:

1. Appropriate legislation to support the transparent setting, levying, and collection of council revenue, rates and charges;
2. Local government electoral provisions, including options for enhancing both voter and candidate participation in local government elections;
3. Provisions that support efficient and high-quality council operations and service delivery;
4. Performance monitoring, including financial sustainability, governance and other relevant reporting;
5. Council governance and decision-making practices, including options for community engagement, representation, and democratic participation;
6. Provisions that support public confidence in the integrity, transparency and accountability of local government; and
7. The roles, functions, powers and operation of statutory bodies that oversee local government compliance and reform.

The Review will not consider:

- Council amalgamations, or consideration of changes to existing municipal boundaries. However, the new legislative framework will need to be flexible enough to deal with potential future structural changes that might occur over the next 20-30 years.
- The roles and functions of the State Government and local government. However, the new legislative framework will need to be flexible enough to allow future agreed changes to roles and functions between the two levels of government.
- The roles and functions of mayors, deputy mayors and councillors. These matters were considered in some detail as part of the 2015-2017 Targeted Review process and are considered contemporary for the broad remit and expectations of councils.

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- The suite of contemporary council planning and financial management arrangements that were introduced in 2014, with the exception of possible improvements to streamline processes.
- The local government Code of Conduct framework. The framework was introduced in 2016 and has recently been reviewed to ensure that it is operating as intended.

Review of Tasmania's Local Government Legislation Framework

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How to Make a Submission

Submissions

Questions are provided throughout this Paper seeking general responses to the broad principles discussed, however submissions can be made on any aspect being considered during the Review. You are not required to answer all the questions in this Paper when making your submission, if you do not wish to do so.

Factsheets have been provided at the back of this Paper to provide additional background information in relation to the topics covered by the Paper.

Submissions close on 1 March 2019.

Submissions can be made either by:

- completing the questionnaire survey
www.dpac.tas.gov.au/LGReview or
- writing to or calling the Review Project Team.

Email: LGAReview@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, for publication on the Local Government Division's website. Alternatively, if your submission is being provided confidentially, please clearly state this.

Submissions should only address issues outlined in the 'Scope of the Review'. Any offensive or defamatory material will not be published.

Refer to
factsheet
#1

What to Include

Submissions are invited on the principles of how Tasmania's local government should be legally established and elected; how it should provide services to its community; and how it should be accountable to its community.

This is a wholesale Review of the legislative framework that creates, empowers and provides councils with a mechanism to work within, rather than a review of the current Local Government Act. The focus of this consultation is on the broad principles that should apply to local government, rather than technical issues in the current legislation.

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 LGAReview@dpac.tas.gov.au



Minister's Foreword

The Government recognises the important, and increasingly complex, role of local government in the community. It is a vital arm of government in administering legislation and making economic, social and environmental planning decisions to support Tasmania to grow strong, sustainable and vibrant communities, both now and into the future.

It is crucial that the legal framework for the sector is reflective of this, is not unnecessarily burdensome from an administrative perspective, and is flexible and adaptable enough to allow for inevitable change and growth over the coming decades.

To help support this, the Government has committed to reviewing and developing a modern, best-practice legislative framework for local government. The Review will be broad and will deliver a contemporary framework that supports greater innovation, flexibility and productivity; improves efficiency and effectiveness of council services; enhances accountability and transparency and minimises red tape wherever possible.

I have appointed an experienced Steering Committee to guide the Review and provide me with advice. In continuing my commitment for this to be a collaborative Review, the Steering Committee includes three highly respected members of the local government sector and two senior officers from the Department of Premier and Cabinet. They will be supported by a Reference Group, selected from the sector and the community through an Expression of Interest process. I will also be updating the sector through the Premier's Local Government Council. The Terms of Reference detailing the scope of the Review and the membership of the Steering Committee can be found on the Review's webpage.
www.dpac.tas.gov.au/LGReview

I was encouraged to see a high degree of interest and engagement with local government during the most recent local government elections, conducted in October 2018. The elections highlighted a number of challenges with the current legal framework, including the electoral system and lack of caretaker provisions.

While this is one aspect, I acknowledge there are a number of broader policy challenges which councils face. This Review will provide a platform to consider both the challenges and opportunities for Local Government and how to best support councils in meeting these.

It will involve various consultation papers and opportunities for engagement, through public forums and stakeholder consultation, starting with this Discussion Paper. I encourage all those with an interest to have their say. Make submissions, provide responses and submit ideas for how we can create a better legal framework for local government.

I look forward to continuing to work closely with the sector and the community to create a strong, practical legal framework for the future of local government.



Purpose of the Review


Refer to
factsheet

#2


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. These amendments, together with the introduction of supporting subordinate legislation, have resulted in a framework which, at times, is inconsistent and overly prescriptive.

Local government has a crucial – and increasingly demanding – role in serving and representing local Tasmanian communities. The legislative and regulatory framework (the framework) that governs the Tasmanian local government sector needs to reflect and support what other levels of Government and communities expect from their local councils. The framework also needs to support councils to be able to meet requirements and expectations now, and into the future. Making continuous updates to the existing legislation is unsustainable and a more proactive, forward-looking approach is needed.


The intended outcome of this 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



Minimise the red tape and administrative burden on councils, businesses and the broader community



Enhance accountability and transparency across the sector



Increase democratic and community engagement, participation and confidence in local government.



Guiding Principles

The Review will adopt a 'first-principles' approach, taking the concept of local government back to its core purpose and fundamental values. In essence, it considers why local government was created in the first place and seeks to ensure its core objectives are recognised and supported in developing a new legislative framework.



The principles guiding the Review are to deliver a legislative framework that will:

- ① To the greatest extent that is possible and practical, be 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.

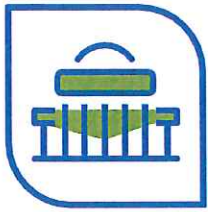


Key Assumptions

In developing this Paper, several key assumptions have been made in relation to the local government sector and the community's expectations. Where there is disagreement with these assumptions, this can be provided in submissions.

The assumptions are that:

- Councils have an important role in serving the community and the expectations for their responsibilities are likely to change over the next few decades as our social, economic and technological environment continues to evolve.
- Elections are an important part of ensuring the democratic representation of local government. A robust electoral system should be accessible and equitable for all members of the community and reflect good democratic principles. It should support and encourage maximum participation to achieve a democratic result. Diverse, skilled candidates and councillors are positive for communities and should be encouraged.
- The community expects councils to operate in an efficient, effective way and make sound, ethical decisions that reflect the best interests of the community. Good governance is the foundation that supports good decision-making. Strategic decisions should be made by elected members, wherever possible, through debate in an open, public forum.
- To further achieve this, there should be mechanisms to enhance accountability and performance. Where things go wrong, the community expects that there are appropriate responses both councils and the State Government can make to improve council performance.



Overview of Local Government

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

Local government has a critical role to play in the Tasmanian economy. It has a total annual operating revenue of \$791 million; holds and manages over \$11 billion in assets; and has invested more than \$1 billion in capital expenditures over the past four years¹. The sector delivers a range of key functions. It is responsible for over 14,000 km of Tasmania's road network by length and it provides governance, planning, service delivery, community development, asset management and local regulation. It is vital in building local community infrastructure to create jobs and to improve the social life of Tasmanians.



On any given day, councils are managing land use to ensure development is consistent with community expectations and that building standards are met. They are managing and recycling waste, maintaining stormwater and drainage systems, roads, streets, public buildings, bridges and parks. They are supporting communities to prepare for natural disasters and providing cultural and sporting venues, events and opportunities. Councils are also providing social welfare programs like childcare, aged care and youth programs and supporting community health through immunisation programs and safe drinking water. They are considering environmental concerns like climate change and biodiversity and how to mitigate these for future generations.

Increasingly, local government is responsible for enforcing Commonwealth and State legislation at the local level and delivering initiatives at the grass roots. Councils act as statutory authorities under other legislation, for example under the *Land Use Planning and Approvals Act 1993* and the *Environmental Management and Pollution Control Act 1994*. They are now a fundamental part of delivering services and providing governance to Tasmania. Into the future, they will be actively working to ensure vibrant communities through infrastructure and development planning, social welfare, health services, economic development and tourism programs.

Councils determine the services they provide to their communities through their strategic planning and annual planning process, with an increasing focus on building their capacity to service their ratepayers. As the closest level of government to the community, councils' role is to identify community needs and make sure those needs are met, which highlights the importance of community engagement in council planning.

¹ Tasmanian Audit Office, *Local Government Authorities 2017-18*, No 5 of 2018-19, Auditor-General's Report on the Financial Statements of State entities, Volume 3

Councils across Tasmania are as diverse as the communities they represent. The needs and operations of a small, rural council may be vastly different from those of a large urban council, as will the expectations of the communities they serve. A future legislative framework to support councils across Tasmania needs to consider this and be flexible enough to accommodate these differences.

The Review will offer the opportunity to consider what Tasmanians want local government to look like: how it should be elected, operate, deliver services, engage with them on issues and be accountable to its community. The community's expectations will guide the Review and what provisions are needed to enable it to meet those expectations, both now and into the future.



- What do you think councils will be responsible for in the future?
- What council activities should be driven or determined by communities?
- Given the varying sizes of councils, what consideration should be given to costs of services and the councils' capacity to deliver these?



Council Governance and Powers

Refer to
factsheet

#3

Governance is the processes and culture that guide the activities of an organisation². Good governance is fundamental to an efficient, effective and transparent council that delivers quality services. Good governance ensures robust, ethical decisions and gives the local community confidence in those decisions.

Good governance structures, across all levels of government, separate the strategic decisions from the operational decisions of an organisation. In local government, elected members (councillors, including mayors and deputy mayors) are responsible for strategic and policy decisions on issues that affect their communities, and council administration (general managers and their staff) are responsible for the operational decisions in implementing and supporting those strategic decisions.

General Managers act as a conduit between elected members and council staff, providing advice and assistance to elected members and implementing council decisions. This dual responsibility reinforces the importance of a clear governance structure to support them. An effective and functional relationship between general managers and elected members (and especially mayors) is critical to the success of the overall council.

Refer to
factsheet

#2

Councils require broad powers to make and implement their strategic and operational decisions. Powers given to local government, through the local government legislative framework which is the subject of this Review, are essential for them to exist and operate as a distinct level of government. Powers can be granted through either specific legislative provisions (such as the power to levy rates), or general competency powers (such as requiring a council to provide for the good governance of the local area). Competency powers allow councils authority in any area, unless expressly prevented³.



- What is vital to good governance in local government?
- What aspects of good governance should be prescribed in a legislative framework?
- What statutory powers do councils need to deliver the services that communities require, or expect to receive, from councils now and into the future?
- How are the strategic decisions of councils best made?
- What mechanisms best support strategic, operational and technical decisions and actions?

² Department of Premier and Cabinet, Local Government Division's *Good Governance Guide*

³ Australian Government, Department of Infrastructure, Regional Development and Cities http://regional.gov.au/local/publications/reports/2003_2004/CI.aspx



Democracy and Engagement

Local government is a form of representative democracy. Democratically elected governments are popularly elected by the people and are answerable to them for the decisions they make. Councillors collectively make major decisions that impact their communities, including making of by-laws, provision of public services and the levying of rates.

This emphasises the importance of the community's right to engage and participate in local government decision-making. The more communities can be involved in councils' decisions and decision-making processes, the more effective, transparent and accountable these decisions will be⁴.

The ways the community can engage and participate in the local government decision-making process include: through elections, policy decisions, strategic planning and law-making processes.

Elections

Tasmania's local government elections are conducted every four years, in October, via a three week, voluntary postal ballot. There was high community interest during the most recent elections in October 2018. This was reflected in strong voter participation which averaged 58 per cent across the State, with one municipality as high as 82 per cent⁵.

A number of issues regarding elections were raised publicly during the recent elections, including:

- compulsory vs voluntary voting;
- the three week postal polling process;
- how to reduce informal voting (incomplete or incorrectly completed ballots);
- the lack of caretaker provisions that might otherwise limit council decision-making and administration during elections⁶;
- eligibility to vote and the General Manager's Roll;
- eligibility to run as an elected member; and
- requirements for already elected members seeking re-election to declare donations, compared with requirements on candidates not currently elected. Campaign funding was also raised as an issue.

While recently-introduced gifts and benefits disclosures are applicable to councillors at all times, it is a matter for consideration whether there should be separate provisions that capture all candidates in the context of an election.

4 International Association of Public Participation – The United Nations (Brisbane) Declaration on Community Engagement

5 https://www.tec.tas.gov.au/Local_Government_Elections/LocalGovernmentElections2018/DailyReturns.html

6 Caretaker provisions are designed to allow the administrative functions of government to continue while safeguarding the process of making strategic or policy decisions during an election period.

Refer to
factsheet

#5

Consultation

Public consultation on major decisions ensures the local community has a voice in determining what their council will do and how it will affect them. Councils are required to consult, involve and be accountable to the community in performing their functions. This places a broad obligation on councils to engage the community in their planning and decisions.

In today's environment of electronic and instant information, the public have become increasingly passive and disengaged with traditional engagement mechanisms, but more active in social media⁷. This makes effective engagement increasingly difficult. The traditional ways of engaging through public notices, open council meetings and making information publicly available for comment, frequently receive very little community feedback. Lack of consultation or feedback can result in councils developing plans for the future or making decisions, such as the level of service the community receives, without understanding if these plans and decisions align with the broader community's expectations, including for engagement through online platforms and social media.



- What is the best way to engage Tasmanians in voting for local government?
- Who should be allowed to participate in local government elections?
- How can local government attract skilled, diverse and representative electoral candidates?
- What should be required of candidates in local government elections before, during and after elections?
- What decisions should councils continue to be able to make during an election period?
- In what ways should councillors engage with, and represent, communities in the digital age?
- On what matters should councils engage with communities?
- How can community engagement be strengthened and measured?

⁷ Australian Public Service Commission 'Changing behaviour: A public policy perspective' p. 1



Council Revenue and Expenditure

Revenue is essential to councils' financial sustainability and their ability to serve their local communities. Revenue can be sought through grants, general property rates and charges, or specific purpose rates, such as for infrastructure upgrades of a bridge. Councils can invest in business or commercial activities as a source of revenue, which may reduce rates, however, may also expose ratepayers to commercial risks.

Councils have the ability to determine their own rating approach and where they seek specific purpose funds, which reflects the independence of local government. Council rates are a type of property tax levied on property owners, based on the value of property within the municipal area. Taxation principles govern how councils set rates, which have traditionally considered the value of rateable land as an indicator of the property owner's capacity to pay. Rates can also be based on the principle of equity across the municipal area. Councils' rating approaches are published in rates resolutions⁸, which outline councils' approach to distributing the tax burden across the local community.

Councils are as diverse as their communities, resulting in diversity in the services they deliver. Consequently, they require different levels of revenue to provide these services. Councils consider their forward planning activities in their annual budgets, which set out the mix and level of services to be provided and how they will be financed. Councils must consult with their communities in developing their strategic and annual forward planning, to ensure their planning is consistent with the community's expectations. Where communities are disengaged or disinterested in councils' planning processes, this can have long-term impacts on how councils raise revenue and where this revenue is spent. Communities can also have vastly differing views and priorities on how public funds should be spent. To what extent councils engage and consult with their community in planning their services, facilities and programs will be reflected in community satisfaction.

Councils constantly face expenditure decisions on competing projects and services, which may be more or less important to different members of the community. How councils can balance these interests and clearly articulate the difficult decisions of choosing to fund one service or project over another, and what this will mean for the community, is critical to this engagement process. Where a community is invested in developing infrastructure or services in their local area, they may be more willing to financially contribute to these developments. Councils must also balance the community's ability to pay rates with what they can deliver from that funding, taking into consideration rising costs of living, operating costs and inflation. Lower revenue, through reducing rates and charges, may be popular but can have hidden long-term costs for the community in deteriorating assets, such as roads, or reduced services. This can result in a need to raise specific purpose funds to address these issues.

⁸ Section 86B, *Local Government Act 1993*



Where a council invests, for example, \$10,000 in purchasing a new BBQ, it must consider the ongoing costs of maintaining and servicing that BBQ over the life of the asset. If it costs \$10,000 per year to run, maintain and clean the BBQ and the life of that asset is 10 years, the total cost of that asset becomes \$110,000, rather than the initial outlay of \$10,000. Councils must consider these long-term costs, even for seemingly small items, when making expenditure decisions to ensure financial sustainability and value for their communities.

The financial sustainability of councils is also an important consideration in raising revenue and planning expenditure. Residents and ratepayers have an interest in ensuring their councils have strong financial positions, which enable them to provide better services and facilities, as well as manage unexpected costs, such as those from a natural disaster. Transparency in the financial decisions of councils will help achieve a better understanding of where public funds are being spent and the value the community is receiving.



- How can councils ensure transparency in funding decisions; both how it is raised and spent?
- How can councils determine how best to raise revenue for specific purposes?
- How should councils engage communities when raising revenue?
- How should councils determine the services they deliver to their communities in exchange for rates and charges?
- How should councils decide where to make trade-offs (more or less rates vs more or less services)?



Performance Transparency and Accountability

Refer to
factsheet

#7

Councils are accountable to the community which elects them. The State, by virtue of local government being created through State legislation, has a role in providing the functions and powers under which local government operates. The State Government, therefore, has an interest in ensuring the local government sector operates consistently within its legislation. This accountability 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.

The State monitors and regulates council performance. 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 members⁹.

Council accountability requirements can be set out in legislation, including through reporting requirements and oversight mechanisms to ensure transparency in council performance and, where necessary, detect, respond to and manage poor performance. Acknowledging that generally, councils perform well, regulatory models should take a risk-based approach that does not unnecessarily increase bureaucratic processes.

Performance reporting is another element of accountability. It has the capacity to enhance transparency when it is available to the public and also to drive improvement by, and within, councils where it can be used for operational analysis.

Councils are constantly working to improve how effectively and efficiently they deliver to their communities and performance data is a key part of informing this. 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.

It is difficult to determine to what extent council reports, information and decisions are accessed by, and are useful to, the public. In theory, council reporting should encourage transparency and allow communities access to relevant information. Where reporting is not being accessed or used by the public, it can create red tape. The preparation and delivery of reports that are not effective also places a cost-burden on the community.

⁹ Victorian Ombudsman submission to the Victorian Government's Review of the *Local Government Act 1989*.

Refer to
factsheet

#7

Current information and notification requirements centre on providing hard-copy material and placing public notices in newspapers, which can be costly. With technological advancements and social changes in the way people seek out, access and use information, it is timely to consider what and how councils report. The majority of people now commonly seek out, and expect to find, information available on the internet, rather than in traditional print media¹⁰.



- How can the right balance between autonomy and accountability be delivered?
- Who should have oversight and regulation of councils' performance and how should it occur?
- What mechanisms should there be to respond or intervene when a council is not performing as required?
- What information should councils make available to the public and how should they be able to access it?
- What information would be useful to councils to drive performance improvements?

Other Matters

This Review will consider a broad range of issues facing the local government sector and consider the best ways to support it into the future. Should you wish to provide feedback on areas not raised in this Discussion Paper, please feel free to do so, noting the aspects that are outside the scope of this Review.



- What is one thing you would change about the current local government legislative framework and why?

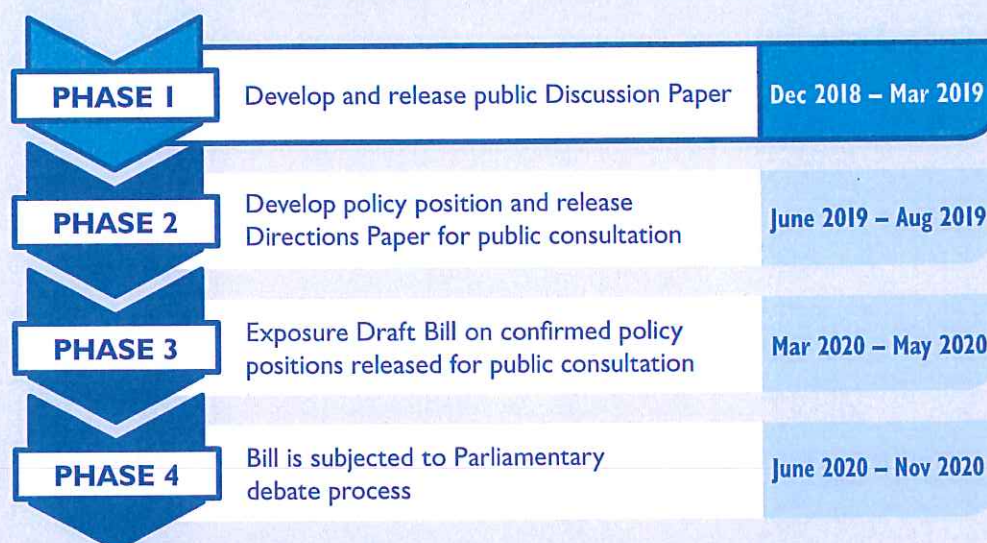
¹⁰ Western Australia Department of Local Government, Sport and Cultural Heritage – Local Government Act Review Discussion Paper



Factsheet 1 Process and Scope

The Review Process

The Review is divided into four phases, as outlined in the diagram below.






The Review Scope

The Review will consider the following:

-  Appropriate legislation to support the transparent setting, levying, and collection of council revenue, rates and charges;
-  Local government electoral provisions, including options for enhancing both voter and candidate participation;
-  Provisions that support efficient and high-quality council operations and service delivery;
-  Performance monitoring, including financial sustainability, governance and other relevant reporting;
-  Council governance and decision-making practices, including options for community engagement, representation, and democratic participation;
-  Provisions that support public confidence in the integrity, transparency and accountability of local government; and
-  The roles, functions, powers and operation of statutory bodies that oversee local government compliance and reform.

The Review will **not** consider:

-  Council amalgamations, or changes to existing municipal boundaries.
-  The roles and functions of the State Government and local government; mayors, deputy mayors and councillors.
-  The suite of contemporary council planning and financial management arrangements; and the Code of Conduct framework.



Factsheet 2 Local Government Legislation: The Current Framework

- Local government is recognised as a level of government under the Tasmanian Constitution¹¹. For councils to exist in Tasmania, local government legislation is required to legally constitute them. The local government legislation determines what the core functions of local government are and what powers local councils have to undertake those functions.
- The current Act sets out the broad functions of councils as being:
 - To provide for the health, safety and welfare of the community;
 - To represent and promote the interests of the community; and
 - To provide for the peace, order and good government of the area.
- The Act underpins the work of councils and sets out the roles, responsibilities and powers of elected members and council administration staff. Councils work within a broad legislative framework that governs their operation and activities. These include, but are not limited to:

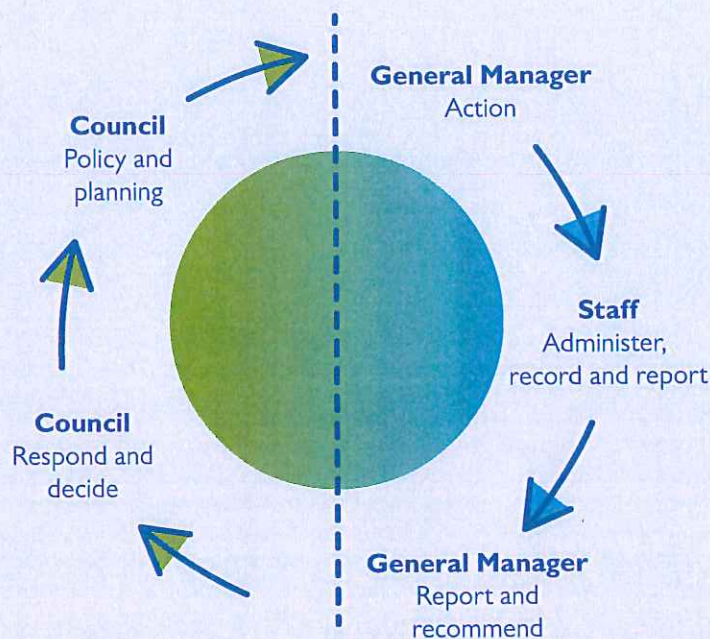
<ul style="list-style-type: none"> - <i>Local Government Act 1993</i> - <i>Local Government (Building and Miscellaneous Provisions) Act 1993</i> - <i>Local Government (Highways) Act 1982</i> - <i>Local Government (Rates and Charges Remissions) Act 1991</i> - <i>Local Government (Savings and Transitional) Act 1993</i> - <i>Land Use Planning and Approvals Act 1993</i> - <i>Environmental Management and Pollution Control Act 1994</i> - <i>Resource Management and Planning Appeal Tribunal Act 1993</i> - <i>Building Act 2016</i> - <i>Dog Control Act 2000</i> 	<ul style="list-style-type: none"> - <i>Public Health Act 1997</i> - <i>Roads and Jetties Act 1935</i> - <i>Traffic Act 1925</i> - <i>Water Management Act 1999</i> - <i>Right to Information Act 2009</i> - <i>Water and Sewerage Corporation Act 2012</i> - <i>Local Government (General) Regulations 2015</i> - <i>Local Government (Meeting Procedures) Regulations 2015</i> - <i>Local Government (Content of Plans and Strategies) Order 2014</i> - <i>Local Government (Management Indicators) Order 2014</i> - <i>Local Government (Audit Panels) Order 2014</i>
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¹¹ Part IVA, *Constitution Act 1934*



Factsheet 3 Governance: The Current Framework

- Councils are established as corporations, where
 - elected members are regarded as equivalent to the board of management with policy and planning responsibilities, with general managers being the only employees directly employed by elected members; and
 - general managers are responsible for the day-to-day administration of councils, the implementation of decisions made at council meetings, and providing qualified advice to allow the elected members to make informed decisions.



- Governance requirements for local government are set out in both legislation, which forms the 'rule book' for the activities and conduct of councils, and in the *Good Governance Guide* issued by the Local Government Division, which notes that good governance is demonstrated by elected members who:
 - act with the highest ethical standards;
 - understand their role and the role of others;
 - foster trusting and respectful relationships;
 - show a commitment to risk management;
 - engage in effective strategic planning;
 - follow a transparent and accountable decision-making process;
 - make good decisions that promote the interests of the community they serve;
 - understand and abide by the law;
 - commit to continuous improvement; and
 - have good judgement¹².

¹² Department of Premier and Cabinet, Local Government Division's *Good Governance Guide*



Factsheet 4 Consultation and Engagement: *The Current Requirements*

- There are both broad and specific requirements on councils to consult, involve and be accountable to the community in performing their functions and in their planning and decision-making processes. Specific consultation, including seeking and considering submissions, must occur when:
 - preparing strategic plans;
 - making or amending by-laws;
 - making or changing the councils' rating system; and
 - selling, leasing or exchanging public land.
- The public can also request that a council hold a public meeting in relation to issues raised in petitions. If a certain number of the municipal electorate request a meeting, the council must oblige. Notice of public meetings, including the meeting date, time, location and subjects for discussion, must be published at least twice before the meetings take place.
- Councils may also hold elector polls on any issue upon which they choose to seek community feedback. If petitions have been received at a public meeting, an elector poll must be held. Elector polls are used to gauge community interest in issues, but are not binding on councils.
- While not a requirement, some councils engage community members directly through community boards, which are regularly constituted committees that provide a voice on local issues to the council.



Factsheet 5 Elections: The Current System

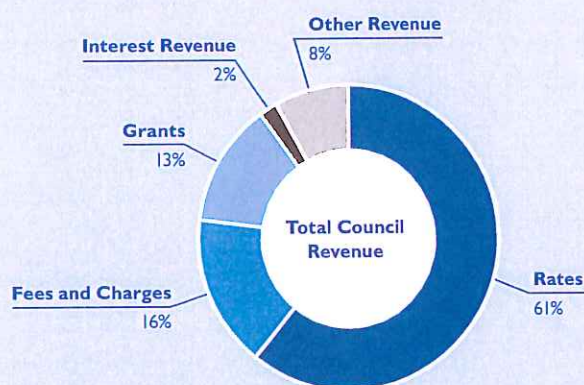
- Elections are run by the Tasmanian Electoral Commission on behalf of councils.
- Elections are held by postal ballot, in October, every four years.
- The ballot period is open for three weeks.
- Mayors and deputy mayors must also be elected as councillors.
- Candidates can nominate for either the seat of mayor or deputy mayor, but not both.
- Election results are determined using the Hare-Clark system, which is a preferential voting system.
- Voting is voluntary. At the recent election in 2018, an average of 58 per cent of residents voted.
- There are no caretaker provisions leading into the local government electoral period in Tasmania.
- Eligibility to vote is determined by being on the General Manager's Roll or the State House of Assembly Roll¹³. Individuals must be 18 years or older. Eligibility to be on the General Manager's Roll is based on having property or business interests within the local electorate. Where an individual has both property and business interests, they may be entitled to two votes in a local government election. It is not necessary to be an Australian citizen to be on the General Manager's Roll. The General Manager's Roll is kept by the General Manager of the council.
- Eligibility to run for office is based on being a Tasmanian resident and being eligible to vote in that local government area.

¹³ Section 258 of the *Local Government Act 1993* and Section 30 of the *Electoral Act 2004*



Factsheet 6 Council Revenue and Rating: The Current System

- Councils predominately raise revenue through rates and charges, but also through grants and business enterprises. The breakdown of council revenue across the State is shown below.



- Councils can choose a number of different approaches to setting rates. Rates in any municipal area can be affected by many factors, contributing to both the rates payable by the community and the revenue that councils can raise. These factors include:
 - Choice of property valuation methodology - including a choice of property valuation methodology (based on either: land value, land and property value or approximate market rental value). Six councils rate on land and property value (Capital Value) in Tasmania, while 23 rate on approximate market rental value (Assessed Annual Value).
 - Setting different rates in the dollar (and/or rate remissions) for different classes of ratepayers – e.g. commercial, residential, or industrial. While 12 councils apply a single (uniform) rate in the dollar, 17 councils use differential rating.
 - Setting 'flat-rates' or average area rates - intended to achieve consistency in rates across the local area and minimise rate fluctuations from movements in property values. Three councils use this approach.
 - Councils' capacity to choose fee-for-service based 'charges' instead of property-value based 'rates' in respect to revenue for services, construction and specific local improvements.
- The Local Government Division and the Tasmanian Audit Office publish some comparative data to enable comparison of rates charged, but not services provided.
- Councils may provide rates remissions for classes of ratepayers or persons experiencing financial hardship or, alternatively, allow ratepayers to defer rates payments.
- Grants can vary each year, as determined by the State Grants Commission, as do distributions from local government businesses, such as Taswater.
- General property rates are a tax, rather than a fee-for-service. The current rating framework is structured to reflect the taxation principle of ratepayers' 'capacity to pay' (those with greater capacity contribute more) being determined by property value, rather than the service provided to individual properties. However, in setting their rates resolutions, councils also balance other supporting taxation principles of efficiency; simplicity (practical, cost-effective); sustainability (system can withstand changing conditions); equity principles (everyone contributes equally) or benefit principles (those who benefit more, contribute more).
- Rates are based on the property value as determined by the State Government Valuer-General. Councils must pay for this service.
- Councils also collect the (property-value based) fire levy on behalf of the State Government.



Factsheet 7 Performance Monitoring and Oversight: The Current Framework

Performance Monitoring

- Performance monitoring functions, including financial sustainability, governance and other reporting, are carried out by:
 - the Auditor-General; and
 - the Director of Local Government.
- There is no specific location for publishing comprehensive performance monitoring or comparative data in Tasmania.

Access to Information

Mechanisms to ensure public access to information include:

- Public access to council meetings;
- Publicly available meeting minutes and agendas (if not audio or video recordings);
- Restrictions on closed council meetings and requirements that councillors consider what material can be publically released from those meetings;
- Public access to strategic council documents such as Strategic Plans, Annual Plans and Budget Estimates;
- Publicly available records of delegations, gifts and donations or conflict of interest registers; and
- Public question time and publishing responses to questions on notice.

Councils have important reasons for holding some discussions in closed meetings, such as commercial sensitivity or protecting the privacy rights of individuals in the community or employees.

Oversight

- A range of bodies are involved in regulating the local government sector, including:
 - the Director of Local Government;
 - the Tasmanian Ombudsman;
 - the Integrity Commission;
 - the Auditor-General; and
 - (if convened by the Minister for Local Government) the Local Government Board and Board of Inquiry.
- There are a range of possible oversight responses scaled in response to the severity of the issues concerned; with education and support at the lower end and intervention at the most serious end.
- Complaints about council performance are directed to councils in the first instance. If a complainant is still unhappy, they can take their complaint to the Tasmanian Ombudsman.
- Complaints relating to the conduct of elected members can be made through Code of Conduct and Code of Conduct Panel Processes¹⁴ (which were reformed in 2017 and are outside the scope of this Review).
- Complaints about statutory breaches or offences can be made to the Director of Local Government. The Director of Local Government has investigatory powers and the power to refer complaints for prosecution to the Director of Public Prosecutions. The Director does not have coercive investigatory powers.
- Powers for the most serious level of intervention in local government (e.g. suspension of councils, initiating reviews or inquiries) are held by the Minister.

¹⁴ http://www.dpac.tas.gov.au/divisions/local_government/local_government_code_of_conduct



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