

<p style="text-align: center;">CITY OF HOBART SUBMISSION</p> <p style="text-align: center;">THE FUTURE OF LOCAL GOVERNMENT REVIEW</p>

Executive Summary

Council welcomes the approved reforms which emerged from the consultation conducted with the local government sector and stakeholders in 2018 and 2019. It also agrees with the scope of the review.

The Council has previously participated in discussions around reform of the local government sector in Tasmania and been an active advocate for a strategic alliance with the 'greater Hobart' councils both before and as part of the City Deal. This has seen the development of the Greater Hobart Act 2019 along with the current draft Greater Hobart Plan.

The City of Hobart would welcome further discussions about the potential of the local government reform to identify opportunities of the coming together of Greater Hobart municipal areas; in a way that makes sense; both in terms of geography, demographics and penultimate size in terms of current and future population and optimal organisation scale to meet current and emerging community needs and aspirations.

At the City of Hobart, we have a duty to actively participate in the development of a legislative framework that fosters professionalism, good working relationships, meaningful community engagement and representation and contribution to forward thinking policy among our colleagues. This will empower Tasmanian councils to develop policies, programs and services that will lead their communities in attracting business, residents and visitors to their municipal areas.

Council believes that, central to this, must be a focus on elected member conduct and capabilities. Improving elected member conduct and capabilities will allow councils to develop policies and procedures that focus on the needs of their communities and lead policy.

Having been given a further opportunity to make a submission, Council highlights the following as areas of focus for the new Local Government Act:

1. Elected member conduct

It is imperative that elected members conduct themselves in a way that is conducive to informed, effective and transparent decision-making that promotes the best interests of their council's community. This includes ensuring that elected members receive timely training in connection with their role and responsibilities, as well establishing clear enforcement processes where poor conduct occurs.

2. Principles based approach to local government

Councils must be provided with the autonomy necessary to plan and provide for their unique municipal communities. This approach extends to city shaping, community engagement, policy development, programs and services, complaints handling and procurement. Arrangements should be tailored to, and reflective of, a council's resources and demography.

3. Caretaker provisions

Caretaker provisions and obligations must be incorporated into the legislation to ensure that councils are making decisions that protect council resources and do not inappropriately burden an incoming council.

4. Compulsory Voting

The Council has previously conveyed support for compulsory voting in local government elections in Tasmania. Noting the *Local Government Amendment (Elections) Bill 2022* having been introduced to Parliament, the Council is supportive of the proposed amendments.

5. Role of councils in policy

As councils' communities evolve, councils are called on more frequently to take the lead in matters of policy – housing is a good example of this. Councils are well placed to perform a policy role as they are the closest to their communities and understand their unique needs. This is especially true of the City of Hobart, which assumes a special role in maintaining a capital city that is a vibrant, diverse and attractive destination domestically and internationally. The functions and powers of councils in the Act do not lend themselves to this broader role that councils play. A set of overarching governance principles will be more reflective of modern councils and the nature of their role.

6. An integrated planning and reporting framework

The City of Hobart, would like to see a strengthening of the provisions within the Local Government Act to enable councils to take an integrated approach to strategic planning and reporting.

Local governments know best how to respond to their communities' needs and aspirations, and the capacity of their organisation to deliver on same. Changes to the Local Government Act will provide an important conduit to support the design by the sector, for the sector.

It is suggested that strategic planning and reporting arrangements consider the following key elements:

- Community Vision –bring community and its aspirations and longer-term sustainable thinking to the core of policy and strategy development, planning and fiscal management
- Outcomes focus – a deliberate move to a principles-based Act is required and shifts regulatory focus from prescriptive rules and defined processes towards broadly stated principles and strategic outcomes
- Community engagement –Councils develop appropriate consultation mechanisms (including deliberative engagement) in the context of their community and incorporate these into a policy to be adopted by respective Council's; to be updated every four years to ensure currency.

Detailed Submissions

1. Elected member conduct

Elected member conduct is a central pillar of the efficacy of, and public trust in, local government. At a time of unprecedented public interest in, and expectation of, integrity in public office, Council is firmly of the view that the elected member conduct framework must be strengthened.

Council considers that the current framework for elected member conduct requires significant attention, at least in the areas outlined below.

1.1 *Standards of conduct*

- 1.1.1 The Model Code of Conduct contains various standards which are essential for elected members to observe. A breach of the standards specified in the Model Code of Conduct can attract a range of sanctions, the most serious of which is a 3-month suspension.

- 1.1.2 Council considers that at least some of the conduct addressed by the Model Code of Conduct is so serious as to warrant specific offence provisions in the Act. For example, an elected member who:
- (a) uses their position to improperly gain an advantage, or to influence others; or
 - (b) uses Council resources for their own private purposes,
- ought to be prosecuted for an offence, although it is recognised that similar offence provisions do exist in the current Act.
- 1.1.3 Otherwise, the standards of conduct in the Model Code of Conduct are expressed narrowly and fail to recognise the true nature and extent of the role of elected members.
- 1.1.4 Council cites the prescribed standards of conduct contained in Schedule 1 to the *Local Government (Governance and Integrity) Regulations 2020* (Vic) as striking a balance between:
- (a) broad statements of the principles of good elected member conduct; and
 - (b) specific actions of elected members by which they will meet those prescribed standards of conduct.
- 1.1.5 In particular, Council thinks that standards of conduct which expressly address:
- (a) respectful and dignified treatment of others, including the promotion of diversity, inclusion and equality;
 - (b) proper performance of the role of elected member, including informing themselves about matters coming before them for decision and participating in training;
 - (c) compliance with the council's governance measures, including procedures for interactions between elected members and staff; and
 - (d) actions which bring the council into disrepute,
- are suited to the role and conduct of elected members in Tasmania.
- 1.1.6 There is nothing in the Act which directly prohibits dangerous behaviours, such as bullying and sexual harassment. This creates potential confusion and lack of clarity when considering that general employment obligations may or may not apply to elected members. As greater focus is given to the conduct of, and interactions between, elected representatives, such matters must be expressly addressed in connection with elected member conduct.
- 1.1.7 Overall, there is value in adopting an elected member conduct framework which recognises that misconduct occurs on a spectrum, and that some types of misconduct will be more serious and more damaging than others.
- 1.1.8 Again, Council refers the Board to the regime established by the *Local Government Act 2020* (Vic), which establishes four levels of misconduct:
- (a) misconduct (eg failure to treat others with respect and dignity, bringing Council into disrepute);

- (b) serious misconduct (eg bullying, sexual harassment, disclosure of confidential information);
- (c) gross misconduct (being misconduct which shows that the elected member is not fit to hold the office); and
- (d) criminal offences (eg misuse of position, improper direction of staff).

1.1.9 This style of framework will recognise the importance of the:

- (a) public role that elected members play;
- (b) influence that elected members have over matters directly affecting the community; and
- (c) expectations of the community in connection with the behaviour of their elected representatives.

1.1.10 It also encourages a level of professionalism of a capital city council, considered to be vital to the proper representation of the community locally and more broadly.

1.2 *Code process*

1.2.1 Currently, every alleged breach of the Code of Conduct by an elected member is referred to the Code of Conduct Panel. This process is expensive and cumbersome and is unsuited to lower levels of misconduct by elected members.

1.2.2 Council is supportive of a more detailed framework for managing misconduct, with the nature of the resolution process reflecting the seriousness of the allegation as announced as part of the Local Government Code of Conduct Framework Review in December 2021.

1.2.3 This is reinforced by the types of complaints which have been referred to the Code of Conduct Panel in recent times, many of which are concerned with lower-level misconduct, and would be better suited to a more economical informal process.

1.2.4 While these changes were announced in December 2021, no draft legislation has been seen and it is noted that the timeframe identified was that legislation implementing these changes was to be introduced in the 2022 Autumn session of Parliament. Council is supportive of this being expedited.

1.3 *Sanctions*

1.3.1 Sanctions ought to mirror the seriousness of the misconduct found to have occurred.

1.3.2 Council considers that the sanctions available to a Code of Conduct Panel are appropriate and proportionate in the context of lower-level misconduct. However, there is scope for more serious sanctions as the seriousness of the misconduct escalates.

1.3.3 The Board might consider adding to the existing scale of sanctions available, such as:

- (a) providing an apology in a particular form;

- (b) removal from representative appointments;
- (c) undertaking specified training or counselling;
- (d) suspension from office for a period of up to 3 months;
- (e) suspension from office for a period of up to 12 months; and
- (f) disqualification from office.

1.3.4 This greatly expands the levers available to address poor conduct on the part of elected members, while reflecting the importance of the role that elected members play in the community as popularly elected representatives.

1.4 *Conflict of interest*

1.4.1 Conflicts of interest are currently limited to pecuniary interests. While Council recognises that perceived and potential conflicts of interest are captured by the Model Code of Conduct, it is submitted that this does not go far enough to address expectations of the community.

1.4.2 Relevantly, only a failure to disclose a pecuniary conflict of interest will constitute an offence, where a failure to disclose other types of conflicts of interest can be equally damaging but these are reliant in a complaint being brought against an elected member through the Code of Conduct process.

1.4.3 Most jurisdictions have recognised this by going beyond simple pecuniary interests to also address something akin to a perceived conflict of interest. Indeed, in each of Queensland, South Australia and Victoria, conflicts of interest are expressed as going well beyond a simply financial interest.

1.5 *Training*

1.5.1 The role of an elected member can be complex and is constantly evolving. Elected members need to have an understanding of a broad range of areas affecting councils, including:

- (a) planning;
- (b) financial management;
- (c) conduct obligations; and
- (d) public accountability.

1.5.2 Candidate training is required to ensure that people considering nominating for election have an understanding of the extent of the commitment involved in being an elected member.

1.5.3 Ongoing training is required for elected members, not only as part of their induction after being elected, but on a regular basis throughout their term. This assists elected members in understanding their roles and, in turn, providing effective leadership and representation for their communities.

1.5.4 Council urges the Board to consider introducing mandatory training requirements for all candidates in local government elections and for elected members after election, noting that the Local Government Division is currently developing an education package.

- 1.5.5 Training for candidates should be made a prerequisite for nomination in a local government election.
- 1.5.6 Induction training should be made mandatory for all elected members, to be completed within 6 months after the election.
- 1.5.7 Council requests that the Board considers, when determining the content of mandatory induction training, including the following:
 - (a) the role of the Mayor and elected members;
 - (b) the role of the CEO / General Manager and the administration, including interactions between elected members and the administration
 - (c) the Model Code of Conduct (or standards of conduct, as the case may be) and consequences of breach;
 - (d) conflict of interest;
 - (e) engagement and reconciliation with the traditional owners of land within the council's municipal area; and
 - (f) giving effect to gender equality, diversity and inclusiveness.
- 1.5.8 Council recognises that the role of elected members is such that it spans a diverse range of expertise. To support elected members in their continuing development, refresher training sessions should be mandated throughout the council term, at least annually and to align with the requirement in the Declaration of Office made by an elected member at the beginning of each council term that they engage in ongoing professional development.

2. Principles based approach to local government

Tasmania is a diverse state and each council is responsible for land, development, activities, communities and visitors that differ dramatically. The result is that extensive and inflexible prescription of the responsibilities of councils in connection with the fulfilment of their statutory functions and obligations is ill-suited to the particular conditions of Tasmanian local government.

- 2.1 To provide councils with the autonomy they need to plan and provide for their unique communities, a principles based approach should be adopted to enable councils to tailor their respective approaches to matters affecting their communities.
- 2.2 Council encourages the Board to consider establishing broad principles which will underpin the performance of council functions, including:
 - 2.2.1 community engagement practices;
 - 2.2.2 complaints handling policies and procedures; and
 - 2.2.3 procurement processes.
- 2.3 This approach will enable councils to tailor their arrangements to, and ensure that their arrangements are reflective of, their council's resources, priorities and demography.
- 2.4 Community engagement is particularly important and should underpin many decisions that councils make. The nature and extent of that community engagement ought to be informed by the type of decision being made and the likely impact on the community or particular parts of it, rather than the current 'one size fits all' approach.

2.5 Council feels strongly that adopting something like the 'IAP2 Spectrum of Public Participation' will assist councils in engaging meaningfully with their communities on matters of importance to them.

3. Caretaker provisions

Restrictions on the activities of councils during the lead up to local government elections are important to ensure that councils are making decisions that protect council resources and do not inappropriately burden an incoming council.

3.1 Councils which adopt a caretaker policy voluntarily may still decide to ignore it without any real consequences, meaning that the potential for inappropriate decisions being made in the lead up to an election remains.

3.2 Council submits that, at a minimum, the following types of decisions should be prohibited under the Act during the election period:

3.2.1 relating to the appointment or remuneration of the Chief Executive Officer (but not to the appointment or remuneration of an Acting Chief Executive Officer);

3.2.2 committing the council to expenditure exceeding one per cent of the council's income from rates and charges in the preceding financial year;

3.2.3 allocating resources for use, whether with express or tacit approval, to elected members beyond what is allocated in existing policies;

3.2.4 adopting new by-laws or policies;

3.2.5 which the council considers could be reasonably deferred until the next council is in place; and

3.2.6 which the Council considers should not otherwise be made during an election period.

3.3 Legislating for these matters will ensure that the position in the lead up to local government elections is consistent across the sector and enforceable.

4. Compulsory Voting

4.1 The council has long held the view that compulsory voting is required in local government elections. This not only assists in engaging the community in local issues but also provides a wider franchise, or mandate for those elected.

4.2 In a non-compulsory voting environment significant local issues current at the time of an election can skew an election outcome through the mobilisation of specific interests while there remains a large non-voting cohort. Compulsory voting would assist in achieving a more balanced result representative of the community as a whole.

4.3 Compulsory voting will also provide a greater opportunity to engage with younger residents/ratepayers. It has been stated that in the 2014 election less than one third of voters aged between 18 and 34 voted, while voter participation for those above 65 was at 70 per cent. This underrepresentation has the potential to create a less representative council.

4.4 The Council's view, expressed in the submission to the Legislative Council Government Administration Committee 'B' Inquiry into the operations of the Tasmanian Electoral Commission, identified the underlying principles that support compulsory voting to include;

- (a) • Increasing participation in democracy

- (b) • Engaging the full electorate
- (c) • Building the relevance of local government
- (d) • Providing consistency across all levels of government.

4.5 It is the Councils view that this issue is fundamental to any update of the Local Government Act and the outcomes sought by this review. It is also the Council's view that the review should include consideration of the mechanisms for the election of the Lord Mayor and the Deputy Lord Mayor as well as consideration of electronic voting in elections and elector polls.

5. Role of councils in policy

The functions of councils are briefly stated in s 20 of the Act as follows:

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

It is widely accepted that these functions have a broad scope, and any number of matters can be considered to fall within it. However, council lack a clear mandate to act on and respond to matters of broader policy.

5.1 Council requests that the Board considers expanding the functions and powers of councils, as those in the Act do not lend themselves to the broader social policy role that councils play. This will ensure that councils are provided with a clear mandate from the Government to engage with their communities on such matters, and to act with the endorsement of the State Government when doing so. It will also ensure that Council is able to obtain sufficient resources to deliver these important functions.

5.2 It is Council's submission that a set of overarching governance principles will be more reflective of modern councils and the role that they are expected by their communities to assume as policy leaders. This approach has been adopted in Victoria and Queensland and provides councils in those states with a clear set of principles that inform their decisions, and the scope of their role.

5.3 By way of example, s 8 of the *Local Government Act 2020 (Vic)* relevantly describes the role of councils as follows:

- (1) The role of a Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community.
- (2) A Council provides good governance if—
 - (a) it performs its role in accordance with section 9;
 - (b) the Councillors of the Council perform their roles in accordance with section 28.
- (3) In performing its role, a Council may—
 - (a) perform any duties or functions or exercise any powers conferred on a Council by or under this Act or any other Act; and
 - (b) perform any other functions that the Council determines are necessary to enable the Council to perform its role.

5.4 Section 9 of that Act sets out what are called the ‘overarching governance principles’, being matters to which councils must have regard when making decisions. They provide important structure with respect to the broader role of councils in a social context, as well as identifying matters of broad policy with which councils are expected to engage.

5.5 By way of example, the ‘overarching governance principles’ contained in s 9 of that Act include the following:

(b) priority is to be given to achieving the best outcomes for the municipal community, including future generations;

(c) the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted;

...

(f) collaboration with other Councils and Governments and statutory bodies is to be sought;

...

(h) regional, state and national plans and policies are to be taken into account in strategic planning and decision making...

5.6 By augmenting Tasmanian councils’ broad functions with something akin to overarching governance principles, the broader policy aspect of councils’ roles in their communities will be recognised and supported.

5.7 This broader statement of the matters which inform council decision-making will be of particular assistance to Council, which assumes a special role in maintaining a capital city that is a vibrant, diverse and attractive destination domestically and internationally, and a leader in matters of policy, including housing, the arts and the environment.

6. An integrated planning and reporting framework

The review of the future of local government could signal a responsibility and accountability to each individual Council and set the framework for long-term improvement of sector good governance that considers and is responsive to local community needs.

It should drive an integrated approach to planning and reporting to support strategic decision-making through:

- recognising that planning must be holistic and driven by the community
- providing a comprehensive view of available resources and commitments
- enabling alignment of objectives and capabilities, and
- supporting an understanding of medium to long-term implications of decisions on resource allocation and Council performance.