



CITY OF HOBART

AGENDA

Special Governance Committee Meeting

Open Portion

Monday, 24 April 2017

at 4.20 pm

Lady Osborne Room, Town Hall

THE MISSION

Our mission is to ensure good governance of our capital City.

THE VALUES

The Council is:

about people	We value people – our community, our customers and colleagues.
professional	We take pride in our work.
enterprising	We look for ways to create value.
responsive	We're accessible and focused on service.
inclusive	We respect diversity in people and ideas.
making a difference	We recognise that everything we do shapes Hobart's future.

ORDER OF BUSINESS

Business listed on the agenda is to be conducted in the order in which it is set out, unless the committee by simple majority determines otherwise.

APOLOGIES AND LEAVE OF ABSENCE

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Special Governance Committee Meeting (Open Portion) held Monday, 24 April 2017 at 4.20 pm in the Lady Osborne Room, Town Hall.

COMMITTEE MEMBERS

Ruzicka (Chairman)
Deputy Lord Mayor Christie
Cocker
Thomas
Reynolds
Harvey

Apologies: Nil

Leave of Absence: Nil

ALDERMEN

Lord Mayor Hickey
Zucco
Briscoe
Sexton
Burnet
Denison

1. CO-OPTION OF A COMMITTEE MEMBER IN THE EVENT OF A VACANCY

2. INDICATIONS OF PECUNIARY AND CONFLICTS OF INTEREST

Ref: Part 2, Regulation 8(7) of the *Local Government (Meeting Procedures) Regulations 2015*.

Aldermen are requested to indicate where they may have any pecuniary or conflict of interest in respect to any matter appearing on the agenda, or any supplementary item to the agenda, which the committee has resolved to deal with.

3. TRANSFER OF AGENDA ITEMS

Regulation 15 of the *Local Government (Meeting Procedures) Regulations 2015*.

A committee may close a part of a meeting to the public where a matter to be discussed falls within 15(2) of the above regulations.

In the event that the committee transfer an item to the closed portion, the reasons for doing so should be stated.

Are there any items which should be transferred from this agenda to the closed portion of the agenda, or from the closed to the open portion of the agenda?

4 REPORTS

4.1 Targeted Review of the Local Government Act 1993 File Ref: F17/37771

Report of the Acting General Manager of 21 April 2017 and attachments.

Delegation: Council

**REPORT TITLE: TARGETED REVIEW OF THE LOCAL GOVERNMENT
ACT 1993****REPORT PROVIDED BY:** Acting General Manager**1. Report Purpose and Community Benefit**

- 1.1. The purpose of this report is to request the Council's consideration of the proposed *Local Government Amendment (Targeted Review) Bill 2017*.
- 1.2. The proposed amendments are focused on improving governance and ensuring that the legislative framework for local government is effective and efficient.

2. Report Summary

- 2.1. In mid-2015, the Minister for Local Government, the Hon. Peter Gutwein MP initiated a targeted review of the *Local Government Act 1993*.
- 2.2. The discussion paper which was released as part of the review covered a range of matters including the functions of mayors, deputy mayors and general managers; financial management and local government elections.
- 2.3. The Council provided a submission to the review in June 2016 **(Attachment A)**.
- 2.4. A draft *Local Government Amendment (Targeted Review) Bill 2017* has now been released for consultation and comment which includes a number of key legislative amendments.
- 2.5. A spreadsheet has been compiled which provides a summary of the changes being proposed and a suggested position the Council may wish to consider in relation to the changes **(Attachment B)**.
- 2.6. There are a number of matters which have been identified which require specific consideration by the Council, including Ministerial Orders as they relate to the mayor, elected members and the general manager; the suspension of councillors; and the appointment of a commissioner only when all councillors are either dismissed or suspended.

3. Recommendation

That the Council consider the changes proposed as part of the Local Government Amendment (Targeted Review) Bill 2017 and resolve its position as outlined in the summary table marked as Attachment B to the report.

4. Background

- 4.1. In mid-2015, the Minister for Local Government, the Hon. Peter Gutwein MP initiated a targeted review of the *Local Government Act 1993*.
 - 4.1.1. The targeted review of the Act was aimed at improving governance arrangements within councils in line with increasing community expectations for transparency and accountability and to ensure that the legislative framework for local government was effective and efficient.
 - 4.1.2. A Steering Committee was established, chaired by the Department of Premier and Cabinet's Deputy Secretary and included the Director of Local Government, representatives from the Department's Local Government Division, the Local Government Association of Tasmania and the Local Government Professionals Australia (Tasmania).
- 4.2. Initial consultation commenced in early 2016 with the release of a discussion paper which covered the following matters:
 - The functions of mayors, deputy mayors and elected members;
 - The appointment, functions and powers of the general manager;
 - Financial management and reporting;
 - The functions and powers of the Director of Local Government;
 - The functions, powers and procedures of the Local Government Board;
 - The functions, powers and procedures of a Board of Inquiry;
 - Local government elections – electoral rolls, funding and advertising;
 - The recognition, structure and role of regional bodies; and
 - The reduction of unnecessary administrative requirements.
- 4.3. The Council provided a submission on the proposed changes to the Department of Premier and Cabinet in June 2016.
- 4.4. The Department has now written to all stakeholders advising that the proposed draft *Local Government Amendment (Targeted Review) Bill 2017* is now ready to be released for public consultation and comment.
- 4.5. The key legislative amendments are as follows:
 - Providing the Minister with the ability to issue Ministerial Orders in relation to such matters as the role of mayor, functions of elected members and general managers;

- A greater focus and commitment from elected members to engage in ongoing professional development and abide by the principles of good governance;
 - Implementing Performance Improvement Directions as a quicker way of addressing issues in a council to potentially avoid a Board of Inquiry or Local Government Board review;
 - Improving the outcomes for Boards of Inquiry in terms of recommendations that can be made following an inquiry that provide greater efficiencies and flexibility; and
 - Requiring general managers to maintain a gifts and donations register for the purpose of mandatory disclosure of gifts and campaign donations by local government elected members.
- 4.6. Some other proposed amendments that are not yet included within the draft Bill are also being considered for inclusion. The suggestions are generally aimed at strengthening existing provisions rather than introducing materially new provisions, for example online petitions.
- 4.7. To assist the Council with its consideration of the proposed changes, officers have prepared a spreadsheet which provides a summary of the changes and a proposed position which the Council may wish to consider on the changes.
- 4.7.1. In some cases officers have recommended comment or drawn on previous council policy positions.
- 4.8. A number of amendments being proposed, however, require the specific consideration of the Council, namely:
- Ministerial Orders as they relate to the mayor, elected members and the general manager;
 - The suspension of councillors; and
 - The appointment of a commissioner only when all councillors are either dismissed or suspended.
- 4.9. Council requested further clarity of the roles of Lord Mayor, Aldermen and the General Manager. The response to this is Ministerial Orders. A mechanism to address issues is good, but without any information around what would be in them means that it is impossible to comment on them.

5. Proposal and Implementation

- 5.1. It is proposed that the Council consider the *Local Government Amendment (Targeted Review) Bill 2017* and provide its feedback on the draft Bill to the Department of Premier and Cabinet.

6. Strategic Planning and Policy Considerations

- 6.1. The proposed draft of the *Local Government Amendment (Targeted Review) Bill 2017* aligns with Goal 5 of the Council's Capital City Strategic Plan which states that, 'leadership provides for informed decision-making of our capital city.'

7. Financial Implications

- 7.1. Funding Source and Impact on Current Year Operating Result
- 7.1.1. Not applicable.

8. Legal, Risk and Legislative Considerations

- 8.1. These have been addressed in the body of this report.

9. Delegation

- 9.1. This matter is delegated to the Council.


As signatory to this report, I certify that, pursuant to Section 55(1) of the Local Government Act 1993, I hold no interest, as referred to in Section 49 of the Local Government Act 1993, in matters contained in this report.



Heather Salisbury
ACTING GENERAL MANAGER

Date: 21 April 2017
File Reference: F17/37771

Attachment A: City of Hobart Submission to review of Local Government Act 1993 June 2016 ↴ 

Attachment B: Summary of changes proposed to Local Government Act and suggested Council position ↴ 

Targeted Review of the Local Government Act

Hobart City Council Submission



City of **HOBART**

The Hobart City Council welcomes the opportunity to provide a submission to the Tasmanian Government's Targeted Review of the Local Government Act ("the Act").

Introduction

The Hobart City Council acknowledges that the current *Local Government Act 1993* despite being drafted over 25 years ago, has served councils well with minor changes occurring mainly around the clarification of powers and more tools for councils to use. Other positive changes or amendments to the Act have included clarification that the council is responsible for setting policy with the General Manager being responsible for its implementation as well as being the employer.

Given that the changes thus far to the Act have been minor in nature, the Hobart City Council has applied the following guiding principles as part of its consideration of the targeted review of the Act:

- improvements to the governance provisions in the Act;
- clarification of certain functions and powers of the Lord Mayor, Aldermen and General Managers within the Act; and
- making the changes to the Act less prescriptive where possible.

In considering amendments to the Act it is vitally important that changes are not made in order to address individual council issues. In order for the Act to provide an effective framework for councils it needs to provide the basis for councils to operate effectively.

Role of the Mayor

Discussion

The Act provides for the election of mayors, deputy mayors and elected members to lead the community.

Generally, the Act provides an effective framework to support elected members and general managers to fulfil their role and meet the community's expectations.

The Act states that 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 their 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.

It is logical that as the leader of the council, the mayor plays an important role in building a united team; this is critical in order to effectively govern. If this does not happen then the community's confidence in the council may start to erode. With this in mind, there may be merit in mayors being encouraged to undertake induction and training, particularly in the development of leadership and team building skills, given that there is now no requirement for mayors to have previously served on a council.

In 'acting as spokesperson of the council', mayors must represent their views and decisions of the council fairly, even if they do not agree with the view or decision.

An effective working relationship between the mayor and general manager is essential if a council is to serve its community well, therefore it seems logical that the mayor be responsible for leading the performance appraisal of the general manager.

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'. It is necessary that the mayor provides guidance to elected members to assist them in effectively fulfilling their roles and to help establish and maintain a united team.

It may also be appropriate to provide the mayor with the capacity to refer possible breaches of a council's code of conduct to the Code of Conduct Panel without the impost of becoming a complainant in that process. It may also be appropriate to allow referral to other authorities as well.

The discussion paper suggests that one of the options for reform in relation to the mayor is to allow them to be members of each standing committee of council. In the Hobart City Council's case, there are seven standing committees, therefore to legislate that mayors be members of each standing committee would be impractical and a significant impost on the mayor's time.

The reforms being undertaken in New South Wales as they relate to mayors representing their governing body on regional organisations and in inter-governmental forums at regional, state and federal levels have merit. This concept is supported as it is a long standing practice enshrined at the Hobart City Council.

Finally, in Tasmania mayors are popularly elected with the requirement being that a mayoral candidate also be a councillor candidate. From a good governance point of view, there may be merit in holding separate elections for mayors or councillor which is the process used in jurisdictions such as Melbourne and Geelong.

Opportunities for Change

Role of the Mayor

The Hobart City Council in considering this section of the Act requests consideration of the following:

- *enforce the distinction between the role of the mayor and the role of the general manager;*
- *make this section of the Act more prescriptive so that it is made clear what the leadership role of the mayor is especially as it relates to the responsibility they have in overseeing the function and performance of councillors;*
- *provide the mayor with powers in order for them to fulfil the duties required of them – such powers could include a referral power to the Code of Conduct Panel for alleged breaches of a code of conduct or referral to other authorities where appropriate;*
- *provide clarity around the term 'spokesperson' to reflect that whilst the mayor is the spokesperson of the council they also are a community advocate; and*
- *Respecting the right for the mayor to express a personal view*

Role of the Deputy Mayor**Discussion**

The deputy mayor 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.

Opportunities for Change**Role of the Deputy Mayor**

The Hobart City Council in considering this section of the Act requests consideration of the following:

- *delete the word 'absent' and substitute with 'unavailable' to make it clear that the mayor may need to take time away from their role for reasons other than being absent, for example for family reasons.*

Role of individual Councillors**Discussion**

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 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; and
- undertake duties and responsibilities authorised by the council.

The Hobart City Council is in agreement that councils operate within 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.

As elected members representing the community, their behaviour should demonstrate that they:

- 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;
- have good judgment; and
- are well prepared and participate in meetings.

One of the critical components of the Act which requires significant consideration is the oversight mayors have in relation to a councillor's performance of their functions

and exercise of their responsibilities. Across councils there is inconsistency regarding the extent to which the mayor performs the role of 'overseeing councillors in the performance of their functions and exercise of their powers'.

As the leader and chairperson, the mayor is to provide guidance to elected members to assist them in effectively fulfilling their roles and to help establish and maintain a working team and from a good governance perspective have oversight of councillor expenses and meeting attendance.

Opportunities for Change

The Hobart City Council in considering this section of the Act requests consideration of the following:

- *newly elected and returning councillors and mayors participate in induction programs following elections;*
- *newly elected councillors and mayors be required to undertake mandatory training and induction programs, with it being optional for returning councillors and mayors – a specific focus should be the councils' role as a planning authority;*
- *annual professional development plans are developed and participation by councillors in induction and professional development programs be reported in a council's annual report; and*
- *clarify how mayors are to oversee councillors in relation to the performance of their functions and exercise of their responsibilities.*

Role of the General Manager

Discussion

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 of 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.

In terms of the appointment of a general manager, the Act states 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, however, does not prescribe principles or a detailed process for appointing or managing the performance of the general manager. The inclusion of principles for the selection,

reappointment and performance appraisal of the general manager in the Act seems sound.

Greater clarification about what constitutes the 'day-to-day' operations and affairs of the Council' and the separation of strategic and operational matters would be beneficial.

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. It would be problematic to look to the example of South Australia which dictates that general managers are to consult with the council when determining or significantly changing the organisational structure for the staff of the council.

The proposed reforms occurring in New South Wales as they relate to general managers also have merit, including the following:

- 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.

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.'

There is the potential for some confusion around the requirement to 'provide advice and reports to the council' specifically what and how much information should be provided to councillors. As the discussion paper suggests, if elected members feel insufficient information is being provided, it can negatively affect the relationship between the council and senior staff.

In addition, responsibility for the appointment and appraisal of the general manager's performance rests with the council as a whole, however, 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. It seems logical for the mayor to be responsible for leading the performance appraisal of the general manager.

Opportunities for Change

Role of the General Manager

The Hobart City Council in considering this section of the Act requests consideration of the following:

- *remove the requirement to invite applications in a daily newspaper in s61(3);*
- *make clear that the General Manager's responsibilities under the Work Health and Safety Act 2012 does not include responsibility for Aldermen as the general manager is not responsible for them under the Local Government Act 1993;*

- *clarify the intent of s62(c) – draw distinction between the general manager and the council*
 - *clarify that s65 requires the qualified advice to be provided to the Council in an officer report to ensure decisions aren't made without proper consideration;*
 - *make clear that the mayor is responsible for leading the performance appraisal of the general manager;*
 - *clarify what constitutes strategic matters that are the responsibility of the council and operational matters that are the responsibility of the general manager; and*
 - *develop a good practice guide to assist council's with the assessment of the general manager's performance.*
-

Other Matters

What is the role of the Director of Local Government?

Discussion

The Director of Local Government is appointed by the Governor and has responsibility for the general administration of the Act. Their role includes investigating non-compliance and offences under the Act as well as the authority to undertake an investigation in response to a complaint or on his or her own initiative.

There is a need for the Act to be clearer in relation to the powers the Director of Local Government has to dismiss complaints that may be vexatious or frivolous in nature.

Opportunities for Change

What is the role of the Director Local Government?

The Hobart City Council in considering this matter requests consideration of the following:

- *amend the Act to provide the Director of Local Government with the power to dismiss complaints that may be vexatious or frivolous in nature;*
 - *also include the imposition of timeframes in dealing with complaints – possibly 60 days; and*
 - *provide a discretion for the Director of Local Government to make the outcome of investigations public taking account of any confidentiality or privacy issues.*
-

Fair and transparent local government elections

Who can vote in Local Government elections?

Discussion

The debate in relation to eligibility centres around whether it is fair and reasonable that non-permanent residents can vote in local government elections given that they are only accessing the services of the local government for a temporary period, however, on the other hand providing non-permanent residents with the right to vote aligns with the principles of inclusion and equity.

The Council's submission to the Legislative Council Government Administration Committee 'B' Inquiry into the operations of the Tasmanian Electoral Commission called for a review of the eligibility requirements for the inclusion on the General Manager's Roll.

Opportunities for Change**Who can vote in Local Government elections?**

The Hobart City Council in considering this matter requests consideration of the following:

- *the Tasmanian Electoral Commission be charged with reviewing voting eligibility as well as undertaking the administration of the General Manager's Roll to avoid the potential for misuse.*

Electoral campaign advertising expenditure limits and application**Discussion**

While regulations under the Local Government Act 1993 limit political advertising to \$5,000 for candidates for a councillor position or \$8000 for those contesting elections both as councillor and Deputy Mayor or Lord Mayor, there is a large loophole in that the advertising spending limit for the 2014 Local Government elections only applied for expenditure incurred between August 14 and October 28.

The Hobart City Council supports the retention of electoral spending limits and is of the view that these limits should apply to all electoral spending, not just advertising. This could include mail-outs, fundraisers etc. The Council is also of the view that on-line advertising ought to be captured within this limit. This would ensure that being a candidate in a local government is a level playing field for all and does not impose additional barriers to participation.

In relation to the limits themselves, it is considered that these ought to be reviewed and increase them by CPI from the date when they were first determined.

The Council is of the view that candidates should not be entitled to use the names of other candidates in advertising.

Opportunities for Change**Electoral campaign advertising expenditure limits and application**

The Hobart City Council in considering this matter requests consideration of the following:

- *retain electoral expenditure limits but increase the current levels by CPI;*
- *include all electoral expenditure within the limits;*
- *not allowing candidates to use the names of other candidates in electoral advertising.*

Can a Candidate receive donations for an election campaign?**Discussion**

There is an opportunity for the Act to be more prescriptive about who can donate to a candidate or how much may be donated. The Act also does not require candidates to publicly disclose donations received in the lead up to or during an election campaign.

As the only state in Australia which does not require local government candidates to disclose campaign funding there is a significant opportunity to rectify this situation. State legislation would provide consistency across all councils. It would also ensure

that no candidate is prejudiced as any requirement to disclose a donation would apply equally across all candidates.

Opportunities for Change

Can a candidate receive donations for an election campaign?

The Hobart City Council in considering this matter requests consideration of the following:

- *an open and transparent process in relation to reporting electoral donations needs to be included in the Act. This ought to require disclosure of the source of donations, the quantum and how it is spent; and*
 - *the expenditure of donations be within the electoral spending limits.*
-

Aldermanic Expenses

Discussion

Section 72 of the Act requires councils to publish in their Annual Reports a statement of the **total** allowances and expenses paid to the mayor, deputy mayor and councillors.

In addition to this requirement, the Hobart City Council supports greater reporting consistency on the disclosure of Aldermanic expenses on a monthly basis via a council's website (see attached motion to the Local Government Association of Tasmania).

This requirement would provide clarity and consistency around a matter which is of specific interest to the community and which would benefit from a cohesive standardised approach.

Opportunities for Change

Aldermanic Expenses

The Hobart City Council in considering this matter requests consideration of the following:

- *that the Act be amended to reflect that the disclosure of itemised Aldermanic expenses be reported on a monthly basis.*
-

Compulsory Voting

Discussion

The Council most recently made a submission to the Legislative Council Government Administration Committee 'B' Inquiry into the operations of the Tasmanian Electoral Commission on a number of matters, including the disclosure of political donations, amendments to the administration of and eligibility to the General Manager's Roll (as per above) and the extension of compulsory voting for Local Government Elections.

Capital City Act

Discussion

All state capital cities have a Capital City Act in some form, Hobart being the exception. Hobart is the only Capital City that does not have statutory recognition of its capital city status and associated responsibilities.

There a number of benefits in having a Capital City Act that recognises by statute capital city status, Hobart as the Capital City Council of Tasmania and specifically legislates the relationship between the State Government and the Hobart City Council. Examples of projects a Capital City Act could address include sustainable transport options, affordable housing, and social inclusion.

It could be argued that the existence of such an Act may have provided a better mechanism for dealing with the issues that resulted in the creation of the Sullivans Cove Waterfront Authority.

Based on research of other state arrangements the Hobart City Council could continue to work within the *Local Government Act 1993*, but have specific capital city powers and a formal working relationship with the State Government to enable capital city initiatives to be undertaken.

A Capital City Act could include the following key elements:

- (a) Acknowledgment of the capital city status
- (b) The objectives of:
 - balancing economic, social, environmental and cultural considerations through appropriate planning and development;
 - coordinating with the State and Commonwealth Governments in the planning and delivery of services;
 - jointly work on projects of significance
 - promoting and enhancing the special roles of a capital city
 - providing for intergovernmental liaison between State and City
 - revising and enhancing local governance arrangements for the City
- (c) The provisions to bind the State Government and the Hobart City Council to work collaboratively to achieve the objectives.
- (d) The governance arrangements to underpin the relationship (Committee) including membership, functions of the Committee, meeting arrangements, liaison with Government Departments and Council, monitoring and reporting.

Opportunities for Change

Capital City Act

The Hobart City Council in considering this matter requests consideration of the following:

- *based on research of other state arrangements the Hobart City Council could continue to work within the Local Government Act 1993, but have specific capital city powers and formal working relationships with the State Government contained in a Capital City Act for working together on Capital City initiatives.*

City of Hobart - Nomenclature

Discussion

The Hobart City Council has recently undertaken a rebranding process which includes a new logo and reference to the 'City of Hobart'. Currently the reference to the Council in Schedule 3 is 'Hobart City Council'.

Opportunities for Change**City of Hobart - Nomenclature**

The Hobart City Council in considering this matter requests consideration of the following:

- *amend Column 2 of Schedule 3 to rename Hobart City to 'City of Hobart'.*
-

Reducing Red Tape**Requirements to make available hard copies of information****Discussion**

Given the environment in which the council currently operates it seems unnecessary to make available hard copies of various council documents (for example, a council's delegations register).

Opportunities for Change**Requirements to make available hard copies of information**

The Hobart City Council in considering this matter requests consideration of the following:

- *amend the requirement to reflect that documents can be published on a council website or be made available electronically.*
-

Local Government Act 1993 – Sections 28A to 28D**Information and documents relating to functions****Requirements to make information and documents available****Confidentiality undertaking****Documents relating to Agendas****Discussion**

By making amendments to this section of the Act, it will allow for a single process to access information.

Opportunities for Change**Sections 28A to 28D**

The Hobart City Council in considering this section of the Act requests consideration of the following:

- *remove this process and rely on the Right To Information process.*
-

Local Government Act 1993 – Section 57**Petitions****Discussion**

Currently the Act does not deal with online petitions.

Opportunities for Change**Petitions**

The Hobart City Council in considering this section of the Act requests consideration of the following:

- *amend this section of the Act to cater for online petitions.*

Local Government Act 1993 – Section 77**Grants and Benefits****Discussion**

Currently the Act does not provide a definition for a grant or benefit.

Opportunities for Change**Grants and Benefits**

The Hobart City Council in considering this section of the Act requests consideration of the following:

- *amend this section so that a definition is provided as to what constitutes a grant or benefit.*

Local Government Act 1993 – Section 82(5)**Estimates****Discussion**

Section 82(5) of the Act requires the council to approve adjustments to the revenue in the estimates even though that approval might be retrospective – particularly with revenue.

Local Government Act 1993 – Section 87(1)(d)**Exemption from Rates****Discussion**

The wording of the Act is open to interpretation and in recent years an amount of case law has amassed regarding this part, albeit at the Magistrates Court level. Given this, it is often complex to access eligibility under this part. To guide its decision making the Council has recently approved a new policy, *Rates Exemptions – Charitable Purposes*. The policy recognises, however, that because of the specific requirements of section 87(1)(d) and that an application for a rates exemption needs to satisfy all parts of s87(1)(d), it is not possible to formulate a comprehensive list of who will, and who will not, qualify. Therefore, each application for the statutory general rate exemption needs to be assessed individually and the facts of each case examined.

Opportunities for Change**Exemption from Rates**

The Hobart City Council in considering this section of the Act urgently requests consideration of the following:

- *given that the application of the charitable exemption hinges on the interpretation of a number of terms which have technical, legal meaning, for example ‘charitable purposes’, ‘occupied’ and ‘exclusively’, clarification is therefore sought on section 87(1)(d) of the Act, which states that land or part of land owned and occupied exclusively for charitable purposes.*

Local Government Act 1993 – Sections 148(2) & 152(2)**By-Laws****Discussion**

In relation to s148(2), rather than requiring this to be included as part of the by-law it

could be legislated that recovery of expenses is possible relating to a contravention of a by-law.

Similarly, s152(2) could be amended to allow police to be authorised to enforce a by-law rather than requiring the by-law to do so.

Opportunities for Change

By-Laws

The Hobart City Council in considering this section of the Act requests consideration of the following:

- *amendment be made to sections 148(2) and 152(2) based on the above discussion.*

Act Amendments

Reference in Act	Details on the amendment	Council Proposed Position
Interpretation		
Section 3	<p><u>Interpretation</u></p> <p>The interpretation section has had minor amendments to include new and amended definitions to give effect to other areas within the Act that have been amended:</p> <ol style="list-style-type: none"> 1. Amending the definition of ‘absolute majority’ so that it reflects situations where a councillor or several councillors are suspended. 2. A new definition for ‘audit panel’. This amendment will require minor consequential amendments to relevant offence sections within the Bill where audit panel members are to be included. 3. A new definition of ‘model financial statements’. This amendment is covered in more detail later in the Bill. 4. Amending ‘electoral advertising’. In particular, the definition of ‘electoral advertising’ has been amended to include advertising on the internet. This is to reflect that the internet continues to play a larger role in electoral campaigns in federal, state and local government elections. This amendment aims to capture internet advertising as it is not currently captured and amending the Act will ensure the legislation reflects and accommodates what is already occurring in the sector. 5. Increasing the timeframes for postal voting in local government elections by 1 week. 6. Introducing a definition for ‘performance improvement direction’. Performance improvement directions are explained in more detail later in this document. 	Support
Municipal Areas		
Section 16	<p><u>Boundary Adjustments</u></p> <p>This section has been amended such that a Local Government Review is not required to approve minor boundary adjustments. This will make the process for minor boundary adjustments more efficient. The section has also be amended so that the process for boundary adjustments is clearer.</p>	<p>Support</p> <p>The Council will need to consult with affected landowners.</p>

Reference in Act	Details on the amendment	Council Proposed Position
Mayors and Deputy Mayors		
Section 27	<u>Role of the Mayor</u> The role of the mayor has been expanded under the legislation. The amendments are to give mayors a greater leadership responsibility and further distinguish the role of mayor as distinct to the role of elected members.	Support The Council's submission called for a greater leadership role for the mayor. Many of the amendments to the role of the Mayor which are being suggested make what was implicit now explicit.
Subsection 27(2)(a)	<u>Deputy Mayors</u> The word 'absent' has been amended to better reflect the broad circumstances in which mayors sometimes need deputy mayors to act in the role of mayor.	Support This request was included in the Council's submission.
Section 27A	<u>Ministerial Orders – Functions of the Mayor</u> A new provision has been inserted which provides the Minister for Planning and Local Government (the Minister) with the power to make an order to expand and clarify the role of the mayor. The Minister, with consultation from the sector, can implement (or amend) such an order where there may be a need to clarify these matters. A Ministerial Order would be binding without adding further detail into the legislation. Further, amending a Ministerial Order would not require any amendments to the legislation and it therefore affords both the Minister and the sector more flexibility.	Council consideration required There is little information as to the detail of a Ministerial Orders. Council officers have made contact with the LGAT in order to gain further information on the Ministerial Orders and their potential impact.
All Elected Members		
Section 28AA	<u>Ministerial Orders</u> A new provision which provides the Minister with the power to issue a Ministerial Order to clarify the functions of councillors. For example, what are strategic matters that should be decided by councillors and operational matters that are the function of the general manager (council administration) to decide.	Council consideration required The Council's submission did request clarification around what constituted strategic matters which are the responsibility of the council and operational matters which are the responsibility of the general manager, as per the example cited. The attention of Aldermen is again drawn to the fact that there is little information around the detail of the proposed Ministerial Orders.

Reference in Act	Details on the amendment	Council Proposed Position
Audit Panel Members		
Sections 53, 54A, 55B, 338A, 339 and 339A	These sections have been amended to ensure that the relevant offence provisions also apply to members of an audit panel. The relevant offences are: failure to declare a pecuniary interest, disclosure of information, improper use of information and misuse of office.	Support
Gifts and Donations		
Part 5A Section 56A	<u>Requirement to notify a gift/donation</u> This new provision requires a councillor to notify the general manager of a council if they receive a gift or donation as prescribed under the Regulations. The <i>Local Government (General) Regulations 2015</i> will be amended to provide the details around the notification of gifts and donations.	Support
Part 5A Section 57	<u>Gifts and Donations Register</u> This new provision establishes that a gift and donation register must be kept by the general manager of the council. The <i>Local Government (General) Regulations 2015</i> will be amended to prescribe the details for the register, including what items need to be disclosed, when and how and any thresholds or limitations.	In principle support An opportunity to provide clarity and consistency as well as a cohesive standardised approach is valuable, however, the detail will be in the <i>Regulations</i>
General Manager		
Section 61	<u>Appointment of a General Manager</u> This section has been amended so that councils need to take into account any relevant Ministerial Orders when they are appointing a person as general manager.	Council consideration required Little information around the level of detail which may be in a Ministerial Order
Section 61A	<u>Ministerial Orders – Appointment and Performance</u> A new provision which provides the Minister with the power to issue a Ministerial Order that details the high-level principles regarding the selection, reappointment and the monitoring of and appraisal of performance for general managers.	Council consideration required Little information around the level of detail which may be in a Ministerial Order
Section 61B	<u>Appointment of Acting General Manager</u> This section has been amended to clarify the appointment/reappointment of acting general managers. The current provisions are unclear and may create confusion around this process. The amendment will reduce ambiguity.	Support

Reference in Act	Details on the amendment	Council Proposed Position
Model Financial Statements		
Section 83A	<p>This is a new section that requires councils to issue their financial statements in line with model financial statements issued by the Director of Local Government for each financial year. The Tasmanian Auditor-General will be required to provide a set of model financial statements to the Director of Local Government to issue.</p> <p>There will be a transitional period provided to allow councils enough time to prepare for the requirement of model financial statements.</p> <p>Model financial statements will reduce complexity within the legislation because they will necessarily incorporate any other changes in accounting standards or other relevant legislation. They will also help make this financial information easier to compare across councils.</p>	<p>Oppose.</p> <p>Model financial statements are a good initiative but should only be used as a guide. The interpretation and application of accounting standards is not always clear cut and professional opinions and conclusions vary. In these circumstances the Auditor-General's opinion is just that – an opinion. The Auditor –General's office acknowledge this. Mandating in legislation the adoption of the model financial statements, which would reflect the Auditor-General's opinion of interpretations and applications, would be a retrograde step. Further, the final responsibility for the preparation and fair presentation of the financial report always rests with the entity concerned. Under this proposal, this basic tenet would no longer apply – because the responsibility for the preparation and presentation of the financial report would seem to lie with the Auditor-General.</p>
Subsection 84(2)(b)	Subsection 84(2)(b) has been removed because the new model financial statements will necessarily incorporate related parties disclosures under the accounting standard (ASSB 124), therefore avoiding any unnecessary duplication within the legislation.	Support

Reference in Act	Details on the amendment	Council Proposed Position
Section 217	<u>Requests for information</u> This section provides the Board of Inquiry with the power to require a person to provide written answers to a formal request for information. This amendment will allow Boards of Inquiry to operate more efficiently and ensure that information is provided in a timely manner such that the process is not hindered.	Support
Section 225	<u>Result of Inquiry</u> Several subsections of section 225 have been amended to ensure that individual councillor(s) are also captured under these provisions such that the Minister has the power to direct an individual councillor.	Council consideration required
Section 226	<u>Dismissal of councillors – Individuals</u> This section has been amended to clarify that individual councillors can also be dismissed (rather than all councillors). This amendment will provide the Minister with the flexibility to dismiss an individual councillor, several or all councillors.	Council consideration required
Section 226 (1A)	This section has been amended to further clarify what is intended by the phrase 'operation of the council'. This phrase is to include one or more of the matters listed, including the administrative operation or the governance of the council. The amendment will ensure that phrase operates as intended to capture these areas of operation.	Council consideration required
Sections 230 and 231	These two sections have been amended to clarify that the commissioner is only appointed when all the councillors are either dismissed or suspended.	Council consideration required
Election Dates		
Sections 260, 269 and 274	<u>Elections</u> All the dates under these sections have been increased by 1 week. This is to accommodate changes to Australia Post's services which have increased the time taken for mail to be delivered. This amendment will allow greater time for local government postal votes to be returned.	Support
Electoral Advertising		
Subsection 278(3)	This subsection has been amended to delete 'broadcast' as it is unnecessary duplication with an exclusion described in subsection 278(4)(b).	Support

Reference in Act	Details on the amendment	Council Proposed Position
Performance Improvement Directions		
Section 341	<u>Immunity from Liability</u> This section has been amended to clarify and ensure it operates efficiently in light of other statutory immunities available under the Statutory Authorities (<i>Protection from Liability</i>) Act 1993.	Support Appears to just be a rewording
References to Act		
Section 348A	This section clarifies references within the Act to orders and regulations and their status.	Support
Office of Councillors		
Schedule 5, Clause 3(f)	<p>This amendment is designed to address an unintended technical consequence that arises from the current operation of Schedule 5 Clause 3 (Vacation of Office). It impacts councillors who are moving residence from their elected municipality into another municipality but who are eligible to be enrolled on the general manager's electoral roll in respect to their elected municipality and therefore remain eligible to hold office. The Act does not provide enough time for changes in their electoral details to occur and could result in a councillor becoming automatically vacated from office due to this technicality.</p> <p>The aim of this amendment is to provide a transitional period to give councillors who are eligible to remain in office the time to ensure they can update their electoral details so that they are not automatically vacated.</p> <p>The automatic vacation provision will continue to operate if the councillor is not entitled to remain in office, due to their electoral status.</p>	Support

Additional Matters

The following have not been included in the draft amendment Bill however are being considered for inclusion. These have been identified since the conclusion of the Steering Committee's recommendations to the Minister and are generally aimed at strengthening existing provisions, rather than introducing materially new provisions. The Department of Premier and Cabinet have sought the Council's views on these additional matters

Reference in Act	Details on the amendment	Council Proposed Position
Section 339A (Misuse of Office)	Considering clarifying this provision so that it also includes an 'attempt' to procure, the doing, or not doing anything to gain an advantage or to avoid a disadvantage.	Support
Section 339E (Complaints against non-compliance or offence)	Considering clarifying this provision so that: <ul style="list-style-type: none"> • The Director of Local Government has the power and ability to refer such matters of non-compliance to third parties or other investigative authorities where the Director considers the matter may be more appropriate handled within their jurisdiction; • The matters which the Director can investigate are clarified; and • The Director, in determining the procedure for handling complaints or investigating matters, can also authorise a person to undertake an investigation. These amendments could make the investigation provisions clearer.	Support
Financial Administration	Considering including a similar provision to the <i>Public Account Act 1986</i> that allows general managers to continue to run the council and expend funds until the council adopts the estimates in the situation where a council does not approve its estimates prior to 1 July of any year. This would allow councils to continue to operate efficiently in such circumstances.	Support. However, if the budget is not approved then the rates are not approved, therefore, clarification is needed regarding this (no power to raise rates? Could councils raise rates based on the prior year, then adjust when the budget is approved?)
Financial Administration and Section 3 (Interpretation)	Considering including a definition of 'senior positions' within a council as it is currently not defined and could be further clarified to avoid confusion. This could encapsulate those senior employees who are direct reports to a general manger. This would assist in the efficient operation of section 72 (Annual Report) and other relevant financial administration provisions under the Act.	Support

Petitions (Part 6)	Considering including within the Act a power to prescribe for online petitions. This recommendation was made by the Steering Committee, however, there are practical difficulties in implementing this recommendation, including the cost of information technology to validate the process. This amendment would require further detail and prescription under a future amendment to the Regulations.	In principle support The Council in its submission called for an amendment to cater for online petitions, however, some further work will need to be done on the practical difficulties in implementing this recommendation.
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