



WAVERLEY
COUNCIL

COUNCIL MEETING ADDITIONAL BUSINESS ITEM

6.30PM, TUESDAY 15 MARCH 2016

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**AGENDA
ADDITIONAL ITEM**

7. Reports

CM/7.9/16.03 Council's submission on the Local Government Act Review - Phase 1
amendments2

REPORT CM/7.9/16.03



Subject: Council's submission on the Local Government Act Review
- Phase 1 amendments

TRIM No.: A12/0619

Author: Jane Worthy, Internal Ombudsman

Director: Arthur Kyron, General Manager

RECOMMENDATION:

That Council endorses the draft 'Waverley Council Submission on the Local Government Act Review – Phase 1 Amendments' included as Attachment 2 to this report and forwards the submission to the Office of Local Government.

1. Executive Summary

The Office of Local Government (OLG) is seeking submissions on 37 amendments it is proposing to make to the Local Government Act 1993. The amendments are the first phase of a series of proposed changes to the Act. The OLG has released a paper on the amendments, 'Towards New Local Government Legislation Explanatory Paper: proposed Phase 1 amendments' (The Paper) (see Attachment 1).

The Paper states "Phase 1 is designed to:

- embed strategic business planning principles across the range of council functions and practices;
- promote independent and sustainable councils engaged with and accountable to their local communities that have the capacity to deliver on local and regional needs; and
- support a culture of continuous improvement in councils to ensure the effective and efficient delivery of the strategic goals agreed to with their local communities."

The OLG deadline for submissions is 15 March 2016, however Waverley Council has secured an extension until 18 March 2016. The purpose of this report is to seek Council's endorsement of its submission to the OLG on the Phase 1 amendments.

2. Introduction/Background

As part of the State Government's Fit for the Future reforms, Council's came together in late 2011 for Destination 2036, to discuss the long term future of local government in New South Wales. This led to the establishment of the *Independent Local Government Review Panel* (the Panel) and *Local Government Acts Taskforce* (the Taskforce).

The Panel and the Taskforce both recommended change to the sector in their 2014 reports. The NSW government has supported many of the recommendations from the Panel and the Taskforce including the development of legislative reform through the development of modern principles-based legislation, which has Integrated Planning and Reporting at its centre.

The government has only released for discussion one small part of the proposed changes and it is unclear from the paper how or when the other parts will be released. This makes it difficult to make informed comment about how the complete package of proposed changes will work. Phase 1 focuses on changes to governance and strategic business planning processes and the government says later phases will look at revenue raising, regulatory functions as well as the program of restructuring and updating the legislation.

3. Relevant Council Resolutions

Council or Committee Meeting and Date	Minute No.	Decision
Extraordinary Council Meeting 24 March 2014	CRD.11/14	That Council endorse the amended submission on the final reports of the Independent Local Government Review Panel and the Local Government Acts Taskforce and forward this to the Minister by 4 April 2014, and that the overview letter be amended accordingly to reflect all the amendments made in the table.

4. Discussion

The Paper was only released in January 2016 when Council was in recess and in the middle of preparation for pending mergers and the limited time provided to respond to this Paper has made it difficult to provide a full response.

The Councillor workshop held on 8 March 2016 and facilitated by LGNSW provided the opportunity for Councillors to prepare a response to some of the priority areas and these have been incorporated into the draft 'Waverley Council Submission on the Local Government Act Review – Phase 1 Amendments' (see Attachment 2). Due to the limited timeframe to prepare the submission it has not been possible to provide a response to every proposed amendment. This has been noted in the submission.

The draft submission also includes the following general feedback about the process:

- The very short timeframe for submissions has severely limited the sectors ability to undertake thorough analysis and to provide informed feedback;
- The proposed amendments are only one part of a package of legislative reforms so it is very difficult to understand the context and impact of the proposals;
- The government states that it intends to introduce these changes to parliament in April-June 2016. Such a short timeframe will make it impossible for any consideration of a draft exposure bill, which would enable a better understanding of the details of the legislation;
- The timing of the introduction of the bill into parliament suggests that the legislation must be being drafted concurrently with the consultation, which casts doubt on the likelihood of feedback being considered and adopted;
- Some of the key amendments rely on the detail through regulation or guidelines which is not provided;
- Some of the proposals include the removal of certain matters from the legislation into mandatory regulations and guidelines which is of great concern given regulations and guidelines do not require parliamentary scrutiny and can be altered administratively at any time without consultation;

- The on-line survey tool may make the process easier for the Office of Local Government but it is not a satisfactory mechanism for feedback on such a critical issue as new legislation - it is overly simplistic and prevents the contribution of ideas.

5. Relationship to Waverley Together 3 & Delivery Program 2013-17

The relationship to *Waverley Together 3* and *Delivery Program 2013-17* is as follows:

Direction: G1 Inspiring community leadership is achieved through decision making processes that are open, transparent, corruption resistant and based on sound integrated planning.
Strategy: G1c Our leaders advocate on our behalf to promote the area's interests and win resources.
Deliverable: Mayor's role in advocating the provision of resources for the Waverley local government area.

6. Financial impact statement/Timeframe/Consultation

There are no unbudgeted costs to Council in responding to the 'Towards New Local Government Legislation Explanatory Paper: proposed Phase 1 amendments' paper.

Comment on the Paper needs to be lodged with the Office of Local Government by 18 March 2016.

Given the short timeframe provided for submissions consultation has been limited.

7. Conclusion

It is recommended that Council endorses the attached submission to the Office of Local Government on the proposed amendments to the Local Government Act.

8. Attachments:

1. Towards New Local Government Legislation Explanatory Paper: proposed Phase 1 amendments
2. Council's submission on the Local Government Act Review - Phase 1 amendments

Fit for the  Future



Towards New Local Government Legislation
Explanatory Paper: proposed Phase 1 amendments



Towards New Local Government Legislation
Explanatory Paper: proposed *Phase 1* amendments



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Towards New Local Government Legislation
 Explanatory Paper: proposed *Phase 1* amendments



Table of Contents

Foreword	1
Overview	2
We are seeking your feedback	2
How to give your feedback	2
1. Guiding principles for the Act and local government	3
1.1 Purposes of the Local Government Act	3
1.2 Role of local government	3
1.3 The guiding principles of local government	4
2. Structural framework of local government	5
2.1 The role of the governing body	5
2.2 The number of councillors	6
2.3 Rural Councils	6
3. The governing body of councils	7
3.1 The role of the mayor	7
3.2 The mayor's term of office	8
3.3 The role of councillors	9
3.4 Councillors' term of office	9
3.5 Oath or affirmation of office	9
3.6 Councillors' expenses and facilities	10
3.7 Mayor/councillor professional development	10
3.8 Role and functions of administrators	11
3.9 Financial controllers	11
3.10 Meetings	12
3.11 Delegation of functions	13
4. Elections	14
4.1 Extension of the option of universal postal voting to all councils	14
5. Council's workforce	15
5.1 Determination of the organisation structure	15
5.2 The role of general managers	16
5.3 The requirement to report annually to the council on senior staff contractual conditions	17
6. Ethical standards	18
6.1 Consolidation of the prescription of ethical standards	18
6.2 Investigation of pecuniary interest breaches	19
7. Councils' strategic framework	20
7.1 Integrated planning and reporting principles	20
7.2 Streamlining the existing integrated planning and reporting provisions	21
7.3 Council's integrated planning and reporting to reflect regional priorities	21
7.4 Expanded scope of delivery programs	21
7.5 Fiscal sustainability	22
7.6 Expanded scope of councils' community engagement strategies	22

Towards New Local Government Legislation
Explanatory Paper: proposed *Phase 1* amendments



8. Council performance 23

- 8.1 Annual reports..... 23
- 8.2 State of the environment reports..... 23
- 8.3 Performance measurement 24
- 8.4 Internal audit..... 25
- 8.5 Sector-wide performance audits by the Auditor-General..... 26
- 8.6 Financial management..... 27
- 8.7 Financial reporting..... 28
- 8.8 External audit 28

Towards New Local Government Legislation
Explanatory Paper: proposed *Phase 1* amendments



Foreword



The journey towards stronger, more sustainable local government began in late 2011. Councils from throughout NSW came together for Destination 2036 to discuss their long-term future. The gathering considered how communities, economies and technologies might change over the next 25

years and how the local government sector might change to meet these challenges. This led to the appointment of the *Independent Local Government Review Panel* (the Panel) and *Local Government Acts Taskforce* (the Taskforce).

While the fundamentals of the *Local Government Act 1993* remain sound, both the Panel and the Taskforce recommended change. The Government's response to the Taskforce and Panel reports was released in 2014 and supported many important recommendations that had been made for legislative reform – including the development of modern, principles-based local government legislation.

The proposed phase 1 reforms are the first step in the process of modernising the Local Government Act, to ensure that it meets the future needs of councils and communities. Phase 1 of the reform program focuses mainly on changes to the governance and strategic business planning processes of councils. Later phases will focus on how councils raise revenue and how they exercise their regulatory functions, as well as a program of restructuring and updating the local government legislation.

I would like to invite councils and communities to provide your input and co-operation on this critical phase of the Fit for the Future reforms and I look forward to working with you as we continue the process of reform.

A handwritten signature in blue ink that reads 'Paul Toole'.

The Hon. Paul Toole
Minister for Local Government

Towards New Local Government Legislation Explanatory Paper: proposed *Phase 1* amendments



Overview

We are seeking your feedback

The Office of Local Government is seeking input on important proposals by the NSW Government for legislative reform. The views of councils and their communities, and other stakeholders, are now being sought on phase 1 of the development of new Local Government legislation.

Phase 1 is designed to:

- embed strategic business planning principles across the range of council functions and practices;
- promote independent and sustainable councils engaged with and accountable to their local communities that have the capacity to deliver on local and regional needs; and
- support a culture of continuous improvement in councils to ensure the effective and efficient delivery of the strategic goals agreed to with their local communities.

How to give your feedback

Each of the amendments that is being proposed for phase 1 is described briefly in this explanatory paper and a cross-reference to any relevant recommendation of the Panel and/or the Taskforce is given. Most of these proposals have been the subject of stakeholder consultation in developing the Government's response to the Panel and Taskforce reports, so the paper is as streamlined as possible. The aim of this consultation is to use feedback received about the phase 1 amendments to inform the legislative drafting process.

The first stage of consultation is therefore an invitation to provide your feedback on each of these proposals through an online survey on the Fit for the Future website at www.fitforthefuture.nsw.gov.au. There will also be a link through the NSW Government's Have Your Say website at www.haveyoursay.nsw.gov.au.

Following consultation, it is anticipated that amending legislation could be introduced into and passed by the NSW Parliament in 2016.

Towards New Local Government Legislation
Explanatory Paper: proposed *Phase 1* amendments



1. Guiding principles for the Act and local government

1.1 Purposes of the Local Government Act

Proposed Amendment

The purposes of the *Local Government Act 1993* should be:

- to establish a legal framework for the NSW system of local government, in accordance with section 51 of the *Constitution Act 1902* (NSW);
- to describe the nature and extent of the responsibilities and powers of local government; and
- to create a system of local government that is democratically elected, engages with and is accountable to the community, is sustainable, flexible, effective and maximises value for money.

Current provision:

Section 7

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

T: 3.1.1 Purposes of the Local Government Act

Background

The current purposes of the Act will be updated and streamlined by the proposal.

1.2 Role of local government

Proposed Amendment

The council charter in section 8 should be replaced by provisions that:

- describe the role of local government; and
- establish guiding principles for local government.

The role of local government should be to enable local communities to be healthy and prosperous by:

- providing strong and effective elected representation, leadership, planning and decision making;
- working cooperatively with other bodies, including other levels of government, to pursue better community outcomes;
- effective stewardship of lands and other assets to affordably meet current and future needs;
- endeavouring to provide the best possible value for money for residents and ratepayers;
- strategically planning for and securing effective and efficient services, including regulatory services, to meet the diverse needs of members of local communities; and
- following the guiding principles of local government.

Current provision:

Section 8

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

T: 3.1.2 Role and Guiding Principles of Local Government

Background:

The Taskforce's proposed role of local government was similar but has been modified in this proposal to:

- more closely reflect the vision for Local Government in NSW agreed to at Destination 2036, including a focus on achieving outcomes and working together within and outside local government;
- adopt clear and simple language and remove duplication;
- reflect the role of councils in enabling outcomes and shaping its local government area through external relationships; and
- focus on the context in which councils operate, rather than prescribe outcomes.

Towards New Local Government Legislation Explanatory Paper: proposed *Phase 1* amendments



1.3 The guiding principles of local government

Proposed amendment:

The council charter in section 8 should be replaced by provisions that:

- describe the role of local government; and
- establish guiding principles for local government.

The new guiding principles to be observed in local government should enable councils to:

- actively engage local communities, including through integrated planning & reporting;
- be transparent and accountable;
- recognise diverse needs and interests;
- have regard to social justice principles;
- have regard to the long term and cumulative effects of its actions on future generations;
- foster ecologically sustainable development;
- effectively manage risk;
- have regard to long term sustainability;
- work with others to secure services that are appropriate to meet local needs;
- foster continuous improvement and innovation;
- act fairly, ethically and without bias in the public interest; and
- endeavour to involve and support its staff.

Current provisions:

Section 8

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

T: 3.1.2 Role and Guiding Principles of Local Government

Background:

The Taskforce's proposed role of local government was similar but has been modified in this proposal to:

- more closely reflect the vision for Local Government in NSW agreed to at Destination 2036, including a focus on achieving outcomes and working together within and outside local government;
- adopt clear and simple language and remove duplication;
- reflect the role of councils in enabling outcomes and shaping its local government area through external relationships; and
- focus on the context in which councils operate, rather than prescribe outcomes.

Towards New Local Government Legislation
Explanatory Paper: proposed *Phase 1* amendments



2. Structural framework of local government

2.1 The role of the governing body

Proposed Amendment

It is proposed to replace the current prescribed role of the governing body under section 223 which is focussed only on the board-like function of the body. The governing body is the elected representatives of the council (the councillors).

It is proposed to use the Panel's more expansive list as a basis for describing the functions of the governing body:

- to provide effective civic leadership to the community;
- to consult regularly with community organisations and other key stakeholders and keep them informed of council's activities and decisions;
- to direct and control the affairs of the council in consultation with the general manager and in accordance with the Act;
- to ensure as far as possible the financial sustainability of the council;
- to determine and adopt the community strategic plan, delivery program and other strategic plans and policies;
- to determine and adopt a rating and revenue policy and operational plans that ensure the optimum allocation of the council's resources to implement the community strategic plan and for the benefit of the area;
- to make decisions in accordance with those plans and policies;
- to make decisions necessary for the proper exercise of the council's regulatory functions;
- to keep under review the performance of the council and its delivery of services;
- to determine the process for appointment of the general manager and monitor his/her performance; and
- to ensure that the council acts honestly, efficiently and appropriately in carrying out its statutory responsibilities.

Current provision:

Section 223

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

P: 26 Political Leadership and Good Governance (Box 19)

T: 3.1.4 Roles and Responsibilities of Council Officials

T: 3.3.18(7)d Other Matters

Background:

The proposed amendments are intended to:

- provide greater clarity to the roles of councillors by describing their collective role as members of the governing body, as distinct from their individual role as elected representatives; and
- embed strategic principles and practices within the prescribed role of the governing body.

Towards New Local Government Legislation Explanatory Paper: proposed *Phase 1* amendments



2.2 The number of councillors

Proposed Amendment:

Section 224 prescribes the numbers of councillors a council may have (between 5 and 15) and the manner in which that number is to be determined.

It is proposed to amend section 224 to require that councils must have an odd number of councillors and mayor.

Current provisions:

Section 224 and 224A

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

P: 26 Political Leadership and Good Governance (Box 22)

Background:

The proposed amendment would give effect to the Government's response to the Panel's recommendation that councils comprise an odd number of councillors. This change will reduce the risk of the mayoralty being determined by lot and decisions being made on the casting vote of the mayor.

2.3 Rural councils

Proposed Amendment

It is proposed to allow for small rural councils to apply to the Minister for Local Government for one-off approval to:

- reduce councillor numbers and abolish wards without the need for a constitutional referendum;
- omit the current restriction that prevents councils from making an application for a decrease in the number of councillors that would result in the number of councillors for each ward being fewer than 3; and
- reduce the number of council meetings to be held in a year to below the minimum of 10 currently required under section 365.

Current provisions:

Sections 224A and 365

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

P: 12 Rural Councils (Box 33)

Background:

The Panel recommended that consideration be given to supporting the streamlining of some small rural councils' governance arrangements to allow efficiencies and savings. These councils are in rural-remote areas with small populations. It is proposed to provide a one-off voluntary process to allow the Minister to approve small rural council proposals to abolish wards, change councillor numbers and allow numbers of meetings that are less than the thresholds set out in the Act where proposed by some small rural councils in their Fit for the Future submissions.

This proposal is intended to facilitate a flexible response to the needs and circumstances of different regions.

Towards New Local Government Legislation
Explanatory Paper: proposed *Phase 1* amendments



3. The governing body of councils

3.1 The role of the mayor

Proposed Amendment

It is proposed to describe the role of the mayor differently.

The mayor should have all the prescribed responsibilities of a councillor in addition to the following additional responsibilities:

- to be the leader of the council and the community of the local government area, and advance community cohesion;
- to promote civic awareness and, in conjunction with the general manager, ensure adequate opportunities and mechanisms for engagement between the council and the local community;
- to be the principal member and spokesperson of the governing body and to preside at its meetings;
- to ensure that the business of meetings of the governing body is conducted efficiently, effectively and properly in accordance with provisions of the Act;
- to lead the councillors in the exercise of their responsibilities and in ensuring good governance;
- to ensure the timely development of the governing body's strategic plans and policies, and to promote their effective and consistent implementation, including by promoting partnerships between the council and key stakeholders;
- to exercise, in cases of necessity, the policy-making functions of the governing body between meetings of the council;
- to represent the governing body on regional organisations and in inter-government forums at regional, State and federal levels;
- to advise, manage and provide strategic direction to the general manager in accordance with the council's strategic plans and policies;
- to lead performance appraisals of the general manager;
- to carry out the civic and ceremonial functions of the mayoral office; and
- to exercise such other functions as the governing body determines.

Current provision:

Section 226

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

P: 26 Political Leadership and Good Governance (Box 21)

T: 3.1.4 Roles and Responsibilities of Council Officials

T: 3.3.18(7)d Other Matters

Background

Some aspects of the prescribed role of the mayor recommended by the Panel have not been included in this proposal as a result of previous stakeholder consultation.

Towards New Local Government Legislation Explanatory Paper: proposed *Phase 1* amendments



3.2 The mayor's term of office

Proposed Amendment

The current length of term for a mayor is either:

- one year for mayors elected by councillors; or
- four years for mayors popularly elected by the electors.

This would be changed so that mayors elected by councillors are to hold office for a minimum of two years, as recommended by the Panel, with the option of electing a person to the office for the whole four year term.

Also in accordance with the Panel's recommendation, and the Government's response, it proposed that it be compulsory for councillors to vote in a mayoral election.

Section 230 will also be amended to clarify that the office of mayor becomes vacant upon the person holding the office ceasing to hold civic office or on the occurrence of a casual vacancy.

Current provision:

Section 230

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

P: 26 Political Leadership and Good Governance (Box 22)

T: 3.3.1(8) Elections

Background

The proposed amendments will

- enhance political leadership and stable governance of council to give effect to the Government's commitment to extend the term of mayors elected by councillors to a minimum of two years, as well as make voting in mayoral elections compulsory; and
- address an existing ambiguity in the Act that has allowed some Mayors to purport to exercise the role of mayor after they cease to hold office as a councillor after an election.

Although the Panel and Taskforce did not describe a four year mayoral term option – just proposing a *minimum* of two years – this extension is being explored as a way to further support stable local government.

Compulsory voting by councillors for a mayoral election (as recommended by the Panel) may also address community concern that too many mayors are chosen by pulling lots out of a hat. However, it is important that a positive statutory obligation to vote does not undermine the democratic process (such as by excluding a person who has a genuine reason for being absent) or be too easy to avoid for reasons that are not bona fide. To meet those policy ends, the Act could provide:

- councillors may cast a vote in a mayoral election by proxy;
- councillors may cast a vote by telephone, video-conference, or electronic means;
- if a councillor is absent from the meeting at the time of the vote so that the number of remaining councillors voting is even-numbered, and has not cast a vote by proxy or electronic means, then another councillor must be excluded from voting by way of a 'draw from a hat'; and
- a regulation-making power in relation to process of electing mayors by councillors.

Towards New Local Government Legislation Explanatory Paper: proposed *Phase 1* amendments



3.3 The role of councillors

Proposed Amendment

It is proposed to recast section 232 so that it focuses on individual responsibilities of councillors, rather than their responsibilities as members of the governing body of a council. The role and responsibilities of an individual councillor, (including the mayor), should be:

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

Current provision:

Section 232

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

P: 26 Political Leadership and Good Governance (Box 19)
T: 3.1.4 Roles and Responsibilities of Council Officials
T: 3.3.18(7)d Other Matters

Background

Section 232 currently sets out a "dual role" for councillors as members of the governing body and as elected representatives and has been a source of confusion.

The proposed amendments are intended to provide greater clarity for councillors and communities by prescribing councillors individual roles as elected representatives separately from their collective roles as members of the governing body, as recommended by the Panel.

3.4 Councillors' term of office

Proposed Amendment

Section 234 prescribes the circumstances in which a civic office becomes vacant. Section 234 will be amended to clarify that a vacancy will occur in the civic office of a councillor where they are elected to another civic office in the council, (ie the office of a popularly elected Mayor) something that is currently not clear.

Current provisions:

Sections 233 and 234

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

None

3.5 Oath or affirmation of office

Proposed Amendment

It is proposed to require all councillors, including the Mayor to take an oath or affirmation of office in the prescribed form before commencing duties.

The oath or affirmation of office is to be taken within 1 month of election to office and councillors are not to undertake their duties until they do so. Where a councillor fails to take an oath or affirmation, his or her office will be declared vacant.

Current provision:

None

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

T: 3.3.18(2) Other Matters

Background

An oath or affirmation of office operates as a mechanism for inducting councillors into their role and reinforcing the serious nature of the role and the chief responsibilities and duties the role entails. Both Victoria and Queensland require their councillors to take an oath of office. It is proposed that the NSW law should operate in a similar way to Victoria and Queensland.

Towards New Local Government Legislation Explanatory Paper: proposed *Phase 1* amendments



3.6 Councillors' expenses and facilities

Proposed Amendment

Sections 252 to 254 relate to the payment of expenses and provision of facilities to councillors and the adoption of policies governing this. It is proposed to amend sections 252 and 253 to:

- replace the requirement under section 252 for councils to annually adopt an expenses and facilities policy with one simply requiring councils to adopt a policy within the first 12 months of their terms; and
- remove the requirement under section 253 for councils to provide the Office of Local Government annually with a copy of their adopted policies and an assessment of public submissions made in relation to their adoption.

Current provisions:

Sections 235 – 254A and Schedule 1

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T)

recommendation:

T: 3.3.18(3) Other Matters

Background

The proposed amendments are designed to reduce the compliance burden on councils of being required to annually exhibit, consult and adopt their councillor expenses and facilities policies even where no change is made to them and to provide copies to the Office of Local Government. It is also noted that open access obligations apply now to councils under the *Government Information (Public Access) Act 2009*.

3.7 Mayor/councillor professional development

Proposed Amendment

New provisions are proposed to require the following:

- Councils are to develop an induction program for newly elected and returning councillors and a specialist supplementary program for the mayor to assist them in the performance of their functions. The induction program is to be available for delivery within 4 months of the election.
- Each year, councils are to develop an ongoing professional development program for the mayor and each councillor to assist them in the performance of their functions to be delivered over the coming year.
- In determining the content of the induction and ongoing professional development programs, the council is to have regard to the specific needs of each individual councillor (including the mayor) and of the governing body as a whole and the requirements of any guidelines issued by the Office of Local Government.
- The content of the induction and ongoing professional development program is to be determined in consultation with the mayor, the council as a whole and individually with each of the councillors.
- Councils are to include details of the content of the induction and ongoing professional development offered to the mayor and each councillor and whether or not they participated in the training or development offered in the council's annual report.

Current provisions:

None

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T)

recommendation:

P: 26 Political Leadership and Good Governance (requirement for mandatory professional development)

P: 27 Political Leadership and Good Governance (linking remuneration with completion of professional development program).

Background

Some aspects of the Panel recommendation have not been included in this proposal as a result of previous stakeholder consultation. The proposed approach has the following benefits:

- it places a responsibility on all councils to offer an induction and ongoing professional development programs to their councillors;
- it allows councils the freedom to determine the content of those programs based on local and individual needs at the same time as allowing the Office of Local Government to have input into content through guidelines; and
- it places responsibility for participation on councillors and makes them accountable to the community that elected them for any failure to do so.

Towards New Local Government Legislation Explanatory Paper: proposed *Phase 1* amendments



3.8 Role and functions of administrators

Proposed Amendment

Several provisions of the Act provide that the administrator is to exercise the functions of the council without articulating what the nature of their role is within a council.

It is proposed to address this ambiguity and align the role of the administrator with the proposed prescribed role of the mayor and councillors by amending these sections to provide that:

- Where a sole administrator is appointed to a council, they are to exercise the role and responsibilities of the mayor and a councillor as prescribed under the Act.
- Where more than one administrator is appointed, all administrators are to exercise the role and responsibilities of councillors as prescribed under the Act and one, as specified by the relevant instrument of appointment, is to exercise the role and responsibilities of the mayor as prescribed under the Act in addition to those of a councillor.

Current provisions:

Sections 255-259, 438I, 438M and 438Y

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

None

Background

The proposed amendments are designed to address an existing ambiguity in the legislation that has been unhelpful in councils under administration. Providing greater clarity in relation to the roles of administrators aligns with the new descriptions that are being proposed for mayors and councillors.

3.9 Financial controllers

Proposed Amendment

A financial controller is responsible for implementing financial controls and related duties. Where a financial controller is appointed, a council may only make payments that are authorised or countersigned by the financial controller.

It is proposed to allow the Minister for Local Government to appoint a financial controller to a council that is performing poorly with respect to its financial responsibilities and/or is at high financial sustainability risk, in conjunction with issuing a performance improvement order.

A financial controller would only be appointed through the existing performance improvement order process after information is gathered or an investigation undertaken that shows the council is not performing, a notice of the proposed remedial action has been issued to a council and the Minister has considered the council's submissions with respect to the notice.

Current provision:

None

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

None

Background:

The Minister has an existing power to issue a performance improvement order against poorly performing councils to compel them to take steps to improve their performance. Before issuing a performance improvement order, the Minister must first give the council notice of his intention to do so and consider submissions by the council.

As part of the exercise of these powers, the Minister may appoint a temporary adviser to the council. If a temporary adviser is appointed, the council, councillors and members of the staff of the council are required to co-operate with the temporary adviser and to provide any information or assistance the temporary adviser reasonably requires to exercise his or her functions.

It is proposed to complement these powers with a new power for the Minister to appoint a financial controller to a council. These powers will be modelled on those that exist in Queensland.

Towards New Local Government Legislation
Explanatory Paper: proposed *Phase 1* amendments



3.10 Meetings

Proposed Amendment

In relation to conduct of meetings, amendments consistent with the following are proposed :

- provide that the Regulation may prescribe a Model Code of Meeting Practice (a Model Meeting Code);
- provide that the Model Meeting Code may include mandated and non-mandatory "best practice" provisions;
- require councils to adopt a Code of Meeting Practice (an adopted meeting code) that at a minimum incorporates the mandated provisions of the Model Meeting Code;
- allow a council's adopted meeting code to supplement the provisions contained in the Model Meeting Code;
- provide that a provision of a council's adopted meeting code will be invalid to the extent of any inconsistency with the mandated provisions of Model Meeting Code;
- require council and committee meetings to be conducted in accordance with the council's adopted meeting code;
- require councils to review and adopt a meeting code within 12 months of each ordinary election; and
- retain the existing requirements under sections 361 - 363 in relation to the adoption and amendment of a meeting code and public consultation in relation to this.

Aspects of the current meetings provisions in the Act and the Regulation will be updated and incorporated into a new Model Meeting Code.

Current provisions:

Sections 9-11, and 360-376
Clauses 231-273

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

T: 3.3.2 Meetings

Background

The Model Meeting Code will comprise mandatory provisions and non-mandatory best practice provisions. Councils will be required to adopt meetings codes that incorporate the mandatory provisions but will not be obliged to adopt the non-mandatory best practice provisions in order to respond to local requirements. The mandatory provisions will largely incorporate the existing meetings provisions, which will be updated to:

- address existing procedural ambiguities; and
- modernise procedural requirements.

It is expected that the new Code will initially include the provisions relating to meeting processes now found in the Act and Regulation, but be reordered to reflect the order in which events usually occur in meetings.

Towards New Local Government Legislation Explanatory Paper: proposed *Phase 1* amendments



3.11 Delegation of functions

Proposed Amendment

It is proposed to include amendments to section 377, which were introduced into Parliament previously but lapsed prior to the 2015 election, to remove the restriction on the delegation of the acceptance of tenders.

It is also proposed to allow councils to delegate the provision of community financial assistance for the purpose of exercising its functions where:

- the financial assistance is part of a specific program;
- the program's details have been included in the council's draft operational plan for the year in which the financial assistance is proposed to be given;
- the program's proposed budget for that year does not exceed 5 per cent of the council's proposed income from the ordinary rates levied for that year; and
- the program applies uniformly to all persons within the council's area or to a significant proportion of all persons within the area.

Amendments may be required facilitate the proposal to allow councils to delegate a regulatory function to another council or a joint organisation of councils, to support future collaboration and resource sharing.

Current provisions:

Sections 377-381

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T)

recommendation:

T: 3.3.8 Delegations

T: 3.3.10 Procurement

Background

The amendments are designed to:

- Reduce red tape
- Remove impediments to collaboration, and
- Support the use of Integrated Planning and Reporting to guide council decisions on financial assistance.

Towards New Local Government Legislation
Explanatory Paper: proposed *Phase 1* amendments



4. Elections

4.1 Extension of the option of universal postal voting to all councils

Proposed Amendment

It is proposed to amend section 310B to provide that the option of universal postal voting is available to *all* councils after the next ordinary election.

Current provisions:

Sections 310B
Clauses 313 and 321

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

T: 3.3.1(1) Elections

Background

The Taskforce's election-related recommendations have largely been implemented through the *Local Government Amendment (Elections) Act 2014* which was legislated to give effect to the recommendations of the Joint Standing Committee on Electoral Matters' inquiry into the 2012 Local Government elections.

The one outstanding action arising from the Government response to the Committee's recommendations is the extension of the option of universal postal voting to all councils. Currently this is only available to the City of Sydney. In its response to the Committee's recommendation to give councils the option of universal postal voting, the Government indicated that this option would be made available to all councils following the 2016 elections. For councils that do not choose universal postal voting, the existing postal and pre-poll voting qualifications will remain.

Towards New Local Government Legislation
Explanatory Paper: proposed *Phase 1* amendments



5. Council's workforce

5.1 Determination of the organisation structure

Proposed Amendment

It is proposed to amend the Act to provide that:

- the organisation structure is to be determined on the advice of the general manager;
- the adopted structure must accord with the priorities set out in the council's community strategic plan and delivery program;
- the adopted structure may only specify the roles and relationships of the general manager, designated senior staff and other staff reporting directly to the general manager; and
- the general manager is to be responsible for determining the balance of the organisation structure but must do so in consultation with the governing body.

Current provisions:

Sections 332-333

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

P: 29

T: 3.3.3 (1)

Background

The current provisions are unclear about the respective roles of general managers and councils in determining the organisation structure. This has been the source of conflict within councils.

The proposed approach has the benefit of:

- addressing this ambiguity making it clear what the respective responsibilities of the council and the general manager are;
- making it clear that the organisation structure has to be determined on the advice of the general manager (ie councils cannot unilaterally restructure without the input of the general manager); and
- clearly aligning the determination of the organisation structure with the delivery of a council's Integrated Planning and Reporting objectives.

Towards New Local Government Legislation Explanatory Paper: proposed *Phase 1* amendments



5.2 The role of general managers

Proposed Amendment

It is proposed to describe the role and responsibilities of the general manager in the Act consistent with the following:

- to conduct the day-to-day management of the council in accordance with the governing body's strategic plans and policies;
- to advise the mayor and the governing body on the development and implementation of policies and programs, including the appropriate form and scope of community consultation;
- to prepare, in consultation with the mayor and governing body, the community strategic plan and the council's resourcing strategy, delivery program and operational plan, annual report and community engagement strategy;
- to certify that Integrated Planning and Reporting requirements have been met in full, and that council's annual financial statements have been prepared correctly;
- to ensure that 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 direct and dismiss staff;
- to implement the council's workforce management strategy; and
- to undertake such other functions as may be conferred or imposed on the general manager by or under the Act or any other Act.

Current provision:

Section 335

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

P: 28: Political Leadership and Good Governance (Boxes 23 and 24)

T: 3.1.4 Roles and Responsibilities of Council Officials

T: 3.3.3 Appointment and Management of Staff

T: 3.3.18(7)d Other Matters

Background

The current provisions are unclear about the respective roles of general managers and councils in determining the organisation structure. This has been the source of conflict within councils.

The proposed approach has the benefit of:

- addressing this ambiguity making it clear what the respective responsibilities of the council and the general manager are;
- making it clear that the organisation structure has to be determined on the advice of the general manager (ie councils cannot unilaterally restructure without the input of the general manager); and
- clearly aligning the determination of the organisation structure with the delivery of a council's Integrated Planning and Reporting objectives.

Towards New Local Government Legislation
Explanatory Paper: proposed *Phase 1* amendments



5.3 The requirement to report annually to the council on senior staff contractual conditions

Proposed Amendment

It is proposed to omit the requirement under section 339 for general managers to report annually to the council on the contractual conditions of senior staff.

Current provision:

Section 339

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T)

recommendation:

None

Background

Senior staff are now all employed under the approved standard contract for senior staff rendering this requirement redundant.

Towards New Local Government Legislation
Explanatory Paper: proposed *Phase 1* amendments



6. Ethical standards

6.1 Consolidation of the prescription of ethical standards

Proposed Amendment

Provisions in the Act and the Regulation relating to the disclosure of pecuniary interests and the management of pecuniary conflicts of interests will be replicated in the Model Code of Conduct.

Current provisions:

Sections 441 – 459
Clauses 180 - 192

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

T: 3.3.6 Code of Conduct
T: 3.3.7 Pecuniary Interest

Background

The proposed amendments are designed to consolidate the imposition, administration and regulation of the ethical obligations of council officials into a single instrument, the *Model Code of Conduct for Local Councils in NSW* (the Model Code).

Currently council officials need to be familiar with their obligations under both the Model Code and the pecuniary interest provisions of the Act. The separate regulation of the obligation of council officials to disclose and appropriately manage pecuniary conflicts of interests is a historical anomaly that arose from the fact that these provisions predated the prescription of a Model Code of Conduct and the provision for a disciplinary regime with respect to councillor misconduct. Replication will allow the consolidation of ethical standards into a single instrument.

The current misconduct investigative provisions in the Act will apply to pecuniary interest matters and replace the pecuniary interest investigative procedures (see [6.2] below). The prescribed *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW* (the Model Code Procedures) will continue to require the referral of pecuniary interest breaches to the Office of Local Government and these will be dealt with under the misconduct provisions of the Act.

Towards New Local Government Legislation Explanatory Paper: proposed *Phase 1* amendments



6.2 Investigation of pecuniary interest breaches

Proposed Amendment

It is proposed to omit the provisions relating specifically to the investigation of complaints alleging breaches of the pecuniary interest provisions. These will instead be dealt with under the existing misconduct provisions.

General managers (and mayors in the case of allegations concerning general managers) will continue to be obliged to refer pecuniary interest breaches to the Office of Local Government under the prescribed Model Code Procedures. These will continue to be investigated by the Office and referred to the NSW Civil and Administrative Tribunal (NCAT) under the misconduct provisions where appropriate. As is currently the case with respect to misconduct matters, it will also be open to the Chief Executive to take disciplinary action with respect to less serious pecuniary interest breaches instead of referring them to the Tribunal.

The Tribunal's powers to take disciplinary action against council staff, committee members and advisors with respect to pecuniary interest breaches are to be retained. The provisions that apply to proceedings before the NCAT generally and the NCAT's consideration of misconduct matters will also be retained.

Current provisions:

Sections 440F – 440P
Sections 460 – 486A

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

T: 3.0.0 Approach and Principles for the Development of the New Act
T: 3.2.1 Integrated Planning and Reporting

Background

The proposed amendments are required to give effect to the amendments that will see the prescription of all ethical standards under the Model Code of Conduct for Local Councils. All breaches (including in relation to the obligation to disclose and appropriately manage pecuniary conflicts of interests) will be dealt with under the existing misconduct provisions of the Act.

Towards New Local Government Legislation
Explanatory Paper: proposed *Phase 1* amendments



7. Councils' strategic framework

7.1 Integrated planning and reporting principles

Proposed Amendment

New provisions will be included to establish overarching Integrated Planning and Reporting principles and require councils to undertake strategic business planning in accordance with those principles.

The proposed Integrated Planning and Reporting principles will provide that councils (together with their communities, other councils and stakeholders) are proposed to include:

- lead and inspire residents, businesses and others to engage with their council;
- identify and prioritise key community needs and aspirations;
- develop strategic goals to meet these needs and aspirations;
- identify activities and prioritise actions to work towards these strategic goals;
- plan holistically to deliver on strategic goals within their resources;
- foster community participation to better inform local and state decision making;
- manage council's current and future financial sustainability;
- appropriately adapt to changing circumstances, evidence and priorities;
- proactively manage risks to the community and its council;
- be transparent and accountable for decisions and omissions;
- maintain an integrated approach to planning, delivery, monitoring and reporting;
- collaborate to maximise achievement of key community outcomes; and
- honestly review and evaluate progress on a regular basis.

Current provisions:

Sections 402 – 406 (Note there are mandatory guidelines)

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

T: 3.0.0 Approach and Principles for the Development of the New Act

T: 3.2.1 Integrated Planning and Reporting

Background

The proposed amendments will ensure that the purpose and principles of Integrated Planning and Reporting as a strategic business planning tool are clearly reflected in the Act. These provisions will:

- set out the overarching principles of Integrated Planning and Reporting;
- require strategic business planning to be undertaken by councils in accordance with the prescribed Integrated Planning and Reporting principles and provisions;
- guide how Integrated Planning and Reporting documents are to be adopted/endorsed and reviewed; and
- require integrated planning to be directed to achieving better outcomes through continuous improvement.

Towards New Local Government Legislation Explanatory Paper: proposed *Phase 1* amendments



7.2 Streamlining the existing integrated planning and reporting provisions

Proposed Amendment

The current Integrated Planning and Reporting provisions are contained in sections 402 to 406. These provisions will be amended so that they are confined to setting out the purpose of each document and when they must be delivered. Detailed process requirements for how this must be done will be moved to the Regulation.

Current provisions:

Sections 402 – 406

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

T: 3.0.0 Approach and Principles for the Development of the New Act
T: 3.2.1 Integrated Planning and Reporting

Background

These amendments are designed to give effect to the Taskforce's recommendations that the existing Integrated and Planning and Reporting provisions be simplified with prescriptive detail contained in the Regulation.

7.3 Council's integrated planning and reporting to reflect regional priorities

Proposed Amendment

Amendments are proposed to ensure that regional priorities are reflected in individual councils' strategic business planning. In particular, amendments are proposed to:

- require council's community strategic plans to identify key regional priorities and strategies for the council, developed with adjoining councils and agencies; and
- require delivery programs to address key regional strategies including council actions and any proposed joint programs agreed regionally.

Current provisions:

Sections 402 and 404

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

T: 3.0.0 Approach and Principles for the Development of the New Act
T: 3.2.1 Integrated Planning and Reporting

7.4 Expanded scope of delivery programs

Proposed Amendment

Section 404 will be amended to clarify that delivery programs are to capture all council activities.

Current provisions:

Section 404 and 406

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

T: 3.0.0 Approach and Principles for the Development of the New Act
T: 3.2.1 Integrated Planning and Reporting

Background

This amendment is designed to embed in the Act a requirement that is currently reflected in the mandatory Integrated Planning and Reporting Guidelines.

Towards New Local Government Legislation Explanatory Paper: proposed *Phase 1* amendments



7.5 Fiscal sustainability

Proposed Amendment

The *Local Government (General) Regulation 2005*, which provides for an annual statement of revenue policy in each operational plan, will be amended to require councils to:

- establish revenue policies with a view to ensuring fiscal sustainability; and
- provide a clear rationale for how rating systems are structured and what they are designed to achieve.

The Regulation will also set out in more detail what is required of councils' resourcing strategy to clarify the purpose and objectives of workforce, asset and long term financial planning. This will draw on the essential elements in the current Integrated Planning and Reporting guidelines to help councils produce more robust and useful strategies in these key areas.

Current provision:

Clause 201

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T)

recommendation:

P: 2 Fiscal Responsibility (Box 9)

P: 5 Strengthening Revenues

Background

The amendments will give effect to the Panel's recommendations to embed the principle of fiscal sustainability through Integrated Planning and Reporting.

7.6 Expanded scope of councils' community engagement strategies

Proposed Amendment

It is proposed to broaden the existing requirement that a council must adopt a community engagement strategy to inform the development of its community strategic plan. If amended, the Act would require the adoption of a community engagement strategy to inform *all* council activities (other than routine business-as-usual operations), not only those directly associated with development of the council's Integrated Planning and Reporting framework.

This would be done by making the adoption of a community engagement strategy a general legislative obligation.

A council's community engagement strategy would need to meet minimum prescribed requirements. It is anticipated, for example, that guidelines would prescribe minimum public consultation requirements for specific activities including the development of the components of a council's Integrated Planning and Reporting framework, and include a requirement to periodically evaluate the efficacy of consultation methodologies.

It is proposed to accommodate the existing provisions relating to community polls within the proposed standalone community engagement provisions.

Current provisions:

Sections 14, 18 – 20, 402

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T)

recommendation:

T: 3.0.0 Approach and Principles for the Development of the New Act

T: 3.2.2 Community Engagement

T: 3.3.18(7)b Other Matters

Background

The requirement for a single overarching community engagement strategy provides a framework for councils to engage with their communities in a strategic, ongoing, flexible and locally appropriate way. It also provides a single, consistent point of reference in the Act for other provisions requiring councils to undertake consultation for specified activities.

Towards New Local Government Legislation
Explanatory Paper: proposed *Phase 1* amendments



8. Council performance

8.1 Annual reports

Proposed Amendment

It is proposed to require the information reported in councils' annual reports to be endorsed as factually accurate by an internal audit committee. As noted below (at [8.4]), councils will be required to establish internal audit committees with a majority of independent members and an independent Chair.

Current provisions:

Sections 428-428A

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

P: 22 Improvement, Productivity and Accountability (Box 17)

T: 3.2.3 Performance of Local Government

Background

The proposed amendment is designed to provide an assurance mechanism and to give communities confidence in the integrity of the information their councils report about their council's performance through its annual report.

8.2 State of the environment reports

Proposed Amendment

It is proposed to remove the requirement under section 428A for a council to include a State of the environment report in its annual report every 4 years. Councils would instead be required to report on environmental issues relevant to the objectives established by the community strategic plan in the same way they are currently required to report on the achievement of other objectives set in their community strategic plans (that is, through their annual reports and the 4-yearly end of term report).

Current provision:

Section 428A

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

T: 3.2.1 Integrated Planning and Reporting

Background

This amendment is designed to:

- reduce the compliance burden on councils arising from the preparation of a separate state of the environment report every 4 years; and
- help councils achieve their environmental objectives by consolidating the reporting of those objectives into their Integrated Planning and Reporting frameworks.

Towards New Local Government Legislation
Explanatory Paper: proposed *Phase 1* amendments



8.3 Performance measurement

Proposed Amendment

It is proposed to allow for the introduction of a performance management and reporting framework that should:

- provide a statutory basis to establish new indicators and benchmarks for reporting purposes;
- expressly require councils to collect and report against these indicators in accordance with guidelines;
- establish annual performance statements as part of council annual reports, which will be subject to oversight and attestation requirements;
- align performance reporting to the Integrated Planning and Reporting cycle; and
- provide the capacity to establish a state-wide community satisfaction survey.

Current provision:

Section 429

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T)**recommendation:**

P: 2 Fiscal Responsibility

P: 18 Improvement, Productivity and Accountability

T: 3.2.3 Performance of Local Government

Background

The proposed framework is a modified version of the one recently adopted by Victoria. Further work will be undertaken with the local government sector to develop the performance management framework in the coming months.

Towards New Local Government Legislation Explanatory Paper: proposed *Phase 1* amendments



8.4 Internal audit

Proposed Amendment

It is proposed to introduce a mandatory requirement for councils to have an internal audit function. To this end, it is proposed that new provisions will require all councils to have an internal audit function:

- with broad terms of reference covering compliance, risk, fraud control, financial management, good governance, performance in implementing their community strategic plan and delivery program, service reviews, collection of required indicator data, continuous improvement and long term sustainability; and
- that focuses on councils adding value to, and continuous improvement in, the performance of their functions.

All councils will be required to comply with guidelines issued by the Chief Executive of the Office of Local Government with respect to the implementation of their internal audit functions. All councils will appoint an audit, risk and improvement committee that meets the following requirements:

- audit committees must have a majority of independent members and an independent chair;
- general managers may not be members of audit committees (but may attend meetings unless excluded by the committee); and
- the Chair of the audit committee must report at least biannually to a council meeting on the organisation's performance in financial management, good governance and continuous improvement.

Councils will be permitted to have joint arrangements for internal audit and share audit committees.

Current provisions:

Discretionary guidelines issued under section 23A

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

P: 22 Improvement, Productivity and Accountability (Box 17)

Background

Mandating internal audit will:

- entrench within each council an internal assurance mechanism that offers an alternative to prescription and external oversight as a means of addressing risk, ensuring compliance and promoting best practice;
- drive and inform a culture of continuous improvement;
- facilitate reporting; and
- promote increased accountability.

Towards New Local Government Legislation
Explanatory Paper: proposed *Phase 1* amendments



8.5 Sector-wide performance audits by the Auditor-General

Proposed Amendment

To identify trends and opportunities for improvement across the sector as a whole, it is proposed to compliment the mandated requirement for internal audit by empowering the Auditor-General to conduct issue-based performance audits in key areas of local government activity.

Current provision:

None

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

P: 22 Improvement, Productivity and Accountability (Box 17)

Background

As noted by the Panel, such audits have been conducted by the Victorian Auditor-General for many years. Topics are selected in consultation with the sector, and recent audits have covered important issues such as rating practices, sustainability of small councils, business planning, fees and charges, and use of development contributions. They usually involve a small sample of representative councils. The audits do not question the merits of councils' policy objectives. Rather, the purpose of the audit is to assess whether councils are achieving their objectives and operating economically, efficiently and effectively.

Towards New Local Government Legislation Explanatory Paper: proposed *Phase 1* amendments



8.6 Financial management

Proposed Amendment

It is proposed to adopt a more 'principles-based' approach to the management of council funds by moving detailed requirements to the Regulation and the *Local Government Code of Accounting Practice and Financial Reporting*, which is prescribed under the Act.

New provisions in the Act will set out objectives and principles that are to inform councils' financial management practices and that align them with the objectives set through councils' Integrated Planning and Reporting frameworks. These provisions will ensure that the financial targets for councils are to be those reflected in their long term financial plans, delivery programs and operational plans.

They will also establish the following principles of sound financial management:

- responsible and sustainable spending, aligning general revenue and expenses as per the councils' planning documents.
- responsible and sustainable infrastructure investment for the benefit of its community.
- effective financial and asset management, including sound policies and processes for:
 - performance management and reporting, and
 - asset maintenance and enhancement, and
 - funding decisions, and
 - risk management practices.
- achieving intergenerational equity, including ensuring that:
 - policy decisions are made having regard to their financial effects on future generations, and
 - the current generation funds the cost of its services.

Current provisions:

Sections 408 – 411

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

T: 3.3.9 Financial Governance

Background

The proposed amendments are designed to start to give effect to the Taskforce's recommendations for a more "principles-based" approach to the regulation of councils' financial governance in the Act, with prescriptive detail moved to the Regulation and other subordinate instruments wherever practical.

The proposed principles of sound financial management are modelled on those contained in the *Fiscal Responsibility Act 2012*.

Towards New Local Government Legislation Explanatory Paper: proposed *Phase 1* amendments



8.7 Financial reporting

Proposed Amendment

Consistent with the proposal that councils' financial obligations be recast to establish a "principles-based" approach in the Act detailed reporting requirements should be specified instead in the Regulation and the *Local Government Code of Accounting Practice and Financial Reporting*.

Current provisions:

Sections 412-421

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

T: 3.3.9 Financial Governance

Background

The proposed amendments are designed to give effect to the Taskforce's recommendations for a more "principles-based" approach to the regulation of councils' financial governance in the Act, with prescriptive detail moved to the Regulation and other subordinate instruments.

8.8 External audit

Proposed Amendment

It is proposed to place Local Government audits under the aegis of the NSW Auditor-General.

There will also need to be transitional arrangements in the Bill to ensure that existing auditor appointments can be brought to an orderly conclusion, with minimal disruption to councils, current auditors and the Audit Office of New South Wales.

Current provisions:

Sections 422-427

Independent Local Government Review Panel (P)/Local Government Acts Taskforce (T) recommendation:

P: 3 Fiscal Responsibility

Background

As noted in the Government response to the Panel and Taskforce, giving the Auditor-General oversight of council financial audit will improve quality, consistency and timeliness and financial management.

The Office of Local Government is currently working with the Audit Office on the development and implementation of the proposed amendments, including transitional arrangements.



Waverley Council Submission on the Local Government Act Review – Phase 1 Amendments

Introduction

Waverley Council welcomes the opportunity to make a submission on the Local Government Act Review – Phase 1 Amendments.

Comment on Process

Waverley Council has the following comments on the Phase 1 amendments process:

- There has been a very short timeline for submissions as it commenced in January 2016 when governing bodies were already grappling with council amalgamations and merger proposals.
- Amendments are piecemeal and there is no context of what will happen in Phase 2 nor how many further phases there will be.
- Amendments are to be introduced to Parliament in April-June 2016 so legislation is being written while consulting giving a sense that there is not much commitment in taking on board feedback.
- There is difficulty in taking on new issues as other stakeholders will be unable to comment.
- Some amendments rely on detail through regulation or guidelines which are not provided.
- The online survey is not satisfactory and quite simplistic preventing a contribution of ideas.
- The process does not include an exposure draft.
- The use of mandatory guidelines avoid parliamentary scrutiny – mandatory provisions should be in the Act or Regulation.
- There is concern that constraints of time has not allowed for a full debate to provide for a full submission.

Following is Waverley Council 's comments on the 37 proposed amendments to the Local Government Act 1993 as set out in the paper issued by the Office of Local Government titled 'Towards New Local Government Legislation Explanation Paper: proposed Phase 1 amendments'.

1. Guiding principles for the Act and local government

1.1 Purposes of the Local Government Act

- Council has had insufficient time to prepare a response to this proposed amendment.

1.2 Role of local government

- Waverley Council supports the wording of this provision with one exception: the reference to 'value for money' does not carry the right implications about budgetary constraints. Doing things cheaply is not always the right way for the community from a sustainability point of view. Council needs to balance financial sustainability with community outcomes and social issues and councils need to consider financial sustainability in its decisions.
- Although the wording of the 'Role of Local Government' statement is an improvement it should still be called a Council Charter which outlines the general guiding principles with abstract notions of ethical behaviour. The draft wording of the Role of Local Government is too wordy.

1.3 The guiding principles of local government

- Council has had insufficient time to prepare a response to this proposed amendment.

2. Structural framework of local government**2.1 The role of the governing body**

- Council has had insufficient time to prepare a response to this proposed amendment.

2.2 The number of councillors

- Council has had insufficient time to prepare a response to this proposed amendment.

2.3 Rural Councils

- Council has had insufficient time to prepare a response to this proposed amendment.

3. The governing body of councils**3.1 The role of the mayor**

- Council has had insufficient time to prepare a response to this proposed amendment.

3.2 The mayor's term of office

- Waverley Council supports a minimum length of term for a mayor of two years and also supports a two year term for chairing committees to align with the Mayor's term. A two year period gives stability and certainty to the community.
- There is some support for the Act to include a capacity for the Council to 'spill' the mayor if they lose the support of the council or to call for a vote of confidence.
- The requirement for councillors to vote on the Mayoral election was not supported.
- A good relationship with the Mayor and General Manager is important to ensure positive outcomes.

3.3 The role of councillors

- Waverley council does not support this amendment. We support the removal of the 'dual role' for councillors as set out in Section 232 but do not support the new statements. It denies the right to free speech where councillors may have differential points of view and the wording is not framed properly.

3.4 Councillors' term of office

- Council has had insufficient time to prepare a response to this proposed amendment.

3.5 Oath or affirmation of office

- Council has had insufficient time to prepare a response to this proposed amendment.

3.6 Councillors' expenses and facilities

- Council has had insufficient time to prepare a response to this proposed amendment.

3.7 Mayor/councillor professional development

- Council has had insufficient time to prepare a response to this proposed amendment.

3.8 Role and functions of administrators

- Council has had insufficient time to prepare a response to this proposed amendment.

3.9 Financial controllers

- The role of the financial controller needs to be separate from the administrator. It is unclear what happens to the General Manager when a financial controller is installed. If there is a General Manager in place why is there a need for a financial controller?
- This is a heavy handed provision that undermines the role of the General Manager. What is the benchmark/threshold for this provision? It is unclear what the process is for the installation of a financial controller?
- There should be a stepped out process so that the council is given notice. Putting in financial controllers is draconian, and is at the whim of individual Ministers.
- There is insufficient information to better understand how the financial controller will work.
- It is unclear who would pay for this and what the dispute mechanisms are.
- There needs to be a framework included to say what conditions and information needs to be provided.
- This proposal is insufficiently described and presents a potential for undermining and duplicating the role of the General Manager.

3.10 Meetings

- Council has had insufficient time to prepare a response to this proposed amendment.

3.11 Delegation of functions

- Council has had insufficient time to prepare a response to this proposed amendment.

4. Elections**4.1 Extension of the option of universal postal voting to all councils**

- Council has had insufficient time to prepare a response to this proposed amendment.

5. Council's workforce

5.1 Determination of the organisation structure

- Council has had insufficient time to prepare a response to this proposed amendment.

5.2 The role of general managers

- Waverley Council support the description of the role of the general manager. At Waverley the governing body approves the program areas and structures. Council decides which services it provides eg. Childcare but the General Manager should decide where in the structure it sits.
- Council should have a legitimate role in selecting the governance manager and internal auditor.

5.3 The requirement to report annually to the council on senior staff contractual conditions

- Council has had insufficient time to prepare a response to this proposed amendment.

6. Ethical standards

6.1 Consolidation of the prescription of ethical standards

- Council has had insufficient time to prepare a response to this proposed amendment.

6.2 Investigation of pecuniary interest breaches

- Council has had insufficient time to prepare a response to this proposed amendment.

7. Councils' strategic framework

7.1 Integrated planning and reporting principles

- Council has had insufficient time to prepare a response to this proposed amendment.

7.2 Streamlining the existing integrated planning and reporting provisions

- Council has had insufficient time to prepare a response to this proposed amendment.

7.3 Council's integrated planning and reporting to reflect regional priorities

- Council has had insufficient time to prepare a response to this proposed amendment.

7.4 Expanded scope of delivery programs

- Council has had insufficient time to prepare a response to this proposed amendment.

7.5 Fiscal sustainability

- Council has had insufficient time to prepare a response to this proposed amendment.

7.6 Expanded scope of councils' community engagement strategies

- Council has had insufficient time to prepare a response to this proposed amendment.

8. Council performance

8.1 Annual reports

- Waverley council would like to clarify whether the existing Audit committee will be able to fulfil the requirement 'Councils will be required to establish an internal audit committee with majority independent members and an independent chair' which would be the optimal solution rather than an additional committee being established.
- If an additional committee is required would these be paid positions or voluntary? If paid what is the criteria/job description for the members and how often would this committee meet? Are they just reviewing the financials or all of the Delivery Plan? It appears that it would be a challenge for an independent board to be able to confidently sign off that the annual report is accurate and wouldn't this be a duplication of the council's role?

8.2 State of the environment reports

- Council has had insufficient time to prepare a response to this proposed amendment.

8.3 Performance measurement

- Council has had insufficient time to prepare a response to this proposed amendment.

8.4 Internal audit

- Council has had insufficient time to prepare a response to this proposed amendment.

8.5 Sector-wide performance audits by the Auditor-General

- Council has had insufficient time to prepare a response to this proposed amendment.

8.6 Financial management

- Council has had insufficient time to prepare a response to this proposed amendment.

8.7 Financial reporting

- Council has had insufficient time to prepare a response to this proposed amendment.

8.8 External audit

- Council has had insufficient time to prepare a response to this proposed amendment.

Additional comments

- If the current scenario is the major change in 100 years in NSW Local Government then we could propose how the Local Government Reform can assist the Commonwealth Constitutional Recognition of Aboriginal Peoples and reconcile the existing Community Governance structures of NSW Aboriginal Land Councils with Municipal Councils. Major reform of NSW Local Government relationships with Aboriginal Lands Councils should be part of a Reconciliation Approach to this legislative reform in further consultation with the Aboriginal Community and the NSW Aboriginal Land Council network.