

# 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.

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## **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.*

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## **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.*
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### **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.*
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## **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.*
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## **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.*
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## **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.*
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## **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.*
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### **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.*
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### **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.

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### **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.*

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## **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'.*
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**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.*
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**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.*
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**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.*

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## **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.

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## **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.*

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## **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.*