



Targeted review of the Local Government Act

Discussion paper for consultation

APRIL 2016

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Foreword

Minister for Planning and Local Government

Local government plays an important role in providing infrastructure and services for healthy, safe and vibrant communities.

The Tasmanian Government is committed to improving the efficiency and effectiveness of local government to reduce costs to ratepayers and to make Tasmania the best place in the country to live, work, invest and raise a family.

The *Local Government Act 1993* (the Act) provides a sound framework for supporting councils to effectively govern themselves. I am not intending to throw out the Act, rather my intention is to keep what is working and fix what isn't.

There is a heightened level of community concern over how some councils are managing their affairs, with how and why councils make decisions currently under the microscope. The review of the Act is precisely aimed at improving governance arrangements within our councils.

There are a number of challenges confronting local government and it is timely that we take the opportunity to consider what has served us well, with a view to addressing the current and future challenges for local government in the 21st century.

The last comprehensive review of the Act was commenced in 2003, with the resultant changes coming into effect in 2005 through the *Local Government Amendment Act 2005*.

I want to ensure the local government sector is sustainable in the long-term, with sound governance arrangements and the strategic capacity to function effectively. These priorities are crucial to ensuring councils deliver efficient and cost-effective services for the communities they serve.

The review has the following objectives:

- Improve governance in local government and make the Act less prescriptive where possible;
- Clarify certain functions and powers of statutory bodies, councillors and general managers within the Act; and
- Ensure fair and transparent local government elections.

This discussion paper addresses elements of the Act that contribute to these objectives. The paper suggests some ideas for possible changes to the Act and provides an opportunity for those involved in local government and members of the public to express their views.

While I expect local government to play a significant role in the review, I also encourage all interested parties, including community groups and members of the public, to participate in the review process.

Thank you for taking the time to read the discussion paper and I look forward to hearing your views.



The Hon Peter Gutwein, MP
Minister for Planning and Local Government

Introduction

Good governance in local government

Governance refers to the processes and culture that guide the activities of an organisation beyond its basic legal obligations.

Tasmanian councils must understand and operate in accordance with best practice governance principles to effectively lead and provide services to their communities.

HOW IS LOCAL GOVERNMENT ESTABLISHED IN TASMANIA?

Local government is one of the three spheres of government in Australia: Commonwealth, State and Local. Each sphere has separate responsibilities, although there are areas of mutual interest and cooperation.

The existence of local government as the third tier of government in Tasmania is founded in the *Tasmanian Constitution Act 1934*, which states:

- there shall in Tasmania be a system of local government with municipal councils elected in such manner as Parliament may from time to time provide; and
- each municipality shall have powers as Parliament may from time to time provide, being such powers as Parliament considers necessary for the welfare and good government of the municipalities.

In accordance with the *Tasmanian Constitution Act 1934*, the *Local Government Act 1993* (the Act) provides the basis for local government in Tasmania.

The Act establishes the 29 councils and the municipal areas they are responsible for, provides for the election of councillors and enables councils to undertake day-to-day activities, including providing local services and levying of rates.

The Act describes the functions of councils as:

- to provide for the health, safety and welfare of the community;
- to represent and promote the interests of the community;
- to provide for the peace, order and good government of the municipal area.

In addition, councils have a statutory role in administering a broad range of Commonwealth and State legislation, as well as their own by-laws.

Councils play a critical role in helping to build resilient communities, develop healthy environments, and promote local economies across our State.

Good governance is critical to local government's ability to perform its functions and effectively lead and provide services to Tasmanian communities.

HOW IS THE GOVERNANCE MODEL OF COUNCILS DESCRIBED?

Councils operate in accordance with the principles of corporate governance. A key feature of the corporate governance model in councils is the clarity of roles, particularly the distinctions between:

- the council operating collectively as a board, in conjunction with the role of the individual councillor as an elected representative of the people; and
- the council being responsible for setting the strategic direction and policies, as distinct from the role of the general manager in carrying out the council decisions and managing the operational arm of the council.

According to the Australian Institute of Company Directors, there are four roles for the board, or in the case of local government, the council:

- setting the strategic direction of the municipality and the council itself as an organisation;
- setting the policies for the council as an organisation, such as the maintenance of gardens and parks, waste collection, animal control and economic development;
- monitoring of the implementation of policies and operational management; and
- the recruitment, performance review, remuneration and succession planning of the general manager.

It is important for mayors and general managers to assist new councillors to understand the role of the council as a decision making body and, where necessary, to improve the skill base of councillors so good governance can be practiced.

WHAT ARE THE KEY CHARACTERISTICS OF GOOD GOVERNANCE IN LOCAL GOVERNMENT?

As described in the *Good Governance Guide for Local Government in Tasmania*¹, good governance has eight major characteristics. It is when the processes and culture of a council are:

- Accountable
- Transparent
- Law-abiding
- Responsive
- Equitable
- Participatory and inclusive
- Effective and efficient
- Consensus oriented

Councils demonstrate **accountability** when they report, explain and are answerable for the consequences of decisions they make on behalf of their communities.

Councils demonstrate **transparency** in revealing appropriate detail about the information, advice, consultation and legislative requirements they followed in making a decision. Making council plans, financial information and other relevant reports publicly available also demonstrates transparency.

A council is **law-abiding** when its decisions are consistent with relevant legislation or common law and within the powers of local government.

A **responsive** council always tries to represent and serve the needs of the entire community while balancing competing interests in a timely and appropriate manner.

¹ Local Government Division. (2016). *Good Governance Guide for Local Government in Tasmania*. Department of Premier and Cabinet (to be launched on 8 May 2016).

A council demonstrates it is **equitable, participatory and inclusive** if it ensures all interested groups and individuals, particularly the most vulnerable, have had an opportunity to participate in the decision-making process and are treated equally.

Councils demonstrate they are **effective and efficient** when their decisions and processes make the best use of people, time and money to achieve the best possible result for the community.

A **consensus oriented** council takes into account the different views and interests in a municipality to reach a majority position on what is in the best interests of the whole community.

Consensus means the reasons for decision are understood, even if it not agreed with.

HOW DO COUNCILLORS DEMONSTRATE GOOD GOVERNANCE?

Good governance in local government is reliant on the behaviour of elected members (councillors). Councillors who practice good governance:

- 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 judgement.

WHY IS GOOD GOVERNANCE SO CRUCIAL?

It is important councillors understand and practice good governance because it supports them to make decisions and to act in the best interests of the community.

Good governance gives the community confidence in its council and improves the faith councillors have in their own council and its decision making processes.

Good governance enables councils to make good decisions in a timely manner and ultimately ensures councils effectively lead and provide services to their communities.

The people who lead and serve our community

The Local Government Act (the Act) provides for the election of mayors, deputy mayors and councillors (elected members) to lead our community, as well as the appointment of general managers to manage council operations that provide services to our community. The Act also sets out the functions and powers of those elected and appointed to these roles².

For the most part, the Act provides an effective framework to support elected members and general managers to effectively fulfil their role and meet the community's expectations. However, over time, common issues have impacted the ability of some people to carry out their functions, as well as negatively affecting council decision making and overall governance.

WHAT IS THE ROLE OF THE MAYOR?

The mayor's role is to:

- act as a leader of the community of the municipal area;
- act as chairperson of the council;
- act as the spokesperson of the council;
- liaise with the general manager on the activities of the council and the performance of its functions and exercise of its powers; and
- oversee the councillors in the performance of their functions and in the exercise of their powers.

The Act also requires the mayor to accurately represent the policies and decisions of the council in performing the functions of mayor.

WHAT COMMON ISSUES AFFECT THE ABILITY OF SOME MAYORS TO PERFORM THEIR ROLE?

As the leader of the council, the mayor plays an important role in building a united team. A council must function as a team in order to effectively govern. Where there is a breakdown in the team dynamic among elected members, there will be a loss of focus on acting in the interests of the community.

Mayors can find themselves in a difficult situation if they are elected with a strong platform but don't have the support of their fellow councillors to implement what is seen as a mandate. This can be a frustrating position for mayors as they try to perform the dual role of 'leader of the community' and 'chair of council'.

However, council decisions can only be agreed by the majority of councillors and the mayor is foremost responsible for leading the council and building a united team, not for implementing their own individual platform.

In 'acting as spokesperson of the council', mayors must fairly represent the views and decisions of a council, even if they do not agree with the view or decision. This can be challenging for mayors if their personal view conflicts with council's position, especially if they have made their personal view on a matter known at other times.

Mayors have the opportunity to express their views in the lead-up to a decision and during a debate. However, in the public arena the mayor should refrain from expressing a view that is contrary to the formal position of the council as this can lead to confusion and a community perception that the council is divided. The sense of a united team among the elected members can be compromised, potentially undermining the mayor's leadership.

² For more detail on the functions and powers of mayors, deputy mayors, councillors and general managers see [The functions and powers of the people who lead and serve our community](#).

There may be a need to clarify what is meant by the requirement of mayors to 'liaise with the general manager on the activities of council'. A functional and effective working relationship between the mayor and general manager is essential if a council is to effectively serve its community. Where the expectations of the mayor and the general manager differ significantly there can be serious implications for good governance.

In addition, responsibility for the appointment and appraisal of the general manager's performance rests with the council as a whole. The Act does not specify how councils are to monitor the performance of the general manager, and there is some inconsistency in the approach across councils.

There is also inconsistency across councils regarding the extent to which mayors perform the role of 'overseeing councillors in the performance of their functions and exercise of their powers'. As the leader and chairperson, it is important mayors provide guidance to elected members to assist them in effectively fulfilling their roles and to help establish and maintain a united team.

There are no pre-requisites to stand as mayor and there are occasions where mayors are elected without any previous experience in chairing meetings, building teams and communicating effectively with elected members and staff. These are critical skills for a mayor and the best intentions can be undermined when a mayor does not possess or seek to develop these skills.

Whilst the mayor chairs meetings, they do not currently have a casting vote when decisions are tied. If votes on any motion before council are tied the motion is determined in the negative.

The ability of the mayor to have a 'casting vote' if voting is tied may enable more timely decision making and prevent deadlocks that are more likely because of the small number of decision makers in a council (compared to State Parliament). However, giving the mayor a second vote could be considered undemocratic and giving the mayor unequal influence over council decisions could cause divisions between councillors.

HOW ARE MAYORS ELECTED?

In Tasmania, mayors are popularly elected. A mayoral candidate is required to also be a councillor candidate (dual candidacy), but cannot stand for the position of deputy mayor.

Dual candidacy means unsuccessful mayoral candidates can still be elected as a councillor. This may cause tensions to arise if there are conflicts between the elected mayor and unsuccessful mayoral candidates.

However, if a person could be a candidate for only one position on the council, a serving councillor who makes an unsuccessful attempt to contest the mayoral position at a periodic election would be lost to local government entirely.

This could mean the loss of people who have valuable skills and experience and may be a strong disincentive for mayoral candidates.

WHAT HAPPENS ELSEWHERE?

New South Wales is proposing reforms to the role of mayor, suggesting mayors should have the responsibilities of a councillor along with 12 additional responsibilities, including to:

- promote civic awareness and, in conjunction with the general manager, ensure adequate opportunities and mechanisms for engagement between the council and the local community;
- represent the governing body on regional organisations and in inter-government forums at regional, state and federal levels;
- lead the councillors in the exercise of their responsibilities and in ensuring good governance; and
- advise, manage and provide strategic direction to the general manager in accordance with the council's strategic plans and policies.

New South Wales is also proposing provisions that would require new and returning mayors to participate in induction programs following elections and annual professional development programs. Mayors would be required to report on their participation in these programs in the annual report.

Victoria has recently made changes to its Local Government Act that require mayors to:

- provide guidance to councillors about what is expected of a councillor including obligations and responsibilities; and
- support good working relations between councillors.

Queensland mayors have the greatest number of specific responsibilities, some of which could be described as executive. For example, mayors in Queensland are required to lead, manage and provide strategic direction to the chief executive officer (equivalent to general manager) and conduct the annual performance appraisal. Mayors are also required to prepare the council budget for council approval and are a member of each standing committee of the council.

All other jurisdictions require mayors to carry out civic and ceremonial duties.

The mayor has a casting vote when decisions are tied in all jurisdictions except Tasmania. In South Australia, popularly elected mayors do not have a deliberative vote like other councillors, but they do have a casting vote when decisions are tied. Where the leader of the council is elected by the councillors as the 'chairperson' rather than popularly elected as the 'mayor', they do have a deliberative vote but do not have a casting vote when decisions are tied.

All jurisdictions except South Australia and Queensland allow candidates to nominate for both mayor and councillor positions (where mayoral positions are popularly elected).

WHAT ARE THE OPPORTUNITIES FOR CHANGE?

It is important the Act effectively supports mayors by clearly setting out how they are to lead both their council and community.

Options for reform include:

- Defining the leadership role of the mayor more specifically, including the following functions:
 - promote good governance by building a united and strategic approach from elected members;
 - chair councillors robust decision making processes, respecting the council's decisions, and representing the council's decisions to the community;
 - be members of each standing committee of their council;
 - represent the governing body on regional organisations and in inter-government forums at regional, state and federal levels;
 - carry out the civic and ceremonial functions of the mayoral office; and
 - lead the performance appraisal of the general manager.
- Specifying the type of interactions that must occur in the mayor liaising with the general manager, for example including:
 - in representing the council, advise, manage and provide strategic direction to the general manager in accordance with the council's strategic plans and policies; and
 - work in conjunction with the general manager to ensure adequate opportunities and mechanisms for engagement between the council and the local community.

- Building leadership capacity by requiring new and returning mayors to:
 - participate in induction programs following elections;
 - develop professional development plans on an annual basis;
 - participate in leadership and professional development courses; and
 - report on their participation in induction and professional development in the annual report.
- Giving mayors a casting vote when decisions are tied, instead of the decision being automatically determined in the negative.
- Removing the dual candidacy provisions so a person cannot stand for both a mayor and councillor position.

WHAT DO YOU THINK?

Q1 What should the leadership role of the mayor include?

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

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

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

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

WHAT IS THE ROLE OF THE DEPUTY MAYOR?

The deputy mayor's role is to act in the position of mayor and exercise the powers and perform the functions of mayor if:

- the mayor is absent; and
- the mayor or the council, by notice in writing, appoints the deputy mayor to act in the position.

The Act also requires that the deputy mayor represents accurately the policies and decisions of the council in performing the functions of deputy mayor.

HOW ARE DEPUTY MAYORS ELECTED?

Like mayors, deputy mayors are popularly elected and a deputy mayoral candidate is required to also be a councillor candidate, but cannot also stand for the position of mayor.

Prior to 2000, deputy mayors were appointed by the council rather than popularly elected. A Local Government Board review into the method of election of mayor and deputy mayor resulted in changes to the Act introducing direct election for the mayor and deputy mayor.

The primary reason for the change was to maintain consistency between mayoral and deputy mayoral positions and across municipalities. At the time, some municipal areas had direct election of mayors and deputy mayors whereas others had both leadership positions elected around the table.

WHAT HAPPENS ELSEWHERE?

In Victoria, there is no provision for the position of deputy mayor. However, a number of councils elect a councillor (around the table) to fulfil the role, as councils are required to appoint an acting mayor when a mayor is not able to carry out his/her functions.

In New South Wales and South Australia, a deputy mayor may be elected around the table for the mayoral term or shorter. Alternatively, an acting mayor can be elected on an as-needs basis.

WHAT ARE THE OPPORTUNITIES FOR CHANGE?

There have been questions about whether the role of deputy mayor is required and, if it is required, how it should be elected.

Options for reform include:

- Removing the provision for a deputy mayor.
- Deputy mayors being elected by the council (around the table) rather than by popular election.

WHAT DO YOU THINK?

Q6 What should the role of deputy mayor include?

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

WHAT IS THE ROLE OF AN INDIVIDUAL COUNCILLOR?

Individual councillors are non-executive directors of the organisation; they are involved in policy making and strategic planning exercises, but do not engage in the day-to-day management of the organisation. The role of an individual councillor, or elected member, is to:

- represent the community;
- act in the best interests of the community;
- facilitate communication by the council with the community;
- participate in the activities of the council;
- undertake duties and responsibilities as authorised by the council.

The Act also requires that councillors represent accurately the policies and decisions of the council in performing the functions of councillor.

In addition, councillors have collective functions as members of the council³.

Councillors must not:

- direct or attempt to direct an employee of the council in relation to the discharge of the employee's duties; or
- perform any function of the mayor without the approval of the mayor.

WHAT COMMON ISSUES AFFECT THE ABILITY OF SOME COUNCILLORS TO PERFORM THEIR ROLE?

There are no pre-requisites to stand as a councillor and while elected members may be passionate about their community and well educated, they do not necessarily have the

relevant knowledge and experience required to effectively fulfil their complex role.

Newly elected members may not be familiar with the requirements of the Act, or with meeting procedures and regulations. They may not be aware of other relevant legislation or have experience in land-use planning matters. This knowledge is critical when it comes to being an effective councillor.

Councils operate in accordance with a corporate governance model whereby elected members are responsible for setting the policy framework and strategic direction and the general manager and council staff are responsible for the operational activities of the council.

This important distinction in roles and responsibilities is sometimes poorly understood leading to tension and, in some cases, dysfunction at the heart of the organisation.

A key challenge for councillors is not becoming involved in the day-to-day operation of the council by directing council employees to take action or perform particular tasks.

In line with best practice governance, there should be protocols for delineation between the elected body and the administration. In practice, communication between the council and management mainly occurs through the mayor's liaison with the general manager.

Mayors are responsible for overseeing councillors in the performance of their functions and exercise of their responsibilities. However, there is no corresponding requirement for councillors to comply with direction provided by mayors.

³ For more detail on the functions of councillors see [The functions and powers of the people who lead and serve our community](#).

WHAT HAPPENS ELSEWHERE?

New South Wales is considering reform to include the following roles for councillors:

- to be an active and contributing member of the governing body;
- to make considered and well-informed decisions;
- to represent the collective interests of residents, ratepayers and the wider community of the local government area;
- to facilitate communication between the community and the governing body;
- to be accountable to the community for the local government's performance; and
- to uphold and represent accurately the policies and decisions of the governing body.

Further to this, New South Wales has proposed that newly elected and returning councillors (and mayors) are required to participate in induction programs following elections, as well as annual professional development plans.

As with mayors, elected members participation in induction and professional development would be reported in the annual report.

In Victoria, the *Local Government Act 1989* has recently been amended to improve governance. Amendments include specifying how a councillor is to perform their role, in addition to defining what the role of councillor includes. In performing their role a councillor must:

- consider the diversity of interests and needs of the local community; and
- observe the principles of good governance and act with integrity; and
- provide civic leadership in relation to the exercise of the various functions and responsibilities of the council under this Act and other Acts; and
- participate in the responsible allocation of resources of council through the annual budget; and
- facilitate effective communication between the council and the community.

WHAT ARE THE OPPORTUNITIES FOR CHANGE?

It is important the Act supports elected members to effectively represent and serve their communities.

The role of elected members is typically considered to be part-time. However, there are community expectations and legal obligations associated with their role which affect the way elected members should conduct themselves at all times.

Options for reform include:

- Clarifying how mayors are to oversee councillors in relation to the performance of their functions and exercise of their responsibilities.
- Requiring councils to develop protocols to guide interaction between council staff and councillors.
- Building capacity and professionalism among elected members by requiring them to:
 - participate in induction programs following elections;
 - create and implement annual professional development plans; and
 - report on participation in induction and professional development in the annual report.

WHAT DO YOU THINK?

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

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

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

HOW IS THE GENERAL MANAGER APPOINTED AND MANAGED?

The Act enables councils to appoint a general manager, specifically providing that 'a council is to appoint a person as general manager of the council for a term not exceeding 5 years on terms and conditions it considers appropriate'.

The Act requires that the council is to advertise the position of general manager if there is a vacancy and monitor the general manager's performance. However, it does not prescribe principles or a detailed process for appointing or managing the performance of a general manager.

WHAT HAPPENS ELSEWHERE?

The provisions related to the appointment of general managers (or equivalent) in other jurisdictions are similar to those in Tasmania. Some jurisdictions specify advertising requirements and required qualifications as well as contract terms.

The Northern Territory's Act simply states that 'appointments to the office of CEO are to be made, as occasion requires, by the council in accordance with the relevant Ministerial guidelines'.

WHAT ARE THE OPPORTUNITIES FOR CHANGE?

It is important councils have sufficient guidance and support to effectively manage the appointment and performance of their general managers.

Options for reform include:

- Clarifying the role of the mayor in relation to the appointment and performance appraisal of general managers (given the requirement for the mayor to 'liaise with the general manager').
- Including principles for the selection, reappointment and performance appraisal processes for general managers.

WHAT DO YOU THINK?

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

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

WHAT IS THE ROLE OF THE GENERAL MANAGER?

The general manager is responsible for running the day-to-day operations of the council, based on the policy framework and strategies determined by the council.

The general manager's role is to:

- implement the policies, plans and programs of the council;
- implement the decisions of the council;
- be responsible for the day-to-day operations and affairs of the council;
- provide advice and reports to the council on the exercise and performance of its powers and functions and any other matter requested by the council;
- assist the council in the preparation of the strategic plan, annual plan, annual report and assessment of the council's performance against the plans;
- advise the mayor and the governing body on the development and implementation of policies and programs, including the appropriate form and scope of community consultation;
- coordinate proposals for the development of objectives, policies and programs for the consideration of the council;
- liaise with the mayor on the affairs of the council and the performance of its functions;
- manage the resources and assets of the council; and
- perform any other function the council decides.

The general manager is also responsible for appointing, directing and dismissing employees and developing human resource practices and procedures in accordance with council policy to ensure employees receive fair and equitable treatment.

The Act also provides that 'the general manager may do anything necessary or convenient to perform his or her functions under this or any other Act'.

WHAT COMMON ISSUES AFFECT THE ABILITY OF SOME GENERAL MANAGERS TO PERFORM THEIR ROLE?

In accordance with best practice governance, the councillors as a whole are responsible for setting the strategic direction and policy framework for the council, while the general manager and staff are responsible for operational matters.

There may be a need to clarify what constitutes the 'day-to-day operations and affairs of the council' and the separation of strategic and operational matters.

The day-to-day operational role involves providing information, advice and support to elected members and implementing the policies, programs and plans in accordance with these frameworks set by the council.

'Grey areas' and different interpretations of what is considered strategic and operational can be difficult for councils to manage. For example, whether the senior staffing structure of the council organisation is a strategic or operational matter.

Another example is whether some council policies, such as certain human resource policies, are operational or strategic in nature.

There may be some confusion around the requirement to 'provide advice and reports to the council', specifically what and how much information should be provided to councillors. For example, the amount of financial information that should be provided to councillors in order for the council to make fully informed decisions concerning the budget.

If elected members feel insufficient information is being provided, it can negatively affect the relationship between the council and senior staff.

There may be a need to clarify the requirement of general managers to 'liaise with the mayor'. A functional and effective working relationship between the general manager and mayor is essential if a council is to effectively serve its community.

Mayors and general managers will fail to adequately represent and serve the community if they continue to hold different views on their respective roles under the Act.

WHAT HAPPENS ELSEWHERE?

There are many similarities across jurisdictions regarding the role of general managers, but there are also some noteworthy differences.

In South Australia general managers are required to consult with the council when determining or significantly changing the organisational structure for the staff of the council.

In Victoria general managers are to manage interactions between council staff and councillors by ensuring appropriate policies, practices and protocols are in place defining appropriate arrangements for interaction between council staff and councillors.

New South Wales is considering reforms to the role of the general manager so among other functions it includes:

- to conduct the day-to-day management of the council in accordance with the governing body's strategic plans and policies;
- to ensure the mayor and councillors receive timely information, advice and administrative and professional support necessary for the effective discharge of their responsibilities;
- to implement lawful decisions of the governing body in a timely manner;
- to exercise such of the functions of the governing body as are delegated by the governing body to the general manager;
- to appoint staff in accordance with an organisation structure and resources approved by the governing body;
- to implement the council's workforce management strategy.

WHAT ARE THE OPPORTUNITIES FOR CHANGE?

It is important the Act supports general managers to effectively manage complex organisations and implement the council policy framework and strategies to deliver services to their communities.

Options for reform include:

- Specifying the type of interactions that could occur in the general manager liaising with the mayor, for example including:
 - weekly meetings between the mayor and general manager; and
 - joint oversight of council meeting agendas.
- Requiring the general manager to provide a specific level of information to the mayor and councillors, for example requiring general managers to:
 - advise the mayor and the governing body on the development and implementation of policies and programs, including the appropriate form and scope of community consultation.
- Clarifying what constitutes strategic matters that are the responsibility of the council and operational matters that are the responsibility of the general manager, for example whether the organisational structure is an operational or strategic matter.

WHAT DO YOU THINK?

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

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

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

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?

Monitoring how effectively councils serve our community

The Local Government Act (the Act) sets out how councils must operate in order to serve their communities effectively.

The Act provides a number of ways to monitor how effectively councils are serving their communities. These are:

- an investigation by a Board of Inquiry;
- a review by the Local Government Board;
- an investigation by the Director of Local Government;
- an investigation by the Code of Conduct Panel.

WHAT IS THE DIFFERENCE BETWEEN THE LOCAL GOVERNMENT BOARD AND A BOARD OF INQUIRY?

The Act provides for the establishment of two separate boards that can both consider the governance and operations of a council or councils and make recommendations to the Minister.

The Local Government Board is made up of four people appointed by the Minister for no longer than three years.

Membership of the Local Government Board includes the Chairperson, the Director of Local Government (or nominee), one person nominated by the Local Government Association of Tasmania and one person nominated by Local Government Professionals Australia (Tasmania).

A Board of Inquiry consists of one or more persons appointed by the Minister and is established when the Minister is satisfied a matter justifies its establishment.

In practice, the Local Government Board generally undertakes strategic reviews of councils and/or broader local government matters, whereas a Board of Inquiry generally undertakes investigations into councils whose governance practices and behaviours are significantly impacting on how effectively it serves its community.

In summary, the scope for a Local Government Board review includes:

- governance and operations;
- boundaries;
- naming;
- declaration as city;
- creation or abolition of area or district;
- division of area into districts;
- combining areas;
- creation or abolition of councils;
- election of councillors;
- number of councillors;
- any matter referred to it by the Minister.

By comparison, a Board of Inquiry is to conduct an inquiry into any matter referred to it by the Minister. However, both the Local Government Board and a Board of Inquiry ultimately have the power to review or investigate any issue.

The last Local Government Board review was undertaken in 2013 and was a review of councillor numbers in Brighton, Derwent Valley, Dorset, Launceston City, Southern Midlands and Waratah-Wynyard councils.

Up until the recent Boards of Inquiry into the Huon Valley Council and Glenorchy City Council, the last Board of Inquiry was initiated in 2002 to investigate the Kentish Council. However, Boards of Inquiry have been initiated more recently to make recommendations regarding councillor allowances.

WHAT CAN THE BOARDS DO TO UNDERTAKE A REVIEW OR INQUIRY?

Both the Local Government Board and a Board of Inquiry may do anything necessary or convenient to perform its functions⁴.

Beyond this, the investigative powers of the Local Government Board are not expressed in the Act. However, the investigative powers of a Board of Inquiry are expressed and include that it may:

- summons a person to appear to give evidence on oath and answer any questions;
- require a person to produce any documents and take copies of documents;
- adjourn the inquiry from time to time.

A Board of Inquiry may be conducted with 'as little formality and technicality as a proper consideration of the matter before it permits'.

However, a Local Government Board process requires consultation at different stages with both the affected council and the community.

A Local Government Board review must provide a council with at least 30 days' notice of the review commencement date and must provide reasonable opportunity for public consultation and submission from council.

WHAT ARE THE POSSIBLE OUTCOMES OF BOARD REVIEWS AND INQUIRIES?

Following a Local Government Board review, by order and on recommendation of Minister, the Governor may:

- create or abolish an area/council/district;
- alter and define boundaries;
- combine or divide areas/districts;
- name or change name of area/council/district;
- declare a city;
- dismiss all the councillors of a council;
- determine number of councillors;
- declare an election.

When a Board of Inquiry is established, all the councillors of the council(s) under inquiry may be suspended for a period no longer than six months, if it is in the public interest.

Following a Board of Inquiry, the Minister may:

- direct a council to take action to mitigate or rectify, discontinue or give reasons for its actions;
- take any other action the Minister thinks necessary; or
- recommend the Governor dismiss the council – that is, all the councillors.

If a council fails to comply with a Ministerial direction, the Minister may recommend the Governor by order dismiss the councillors.

The Act does not currently provide for the suspension or dismissal of an individual councillor or councillors following a Local Government Board review or Board of Inquiry.

⁴ For a flowchart comparison of the Local Government Board review and Board of Inquiry processes see [Comparison of Local Government Board review and Board of Inquiry processes](#).

WHAT IS HAPPENING ELSEWHERE?

Most other state and territory local government Acts provide for the establishment of entities with similar functions and powers to the Local Government Board and a Board of Inquiry.

In South Australia, the Ombudsman may review the practices and procedures of councils – a similar function to the Local Government Board. Similarly, in the Northern Territory the 'Agency' (equivalent to the Local Government Division) must establish a program of compliance reviews for councils.

Victoria is currently reviewing its *Local Government Act 1989* and is considering removing provisions for its Local Government Panels and/or Boards of Inquiry. Instead, Victoria is considering whether investigations by Inspectors of Municipal Administration (equivalent to the Director of Local Government in Tasmania) or the Ombudsman are sufficient for investigating and reporting to the Minister on council governance issues.

WHAT ARE THE OPPORTUNITIES FOR CHANGE?

Good governance practices are vital to a council's capacity to effectively serve its community.

It is important we have reliable, valid and efficient procedures to strategically review local government issues and inquire into the performance of councils, to ensure they are effectively serving their communities.

Options for reform include:

- Combining the functions and powers of the Local Government Board and a Board of Inquiry.
Having only one board to conduct strategic reviews and inquiries into the governance and operations of councils, established when the Minister deems necessary, would reduce unnecessary administrative requirements.
- Providing power to the review/inquiry board to determine the procedures for the review/inquiry.
The process for a review or inquiry would be fit for purpose and the review/inquiry could be expedited if necessary, with respect to the rules of natural justice and procedural fairness.
This would also reduce prescription and unnecessary administrative requirements.
- Providing for additional potential outcomes of a review or inquiry, such as the suspension or dismissal of an individual councillor.

WHAT DO YOU THINK?

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?

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

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?

WHAT IS THE ROLE OF THE DIRECTOR OF LOCAL GOVERNMENT?

The Director of Local Government (Director) is appointed by the Governor and has responsibility for the general administration of the Act.

The Director's role includes investigating non-compliance and offences under the Act. The Director may undertake an investigation in response to a complaint or on his or her own initiative.

The Director's powers are broad – the Director may do 'anything necessary or convenient to perform any function under this or any other Act'. This broad power enables the more specific powers of the Director to be undertaken and is therefore not unlimited⁵.

The Director also has a role as a member of the Local Government Board.

WHAT CAN THE DIRECTOR DO IN CARRYING OUT AN INVESTIGATION?

The Director can request any information, documents or records from councils and can request further particulars about a complaint.

However, the Act does not prescribe any specific investigative powers for the Director, such as the power to summons a person to appear, provide or do something.

In other Tasmanian Acts, such as the *Environmental Management and Pollution Control Act 1994* (s.92(1)) and the *Work Health and Safety Act 2011* (s.171), coercive powers are clearly specified.

WHAT ARE THE POTENTIAL OUTCOMES OF AN INVESTIGATION BY THE DIRECTOR?

Following an investigation, the Director may:

- refer investigations into offences under the Act to the Director of Public Prosecutions for prosecution in the Magistrates Court (where penalty provisions exist); or
- recommend to the Minister that a matter be referred to the Local Government Board or a Board of Inquiry.

The Director does not have specific power to direct councils or councillors to take action in response to instances of non-compliance under the Act or regulations, especially for breaches of sections of the Act that do not have a penalty provision.

⁵ For more detail on the functions and powers of the Director of Local Government and the Minister for Local Government see [The functions and powers of the Director of Local Government and Minister for Local Government](#).

WHAT IS THE ROLE AND PROCESS OF THE CODE OF CONDUCT PANEL?

The Local Government Code of Conduct Panel (the Panel) is responsible for the investigation and determination of code of conduct complaints against councillors.

The Panel receives a complaint that has been lodged with a general manager and decides whether a hearing is necessary or whether the complaint can be dealt with via investigation.

It assesses the evidence and decides whether to uphold or dismiss all or part of a complaint. The Panel has 90 days to make its determination.

WHAT ARE THE POTENTIAL OUTCOMES OF A CODE OF CONDUCT PANEL INVESTIGATION?

If the Panel upholds a complaint, it may:

- caution the councillor;
- issue a reprimand to the councillor;
- require the councillor to apologise;
- require the councillor to undertake training;
- suspend the councillor from office for up to three months, with no allowances.

A councillor may be fined by the Magistrates Court for failing to comply with a Panel's sanction.

The Minister may remove a councillor from office if the Panel imposes a third suspension on the councillor during one term of office or two consecutive terms of office.

ARE THERE ANY OTHER POTENTIAL OUTCOMES FOR BREACHING THE ACT?

A Magistrate may impose a fine, and in addition, dismiss or remove a councillor from office as a penalty for particular breaches of the Act including:

- failing to declare a pecuniary interest;
- disclosure of information;
- improper use of information;
- misuse of office.

A Magistrate may also grant an order declaring that a councillor is unable to perform the functions of a councillor due to physical or mental incapacity.

WHAT IS HAPPENING ELSEWHERE?

In other jurisdictions, the Local Government Acts enable the Director of Local Government or equivalent to:

- conduct an investigation into any aspect of a council or its activities and make any recommendations to the Minister it considers appropriate (NSW).
- take disciplinary action against a councillor who has engaged in misconduct, including, among other things, suspending the councillor from office for a period not exceeding three months (NSW).
- appoint a financial advisor and/or financial controller if a council is not performing its responsibilities properly or complying with the relevant Acts (QLD).
- investigate a complaint against a member of council and may recommend the council reprimand the member, require them to attend training, apologise or take other steps, reimburse the council or ensure a complaint is lodged in the District Court (SA – Ombudsman).

In other jurisdictions, the Minister may:

- order the council, or any of its council members or employees to give effect to any of the recommendations of an inquiry panel (WA).
- advise the Governor the dismissal of a person suspended from office is necessary to protect the public standing of the council and the proper exercise of its functions (NSW).
- issue governance directions to a council (Vic).
- stand down a councillor against whom a complaint of serious or gross misconduct is made until the claim is heard (Vic).
- issue a performance improvement order if the Minister reasonably considers that action must be taken to improve the performance of the council (NSW).*
- issue a compliance order to a councillor who has failed to take action as required by a performance improvement order (NSW).
- suspend a councillor for a period not exceeding three months if satisfied the councillor has engaged in misconduct (NSW).

*Performance improvement orders were introduced to provide a fast and cost effective mechanism for directing a council to remedy an emerging issue quickly. A performance improvement order directs a council and/or individual councillors to do, or refrain from doing, anything as is necessary to improve council's performance within a specified time. It also outlines the actions that may be taken if the council and/or councillors do not comply with the order.

WHAT ARE THE OPPORTUNITIES FOR CHANGE?

To perform their role effectively, councils and individual councillors must act in the best interests of the community at all times.

It is important the Director of Local Government has sufficient powers to enable him or her to support councils and councillors to practice good governance and ensure they serve their communities effectively.

Options for reform include:

- Creating more specific investigative powers of the Director of Local Government, such as the power to summons councillors and council staff.
- Providing the Director of Local Government with the power to direct a council and/or individual councillor to take action following an investigation.
- Providing a mechanism to dismiss a council and/or individual councillor following an investigation by the Director of Local Government.
- Providing for rapid intervention 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.
- Providing for the suspension or dismissal of an individual councillor for breaches of the Act other than code of conduct.

WHAT DO YOU THINK?

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

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)?

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

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?

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

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

HOW IS THE FINANCIAL PERFORMANCE OF COUNCILS MONITORED?

The Act sets out how councils are to manage and report on their finances.

The Act includes provisions for council borrowings, expenditure and investments, as well as budget processes, record keeping, financial statements and auditing (Part 8 – Financial Management).

The Act also requires councils to prepare a number of plans and strategies to demonstrate how they will manage their finances and assets to ensure financial sustainability (Part 7 – Administration).

There is also a suite of subordinate legislation that provides further guidance on and regulation of council financial management.

The Act requires the general manager to prepare and forward a copy of the council's financial statements to the Auditor-General annually, in accordance with the *Audit Act 2008*. Statements are to be in a format prescribed by the Auditor-General.

The Auditor-General reviews the financial statements and reports back to the councils on the findings. A consolidated report on the findings is also presented to Parliament. There is currently no requirement for councils to report back on any actions taken in response to the Auditor-General's findings.

RECENT REFORM OF THE ACT IN RELATION TO FINANCIAL MANAGEMENT

The financial management and administration parts of the Act have recently been reviewed; therefore there are not any significant issues to raise in relation to the financial management and administration parts of the Act.

In 2014, amendments to the Act (Parts 7 and 8) commenced that:

- require councils to develop and implement long-term policies, plans and strategies to support the financial and asset management framework; and
- require councils to establish audit panels to monitor the financial performance of council.

The *Local Government (Miscellaneous Amendments) Act 2013* aimed to improve local government financial and asset management capacity and practices. The Auditor-General has commented that governance arrangements and asset management have improved across councils since these amendments⁶.

WHAT DO YOU THINK?

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?

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

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?

⁶Tasmanian Audit Office. (2015). *Report of the Auditor-General No.7 of 2014-15, Volume 4*. Crown in right of the State of Tasmania.

Fair and transparent local government elections

The Local Government Act (the Act) divides Tasmania into 29 municipal areas, with each area having a council consisting of between 7 and 12 elected members (councillors), including a mayor and deputy mayor.

Elections for Tasmania's 29 councils are conducted by postal ballot every four years.

Mayors, deputy mayors and councillors are elected for four year terms. At the end of the four year term all are eligible for re-election.

Successful candidates for mayor and deputy mayor must be also elected as councillors to be able to accept the office of mayor or deputy mayor.

In relation to local government elections, the following matters are being reviewed:

- the general manager's electoral roll;
- electoral advertising;
- electoral funding.

WHO CAN VOTE IN LOCAL GOVERNMENT ELECTIONS?

A person is entitled to vote in a local government election if they are:

- enrolled on the House of Assembly electoral roll in respect of a residential address within a municipal area*; and/or
- enrolled on the electoral roll maintained by the general manager in a municipal area (general manager's roll).

**The House of Assembly electoral roll includes only the primary residential address of a person. Enrolment on this electoral roll grants a person eligibility to vote only in their electorate of primary residence.*

WHAT IS THE GENERAL MANAGER'S ROLL?

The general manager of each council must maintain an electoral roll for their municipal area, referred to as the 'general manager's roll'.

The general manager's roll includes a list of persons who are not on the House of Assembly electoral roll for that area but are eligible to vote due to a vested interest in that area (eg. a business or shack owner).

Such persons have successfully lodged an enrolment form with the general manager declaring that they are not on the House of Assembly electoral roll, but are:

- over the age of 18 and not subject to a term of imprisonment; and
- an owner of land in the electoral area (but not necessarily a resident);
- an occupier of land in the electoral area; or
- a person nominated to vote on behalf of a corporate body in the electoral area.

General managers are required to make any alterations and additions to the electoral roll necessary to keep the roll accurate and updated.

During the 2014 local government elections there was a significant increase in the number of people enrolled on some general manager's rolls across Tasmania.

CAN PEOPLE WHO ARE NOT AUSTRALIAN CITIZENS VOTE?

Non-Australian citizens are not eligible to be enrolled on the House of Assembly electoral roll, but may vote in local government elections if they meet the eligibility criteria for and enroll on the general manager's roll.

Non-Australian citizens include permanent residents who are not yet Australian citizens, as well as non-permanent residents such as international students, refugees and asylum seekers, and other migrants on a range of visa classes.

There is some debate about whether it is fair and reasonable that non-permanent residents can vote in local government elections, given they are only accessing the services of the local government for a temporary period.

On the other hand, providing non-permanent residents with the right to vote aligns with the principles of inclusion and equity – principles which are at the core of local communities and local government.

CAN A PERSON VOTE MORE THAN ONCE?

Multiple voting is not permitted in state or federal government elections – each voter has one vote to elect the make-up of parliament.

A person can vote in multiple municipal areas, in their own right as an owner or occupier of land or as the nominee of a corporate body that owns or occupies land.

In some municipal areas there is a significant proportion of non-resident landholders (shack owners). The general manager's roll entitles these landholders to vote in the municipal areas where they do not permanently reside but do pay rates, as well as voting in the municipal area they permanently reside in.

The general manager's roll also provides the opportunity for commercial ratepayers and occupiers to vote within the municipal area of their business if they do not permanently reside in the area.

If a person is the nominee of a corporate body and the owner or occupier of land in the same municipal area, they are entitled to a maximum of two votes in that area – one in his or her own right and one on behalf of the corporate body. They have two votes for one council in the one municipality.

There is debate about whether it is fair that one person can have more voting clout than another person in a single election; it has been suggested this goes against the 'one vote, one value' principle of democracy.

WHAT IS HAPPENING ELSEWHERE?

Most other jurisdictions have an equivalent to Tasmania's general manager's electoral roll.

The exceptions are Queensland and the Northern Territory, where eligibility to vote in local government elections is based on enrolment on the equivalent to Tasmania's House of Assembly electoral roll. This means non-resident landholders are not able to vote in Queensland and the Northern Territory.

In all other jurisdictions, non-resident landholders have some entitlement to vote in all municipal areas in which they have a vested interest.

However, Tasmania is the only state that allows a person to have two votes in a municipal area where they are the nominee of a corporate body and also entitled to vote in their own right.

WHAT ARE THE OPPORTUNITIES FOR CHANGE?

It is important the rules for voting in local government elections are fair, people are aware of their entitlement to vote, and that there are effective processes for maintaining local government electoral rolls.

The integrity of the electoral process and the participation of the electorate are crucial to the formation of local government.

Options for reform include:

- Allowing a person to be enrolled only once in any single municipality (rather than potentially twice if they are the nominee of a corporate body and a resident).
- Including provisions to ensure voter awareness of eligibility to enrol and of enrolment, to ensure fairness and inclusion and maximise potential participation in the electoral process.
- Amending the general manager's roll to:
 - Include those aged 18 years and above who are either:
 - Australian citizens or permanent residents living in the municipality;
 - Owners of property in the municipality;
 - Lessees of non-residential property in the municipality.
- Abolishing the general manager's roll.

Removing the roll completely would mean owners, occupiers or corporate body representatives cannot vote in a municipal area where they have a vested interest but are not enrolled on the House of Assembly electoral roll in respect of a residential address in the area.

WHAT DO YOU THINK?

Q29 Should the general manager's roll be retained or abolished?

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?

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?

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?

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?

HOW MUCH CAN ELECTORAL CANDIDATES SPEND ON ADVERTISING?

It is generally accepted that the more money a candidate spends on advertising as part of their election campaign, the greater potential they have to communicate with voters, influence their voting behaviour and affect electoral outcomes.

To provide a level playing field for candidates, the Act restricts the amount of money a candidate may spend on advertising.

Total expenditure on advertising for an election campaign must not exceed:

- \$5 000 for a councillor candidate in respect of a single election;
- \$8 000 for a mayor and deputy mayor candidate in respect of a single election.

These limits apply only to the election period, which is defined as "...the period starting on the 30th day before the date of notice of election and ending at the end of the polling period".

There are no restrictions on the amount of money a candidate can spend outside of this period.

Candidates are required to lodge a return with the Tasmanian Electoral Commissioner (Commissioner) stating how much they spent on advertising, within 45 days following an election.

If a prospective candidate launches an advertising campaign prior to the election period, the amount spent in this time does not count towards their expenditure limit and the amount reported to the Commissioner.

WHAT IS HAPPENING ELSEWHERE?

Tasmania is the only state to restrict expenditure on election campaign advertising.

Like Tasmania, New South Wales and Western Australia require candidates to report on the amount spent on advertising during an election campaign.

WHAT ARE THE OPPORTUNITIES FOR CHANGE?

Considering whether campaign advertising expenditure should be regulated requires a value judgement: should the Act aim to ensure a level playing field or should candidates be free to choose how much they invest in campaign advertising?

Options for reform include:

- Abolishing expenditure limits
- Increasing expenditure limits

Allowing candidates to choose how much money they spend on election campaigns would bring Tasmania in line with other jurisdictions.

Increasing expenditure limits would recognise the increased costs and mechanisms available for advertising.

Either of these changes may deter potential candidates from standing for election if they do not believe they personally have the resources, nor the capacity to seek sufficient campaign donations, to campaign effectively.

WHAT DO YOU THINK?

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

CAN A CANDIDATE RECEIVE DONATIONS FOR AN ELECTION CAMPAIGN?

Yes. Some local government candidates receive donations from their supporters to help fund their election campaign.

Campaign donations are part of a healthy democratic process, one of the legitimate ways of participating in politics. At the same time, campaign donations raise legitimate concerns that contribution to a candidate's election campaign may influence their decision making if elected.

The Act does not prescribe who can donate to a candidate or how much may be donated. Nor does the Act require candidates to publicly disclose donations received in the lead up to or during an election campaign.

WHAT IS HAPPENING ELSEWHERE?

All other jurisdictions have some requirements in relation to receiving and disclosing election campaign donations.

In all other Australian states, candidates are not permitted to accept anonymous donations that exceed a specified monetary value (between \$200 and \$500).

In New South Wales, candidates are not permitted to accept donations from prohibited donors or close associates of prohibited donors, including:

- property developers;
- tobacco industry business entities; and
- liquor or gambling industry business entities.

All other states also require the general manager or equivalent to keep a register of campaign donations. This register must be provided to the state Electoral Commission following the election to disclose the details of campaign donations.

At the State level in Tasmania, there are no restrictions on who can donate to a candidate or how much may be donated.

In addition, Tasmanian law does not require state electoral candidates to report campaign donations. However, the *Commonwealth Electoral Act 1918* requires political parties represented in the Tasmanian Parliament to report political donations to the Australian Electoral Commission.

WHAT ARE THE OPPORTUNITIES FOR CHANGE?

Transparency in election campaign donations is important to protect the integrity of both candidates and donors. It helps protect candidates from the actual or perceived impact of electoral donations on decision making.

Transparency and access to information is important to voters and the details of campaign funding may help to inform them.

Options for reform include:

- Placing restrictions on the donations local government electoral candidates are permitted to receive.

- Prohibiting anonymous donations and/or donations from specific industry entities would increase transparency and ensure potential conflicts of interest can be prevented, or are able to be revealed and addressed in council decision making.
- Requiring local government electoral candidates to disclose campaign donations (who they receive donations from and the monetary value of the donations).

Disclosure of campaign donations would increase transparency and enable public awareness of the level of financial and in-kind support provided to candidates by individuals or organisations.

WHAT DO YOU THINK?

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

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

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

IS ELECTORAL CAMPAIGN ADVERTISING REGULATED?

The *Local Government (General) Regulations 2015* (the Regulations) outline the election campaign advertising rules candidates must follow.

The Regulations provide rules for the following forms of advertising:

- television;
- radio;
- newspaper;
- posters and signage.

The rules relate to the size, space and time in duration of these methods of advertising, as well as requirements in relation to candidate authorisation to advertise.

The Regulations do not provide rules for using social media or internet based methods of campaign advertising.

Many candidates use social media to communicate with voters and it may be a form of free advertising. Candidates also have the option to purchase online advertising, through social media or other online advertising providers.

The absence of rules for online advertising means there is ambiguity about whether the purchase of advertising on the internet must be included in campaign expenditure reports.

The Act also prohibits a person from printing, publishing, broadcasting or distributing electoral advertising that contains the name, photograph or a likeness of a candidate or intending candidate without their consent during the election period. It is also an offence to make a false or misleading statement.

Whilst this protects candidates from potential slanderous claims by other candidates, it means electoral candidates are unable to share any knowledge of or experience working with other candidates with voters.

It may be helpful for voters to be aware of such knowledge and experiences, such as a candidate's participation in council meetings and voting patterns.

WHAT IS HAPPENING ELSEWHERE?

Most other jurisdictions have provisions in relation to the publication of advertising materials and define 'publish' to include by publication on the internet.

In most other jurisdictions it is an offence to make false or misleading statements, however there is not a specific provision prohibiting the use of another candidate's name or photograph without their permission as there is in Tasmania.

For example, in Western Australia and Queensland, it is simply an offence to print, publish or distribute deceptive material; or to publish any false or defamatory statement in relation to the personal character or conduct of a candidate in the election.

At a State level, the *Electoral Act 2004* similarly defines 'publish' to include by publication on the internet and also prohibits a person from including the name, photograph or a likeness of a candidate in campaign advertising materials.

WHAT ARE THE OPPORTUNITIES FOR CHANGE?

Local government electoral candidates rely on the Act to guide the development and implementation of their election campaigns.

It is important the Act has provisions for contemporary marketing and communication methods to protect the interests of candidates and the audiences of different communication mediums.

Options for reform include:

- Creating rules about online electoral campaign advertising.

Including rules for online advertising will provide guidance for local government electoral candidates in using this form of advertising.

It will also ensure there is clarity about the requirement to include online advertising expenditure in reporting campaign expenditure.

WHAT DO YOU THINK?

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

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

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

Regional bodies

The Local Government Act (the Act) provides councils with the power to establish a joint authority in conjunction with one or more other councils. A joint authority may be established to:

- carry out any scheme, work or undertaking;
- provide facilities or services; and
- perform any function or exercise any power of a council under the Act.

Councils in the three Tasmanian regions have established a joint authority to represent their respective regional interests⁷. While the principle objectives and governance of these regional bodies differ, each has an important role in supporting the role and responsibilities of councils and providing a voice and vehicle for activities on a regional scale.

While councils are very effective at working for the regional development of their own municipality, it is recognised that in some instances they may find it difficult to address broader regional issues.

There is significant variance between the scale, funding, functions and staffing structures of the three regional bodies, as well as differences in governance arrangements, including industry and community representation.

Despite these differences, all three regional bodies have a focus on regional cooperation and engagement, regional advocacy and regional development.

WHAT ARE THE OPPORTUNITIES FOR CHANGE?

Given the growing significance of regional planning and decision making, it is important Tasmania's regional bodies are appropriately recognised in the Act. It may be necessary to provide for regional bodies beyond the prescription relating to joint authorities.

The Local Government Association of Tasmania (LGAT) is established under the Act to represent the interests of councils in Tasmania; promote efficient and effective local government and to provide services to members. The Act provides LGAT with the power to make its own rules relating to management, membership and powers.

Options for reform include:

The Act could specify that all three regional bodies have common over-riding functions, such as:

- promoting the interests of the region as a whole;
- providing a vehicle for council cooperation;
- supporting the identification of regional priorities.

WHAT DO YOU THINK?

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

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?

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

⁷ Cradle Coast Authority, Southern Tasmanian Councils Authority, Northern Tasmanian Development Authority.

Reducing red tape

Any changes made as a result of the review will not increase unnecessary administrative requirements (red tape) for local government. In fact, we are seeking opportunities to reduce red tape in the areas where changes are proposed. Such opportunities for this are noted throughout the different sections of the discussion paper.

This aligns with the principle of making the Local Government Act (the Act) less prescriptive in nature and the move towards a framework based on principles rather than detail, which can often be legislated through other means such as ministerial orders, regulations or guidelines.

WHAT ARE THE OPPORTUNITIES FOR CHANGE?

Whilst the review will not involve combing the Act to identify opportunities to reduce red tape, we are interested to hear any feedback on opportunities to reduce red tape in the Act.

WHAT DO YOU THINK?

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

What do you think?

Please tell us what you think of the ideas presented in this discussion paper.

Your views are important to help us determine how the Local Government Act can be improved to ensure our councils are appropriately supported to effectively lead and serve our community.

Opportunities to provide feedback close on Friday, 10 June 2016.

The Steering Committee will consider all feedback and make recommendations to the Minister for Planning and Local Government in August 2016.

It is expected any changes to the Act will be tabled in Parliament in April 2017.

HOW CAN I PROVIDE FEEDBACK?

Have your say your way:

- Complete the online survey at www.dpac.tas.gov.au/lgd
- Provide a response to the questions in your own format and send to:
 - Email: lgd@dpac.tas.gov.au
 - Post: Local Government Division
Department of Premier and Cabinet
GPO Box 123
HOBART TAS 7001

For further information please visit the [Local Government Division website](#) or contact the Local Government Division on (03) 6232 7022.

WHEN DOES FEEDBACK CLOSE?

Friday, 10 June 2016.

WHAT DO YOU THINK?

THE PEOPLE WHO LEAD AND SERVE OUR COMMUNITIES

- Q1** What should the leadership role of the mayor include?
- Q2** What should the requirement for the mayor to liaise with the general manager include?
- Q3** Should mayors be required to undertake induction and training, particularly in the development of leadership skills?
- Q4** Should mayors be given a casting vote when decisions are tied, so that tied decisions are not automatically determined in the negative?
- Q5** Should the provisions requiring a person to be both a mayor and councillor candidate remain?
- Q6** What should the role of deputy mayor include?
- Q7** Should deputy mayors be appointed by the council rather than popularly elected?
- Q8** How should mayors fulfil their role of overseeing councillors in the performance of their functions?
- Q9** What protocols should councils develop to guide interactions between council staff and councillors?
- Q10** Should elected members be required to participate in induction and professional development programs and, if so, what sort of training should they do?
- Q11** What role should mayors have in relation to the appointment and performance appraisal of general managers?
- Q12** Should the Act include principles for the selection, reappointment and performance appraisal of general managers?
- Q13** What should the requirement for general managers to liaise with mayors include?
- Q14** What level of information should be provided to the council by the general manager?
- Q15** Is a council's organisational structure a strategic or operational matter?
- 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?

MONITORING HOW EFFECTIVELY COUNCILS SERVE OUR COMMUNITY

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?

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

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?

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

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)?

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

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?

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

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

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?

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

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?

FAIR AND TRANSPARENT COUNCIL ELECTIONS

- Q29** Should the general manager's roll be retained in its current form, amended or abolished?
- 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?
- 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?
- 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?
- 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?
- Q34** Should electoral campaign advertising expenditure limits be abolished, retained or increased?
- Q35** Should there be restrictions on the donations local government electoral candidates are permitted to receive? If so, what should the restrictions include?
- Q36** Should local government electoral candidates disclose who they receive election campaign donations from and the monetary value of the donations?
- Q37** If candidates are required to disclose donations received, should there still be limits on campaign advertising expenditure?
- Q38** Should online electoral campaign advertising be included in the existing advertising regulations?
- Q39** Should internet advertising be included in the expenditure limit (if there is a limit)?
- Q40** Should an electoral candidate be able to name another candidate in campaign advertising?

REGIONAL BODIES

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

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?

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

RED TAPE

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



GPO Box 123
HOBART TAS 7001

Phone: (03) 6232 7022

Fax: (03) 6173 0257

Email: lgd@dpac.tas.gov.au

Visit: www.dpac.tas.gov.au/lgd