



REFORMING LOCAL GOVERNMENT IN SOUTH AUSTRALIA DISCUSSION PAPER



Government of South Australia

Department of Planning,
Transport and Infrastructure

AUGUST 2019

FOREWORD

Every four years, thousands of people stand for election to their local council, with more than 700 chosen to serve and lead their communities.

High expectations are rightly placed on those elected, as they take on real responsibilities for support and services in their local area. Like all governments, councils need to make decisions about the services they provide, and the revenue that they need to bring these services to life.

To achieve good outcomes for ratepayers we need the ecosystem in and around local government to be as robust as possible. From the internal structures around how councils operate, to the integrity bodies that oversee them and the media that report on them, every part of the ecosystem needs to work to deliver quality services for local communities, whilst also ensuring that ratepayer dollars are used as wisely as possible.

As Minister for Transport, Infrastructure and Local Government, I have a responsibility to ensure that this legislation offers councils the support they need, provides appropriate oversight and gives each community certainty that their council is making good decisions, understands local needs and is operating efficiently and sustainably.

This discussion paper proposes reforms to local government legislation that aims to achieve this. Some of the key reforms proposed include a new conduct management framework for council members, an expanded role for council audit committees to provide expert, independent advice to councils on a range of critical financial and governance matters, and improvements to regulation to reduce councils' costs.

I am grateful to the people who provided their ideas for reform in the first stage of the Local Government Reform program. I was impressed by the range and number of considered ideas that were submitted. Likewise, I am keen to hear as many views as possible on the reforms contained in this discussion paper. Which do you think will work? Are there other ideas for reform that should be considered?

I look forward to receiving all submissions on this discussion paper, and to work together to ensure we have local government legislation that will set the future direction for councils in our State.

HON STEPHAN KNOLL MP

Minister for Transport, Infrastructure and Local Government

Minister for Planning



REFORMING LOCAL GOVERNMENT IN SOUTH AUSTRALIA DISCUSSION PAPER

INTRODUCTION	4
REFORM AREA 1 STRONGER COUNCIL MEMBER CAPACITY AND BETTER CONDUCT	10
REFORM AREA 2 LOWER COSTS AND ENHANCED FINANCIAL ACCOUNTABILITY	32
REFORM AREA 3 EFFICIENT AND TRANSPARENT LOCAL GOVERNMENT REPRESENTATION	50
REFORM AREA 4 SIMPLER REGULATION	68
IDEAS FOR REFORM CONSULTATION SUMMARY	87

WHY IS LOCAL GOVERNMENT REFORM NEEDED?

The *Local Government Act 1999* (the Act) was put in place following significant council amalgamations in the late 1990s that created our current 68 councils. In 1999, the Act recognised that councils are government bodies elected by their communities to make decisions about the services that need to be delivered for their local area.

This means that councils have serious responsibilities. The services they provide—roads, footpaths, ovals, parks, sporting grounds, waste management, libraries, community centres and community support services to name just a few—are what makes our local communities work.

The State Government also has a responsibility to ensure that the legislative framework around councils enables them to act, make decisions, and provide services in the way in which their communities expect. It ‘sets the rules’ for how councils are elected; what their roles and responsibilities are; how they can raise revenue; how they make decisions; and how they inform and engage their communities.

The four reform areas put forward by the Government recognise that there are areas in this legislative framework that currently aren’t working as well as they should, and need to be reviewed.

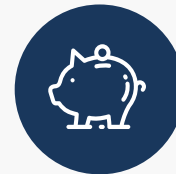
These areas are—

REFORM AREA 1



**STRONGER COUNCIL MEMBER
CAPACITY AND BETTER CONDUCT**

REFORM AREA 2



**LOWER COSTS AND ENHANCED
FINANCIAL ACCOUNTABILITY**

REFORM AREA 3



**EFFICIENT AND TRANSPARENT
LOCAL GOVERNMENT
REPRESENTATION**

REFORM AREA 4



SIMPLER REGULATION

REFORM AREA 1

STRONGER COUNCIL MEMBER CAPACITY AND BETTER CONDUCT



Communities have high expectations of how their council members should behave. They are leaders in their communities, who speak and make decisions on their behalf. There are more than 700 council members in South Australia, and most meet this expectation admirably. They step forward to serve on their council, and commit considerable time and energy to make their local community a better place to live.

However, from time to time, some council members conduct themselves in a way that is not acceptable.

This can be poor behaviour, such as rudeness or a lack of respect to fellow council members or community members. It may be poor behaviour in a council meeting, through an unwillingness to engage in the respectful debate that's needed to ensure good decisions. Or it may be conduct that calls the integrity of their decisions into question, such as not managing a conflict of interest properly, or accepting gifts and other benefits that may improperly influence what they do.

Whatever the issue is, council members and their communities expect that it should be dealt with in the right way. This means that it is investigated at the right level; that sanctions are applied that fit the behaviour, and that council members who choose to repeat poor conduct receive escalating penalties.

There is a strong view that the current system for managing the conduct of council members is not delivering on these expectations. Feedback has been that councils have a desire to be better equipped to manage low-level behavioural issues on a local level, but also want a clearer pathway to resolving more serious conduct matters. Proposed reforms will create a better framework for managing and improving council member conduct and capacity. The Act will make a clear distinction between lower-level 'behavioural' matters that can be dealt with at a council level, and more serious 'integrity' matters that should be investigated and dealt with by an independent body.

The new framework will also recognise that while most behavioural matters are low-level, occasionally poor behaviour can be serious enough, or can be repeated to an extent that it causes a risk to the health and safety of others, or prevents an elected member body from acting effectively. Councils should be able to refer these 'serious behavioural matters' to an independent body for investigation and resolution as integrity breaches.

One question that this discussion paper poses is which model should be put in place to deliver this new framework. Three alternatives are proposed—a 'light touch' model that clarifies the current legislative provisions; a model that uses a new council 'governance committee' to support councils' conduct management; and a significant change through the introduction of a 'Local Government Conduct Commissioner'.



REFORM AREA 2

LOWER COSTS AND ENHANCED FINANCIAL ACCOUNTABILITY

It is fair to say that of all the decisions a council makes, the one that receives the most attention is setting the rates that are paid by its community. This decision is what enables councils to provide the services that we rely on—roads, waste management, libraries, and all the other council services and facilities that our communities use. It also enables councils to manage the very significant assets that underpin these services—over \$23 billion worth across the State.

Most people realise this and are prepared to contribute their fair share to these services. However, ratepayers must have confidence that their money is being raised fairly and spent sensibly. This means that their council is managing its finances responsibly, with the right level of oversight and assurance; that it makes every effort to keep costs low; and that it also provides clear and easily understood information about these critical decisions. The Act establishes clear standards of financial management and accountability, which have been reviewed and improved a number of times over the past decade.

However, given the critical importance of councils' financial position, the need for all councils to make well informed and effective decisions on revenue and expenditure, and a continuing need for independent oversight that assures both councils and their communities that councils are well managed and sustainable; another review of these standards is timely.

The discussion paper proposes several reforms to improve council auditing and oversight, to improve decision making by council member bodies and to improve the information that councils provide each year to their communities on their rating decisions.

Feedback on all proposals is welcome. However, it should also be noted that the State Government has charged the SA Productivity Commission (SAPC) to undertake an inquiry into cost pressures and efficiencies in the local government sector. It is likely that any recommendations the SAPC makes in its final report in November 2019 will have a significant impact on reforms in this area.

REFORM AREA 3

EFFICIENT AND TRANSPARENT LOCAL GOVERNMENT REPRESENTATION



It is the election of our councils that makes them a government.

Like State and Federal Government elections, Local Government elections give us the ability to choose who we want to represent us, to lead our communities, and to make decisions about the services that are available to us. Many aspects of these elections are the same. They are run by an independent body, which for councils and the State Government is the Electoral Commission of South Australia (ECSA). They are based on a fundamental principle of ‘one vote, one value’—that is, that each vote held by each voter is equal.

However, there are also unique features of council elections in South Australia. Most notably, voting for councils is voluntary, and done by a postal vote. The franchise is different—property owners, as well as residents, can vote. The method of voting and counting is also different in council elections. Other differences are in the role of formal political parties, which is much less apparent in council elections; and how voters learn about the candidates that are standing for election.

In the call for reform ideas, council elections attracted the most submissions and comments. Many contributors asked for the introduction of online voting, to make voting more convenient and to improve the numbers of people choosing to vote. There is general agreement that online voting is desirable, however, a range of technological challenges must be overcome before its introduction to ensure the security of our elections. This is why this discussion paper does not propose this reform.

Other calls for improvement to local government elections centred on clarifying the roles of ECSA and councils in elections; particularly for people who wish to nominate for council, and then become candidates. There was also a widespread view that candidates should be required to provide more information that would be of interest to people considering whether to vote for them—any political affiliations the candidate may have; whether they live in the area for which they are standing; and any significant donations they may have received.

The reforms in the discussion paper therefore propose a greater role for ECSA in receiving nominations and publishing information on candidates—all online, to provide a more convenient, centralised service for both candidates and voters. The reforms also propose greater information disclosure by candidates in an easily accessible form.



REFORM AREA 4

SIMPLER REGULATION

Councils are required to act within a range of regulations that are put in place to deliver or protect the public interest. For example, they are required to undertake a specific, regulated process before they decide to revoke the community land status of some of their land. This regulation is in place to ensure that councils fully consider all aspects of this decision, to provide assurance that this decision is made in their community's best interest.

However, it also must be recognised that regulations can be costly—in time and resources. This is why regulation is often referred to as 'red tape'—or perceived only as a barrier to timely and effective actions. There's no question that regulation should be regularly examined to ensure that it delivers on the public good it aims to protect. Every dollar that a council spends on compliance is a dollar that must be raised by rates or not spent on a local service. It's therefore essential that regulations are regularly reviewed to ensure that the cost of compliance is justified by the benefits they deliver.

The many ideas for local government reform received suggested a number of areas where regulation can be simplified. This paper therefore proposes reforms to a range of current regulations. These include a more modern approach to community engagement; a faster process for simple community land revocation proposals; clarifying councils' ability to hold workshops and information sessions for its council members; reducing regulations that apply to permits for use of council roads; and improving aspects of council meetings.



HOW TO MAKE A SUBMISSION

This discussion paper puts forward a range of proposals for local government reform.

In some instances, these include a number of potential models for discussion and debate. In other cases, a single proposal is put forward for comment.

We are seeking your views on the proposed reforms. Which do you think would best address the issues that have been identified? Are there changes that you would make to the proposals? And are there any new ideas and alternative proposals that you think we should consider?



TO FIND OUT MORE VISIT
www.dpti.sa.gov.au/local_government_reform



JOIN THE CONVERSATION
AND COMPLETE OUR SURVEY AT
yourSAy.sa.gov.au



REFORM AREA 1



**STRONGER COUNCIL
MEMBER CAPACITY
AND BETTER CONDUCT**

1 INTRODUCTION

Under the *Local Government Act 1999* (the Act), a council is a body corporate and consists of members elected to the council. A council's elected member body is made up of a principal member who is known as either a 'Mayor' (elected to the position) or a 'Chairperson' (appointed by the other elected members, although may also be referred to as a 'Mayor') and several council members often referred to as 'Councillors'

The reforms proposed in this discussion paper aim to improve the legislative framework to support and promote better conduct and stronger capacity of council members, while recognising the status of council members as democratically elected representatives, who are primarily accountable to their communities and will ultimately be judged at local government elections.

2 COUNCIL MEMBER CONDUCT

BACKGROUND

2.1

Council members are elected to council to make decisions for, and to act in the best interests of, their community. Being a council member is a position of trust bestowed on them by their local communities.

Because local governments today have many complex responsibilities and a great deal of discretion, their communities understandably have high expectations of standards of behaviour, integrity and performance. As representatives and leaders of their communities, council members are generally expected to act ethically, diligently, respectfully, honestly and with integrity.

Generally, the South Australian community is well served by those who serve as council members in local government, who overwhelmingly conduct themselves in accordance with the high standards expected of them. However, from time to time, inappropriate or improper conduct by council members can lead to council dysfunction, impairment of local government integrity and performance, and a reduction in community trust and confidence.

State legislation plays an important role in council member conduct. It can set the standards of behaviour, and provide arrangements for dealing with breaches across all areas of conduct.

This is a spectrum of behaviour that ranges from lower-level behavioural matters, such as how council members relate to others, to more serious matters that may affect the integrity of council members' decisions, such as poor

management of conflicts of interest, or the inappropriate acceptance of gifts and benefits. At the highest, or most serious, end of this spectrum is criminal conduct and corruption¹.

The various pieces of legislation that make up the council member conduct framework are intended to operate as an escalating system that addresses the varying levels of seriousness of poor behaviour with increasing levels of sanctions and penalties.

The chief parts of the current council member conduct management framework are set out below.

THE CODE OF CONDUCT FOR COUNCIL MEMBERS

2.1.1

The Act requires council members to observe a Code of Conduct that is set in regulation. When people think about the ‘rules’ that apply to the conduct of council members, this Code of Conduct is often what comes to mind. The Code of Conduct has several functions. One is to establish the standards of behaviour and integrity that council members should adhere to. Reflecting the spectrum of conduct, the Code has three core ‘levels’ of standards.

The first of these is a statement of high-level principles of behaviour that council members are expected to demonstrate, such as a commitment to serving the best interests of the community, to discharging duties conscientiously, to work together constructively and to uphold the values of honesty, integrity, accountability and transparency.

The second is to set out the specific behaviours that council members should adhere to, in Part 2 of the Code—the ‘Behavioural Code’. These range from more general statements about behavioural standards (such as ‘act in a way that generates community trust and confidence in the Council’), to more detailed instructions on particular behaviours (such as ‘ensure that personal comments to the media or other public comments on Council decisions and other matters, clearly indicate that it is a private view and not that of Council’).

The third level is contained within Part 3 of the Code, ‘Misconduct’. This section contains matters that, if breached, could affect the integrity of council decisions, such as the poor management of conflict of interest, or the inappropriate acceptance of gifts and benefits. Many of these matters are also contained within the Act.

An appendix to the Code outlines the most serious conduct matters—those that could be criminal conduct or corruption.

Along with ‘setting the standards’, the Code also establishes the process by which alleged breaches of these standards are investigated. The high-level principles are not intended to be enforceable, as these express the broader expectations of council members. The Code is clear that breaches of ‘behavioural matters’ in Part 2 should be dealt with at a council level, but allows each council to determine a process to do so that best fits their own needs.

¹**NOTE:** This paper does not consider ‘corruption’ or ‘serious and systemic misconduct or maladministration’, which is within the jurisdiction of the Independent Commissioner Against Corruption (ICAC) and the Office of Public Integrity (OPI). Any reasonable suspicion of corruption, misconduct or maladministration in public administration should be reported to OPI—which is responsible to ICAC—in the first instance. It is noted that misconduct and maladministration complaints or reports may be referred by the ICAC to the Ombudsman for investigation.

Alleged breaches of Part 3, 'Misconduct', are referred to the Ombudsman, as integrity matters should be investigated by an independent statutory body. The Code of Conduct also allows for repeated breaches of the 'Behavioural Code', or non-co-operation with a council investigation or finding under the Behavioural Code, to be elevated to the Ombudsman.

Any suspected breaches of the most serious criminal matters should, of course, be referred to the Independent Commissioner Against Corruption (ICAC).

Finally, the Code of Conduct and Act set the penalties or sanctions that can apply when it has been breached. Again, these are designed to escalate in accordance with the seriousness of the breach.

IF A COUNCIL FINDS THAT A MEMBER HAS BREACHED PART 2 (THE BEHAVIOURAL CODE) IT MAY—



Pass a censure motion in respect of the council member.



Request a public apology, whether written or verbal.



Request the council member to attend training on the specific topic found to have been breached.



Resolve to remove or suspend the council member from a position within the council (not including the member's elected position on council).



Request the member to repay monies to the council.

IF THE OMBUDSMAN HAS INVESTIGATED A MEMBER, HE MAY MAKE THE FOLLOWING RECOMMENDATIONS TO THE COUNCIL TO—



Reprimand the member (including by means of a public statement).



Require the member to attend a specified course of training or instruction, to issue an apology in a particular form or to take other steps.



Require the member to reimburse the council a specified amount.



Ensure that a complaint is lodged against the member with the South Australian Civil and Administrative Tribunal (SACAT).

If a council member fails to comply with a requirement made by a council on the Ombudsman's recommendation, then the council must lodge a complaint against the member with the South Australian Civil and Administrative Tribunal (SACAT). This could result in stronger sanctions for the member, including their suspension or disqualification from office.

Along with establishing the Code of Conduct, the Act includes a number of specific conduct requirements that apply to council members.

In summary, these requirements are—



To act honestly, and with reasonable care and diligence in the performance of official duties;



Not to disclose information that is confidential;



To declare all financial and non-financial interests in the 'Register of Interests';



To properly manage any conflict of interest.



Not to make improper use of their position, or of information they have gained through this position, for their own advantage or to cause detriment to the council;

Other pieces of legislation that form part of the council member conduct framework include the *Independent Commissioner Against Corruption Act 2012* and the *Ombudsman Act 1972* (which provide for the powers and functions of the integrity agencies in South Australia) and the *Criminal Law Consolidation Act 1935* (which covers serious criminal offences by 'public officers').

ISSUES

There is general agreement from the local government sector and the community more widely that the current conduct management system is not working as effectively as it should.

One key issue identified is that the use of the Code of Conduct, particularly the 'Behavioural Code', results in an overly formal process that exacerbates conflicts between elected members, and creates a long, difficult and costly process for councils to resolve behavioural matters.

Before the current Code of Conduct was introduced, each council had its own code of conduct for council members that it was required to review within 12 months after each general election. The intent of the uniform, regulated Code of Conduct was to provide consistent standards of behaviour across all councils. However, feedback has been that formally regulating detailed behavioural matters can result in an excessively combative or legalistic approach to these matters.

Both the ICAC and the Ombudsman have raised public concerns about the number of Code of Conduct complaints they receive from council members against each other, particularly when the complaints stem from disagreements or personality clashes between the members.

Recent statistics from the Ombudsman indicate that almost half of the Code of Conduct complaints he receives are from an elected member against another elected member. Both the ICAC and the Ombudsman have been publicly encouraging council members to stop lodging 'trivial' or 'petty' complaints, which are a waste of public money and resources. The Ombudsman has stated that much of his time has been taken up by internal council complaints that have proved to be costly and time-consuming.

Additionally, continual trivial or petty complaints can be very destructive at a council level. It is very difficult for a council to operate effectively if its members are unable to overcome personal differences and are continually lodging Code of Conduct complaints against each other.

These concerns have also been raised by councils, who have noted a lack of deterrence for 'trivial, frivolous and vexatious' complaints. Councils do not feel that they have the right tools to deal with minor behavioural matters quickly, fairly, and effectively.

Another key area of concern is how serious behavioural issues can be dealt with—behaviour that may cause a risk to another person's health and safety. While the current Code of Conduct recognises bullying and harassment, and provides for a mechanism for repeated behavioural breaches to be escalated from council level to the Ombudsman, there is a strong view that this mechanism is not effective; and that the sanctions available to deal with these matters are not adequate.

It is also essential to ensure that the health and safety of council staff and members is properly protected. There may therefore be a need to enable a position (such as a principal member or CEO), or a body (such as a council governance committee) to give immediate, limited directions to council members in circumstances where this health and safety is at risk.

Other concerns have been raised about the overlap and duplication between the Code of Conduct and conduct matters within the Act. These include duplication of expectations of behaviour in the Code of Conduct and in the section of the Act that sets out the 'General Duties' of members, conflict of interest matters, and the management of confidential information.

While the Code of Conduct was intended to create a 'one-stop shop' that described all conduct matters, and therefore included matters also in the Act, the conclusion is that this approach causes confusion and uncertainty as to the appropriate body to investigate alleged breaches.

Councils have also argued that the conflict of interest provisions in the Act, which were introduced in 2016 are considered 'complex' and 'confusing', making it difficult for council members to adhere to the rules.

PROPOSALS FOR REFORM

2.3

It was clear from the response received through the call for reform ideas that the community generally considers that there should be rules of behaviour or conduct that council members should abide by.

It was also clear that there is support for a review of the current system to create a 'clearer', 'simpler', 'stronger', 'well-defined' conduct management framework. Ideas received on how this could be achieved, however, were diverse.

Ideas about how disagreements between council members should be managed ranged from dealing with them 'in-house' within the council to having an external, independent body to manage all complaints.

Other suggestions were that it is the responsibility of the Mayor and/or the elected member body and/or CEO (i.e. the 'leadership' roles) to manage disputes and find appropriate resolutions. A number of submissions advocated for a mechanism to resolve behavioural issues without having to resort to external complaints management bodies.

Many councils endorsed the approach put forward by the Local Government Association (LGA), which stated that "It is important that local government is empowered to self-determine the expectations of acceptable behaviour that align with community expectations."

Following on from this, one of the LGA's proposals is for an "increase in devolution of responsibility to councils to handle behaviour matters internally, with expedient ways to escalate serious misconduct matters as appropriate". The LGA submission also seeks a broadening of the range of penalties so that effective action can be taken commensurate with the circumstance of each case, and clearer classifications of 'misconduct', along with definitions for 'bullying and harassment' and 'sexual harassment'.

The Local Government Reform process provides an opportunity to review the conduct framework to provide clearer roles and responsibilities and a broader (and proportionate) range of tools and sanctions for managing different categories of elected council member conduct.

Noting the complexity of this issue, there are three conduct management framework models proposed in this paper. All of these models, however, contain a number of 'common features' that, like the current system, reflect the spectrum of member conduct.

A CLEAR ‘HIERARCHY’ OF CONDUCT

A new conduct management framework will establish a much clearer hierarchy of conduct that clearly separates ‘behavioural matters’ from ‘integrity matters’. This will create clearer responsibilities and pathways and enable council members and members of the community to understand which body is responsible for managing aspects of council member conduct.

The Local Government legislation will continue to be the primary documents that establish the standards of behaviour and of conduct that affects integrity for council members. It is proposed that detailed behavioural matters are removed from a ‘Code of Conduct’ in favour of setting appropriate standards of behaviour in the legislation.

Councils will be empowered to determine —if they choose to do so and consider it helpful—more detailed examples of these behaviours (in a policy adopted by the council), which supports and is consistent with the standards in the legislation.

The legislation will also clarify which conduct matters are ‘integrity matters’. These may include—



A requirement to act honestly in the performance of official functions and duties.



Release and disclosure of confidential information.



Misuse of information to gain benefit or cause detriment.



Misuse of position to gain benefit or cause detriment.



Register of interests.



Conflicts of interest.



Directing or influencing council staff.



Gifts and benefits.



Only using official council communication methods (e.g. e-mails) for official council functions and duties.



Breaching any communication (or other) protocol set up by the council or CEO for staff or council members to address risks to health and safety allegedly caused by a council member.



Misuse of meeting management powers by the presiding member.

COUNCILS WILL CONTINUE TO BE RESPONSIBLE FOR 'BEHAVIOURAL MATTERS'

Councils will continue to be responsible for managing council member behaviour, as they currently are under the Code of Conduct.

The current Code of Conduct enables councils to decide for themselves the most suitable mechanism for dealing with behavioural matters by elected members. Complaints may be investigated and resolved in any manner that a council deems appropriate in its process for handling alleged breaches of the Behavioural Code. This can include, but is not limited to: a mediator or conciliator; the Local Government Governance Panel; a regional governance panel; or an independent investigator. A complaint within this process may be considered trivial, vexatious or frivolous and accordingly not investigated.

It is proposed that councils will continue to be required to have a process for handling complaints and an internal resolution process, but will also continue to have the autonomy to decide on the resolution mechanisms that are most suitable to that council.

Councils will also continue to be able to apply the sanctions for breaches of 'behavioural matters' that are contained within the current Code of Conduct, however, it is proposed that this be strengthened to enable councils to direct or require (rather than 'request') the actions.

It is also proposed that the principal member have enhanced powers to deal with disruptive behaviours at meetings.

AN ESCALATION PROCESS FOR 'SERIOUS BEHAVIOURAL MATTERS'

It is recognised that certain behaviours or circumstances can require escalation to an independent body for investigation or intervention if they are serious enough to be considered as an integrity breach.

The current Code of Conduct recognises this and provides for certain matters to be referred from a council to the Ombudsman for investigation. These matters include—

1. Failure of a council member to cooperate with the council's process for handling alleged breaches.
2. Failure of a council member to comply with a finding of an investigation adopted by the council.
3. Repeated or sustained breaches of the Behavioural Code (Part 2) by the same council member may be referred, by resolution of the council.

These referral mechanisms, however, have rarely been utilised by councils. Feedback has been that it can be difficult to escalate issues about a council member's behaviour where there are factions within the council, or where divided views amongst council members on the conduct in question mean that they are unable to agree to refer the matter to the Ombudsman.

It is proposed that a better process is put in place to escalate serious behavioural matters from a council to an independent body for investigation, where there is a view that these matters are an integrity breach.

The matters which could be considered for escalation to an independent body could include—

1. Repeated and unreasonable behaviour by a council member that creates a risk to health and safety, such as bullying or harassment. This may specifically include 'sexual harassment'.
2. Behaviour that is not repeated, but still creates a risk to health and safety.
3. Behaviour that is repeated and does not create a risk to health and safety, but is serious 'unreasonable' behaviour. This could be circumstances where, despite a council's reasonable, multiple efforts to address behaviour, a council member continues to be unreasonable and unmanageable, necessitating an external 'circuit breaker' to resolve the matter.

It is likely that the independent body receiving complaints about these matters would expect that the relevant council would have taken reasonable actions to address the behavior at a council level, before escalating, where possible. It is also proposed that complaints of this nature would be escalated only following a decision of the council, or by a council's governance committee.

It should be noted that any person affected by behaviour that poses risks to their safety can seek intervention orders (including an interim order) under the *Intervention Orders (Prevention of Abuse) Act 2009 (SA)* for their protection. It is proposed that a council member subject to an intervention or interim intervention order relating to a council member or staff could be suspended from office for the duration of this order to properly protect members and staff.

ENSURING THAT 'INTEGRITY MATTERS' ARE DEALT WITH BY AN INDEPENDENT BODY

A new conduct management framework will clarify that breaches of integrity matters should be dealt with by an independent body that has appropriate sanctions available to them.

This body could be the Ombudsman, or the 'Conduct Commissioner' (as discussed in the proposed models). It is also proposed that this body could apply an expanded range of sanctions that would include: the ability to suspend a member; suspend a member's allowance; or to require reimbursement to the council of costs involved in an investigation of a matter.

A number of ideas received requested a greater ability to dismiss council members, and/or prevent them from standing at future elections.

This ability is currently only held by the South Australian Civil and Administrative Tribunal (SACAT). It is appropriate that the ability to disqualify a democratically elected council member from office should be reserved for only the most serious categories of conduct, and can only be applied by a tribunal or court.

It is, however, essential that serious matters can be brought before SACAT when necessary. Accordingly, the new conduct management framework will retain the ability of the independent body investigating integrity breaches to require that complaints to SACAT be made when appropriate.

IMPROVED CONFLICT OF INTEREST PROVISIONS

The conflict of interest provisions in the Act will be reviewed, to—



Simplify the current system by reducing the current three 'categories' of conflict (material actual and perceived) to two—'material conflict of interest' and 'non-material conflicts of interest'



Simplify the process by which council members can be exempt from conflict of interest provisions, or seek approval to participate in a matter. This will include a review of the 'ordinary business matters'.



Clarify the application of conflict of interest rules to council committees and subsidiaries to remove the current complex regulations that deal with this matter.

OPTIONS OF PROPOSED MODELS FOR COUNCIL MEMBER CONDUCT FRAMEWORK 2.3.2

The three models of the conduct management framework that are proposed are detailed below. It is proposed that all of these models would include the common features described above. Additionally, the models are not mutually exclusive. Elements of any of the three could be incorporated into any final model.

MODEL 1 - CLARIFICATION OF CURRENT LEGISLATION

This proposed model would have the common features described above but would require a council resolution to refer 'bullying and harassment' complaints to the Ombudsman. That is, the council as a body has to be satisfied that the definition or threshold for 'bullying and harassment' has been met.

This model would also require the council to report on conduct matters in the annual report.

MODEL 2 - UTILISATION OF GOVERNANCE COMMITTEES

This proposed model utilises a council 'governance committee' (with requisite skillsets) to have a role in relation to council member conduct. The concept of a 'governance committee' is explored in Reform Area 2. In summary, it would be an independent body that is empowered to advise the council on a range of governance issues.

This model would—



Require governance committees to assess complaints of alleged 'bullying and harassment' by council members, and, if determined that alleged behaviour meets the definition/threshold, to lodge the complaint with the Ombudsman.



Enable (but not require) councils to use governance committees to consider behavioural matters.



Require governance committees to report on conduct matters in the annual report.

MODEL 3 - ESTABLISH A LOCAL GOVERNMENT CONDUCT COMMISSIONER

This model would create an additional integrity body with a specific responsibility to oversee all aspects of council member conduct. This body would—



Have a specific role in the prevention of improper conduct through providing training, advice and practice guidelines to council members.



Be able to consider and investigate alleged breaches of behavioural standards at the request of the relevant council.



Have responsibility for considering and investigating bullying and harassment allegations, if the council/governance committee agrees to the referral of this complaint to them.



Have responsibility for the investigation of all alleged breaches of integrity matters (rather than the Ombudsman).



Have appropriate disciplinary or sanction powers except for the powers that will remain with SACAT (e.g. disqualification powers).



At council request, may undertake a range of services on a cost-recovery model including specific training, counselling, mediation and conciliation.

It is expected that this model would be funded by the local government sector, including cost recovery fees for specific services.

While the detail of the operation of a 'Local Government Conduct Commissioner' would be developed in accordance with its potential functions, it is expected that it would—



Require the appointment of a suitably qualified and experienced person as the Commissioner, noting that this role would have similar responsibilities to those currently held by the Ombudsman to investigate members and apply sanctions. This is likely to be a full time, or near full-time position.



Require a core administrative unit to be established to support the Commissioner, and to undertake investigations.



Enable the Commissioner to appoint training facilitators, mediators, and additional investigators as required.

This model would enable the Ombudsman to focus on the administrative acts of councils (not including conduct) as is the case with most other Australian jurisdictions.

3 COUNCIL MEMBER CAPACITY

ROLES WITHIN LOCAL GOVERNMENT - OVERVIEW

A brief overview of the roles of the various components that make up local government is set out below—

THE COUNCIL

A group of members (led by a mayor or chairperson) elected by the community and is the governing body of a local government. Councils are responsible for the governance of their local government's affairs and functions. This includes oversight of the planning and allocation of finances and resources and the determination of local government policies.

CHIEF EXECUTIVE OFFICER (CEO)

Employed by the council to head the administration and manage the day-to-day operations, or executive functions, of the local government and to implement lawful council policies and decisions.

COUNCIL STAFF

Employed by the CEO to perform the functions of the local government.

3.1 ROLE OF COUNCIL MEMBERS

BACKGROUND

3.1.1

Council members are elected to represent the interests of their community through participation in important local decisions and are expected to act with the highest standards of integrity.

To effectively perform this role, council members are also expected to work together constructively and deal with disagreements, conflicts or personality differences in a professional manner, for the best interests of their community. They must also make every effort to ensure that their skills and knowledge enable them to perform their roles, and are continually improved.

The Act recognises the role of council members, and provides some specific details on expectations, that this role is—

AS A MEMBER OF THE GOVERNING BODY OF THE COUNCIL—



Participate in the deliberations and civic activities of the council.



Keep the council's objectives and policies under review to ensure that they are appropriate and effective.



Keep the council's resource allocation, expenditure and activities, and the efficiency and effectiveness of its service delivery, under review.



Ensure, as far as is practicable, that the principles set out in section 8 of the Act are observed.

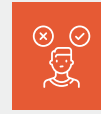
AS A PERSON ELECTED TO THE COUNCIL—



Represent the interests of residents and ratepayers.



Provide community leadership and guidance.



Facilitate communication between the community and the council.

ISSUES

3.1.2

While the role of a council member details the tasks and responsibilities of a council member's functions and duties, the Act is currently silent on expectations of a council member's behaviour, and on their obligations to promote a good working relationship amongst their council.

Feedback was also received that the importance of mandatory training for council members is not well recognised within the Act. Some concern has been raised within the local government sector that there is a perception in the community, however, that training or ongoing training and development of council members is a waste of public resources

PROPOSALS FOR REFORM

3.1.3

There is an opportunity to strengthen council members' capacity and improve their conduct through better description of their role in the Act.

It is proposed to further clarify the role of council members, in particular, to recognise their responsibility both individually and collectively to ensure (as far as reasonably practicable) good working relationships within the council, and to support the effectiveness of a new conduct management framework.

It is also proposed to clarify that the role of a council member recognise their obligation to complete mandatory training requirements within the required timeframes and have a commitment to the continuous development of knowledge and skills.

The role of a council member in the Act will be clarified to include—



Ensure (as far as is practicable) constructive working relationships within the council including with other council members, the principal member and council employees.



Ensure completion of mandatory training within the specified timeframes and to have a commitment to ongoing training and development of skills relevant to the role of a council member and the roles and functions of the council body.



Act with integrity.



Recognise and support the role of the principal member as specified in the Act.

To better recognise the importance of council member training, it is also proposed to clarify its mandatory nature in the Act, and to revise the presentation of the mandatory training scheme in the regulations (see below for further discussion).

3.2 THE ROLE OF THE PRINCIPAL MEMBER

BACKGROUND

3.2.1

The Act also defines the specific role of the principal member of a council (that is, the Mayor or Chairperson), which is in addition to their role as a council member.

These additional duties and responsibilities are to preside at (chair) council meetings, to perform certain civic and ceremonial duties, to act as the principal spokesperson for the council, and to provide advice to the CEO on the implementation of a decision of a council.

ISSUES

3.2.2

While the role of the principal member as described in the current Act recognises the particular responsibilities of a principal member, it does not sufficiently reflect expectations that Mayors and Chairpersons are a leader of their elected body; and should demonstrate and lead the standards of behaviour and decision making that are critical to the effectiveness and reputation of their council.

Good governance relies on constructive working relations between council members. The principal member, as the leader of the council, is expected to promote and foster positive relationships and to support members in resolving disagreements or conflicts that arise. Promoting and leading good relations between council members before contentious issues arise increases the likelihood that these issues can be dealt with robustly but without becoming divisive in a way that damages the reputation of the council.

It is also recognised that, in addition to these expectations, principal members have limited tools available to them to support behavioural standards and working relationships between elected members. In particular, it has been identified that principal members need greater powers to manage poor behaviour in the context of council meetings.

Currently, under the *Local Government (Procedures at Meetings) Regulations 2013*, a council member can only be excluded (suspended) for part of or the remainder of a meeting by a council resolution. This is unworkable where there are factions within a council or where there are disagreements creating high tensions that result in inappropriate and impeding behaviour.

Finally, a number of concerns have also been voiced about the working relationship between principal members and councils' chief executive officers. For a council to be effective, these two leaders must work together in a complementary way, providing mutual support and ensuring productive interaction between the elected council and its administration.

PROPOSALS FOR REFORM

3.2.3

It is proposed that the Act should clearly state expectations of the role of the principal member as a leader of the council. These could include—



Presiding at meetings of the council and exercising the powers as prescribed under the regulations.



Providing guidance to council members about what is expected of a council member.



Supporting council members' understanding of the separation of responsibilities between the elected and administrative arms of the council.



Promoting and supporting good, constructive working relationships and high standards of behaviour and integrity in the council.



Where necessary, taking a leadership role in resolving differences in the elected member body.

It is also proposed that the presiding member of the council meeting (which is usually the principal member) be given enhanced powers to manage disruptive behaviour by council members in a council meeting, through a power to exclude council members for part of or for the remainder of council meetings.

Any misuse of this power would be considered as an integrity breach, within the new conduct framework.

Mayors cannot vote on most council motions as they are currently restricted to a casting vote only when members' votes are tied. Feedback from Mayors is that this limitation does not reflect community expectations of their leadership role within a council. Therefore, it is proposed to give directly elected Mayors a deliberative vote in council meetings while retaining their ability to make a casting vote.

3.3 MANDATORY TRAINING REQUIREMENTS

BACKGROUND

3.3.1

Currently, the imposition of mandatory training for council members is through the requirement in section 80A of the Act and Regulation 8AA of the *Local Government (General) Regulations 2013* that councils must prepare and adopt a training and development policy for its members that complies with the *LGA training standards* approved by the Minister. The *LGA training standards* require mandatory training.

ISSUES

3.3.2

There is a significant amount of support from the community for mandatory training requirements for council members.

However, the LGA, with support from the local government sector, has raised an issue regarding how the mandatory training for council members is currently imposed through the training standards. A number of submissions proposed that there could be more clarity in the legislation on the training that is required, and on the consequences for members that choose not to comply with the mandatory training requirements.

Ideas have been received to change the requirements to a competency-based assessment (rather than attendance-based) and consideration of online training capabilities. Many suggestions were also received in regard to the topics that should be covered in mandatory training.

PROPOSALS FOR REFORM

3.3.3

It is proposed to amend the Act to replace the requirement for councils to have a training and development policy with a mandatory training scheme established in regulations.

It is also proposed that the requirement for mandatory training for council members to be completed (within a specified timeframe) be prescribed in the legislation and that there be a consequence for non-compliance. Specific sanctions may apply for a failure to comply with these mandatory training requirements, or this failure could be considered as a breach of an 'integrity matter'.

The details of minimum training requirements and standards will be considered as part of the development of a regulation package in a later stage of the reform process.

4 THE ROLES AND RELATIONSHIPS BETWEEN THE COUNCIL ELECTED MEMBER BODY AND THE CEO

BACKGROUND

4.1

The effectiveness of a local government is largely dependent on the relationship that a council (and its individual elected members) has with its administration, primarily the chief executive officer (CEO). The role of the CEO is outlined in the Act—in summary, CEOs must implement council policies and lawful decisions, be responsible for the day-to-day management of the council, and provide good advice and information to the council.

CEOs answer to their council—and it is, therefore, the council's responsibility to properly manage them.

However, while the Act includes requirements for appointing (employing) a CEO, and sets some procedures for appointment and grounds for termination, the Act does not have any specific requirements about performance reviews or management.

ISSUES

4.2

Feedback received raised concerns about a perceived imbalance of power in local government in South Australia. There is a view that the council as a governing body and the individual elected members are overly reliant on the administration, particularly the CEO, in their decision making.

Concerns have also been raised that council CEOs have a disproportionate advantage in negotiating their own contractual conditions and that there is insufficient oversight of their performance. Conversely, other feedback argued that CEOs can be vulnerable to poor assessments of their performance, and poor decisions regarding their future employment. The role of a CEO in a council is of critical importance, and therefore, so is their performance. However, council members do not always have the expertise to set performance standards, contractual conditions and appropriate remuneration, or to conduct effective and timely performance monitoring and management.

Further, the review of a CEO's performance can be particularly difficult when relationships between the council and its CEO are not professional—both hostile and overly friendly relationships between a council and its CEO can be equally problematic.

A number of ideas were received on the performance of the CEO, and the role and relationships between the CEO and the council. These ideas included revising the process by which CEOs' positions are advertised, appointed, renewed and released.

It is proposed that councils be required to involve independent advice in a CEO appointment process. This could be a requirement to receive independent advice or to include independent members on the CEO selection panel that makes recommendations to the council on the appointment and employment of a CEO, including employment conditions. An additional proposal could be to give the responsibility for determining appropriate CEO remuneration to the Remuneration Tribunal of South Australia (which currently sets council members' allowances).

It is also proposed that councils be required to conduct annual performance reviews of their CEO. These could include independent membership (noting that it is common for councils currently to use CEO performance committees), which may be linked to the council's governance committee, if this reform is implemented, or separate independence advice.

Finally, it is proposed that a CEO's contract cannot be extended without the council completing a performance review; and that the CEO's contract cannot be terminated without the council gaining specialist industrial/employment contract advice.

REFORM AREA 1

STRONGER COUNCIL MEMBER CAPACITY AND BETTER CONDUCT SUMMARY OF REFORM PROPOSALS

COUNCIL MEMBER CONDUCT

- 1.1** Clearly separate behavioural matters from integrity matters in the legislation.
- 1.2** Include standards of behaviour in the legislation, allowing councils to adopt more detailed 'examples of behaviour'.
- 1.3** Continue to give councils flexibility to deal with behavioural matters.
- 1.4** Provide principal members with enhanced powers to deal with disruptive behaviour at meetings.
- 1.5** Enable escalation of serious behavioural matters to an independent body that can suspend members (including suspension of an allowance).
- 1.6** Simplify the conflict of interest provisions by establishing 'material' and 'non-material' conflicts.
- 1.7** Simplify the process by which council members can be exempt from conflict of interest provisions, or seek approval to participate in a matter.
- 1.8** Clarify the application of conflict of interest rules to council committees and subsidiaries.

Establish a new conduct management framework through—

- 1.9** Model 1 - The clarification of current legislation
- Model 2 - Using governance committees
- Model 3 - Establishing a Local Government Conduct Commissioner.

COUNCIL MEMBER CAPACITY

- 1.10** Clarify the role of council members to recognise their responsibility to ensure good working relationships within the council, and to support the conduct management framework.
- 1.11** Clarify the role of council members to recognise their obligation to complete mandatory training.
- 1.12** Clearly state the role of the principal member as a leader of the council, particularly in ensuring good working relationships within the council.
- 1.13** Provide directly elected Mayors with a deliberative vote on motions before council.
- 1.14** Establish a mandatory training scheme within the regulations.
- 1.15** Establish a timeframe for the completion of mandatory training and a penalty for non-compliance.
- 1.16** Require councils to receive independent advice on CEO selection and remuneration.
- 1.17** Give responsibility for determining CEO remuneration to the Remuneration Tribunal of South Australia
- 1.18** Require councils to conduct annual performance reviews of CEOs, with independent oversight.
- 1.19** Require annual performance reviews to be completed before the extension of a CEO contract.
- 1.20** Require councils to receive independent advice before terminating a CEO contract.

REFORM AREA 2



**LOWER COSTS AND
ENHANCED FINANCIAL
ACCOUNTABILITY**



1 INTRODUCTION

Councils in South Australia collectively manage an annual budget in excess of \$2.2 billion and are responsible for more than \$24 billion worth of infrastructure and other assets. To manage these responsibilities, councils can raise tax—council rates—and impose other fees and charges on their communities.

It is essential that councils, as public bodies, meet the right standards of accountability for public sector administration and management of public funds.

The reforms proposed in this paper aim to enhance financial accountability and improve efficiency within the local government sector by delivering greater confidence in council audits, improving council decision making, financial reporting, and making information about council financial performance more accessible.

Many submissions made through the call for ideas argued that a system of benchmarking or service reviews across local government would help councils and communities to better understand the costs of services, and how efficiencies may be achieved.

The South Australian Government has directed the South Australian Productivity Commission (the SAPC) to undertake an inquiry into local government costs and efficiency to identify options to improve efficiency and financial accountability and reduce costs for ratepayers.

The inquiry will involve state-wide consultation with councils, community groups and relevant professionals in the public, private and professional bodies as part of the public engagement process, before the release of a draft report in August 2019, and a final report on 22 November 2019. It is expected that this work will inform future directions on the potential use of benchmarking and other service review mechanisms across local government.

Further information on the SAPC's work is available at—
www.sapc.sa.gov.au/inquiries/inquiries/local-government-inquiry/consultation

 COUNCILS MANAGE AN ANNUAL BUDGET OF
\$2.2 BILLION

AND ARE RESPONSIBLE FOR
\$24 BILLION
WORTH OF ASSETS



2 FINANCIAL ACCOUNTABILITY

BACKGROUND

2.1

The *Local Government Act 1999* (the Act) sets the standards for councils' administrative and financial accountability, largely in Chapter 8 of the Act. This framework reflects the broader local government policy that has been in place for South Australia for some time, that is, that councils have a responsibility to abide by the statutory framework, and are accountable to their communities for doing so, without detailed compliance oversight from the State Government.

However, the State does have a responsibility to ensure that the statutory framework sets appropriate standards. Significant legislative amendments have therefore been made over a number of years to improve the financial management and accountability of councils in South Australia.

In 2007, amendments to the Act improved the accountability of councils as well as strengthening their financial governance, asset management, rating practices and auditing arrangements.

These improvements included the requirement for councils to—



Prepare and adopt long-term financial plans.



Prepare and adopt infrastructure and asset management plans.



Establish audit committees.



Adopt several measures to strengthen the independence of external auditors.



Adopt a consistent and improved reporting format for annual financial statements.

Additional amendments in 2009 further improved the legislative framework for internal and external review of council administration and financial management, including changes to improve council external audits and strengthen internal controls.

These changes included—



New requirements for an auditor to audit a council's internal controls and provide an opinion on whether those internal controls provide a reasonable assurance that the financial transactions of the council have been conducted properly and in accordance with law.



Expanding the matters that council auditors must report to the Minister.



Increased guidance about what council policies, procedures and practices must be designed to achieve in key areas such as prudential management and contracts and tendering.

In addition, amendments were made to the *Public Finance and Audit Act 1987* in 2013 to enable the Auditor-General to conduct an examination of a publicly funded body (which includes a council, a subsidiary of a council or a regional subsidiary) and the efficiency, economy and effectiveness of its activities.

The Auditor-General may also examine the accounts relating to a publicly-funded project and the efficiency and cost-effectiveness of the project. The Auditor-General must conduct an examination if requested to do so by the Treasurer or the Independent Commissioner Against Corruption.

COUNCIL AUDITS

2.2

Auditing is the independent examination of the financial report of an organisation. Audits are critical to ensuring confidence in councils' financial position and operations, as they assess compliance with the standards set out in the Act and Regulations.

External audits in the South Australian local government sector have traditionally been focused on an independent assurance that a council's annual financial statements present a true and fair view of the financial position of the council and comply with prescribed requirements.

These audits now also examine and report on the adequacy of a council's internal controls, which are the measures put in place by councils to ensure that a council's resources, operations and risk exposures are effectively managed.

Auditors must undertake an audit on the controls put in place by a council in relation to the receipt, expenditure and investment of money, the acquisition and disposal of property and the incurring of liabilities, and provide a report to the council as to whether these controls are sufficient to provide reasonable assurance that the financial transactions have been conducted properly and in accordance with law.

In forming such an opinion on a council's internal controls, the auditor must assess them according to the criteria in the LGA's *Better Practice Model – Internal Financial Controls*, which is a tool that assists a council to assess, mitigate against and reduce risks in its day-to-day operations.

Organisations commonly undertake an internal audit process to assess and report on internal controls, however, an internal audit function is not prescribed for councils in South Australia. Many councils do have an internal audit function of some kind in place to provide assurance to their audit committee that internal controls are in place and effective.

Along with a requirement to undertake an audit, the Local Government Act also provides some direction on how auditors should be appointed, and how audits should be undertaken.

All councils contract registered company auditors to audit their annual financial statements, applying the relevant Auditing Standards. Under the Act—



Councils are required to appoint an auditor who must either be a registered company auditor or a firm comprising at least one registered company auditor.



Auditors are appointed by councils on the recommendation of a council's audit committee.



The term of an appointment of an auditor must not exceed five years.

As described above, external auditors must undertake annual auditing of a council's financial statements and internal controls exercised by the council, and then provide, to the council, an opinion on the financial statements and the adequacy of the internal financial controls.

In practice, many councils have a majority of independent members on their audit committees, and many also extend the role of their committees to provide independent advice on a range of matters, such as procurement and prudential reporting.

Additionally, a council may request its auditor, or some other person determined by the council to be suitably qualified in the circumstances, to examine and report on any matter relating to financial management, or the efficiency and economy with which the council manages or uses its resources to achieve its objectives.

It is worth noting the critical role that councils' audit committees play in their financial reporting framework, including auditing. South Australia was one of the first States in Australia to require councils to establish an audit committee, as a body that provides independent advice to a council on auditing and related matters.

Currently, audit committees are required to—



Review annual financial statements to ensure that they fairly present the state of affairs of the council.



Propose, and provide information relevant to a review of the council's strategic management plans or annual business plan.



Have a role in an investigation of a council's financial management, or its efficiency and effectiveness, if this investigation is requested by the council.



Liaise with the council's auditor.



Review the adequacy of the accounting, internal control, reporting and other financial management systems and practices of the council on a regular basis.

An audit committee must have between three and five members and must include at least one external independent member with financial experience as determined by the council.

It is critical that audits are an effective financial management tool for councils, and that they generate public confidence in their operation.

Increasingly, there is an expectation for audits to provide improved financial management, fiscal responsibility, public accountability and greater community confidence in a council's administration of public money.

While significant improvements have been made to the provisions in the Act regarding council financial management and audits, there are concerns about the present arrangements for the external audit of councils. While there appears to be a consensus that the legislative framework is sound, questions have been raised about the quality of some audits. There also have been calls for greater external oversight.

A report released by the LGA in 2016, *Who Should Audit Local Governments in South Australia?* identified a number of issues regarding local government audit arrangements.

These issues included the limited scope of many council audits (the depth of an audit performed), lack of audit oversight, inconsistency in the interpretation and application of accounting standards and auditing standards, the thoroughness of audits (in light of the generally low audit fees charged by auditors), and the independence of the relationship between auditor and council.

Additionally, an examination of the District Council of Coober Pedy completed by the Auditor-General in late 2018 concluded that this Council's financial position was unsustainable, the Council's financial performance was inadequate and that the Council's accounting systems and records were significantly deficient and unable to support effective financial management of the Council's operations.

While this examination was of a single council, its results raise the question of why the Council's own external audit process apparently did not reveal any irregularities in the Council's accounting practices or management of its financial affairs, or identify the multiple breaches of the Act that had been occurring.

PROPOSALS FOR REFORM

It is timely to consider improvements to the Act to ensure that councils' financial management framework is both robust and consistent.

Potential improvements centre on two reform proposals—strengthening the role of audit committees and expanding the role of the Auditor-General.

As noted above, audit committees play a critical role in the standard of councils' financial management practice and auditing processes.

The value of audit committees is widely recognised in the local government sector. Many councils have taken additional steps, beyond those required by the Act, to improve the independence and standard of audit committee members, and to expand its role.

It is generally acknowledged within the local government sector that having more than one independent member, including an independent chair, is best practice. Many councils also give their audit committees responsibilities and oversight that extend beyond those currently required under the Act, to include risk management and fraud prevention, financial and non-financial performance, and compliance with council policies and legislation.

A simple improvement to audit committees would be to require all committees to have a majority of independent members and an independent chair.

However, it may also be timely to strengthen the role of the audit committee. It is essential to ensure that the relationship between the council and its auditor is independent, and that council audits are not compromised by limited scope and reduced costs.

This could be achieved through establishing a clearer role for audit committees in the appointment of a council's auditor; to ensure that the scope of the council's audit parallels the scope of public sector audits undertaken by the Auditor-General, and clarify an audit committee's role as the council's chief liaison point with the auditor.

Additionally, given the importance of a strong internal control regime in councils, it is proposed that the responsibility of an audit committee to comment on these be strengthened, to form an opinion on the council's internal audit requirements and a recommended course of action, recognising the diversity of councils with regard to size, needs, budget and complexity of operations.

It is critical that the audit committee's membership contains the right skillsets and knowledge, particularly if the role is to be expanded. For example, an audit committee should have at least one member with financial qualifications and experience, in addition to experience in risk management, financial and legal compliance, governance, and a local government background. An appropriate induction should also be provided to committee members.

It is also proposed to amend the Act to clarify the policy intent for an audit committee to be active and carry out its responsibilities. It is therefore suggested that audit and risk committees be mandated to meet regularly, for example, at least four times a year.

It is acknowledged that there are concerns regarding the ability to attract suitably qualified and skilled members to audit committees, particularly in regional areas.

Amendments to the Act in 2009 permitted each council to determine, or allow its committees to determine for themselves that some committee meetings may include participation by telephone or other electronic means, provided that there is still a place that is open to the public where the conduct of the meeting can at least be heard, even when all participants are not physically in that place.

It is proposed that an expansion of audit committees' responsibilities and roles would be accompanied by an ability for councils to establish regional audit committees as they choose.

EXPANDING THE ROLE OF THE AUDITOR-GENERAL

2.4.2

Currently, South Australia is the only Australian state where the Auditor-General does not have some role in the annual council audit process.

In every other jurisdiction (with the exception of the Northern Territory), the Auditor-General is the external auditor for councils. All also enable the Auditor-General, at his or her discretion to undertake a broad scope or performance audit of councils or the local government system.

The council audit process in most interstate jurisdictions has developed in recent years into a mechanism for addressing and improving financial and asset management. This is well illustrated by the reforms in local government seen interstate, in particular in Victoria and New South Wales.

Further, in interstate jurisdictions where the Auditor-General's mandate encompasses the audit of local government authorities, the Auditor-General submits the results of these audits in reports to Parliament. These reports include comparative analysis, including analysis of financial performance and sustainability, and key issues and trends relating to local government. Further information on interstate arrangements is available in a separate document from the Office of Local Government website dpti.sa.gov.au/local_government_reform

The proposal that the South Australian Auditor-General should have a similar role for councils here has been put forward previously, through—

The Economic and Finance Committee of Parliament's 2016 *Final Report on the Inquiry into Local Government Rate Capping Policies*, which recommended that councils be subject to a thorough auditing process under the auspices of the Auditor-General, consistent with section 36 of the *Public Finance and Audit Act 1987*, and that councils be required to publish, on an annual basis, these audits.



The LGA's 2016 *Who Should Audit Local Governments in South Australia?* report, which concluded that transferring local government audits under the auspices of the Auditor-General should be considered as a serious alternative to the current system.

The South Australian Local Excellence Expert Panel's 2013 report *Strengthening South Australian Communities in a Changing World*, which recommended that the Auditor-General assume responsibility for local government auditing on a basis to be agreed between the LGA and State Government, noting that this would add to the legitimacy and autonomy of local government by making it subject to the same scrutiny and accountability to both the community and the Parliament as other spheres of government.



It is acknowledged that, as is the case interstate, the Auditor-General would appoint and oversight councils' external auditors, rather than undertake the audits 'in house'. However, this oversight would ensure that council audits are undertaken to the same standards as the audits of all State government bodies, which would improve the scope and quality of the audit process in many councils.

It would also provide a level of oversight from outside of the council body that is currently lacking. While, as detailed above, audit committees were put in place to ensure that councils' 'self- assessment' scheme under the Act is subject to independent oversight, in order to deliver high quality audits across all councils, this previous reform has not quite achieved that aim. Improving the membership and role of the audit committees, while valuable, may continue to pose a risk that a body that is established by and is subordinate to councils may not deliver the level of independent oversight that is critical for public bodies.

The Auditor-General's involvement in council audits would ensure that all audits are undertaken uniformly and to a high standard. It would also allow for the collection of useful data that can form the basis for further investigations and performance audits.

It is important that councils are aware of what services they provide, the cost of those services, and how they can improve delivery to achieve cost efficiency. Unlike the terms of reference for audits traditionally developed by most councils, an audit by the Auditor-General could routinely assess whether councils are delivering services efficiently and economically.

Finally, establishing a role for the Auditor General in council audits would also provide a consistent approach to the oversight of all public bodies in South Australia, as is already largely the case with the other integrity bodies in the State, the Ombudsman and the Independent Commissioner Against Corruption.

It is recognised that the costs of audits would be likely to increase under the mandate of the Auditor-General. This cost should be weighed, however, against the benefits of improvements to the scope and quality of many council audits, and of better, consistent data and analysis and increased public confidence in councils' financial position, management and decisions.

3 IMPROVING GOVERNANCE STANDARDS AND DECISION MAKING

BACKGROUND

3.1

Councils are established as democratically elected governments to make representative, informed and responsible decisions in the interests of local communities, for which they are ultimately accountable at elections. As local governments, councils must meet the standards of accountability appropriate for public sector administration and management of public funds.

The Act sets out the primary legislative framework for the system of local government and the operation of local governing authorities, including financial governance. For example, the Act requires each council to develop and adopt a number of key documents, including strategic management plans, an annual business plan and budget, and annual report.

ISSUES

3.2

While councils are independent spheres of government that answer to their communities for the decisions that they make, it is critical that these decisions are made within a legislative framework that sets high standards of accountability and transparency.

Concerns have been raised regarding council decision making and accountability. It is essential that the legislative framework supports elected member bodies to make decisions that are well informed and that these decisions are effectively communicated to members of the public. This includes improvements to financial reporting to ensure that information about councils' finances and budget decisions are both accessible and easily understood.

3.3 PROPOSALS FOR REFORM

CREATING 'AUDIT AND RISK COMMITTEES'

3.3.1

As noted above, a number of councils have expanded the role of their audit committees to provide advice to them on a range of matters beyond those detailed within the Act. They do this to ensure that the council has an independent and thorough assessment of various matters to help the council to make good decisions, and to provide assurances to their communities that critical processes and decisions have been subject to independent oversight and assessment.

It is therefore proposed that audit committees be expanded to become 'audit and risk committees' that would play a critical role in improving councils' financial management and performance. An expanded role could include—



Reviewing councils' risk assessments and controls.



Providing comment on councils' rating policies and practices.



Reporting to councils on its use of public resources.



Reporting to councils on prudential matters.



Performance monitoring of councils.

It is also suggested that the chair of each audit and risk committee provide a report or statement in the council's annual report on prescribed matters including compliance with financial governance and related statutory obligations..

The expansion of their current role would assist with increased accountability, improved decision-making, and compliance with legislation, policies and procedures. As highlighted above, it is critical that the committee's membership contains diverse skillsets, particularly if the role is to be expanded.

While councils are required to develop a rating policy, the Act does not require councils to adopt a funding policy that sets out approaches to the funding of services. Some councils, however, have adopted a formal funding policy. The LGA's local government reform agenda highlights that funding policies would create a single point of reference to enable the community to understand how a council proposes to pay for each of its services and infrastructure over a period of time, taking into account rates, grants fees and charges and commercial activities.

An additional proposal is therefore that councils should be required to develop and adopt a funding policy that would be reviewed on an annual basis, as part of a council's annual business plan. Audit and risk committees could also be required to review and report to councils on this policy before its adoption.

In response to concerns regarding the transparency of rating decisions and their impact, it is proposed that councils be required to release a summary with their draft annual business plan each year that details the expected increase in councils' total general rate revenue and the reasons for this increase. If the increase is above a prescribed level, the council's audit and risk committee could be required to report to the council on the necessity for the increase, before a final decision on the matter.

CREATING 'GOVERNANCE COMMITTEES'

3.3.2

Along with audit committees, many councils also establish a range of committees to advise them on critical council business and decisions. These can be governance and corporate management committees, strategic planning committees, policy committees, or committees to assist councils to appoint and manage its chief executive officer (CEO). Often these committees consist entirely of council members, or members and staff.

The advice that independent audit committees provide to councils can be invaluable. They can be a critical source of support for members, to provide additional assessment and assurances to inform their decisions, beyond that which is provided by council administration.

It is proposed to capture the benefits delivered by independent audit committees to apply to other, equally important matters before councils. To undertake their roles properly, councils need good governance standards. This extends beyond their financial management and position to encompass management, policies, processes, guidance and actions that councils rely on to make their decisions. These can be improved and strengthened through independent advice on matters that could include—



Councils' compliance and governance policies.



Councils' policies for improving ethical standards across councils and reducing fraud and corruption risks.



Councils' strategic management plans, and on progress to deliver priorities, particularly on the management of significant council projects.



Council member conduct—both on policies and processes to improve it, and on specific conduct matters (as described in Reform Area 1).



CEO appointment and management (as described in Reform Area 1).

This additional 'governance role' could be incorporated into the overall role of an 'audit and risk committee' (potentially creating an 'audit, risk and improvement committee'), or established as a separate 'governance committee'.

Alternatively, an approach could be to allow councils to decide whether to establish two, smaller committees, or one slightly larger committee to deliver all responsibilities. As with the proposed expansion of the audit committees, enabling councils to establish regional committees could assist regional councils to appoint members with the necessary expertise and experience.

4 ADDITIONAL PROPOSALS

The reform program provides an opportunity to progress a number of other issues that have been identified.

LONG TERM FINANCIAL PLANS — CONTENT

4.1

Section 122(1a) of the Act requires each council to develop and adopt a long-term financial plan covering a period of at least 10 years, along with an infrastructure and asset management plan also covering a period of at least 10 years. These plans form part of a council's strategic management plans. The Act and Regulations set out content requirements for long-term financial plans and the LGA's Financial Sustainability Information Paper includes guidance material.

It is proposed that the requirements in the Act and Regulations should be more detailed. For example, councils should be required to clearly state whether their infrastructure and asset management plan is based on maintaining existing service levels, or whether service level reductions or improvements are planned.

LONG TERM FINANCIAL PLANS — CONSULTATION

4.2

The Act requires councils to review their long-term financial plans, and any other elements of its strategic management plans as soon as practicable after adopting its annual business plan for a particular financial year.

To ensure that long-term financial plans are improved and updated as frequently as practical, it is proposed to amend the Act to clarify that public consultation is not required for a review of a long-term financial plan unless significant changes are being proposed.

It is also proposed to clarify that long-term financial plans must be reviewed at least once a year, rather than the requirement for the review to be undertaken as soon as practicable after the CEO reports on the council's long-term financial performance and position

The Act requires a council CEO to report, each year, on the sustainability of a council's long-term financial performance and position. As the content and quality of such reports vary significantly, it is proposed to strengthen the legislative provisions by ensuring that the report is presented in a manner in which supports council members and the community to understand it.

APPROVAL OF COUNCIL BORROWINGS

4.4

A report released by the Auditor-General in late 2018, concerning the District Council of Coober Pedy, could be interpreted to suggest that councils are required to pass a separate resolution every time a borrowing is undertaken. It is proposed to amend the Act to ensure that a budget adopted by a council may include approval of an amount of new borrowings or other forms of financial accommodation which may be undertaken for the financial year.

ADOPTION OF AN ANNUAL BUSINESS PLAN

4.5

Currently, councils are unable to adopt their annual business plans and budgets before 1 June each year, but must do so before 31 August (except in a case of extraordinary administrative difficulty). It is proposed to simplify this requirement, and recognise that most councils adopt their annual budgets in July, by requiring councils to adopt their annual business plan and budget by 15 August each year.

INTERNAL FINANCIAL CONTROLS

4.6

It is proposed to require all councils to comply with the LGA's *Better Practice Model – Internal Financial Controls*. This would support councils to meet their obligations under the Act to maintain policies, practices and procedures of internal control.

It would also resolve a current inconsistency between the requirements for internal controls under section 125 of the Act, and the scope of internal controls required to be considered by a council's external auditor under section 129(3)(b) of the Act. Unless a council has voluntarily agreed to adopt and comply with the *Better Practice Model – Internal Financial Controls* framework, an external auditor may be put in the position of being required to give an opinion on a council's compliance with a framework that a council is not required to comply with.

REFORM AREA 2

LOWER COSTS AND ENHANCED FINANCIAL ACCOUNTABILITY SUMMARY OF REFORM PROPOSALS

FINANCIAL ACCOUNTABILITY

2.1 Require audit committees to have a majority of independent members, and an independent chair.

2.2 Strengthen the role of audit committees in councils' external audits, through a greater role in the appointment of the auditor and determining the scope of the audit, and as the chief liaison point with the auditor

2.3 Require audit committees to report on the council's approach to internal audit processes.

2.4 Require audit committee members to have specified skills, and an induction process.

2.5 Allow councils to form regional audit committees.

2.6 Require the Auditor-General to oversight all council audits.

Create 'audit and risk committees' that play an expanded role in councils' financial management and performance.

This could include—

- 2.7**
- Reviewing councils' risk assessments and controls.
 - Providing comment on councils' rating policies and practices.
 - Reporting to council on its use of public resources.
 - Reporting to councils on prudential matters.
 - Performance monitoring of councils.

2.8 Require the chair of the 'audit and risk committee' to provide a report in the council's annual report on governance standards and compliance.

2.9 Require councils to develop and adopt a funding policy that would be reviewed by its audit and risk committee.

2.10 Require councils to release a summary of their draft annual business plan that states the proposed increase in total general rate revenue, and the reasons for this increase.

2.11 If a council's proposed increase in total general rate revenue is above a prescribed level (such as the Local Government Price Index), require its audit and risk committee to provide a report to the council on the reasons for this increase.

Create 'governance committees' to provide independent advice to councils on critical management, policies, processes and actions, potentially—

- 2.12**
- Councils' compliance and governance policies.
 - Councils' policies to improving ethical standards across councils and reduce fraud and corruption risks.
 - Councils' strategic management plans, and on progress to deliver priorities, particularly on the management of significant council projects.
 - Council member conduct—both on policies and processes to improve it, and on specific conduct matters (as described in Reform Area 1).
 - CEO appointment and management (as described in Reform Area 1).



EFFICIENT AND TRANSPARENT LOCAL GOVERNMENT REPRESENTATION

REFORM AREA 3

1 INTRODUCTION

Every four years, all councils across South Australia are elected. Just like State and Federal elections, Local Government elections establish our government. They give us the ability to choose who we want to represent us, to lead our communities, and to make decisions about the services that are available to us.

The details of an election process are therefore critically important. Many aspects of council elections are unique, differing from State and Federal elections to reflect their essentially local nature.

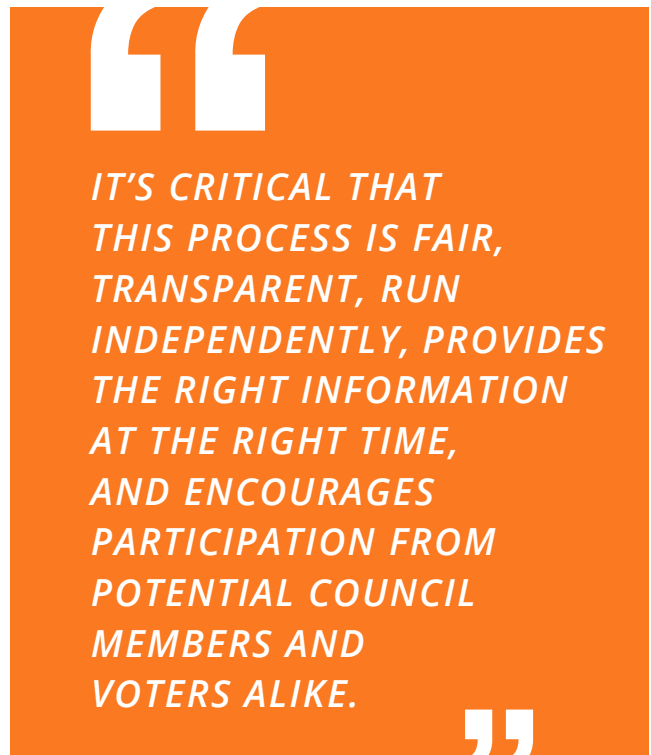
It is fair to say that the way in which we vote for our councils is a matter of great importance to all people with an interest in local government. It's critical that this process is fair, transparent, run independently, provides the right information at the right time, and encourages participation from potential council members and voters alike.

This Reform Area provides a range of proposals aimed at improving the local government elections in South Australia. As election processes can be technical, this Reform Area breaks this process into smaller parts, that progressively work through the 'stages' of an election; from its basis to its final result, to assist further discussion and debate on these proposals.

This Reform Area also covers matters of representation that sit outside a general council election process—supplementary elections; and the role of representation reviews that consider councils' internal structure.

Finally, a number of additional (technical) amendments to the *Local Government (Elections) Act 1999* are proposed. These have largely been requested by the Electoral Commissioner of South Australia (ECSA) to remove inconsistencies and address technical issues that have arisen during previous Local Government elections.

Note: Many aspects of Local Government elections are the responsibility of the 'returning officer'. The returning officer is currently ECSA. References to ECSA throughout this paper should, therefore, be read in this context.



2 BASIS OF ELECTIONS

BACKGROUND

2.1

Local Government elections are held in November every four years. Currently, local government elections are held in the same year as State elections. In 2018, the State election was held in March and Local Government Elections were held in November.

Unlike State and Federal elections where voting is compulsory, voting for your council is voluntary in South Australia.

Voting is postal. Ballot papers are sent to voters, and, if they are choosing to vote, voters complete the ballot papers, and return them via post or to a council office.

The voting franchise extends beyond residents, to include property owners.

It should be noted that these elements of Local Government elections vary across Australian jurisdictions. For example, voting for your council is compulsory in New South Wales, and voting there is also by 'attendance'—that is, at a polling booth.

ISSUES

2.2

While many ideas and suggestions to improve local government elections have been made, the chief issue that is raised is voter turnout. A statewide average of 32.94% of enrolled voters chose to vote in their council elections in the 2018 elections. This is a proportion that has been fairly consistent since the introduction of postal voting for the 2000 Local Government elections.

PROPOSALS FOR REFORM

2.3

During the call for reform ideas, the most popular idea received was to introduce electronic—online—voting for councils. However, there are a range of technological challenges that must be overcome before online voting can be introduced. For this reason, it is not proposed to change the current postal voting system.

ECSA has, however, requested an ability to provide ballot papers to electors electronically in some instances (with them returned electronically) to avoid delays in receiving the completed votes.

It is also not proposed to move to compulsory voting. Enforcing compulsory voting in a postal voting system is difficult and resource intensive. This may be a reform best explored at a time when online voting is possible.

However, it may be timely to consider changing the timing of council elections, to move them away from a State election year. If this proposal is to proceed, it is suggested that Local Government elections would be held the following year from State elections. If this is the desired change, the next local government elections will be held as scheduled in November 2022, followed by the next periodic elections in November 2027 (ie a five-year term), then reverting to four-year terms.

It is also proposed to clarify the respective roles that ECSA and the local government sector play in promoting local government elections. To allow for clear and timely messages to be provided to both encourage people to nominate for councils and to encourage people to vote, it is suggested that councils are responsible for information sessions about their role and opportunities for potential members; and that ECSA is solely responsible for the promotion of the election.

3 ENROLMENT

BACKGROUND

3.1

Before receiving ballot papers, voters must be on their council's voters roll.

In South Australia, voters who are already on the State Electoral roll in their council area to vote in State elections are automatically included on the Council voters roll and receive ballot papers in the post. However, landlords, business lessees or resident non-Australian citizens who wish to vote in Local Government elections must enrol for each council election by completing an enrolment form. The application for enrolment on a voters roll must be made to the CEO of the council, who is responsible for the maintenance of the voters roll for the council area.

This was a change made after an extensive review of local government elections in 2008. From 2000-2008, property owners—like residents—automatically received ballot papers in the post, without having to 'self-enrol'.

However, the 2008 *Review of Local Government Elections* found that the costs of maintaining a separate council voters roll, comprising those voters who are landlords, business lessee or resident non-Australian citizens, was high. Councils at that time were spending around \$1 million across the sector to maintain the roll. Additionally, the voter turnout from property franchise holders was very poor. Slightly less than 19% of these voters chose to exercise their vote in the 2006 local government elections, dropping as low as 10.2% in previous elections.

When the requirement to automatically enrol property franchise holders was removed, councils were required to notify people who were not on the House of Assembly roll in their areas of the need to self-enrol if they wished to receive ballot papers. It has become apparent, however, that many people are not aware of this requirement, and are unhappy when they do not receive ballot papers in the post.

There have therefore been a number of requests from councils and from members of the public to re-introduce the requirement to automatically enrol property franchise holders.

However, some councils have also expressed concerns that this could have significant resource implications. Additionally, ECSA have advised that the re-introduction of the automatic enrolment of property franchise holders must include a requirement for groups and body corporates to nominate a natural person to exercise its vote, before receiving ballot papers. This will enable councils to ensure that a person is not voting twice in a council election, but will add to the costs of managing the roll.

PROPOSALS FOR REFORM

Two proposals are suggested to improve participation in local government elections by property franchise holders—

1. Require councils to undertake specific activities to inform property franchise holders of their need to self-enrol before an election (and introduce a penalty for non-compliance).
2. Re-introduce automatic enrolment of property franchisees, with each body corporate and group required to nominate an eligible natural person as a 'designated person' in order to receive ballot papers.

4 NOMINATIONS

BACKGROUND

Nomination is the process that enables a person who wishes to be elected to their council to put themselves forward as a candidate.

Before making this decision, people can attend information sessions and obtain nomination kits, which are made available by ECSA two weeks before nominations open.

Once they have decided to nominate, that person must complete a form declaring their eligibility to stand as a candidate in their nominated election. Their nomination is then lodged with the council in which the individual is standing for election. The nomination must be accompanied by a 'candidate profile' that includes a short (150 word) description of themselves and the reasons why people should vote for them.

Prior to the close of nominations, those nominations that are accepted (ie not rejected by ECSA) are displayed in council offices for the public's information. The front page of this form includes the candidate's enrolled address, and address of the rateable property, if different from their enrolled address.

Within five business days of the close of nominations, a candidate may also provide a 'candidate's statement', which is subsequently published on the Local Government Association's website. This differs from the candidate profile as candidates are allowed to make direct statements about the council and its members in this statement.

Candidate profiles are also provided to all voters with their ballot papers.

ISSUES

4.2

A number of councils have expressed concerns regarding their involvement in receiving and publishing nominations. This can place pressure on council staff, and give rise to an impression that staff are assisting or benefiting some candidates over others.

There was also some confusion expressed about the intent of the candidate profile and the candidate statement. It was also noted that the need to provide a platform for candidates to promote their candidature has been largely superseded by the accessibility of social media, which allows candidates to communicate information to voters in a dynamic, responsive manner, which the website is unable to achieve.

A specific issue regarding nominations for the position of Lord Mayor has also been raised. The *City of Adelaide Act 1998* prevents any person from holding office as Lord Mayor for more than two consecutive terms. No other council office—and no office within State or Commonwealth Parliament—has a similar limit.

It is proposed that ECSA, as the returning officer, take a clearer and more centralised role in receiving nominations and publishing candidate profiles—

- ECSA will be responsible for the nominations process, will manage an online nomination process and provide councils (and publish online) a list of accepted nominations relevant to their council area within 24 hours after close of nominations.
- ECSA will publish candidates' profiles, including the profile statements on its website. The maximum length of the profile statements will be amended from 150 words to 1000 characters, to provide a more consistent and accurate count. These 1000 characters may include directions to find further information about a candidate (such as social media).
- The provisions relating to the candidate's statement will be removed, along with the corresponding requirement for the LGA to subsequently publish these on a website.

It is also proposed that the term limit on holding the office of Lord Mayor be removed.

5 CANDIDATES

BACKGROUND

5.1

Once a person has had their nomination accepted, they become a candidate standing for election. At this point, a candidate can commence campaigning.

Many candidates in the 2018 local government elections campaigned via social media. Others used more traditional methods of campaigning, such as door-knocking and letterbox drops. 'Meet the candidates sessions' run by councils also help voters to learn who is running for their council, and what their views are.

Candidates may place election signs on road infrastructure (eg light poles and stobie poles) during the campaign, but these signs must comply with legislated guidelines. Election signs may be put in place no earlier than four weeks before the close of voting, and must be removed within 48 hours of the close of voting.

Council resources such as offices, staff, equipment or stationery must not be used during any candidates' campaign.

A range of issues and ideas about requirements placed on candidates were raised in the call for reform ideas.

A number of these centred on the information that is required to be provided by candidates to voters. As described above, candidates currently must provide a 150-word profile (which is included with the ballot papers posted to voters), and may make a candidate statement.

A number of people also raised concerns that candidates who are members of political parties can access a copy of the voters roll in electronic form, which is not available to candidates who are not political party members.

There was also a range of views expressed on whether or not candidates should be required to have a particular qualification, or undergo training relevant to being a council member, to improve the quality of candidates and better prepare candidates to becoming a council member.

While it was widely agreed that council resources should not be used to advantage any candidate for election—whether they be an incumbent member or not—there was also a strong view that the requirements within councils' caretaker policies do not express this obligation well.

PROPOSALS FOR REFORM

It is proposed that candidates be required to state—

- Whether they live within the ward or council area that they are contesting. This would be a simple 'yes/no' or tickbox, to avoid risks associated with the release of candidate addresses.
- Their membership of any political party, or any association or body formed for political purposes, of which the candidate is a member or has been a member within the past 12 months.

It is also proposed that the responsibility for receiving information on donations received by candidates, and enforcing candidates' compliance with campaign donations returns requirements, is transferred from council CEOs to ECSA, which will publish all returns online.

This will include a requirement for candidates to report to ECSA any single donations above a prescribed amount (for example, \$2000), or donations totalling above a prescribed amount from a single person or entity, or gifts worth above a prescribed amount, within five business days of receipt. ECSA must publish a report of these donations within two business days of receipt on its website.

It is proposed that all candidates be entitled to an electronic copy of the voters roll on request to their council, with significant penalties (\$10 000) for use of the roll for any purpose other than campaigning in the local government election for which the candidate has nominated.

While views about candidate training and qualifications were considered, it is not proposed that these will be required, given concerns about enforcement and the impact requirements may have on the range and number of people choosing to stand for their council.

Finally, it is proposed that the requirement for councils to make a 'designated decision' within their caretaker policies regarding the use of council resources for the advantage of a particular candidate or group of candidates be removed. It is more appropriate for this requirement to be simply stated within the general caretaker responsibilities of councils.

6 RECEIVING AND COUNTING VOTES

BACKGROUND

6.1

Voting packs are distributed to enrolled voters in the mail at least two weeks prior to the close of voting. In addition to ballot papers, each pack includes information about the candidates standing for election. Votes must be received by ECSA no later than the day and time noted on the postal voting guide included in the ballot package.

This guide explains how voters need to complete their ballot papers. In the South Australian system, voters must mark numerical preference for at least the number of candidates to be elected, and can continue to number if desired. This voting system is called 'partial preferential voting'.

When counting votes, ECSA use a system called 'Proportional Representation'. This system requires candidates to reach a determined quota, calculated by dividing the number of formal ballot papers (votes) by the number of vacancies to be filled.

It is a counting method designed to ensure that vacant positions are allocated as nearly as possible in proportion to the votes received. A candidate is elected after obtaining a quota or proportion of the formal vote.

ECSA must then declare the provisional result of the poll once the result becomes apparent. The election result must be finalised following a period of 72 hours for any recount requests, and results published within one month of the close of voting.

For the November 2018 local government elections, there were additional expense and delays in the posting of ballot papers as a result of changes to Australia Post fees and delivery policies. This raised some concerns about the voting period (2 weeks), and voters' ability to post a vote that would be received by ECSA before the end of this period.

There have also been some requests for changes to the system of voting, particularly to change to optional preferential voting in Local Government elections, to encourage voter participation. A number of requests were also received to accelerate the counting process, so that results can be known sooner after the close of voting.

PROPOSALS FOR REFORM

6.3

It is proposed that the voting period be extended by an additional week to accommodate Australia Post delivery timeframes. This will assist in bringing forward the current date for reissue of voting material and to provide for its return before the close of voting.

Changes to the voting method were considered, particularly the proposal to move to optional preferential voting. However, it should be noted that a large proportion of voters in elections where optional preferential voting applies only put a number '1'. If a voter's preferred candidate is not elected, but excluded, their ballot paper cannot be distributed as they have no further preferences marked—their vote is exhausted. Therefore, the partial preferential voting method should be retained.

It is, however, proposed to change the counting method. While the current method is assessed as a 'fair' system for counting votes, it is also recognised as a more complex counting process than other systems, and one that takes considerably longer to finalise. A simpler, faster method of counting is the exclusion method. This excludes at each count the candidate who has received the fewest votes until the number of candidates continuing in the count is equal to the number of vacancies to be filled.

The more simplified counting method will remove the requirement for complex counting software, and reduces the risk posed by any lack of access to this software.

To determine the potential effects on election results from this proposed reform, ECSA conducted recounts of ballot papers from six council elections using the simpler exclusion count method. The only change to any of the elected candidates was one case, where the final position in a ward that had six nominations for three positions, was changed. In this instance, the candidate elected through the exclusion method obtained significantly more first preference votes than the candidate elected through the current method.

7 SUPPLEMENTARY ELECTIONS

BACKGROUND

7.1

If an elected member resigns or passes away, a casual vacancy arises in the council. Supplementary elections are held when it is necessary to fill a casual vacancy on a council.

ECSA must begin a supplementary election, once advised by a council's CEO that their council has a vacancy, unless this vacancy has occurred on or after 1 January in a periodic election year, or within seven months before polling day of a general election.

Where a council does not have wards, they may adopt a policy to not fill a single vacancy until the next periodic election. However, if a subsequent vacancy occurs, a supplementary election must be held to fill all vacancies. These provisions do not extend to mayoral vacancies which must be filled as soon as practicable.

ISSUES

7.2

Supplementary elections must be funded by councils and can involve substantial expense. Where a supplementary election is required more than once during a term of the council, costs for a council can be significant. Notably, voter participation in supplementary elections is in the range of 5–7% lower than at periodic elections.

VOTER TURNOUT AT SUPPLEMENTARY ELECTIONS

YEAR	NUMBER OF SUPPLEMENTARY ELECTIONS	AVERAGE PARTICIPATION RATE
2015–16	10 supplementary elections to fill 12 vacancies ¹	24.32%
2016–17	11 supplementary elections	27.9%
2017–18	10 supplementary elections	25.7%
2018	November 2018 Local Government elections	32.94%

Seven months after the conclusion of the November 2018 Local Government elections, three supplementary elections have been held, or will be held, for four elected member positions.

¹As no nominations were received for the vacancy of councillor for Flinders Ward, in the District Council of Streaky Bay, the election failed. Accordingly, the council was required to appoint an eligible person to fill the position, under the provisions of section 8(1) of the *Local Government (Elections) Act 1999*, following the failure of the supplementary election. Source: ECSA Annual Report 2015–16.

It is proposed to reduce the impact of supplementary elections on councils and their communities by allowing the last excluded candidate at the most recent periodic election to be elected, if the vacancy they are filling was created within twelve months of this periodic election. Of course, the candidate would still need to meet the eligibility criteria and be willing to accept the position. This may apply to all positions, or exclude directly elected mayoral positions.

It is also proposed that the period in which a vacancy does not need to be filled be extended to twelve months prior to the next periodic election or a general election.

It may also be possible to allow councils to ‘carry’ greater numbers of vacancies. It is, however, important to balance the cost of supplementary elections against the cost of under-representation of the community during council decision making processes. And, as councils have varying numbers of elected members, the impact of reduced numbers is felt differently.

For those councils that have relatively small numbers of members (6–7) allowing two vacancies would result in a very small number of elected members carrying responsibility for all council decisions. For example, some councils have a total of six elected members, and can carry one vacancy under the current provisions. If allowed to carry an additional vacancy, council decisions would be voted on by four elected members. This may also make it difficult for councils to form a quorum when members are absent.

With this in mind, it is proposed to allow a council without wards to carry a maximum of two vacancies where that council has a total of nine or more elected members, not including a directly elected mayor.

QUORUM REQUIRED FOR REDUCED NUMBER OF ELECTED MEMBERS

If councils were allowed to carry an additional vacancy, it is possible that a council could end up carrying more than two vacancies if an elected member resigned during the prescribed period leading up to a periodic or general election.

ORIGINAL NUMBER OF ELECTED MEMBERS	NUMBER OF ELECTED MEMBERS AFTER 2 VACANCIES	QUORUM REQUIRED
8	6	4
9	7	4
10	8	5
11	9	5

8 REPRESENTATION REVIEWS

BACKGROUND

8.1

Representation reviews require councils to regularly consider their composition—essentially its number of council members—and their structure—primarily whether or not it has wards.

Section 12 of the *Local Government Act 1999* sets out requirements that all councils must follow when conducting a representation review, including how councils must undertake and consider public consultation.

Councils must release a ‘representation options paper’ that examines the advantages and disadvantages of the various options to alter the composition of the council or its ward structure and, in particular, if the council is divided into wards, consider whether this should be the case.

The council must then invite submissions on this paper. After the public consultation period, the council must prepare a report that provides information on the public consultation, responds to issues arising from the submissions it has received, and sets out a proposal. If the council has decided not to adopt any change under consideration that was part of the representation options paper, the council must set out the reason for its decision. This report must then be made available for a ‘second round’ of public consultation.

Before any changes can be made to a council’s composition, ECSA must determine that the requirements of the Act have been satisfied, and provide the council with a certificate. Once a council has this certificate, it can gazette the change to its composition or wards.

ISSUES

8.2

Over the last two council terms (2010–2018), all councils have completed representation reviews. Following this, there has been a request to review and simplify the requirements in the Act that apply to this important process.

In particular, there is a view that the process guiding councils’ public consultation on their representation reviews is unnecessarily prescriptive, and prevents councils from properly responding to—or adopting—changes to proposals that may arise through this consultation.

On a more fundamental level, there is also a view that council members have—or are seen to have—an inherent conflict of interest when making a decision on the right representative structure for their council. Elected members may be reluctant to make any changes which would affect them and their chance to be re-elected at the next election, or may be perceived to be acting in their own interests rather than that of the council and its community.

There are two proposals for reform of representation reviews—

1. Review the current provisions, to make the public consultation requirements more flexible, and to make other simplifications and improvements that may be identified, or
2. Give responsibility to the Boundaries Commission to regularly review the internal structure of councils, including council representation (eg the number of elected members) and nature of representation (eg ward vs area councillors) as is appropriate for each community. This would be done on a cost-recovery basis for each council.

9 ELECTED MEMBERS CONTESTING STATE ELECTIONS

BACKGROUND

9.1

From time to time, members of councils may choose to run for political office in another sphere of government. These candidates continue in their role as a council member throughout the campaign for State or Federal Parliament.

ISSUES

9.2

The issue that has been raised is whether it is appropriate for these candidates to be in a position as a council member if they are running for another office, or whether they should be required to take a leave of absence.

The principal argument for requiring council members to take a leave of absence while campaigning is that it is not appropriate for council members to use their position in local government to promote their candidacy for another sphere of government. It is argued that this raises perceptions that these members have a conflict of interest, or that the interests of their campaign takes precedence over their role as a council member.

While existing rules prevent council members from using council resources for their personal benefit (which would include a campaign), there may also be a perception that the resources available to council members do in fact give them an advantage in this campaign against other candidates who are not council members.

It is proposed that council members standing for election to State Parliament are suspended from their position as council members during the election period. This would mean that the members would not—



Undertake any official functions or duties over this time, including attending council meetings.



Be provided with council meeting agendas or other materials as a council member.



Have any access to council facilities or services that is not available to members of the public.



Receive their allowance for this period.

This proposal only applies to State elections, as Commonwealth legislation prevents its application to elections to the Commonwealth parliament².

10 ADDITIONAL PROPOSALS

The Local Government Reform program provides an opportunity to make a range of other amendments to the *Local Government (Elections) Act 1999*.

Other proposals for reform are—

SUPPLEMENTARY ELECTIONS

10.1

Allow for the close of voting for supplementary elections to be at a time determined by the Returning Officer, allowing the Returning Officer to set both polling day [under section 6(6)] and the time for the close of voting on that day. Such a determination would be made by the Returning Officer when setting all other dates for the supplementary election including the Close of Rolls and Close of Nominations.

COUNCILS HOLDING POLLS UNDER THE LOCAL GOVERNMENT ELECTIONS ACT

10.2

Require councils to provide notice of a polling day on its website, and allow for the close of voting for a council poll to be 5 pm on polling day.

²Section 327(3) of the *Commonwealth Electoral Act 1918* provides that state of territory laws that discriminate against local government members in Federal elections have no effect.

THE VOTERS ROLL **10.3**

Remove the reference to 'purchase' of the voters roll, to provide consistency with section 15(14).

PUBLICATION OF MISLEADING MATERIAL **10.4**

Require the publication of a retraction to be prominently placed in the early pages of *The Advertiser* and other local press.

BALLOT PAPERS **10.5**

Allow for drawing of lots as soon as practicable after noon (rather than waiting for 4 pm).

ISSUE OF POSTAL VOTING PAPERS **10.6**

Align the cut-off for both an application by post and in person to be by 5 pm on the fourth business day before polling day.

ARRANGING POSTAL PAPERS **10.7**

Remove the reference to the close of voting at noon for an election or poll (consistent with amendments to the close of voting).

METHOD OF COUNTING AND PROVISIONAL DECLARATIONS **10.8**

Alter the method to that used when conducting an optional preferential count.

DISPUTED RETURNS **10.9**

Allow the Electoral Commissioner as returning officer to petition the Court of Disputed Returns in circumstances where the validity of the result must be challenged due to error.

REFORM AREA 3

EFFICIENT AND TRANSPARENT LOCAL GOVERNMENT REPRESENTATION SUMMARY OF REFORM PROPOSALS

3.1 Change the timing of periodic council elections to the year following a state election.

3.2 Enable ECSA to provide ballot papers electronically.

3.3 Clarify that councils are responsible for information sessions about the role of a council member, and that ECSA is responsible for election promotion.

3.4 Require councils to undertake specific activities to inform property franchise holders of their need to self-enrol, OR re-introduce the automatic enrolment of property franchise holders.

3.5 Require ECSA to receive all nominations and publish candidate profiles.

3.6 Remove the term limit on holding the office of Lord Mayor.

3.7 Require candidates to 'tick a box' stating whether they live in the area they are contesting.

3.8 Require candidates to state whether they are a member of a political party or any association or body formed for political purposes, or have been within the past 12 months.

3.9 Require ECSA to host all information on donations received by candidates.

3.10 Require candidates to report to ECSA any single donations above a prescribed amount (for example, \$2,000) within five business days of receipt.

3.11 Enable all candidates to request an electronic copy of the voters roll from the relevant council.

3.12 Remove the requirement for councils to make a 'designated decision' within their caretaker policies on the use of council resources, in favour of a statement within general caretaker responsibilities that council resources must not be used to advantage particular candidates.

3.13 Extend the voting period by one week to better allow for postal delays.

3.14 Change the counting method to the 'exclusion method'.

3.15 If a vacancy on a council is created within 12 months of a periodic election, allow this to be filled through a 'countback' of candidates.

3.16 Extend the period of time in which a vacancy does not need to be filled to 12 months before a periodic election.

3.17 Enable councils without wards, and with at least nine members, to 'carry' two vacancies.

3.18 Simplify representation reviews, and make public consultation requirements more flexible.

3.19 Transfer the responsibility for representation reviews to the Local Government Boundaries Commission.

3.20 Suspend council members running for State Parliament for the duration of the election campaign.



SIMPLER REGULATION

REFORM AREA 4

1 INTRODUCTION

Councils play an important role in our local communities and make many decisions that have a real impact on our day to day life. While councils are independent governments in their own right, their operations and decisions must comply with broader rules. These are the various pieces of legislation that apply to councils, that set out the processes by which they make decisions; consult with their communities and release information.

These rules and regulations seek to protect the interests of the community, by making sure that councils operate with transparency and accountability, and that their decisions and actions are, and are seen to be, in the public interest.

However, we must always be aware that compliance with these rules costs councils time and money. If regulation is inefficient, or ineffectively designed or administered, it imposes unnecessary costs on councils, businesses and the community. That is why regulation must be regularly reviewed, to ensure that the rules are justified by the benefits they deliver.

The Local Government Reform process provides an opportunity to look at improvements to the regulations that apply to councils, with the intention to better enable councils to focus on the services their communities value most.

Opportunities for simpler regulation include—



Modernising and streamlining requirements for consulting with communities.



Clarifying the provision and publication of information that is relevant and informative to our communities.



Clarifying obligations around informal gatherings.



Simplifying community land and road management requirements to assist State and Local Government, as well as reducing red tape for businesses.

2 PUBLIC CONSULTATION

BACKGROUND

2.1

Community consultation is an important channel for governments to engage with their community. They can exchange information and ideas, and make sure that councils hear views on projects, policies, issues and plans.

Perhaps most importantly, strong and effective engagement gives communities confidence in the decisions

that their councils make. They know that their council has used the insights, skills, knowledge and experience to understand the impact of their decisions, and how services can be improved.

Since its commencement, the Local Government Act 1999 (the Act) has recognised the importance of community consultation, as it stipulates that councils must prepare and adopt a public consultation policy.

The Act also lists 19 decisions, actions and policies that councils must consult on, in accordance with their community consultation policy. These range from critical annual decisions, such as determining the annual business plan and budget, to decisions that happen less regularly, such as a decision to remove the community land status from council land.

When councils are consulting on these matters, they must publish a notice on their website, and in a newspaper circulating within the area of the council, and allow at least 21 days for people to make a submission. Councils may also choose to follow their public consultation policies whenever they are of the view that it is of value to their decisions and actions.

EXAMPLES OF MATTERS THAT REQUIRE COUNCILS TO UNDERTAKE COMMUNITY CONSULTATION



Representation reviews, including the composition and wards of the Council



Status of Council or change of name.



Principal office of the Council (places and times the office is open to the public).



Prudential requirements for certain activities.



Public consultation policy.



Access to meetings and documents code of practice.



Strategic management plans.



Annual Business Plans and Budgets.



Basis of rating.



Basis of differential rates.



Passing by-laws.



Order making policies.



Planting of vegetation on roads.



Community land: classification; revocation of classification; proposed management plans; amendment or revocation of Management plans; alienation by lease or licence.



Certain authorisations for the alteration of public roads and permits for business purposes on public roads.

The current legislative requirements for councils' community consultation are now 20 years old. There is a clear view that these provisions are outdated; excessively prescriptive; and can lead councils to take a 'tick the box' approach to consultation, rather than thinking creatively about engagement that best suits their community.

The Act also assumes that one process for community consultation fits all needs. Whether it is a critical decision such as a council's rating policies that affects all people in a council area, or a decision that has more impact on a local level, such as a permit for working on a council road, the process is the same. Councils are only required to publish the notice for 21 days—not to determine how best to reach the people that these decisions affect.

PROPOSALS FOR REFORM

2.3

A lot has changed over the past two decades—how we communicate, hear ideas, and provide our views to each other. It is time for the Act to 'catch up with the times', and support councils to develop flexible, contemporary public engagement practices.

It is proposed that the current, prescriptive public consultation obligations in the Act are replaced with a contemporary approach that sets minimum notification and consultation standards in the Regulations but also enables councils to design and deliver the engagement that is the 'best fit' for their decisions and actions. This approach could be to develop a Community Engagement Charter, similar to the Charter now in place within the *Planning, Development and Infrastructure Act 2016*, to deliver a consistent but flexible platform for community consultation for all councils.

3 INTERNAL REVIEWS OF COUNCIL DECISIONS

BACKGROUND

3.1

The decisions that councils make can have a great impact on our everyday lives. It's important that people in the community have confidence in these decisions, and know that they can question them at any time.

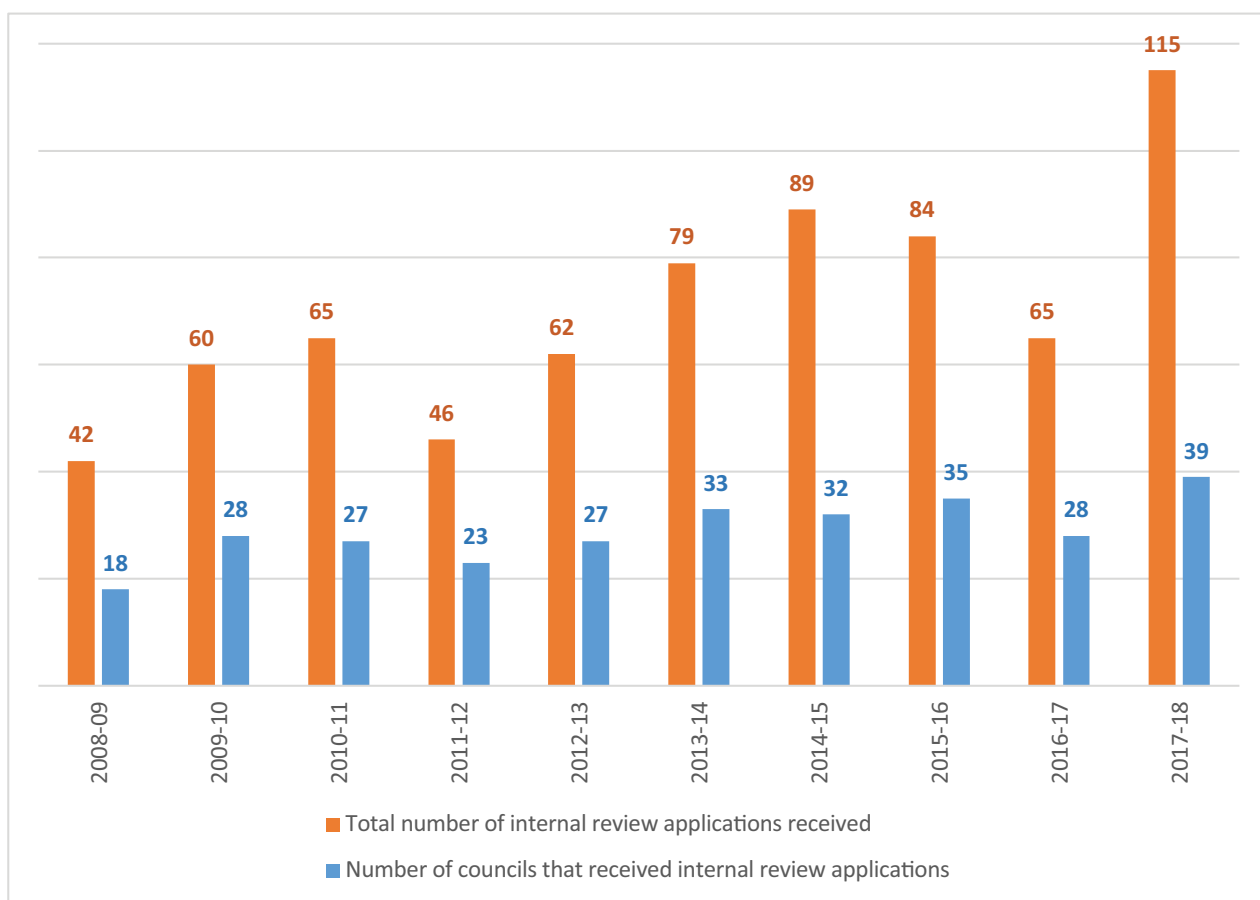
For this reason, section 270 of the Act requires all councils to have a process in place for any community member to apply for an internal review of any council decision. When requested, councils should consider the process by which it made a decision, and the various factors and views that informed it.

This process should not only give communities surety that councils are making well-considered decisions, but also enable councils to identify improvements in their own processes and practices.

This obligation is part of the broader set of requirements to have policies, practices and procedures in place for dealing with requests for services, and also for responding to complaints about the actions of the council, employees of the council, or other people acting on behalf of the council.

Councils are currently required to consider, on an annual basis, a report relating to applications for internal reviews. This report is required to be included in the council's annual report and also to be published on the council's website.

INTERNAL REVIEW APPLICATIONS, 2008-09 TO 2017-18



Source: SA Local Government Grants Commission.

ISSUES

3.2

There is a general consensus that a review of council internal review provisions is required. A number of councils commented that the current system does not provide sufficient benefits to their communities to justify the high level of costs and other resources that are necessary to undertake the reviews.

There is also a view that the system is open to exploitation by people who refuse to accept a reasonable decision of council, but use large amounts of council time and resources to question and challenge it. There is some evidence to support this view as while the total number of internal review applications received by councils fluctuates each year, the number of councils that receive applications has remained more consistent.

Over the past decade, the State Ombudsman has undertaken a number of reviews of councils' internal review processes.

Most recently, the Ombudsman published *Right of Review: An Audit of Local Government Internal Review of Council Decisions Procedures* in November 2016. This examined some of the key issues for councils in delivering a fair internal review of decision process. It also explored how councils can use internal reviews to drive their administrative improvement and service excellence. In summary, the Ombudsman recommended that all councils—

- Highlight a direct link on their website homepage to a plain English description of the procedure available for making an application for internal review of a council decision.
- Ensure that their internal review of decisions procedure is fully compliant with the requirements of the Act.
- Include a reference to a six-month time limit for accepting internal review of council decision applications in a revised version of their internal review of decisions procedure. Consideration should also be given to the exercise of discretion by councils to allow a longer time limit to apply in particular cases.
- Revise the part of their internal review of decision procedure that deals with matters outside the scope of the policy and procedures to explicitly state that matters that fall outside statutory appeals procedures will be considered for the conduct of a section 270 review on the merits of the individual application.
- Consider developing regional panels of independent reviewers who can assist councils with complex review matters.
- Periodically evaluate their section 270 review investigations and document learning outcomes relevant to their administrative practices and functional responsibilities.

It is proposed to extend the Act's current allowance for councils to refuse an internal review of decisions if the request is vexatious or frivolous, to situations where the request is substantially similar to a matter that has already been reviewed or is under review, by the council or by other means.

It is also proposed to allow councils to charge a prescribed fee to undertake an internal review. It is anticipated that this fee would be small (in the order of the current \$35 cost for a Freedom of Information enquiry) to deter vexatious complaints, rather than be a 'cost recovery' mechanism. Councils would not be required to charge this fee, and would also be able to waive it at their discretion.

It is also proposed to set a time limit in which requests for internal review of decisions can be made—potentially within six months of the relevant decision (councils would have the discretion to extend this on a case-by-case basis).

To ensure that councils continue to analyse internal review outcomes, it is proposed that the annual internal review of decisions report that councils are required to consider should include recommendations to improve its administrative practices.

4 INFORMAL GATHERINGS AND DISCUSSIONS

BACKGROUND

4.1

For communities to have confidence in their councils' decisions, they need to understand why these decisions are made, and what their council members' views are. That is why the Act makes it clear that all council meetings are to be open to the public, except in 'special circumstances'.

A number of these 'special circumstances' refer to particular matters that should be discussed in confidence. These include matters that include confidential commercial information, or matters that can affect the security of the council, or its members or employees.

The Act also recognises that council members often get together to discuss council business and other matters outside of council meetings, such as having planning sessions, or briefing and training sessions. These 'informal gatherings' can help council members be better informed on important matters, and enable them to properly plan for the conduct of council business. However, the Act also makes it clear that these meetings should not be used to effectively make a decision outside of a council meeting.

Some years ago, it became apparent that a number of councils were using their ability to hold informal gatherings in a way that gave rise to concerns that they were, in fact, making council decisions outside of formal council meetings.

For example, some councils were holding regular closed meetings to go through their agenda papers immediately before a council meeting. While these meetings may have simply been 'information sessions' the fact that they were held behind closed doors gave the perception at least that they were being used to avoid public debate on council decisions.

In response to these concerns, the Act was amended in 2015 to require councils to have policies to guide their informal gatherings. These policies must comply with the regulations, which currently include detailed instructions to councils on how they may hold informal gatherings, when they should be open to the public and how councils should release information about them.

While these reforms were intended to provide a clearer framework for councils, and assure communities that councils are not making decisions behind closed doors, feedback from some councils has been that the regulations are onerous, difficult to understand, and place an administrative burden on councils that is not justified.

It has also been reported that the legislation gives rise to a view that it is not appropriate for council members to discuss council business between themselves; or cannot hold social gatherings. This has never been the intent of the legislation.

The Local Government Reform process provides an opportunity to re-think how the Act should guide councils when they are holding information, training or briefing sessions for council members.

It is proposed to establish a new category of council ‘meeting’ (possibly calling these ‘information’ or ‘briefing’ sessions) within the Act. These would be sessions called by the council or CEO, inviting any number of council members, for the purpose of providing information on council matters, or to undertake training on any aspect of the members’ official functions and duties.

The Act will continue to state that these sessions should not replace open discussion and decision making at formal council meetings. Sessions discussing matters that are on a council or council committee agenda must only be discussed at a session open to the public, subject to the meeting confidentiality provisions of the Act.

Councils will also be required to publicly release information about these sessions, where practical before the session, detailing when the session will be/was held, what will be/was discussed, attendees, and whether the session was/will be open to the public. If the session was/will be closed to the public, this record would state the reasons why the council consider that it is appropriate to close the meeting.

5 REGISTER OF INTERESTS (PRIMARY AND ORDINARY RETURNS)

BACKGROUND

5.1

It is critically important that all of the decisions that council members make are made in the public interest, and not to benefit or affect them personally in any way. This requirement is largely managed through the conflict of interest processes (discussed in Reform Area 1 of this paper).

Along with managing conflicts of interest that may arise, council members are also required to provide a ‘Register of Interests’ that lists a range of information about themselves and their interests. These interests include things such as property ownership, sources of income, and membership of political organisations and associations.

Similar requirements also apply to council CEOs and other council staff members.

Council members’ Registers of Interest are made available to members of the public at council offices; and large parts are also required to be published on a council website. Council members are also required to let their CEO know when the information on the Register changes or needs to be added to, so that the Register is kept updated at all times.

There are also requirements for council members to complete a Register of Interests under other legislation, for example, council members that sit on Development Assessment Panels under the *Planning, Development and Infrastructure Act 2016*.

ISSUES

5.2

A number of comments have been received saying that the current returns forms are lengthy and confusing to complete. Additionally, the requirement to extract some of the information for publication on the council's website is seen as an administrative burden.

Some people also noted that the requirement to complete several different Registers of Interest to capture essentially the same information is unnecessarily burdensome for council members.

PROPOSALS FOR REFORM

5.3

While the Register of Interests is an important mechanism for ensuring the veracity of council decisions, there may be scope to streamline and standardise the form and method of returns used to maintain them.

It is proposed that the various requirements and forms are compiled into one simple, plain English document that meets a suitable standard (potentially the Australian Accounting Standards)

It is also proposed that councils be required to publish council members' Register of Interests in full on their website (with the removal of any specific residential address information in the interests of safety).

6 PUBLICATION OF INFORMATION

BACKGROUND

6.1

Having full and easy access to a range of important council information means that communities are informed about their council's actions, decisions and policies; and encourages them to engage more fully with their council's work.

The Act lists a range of documents that must be made available to the public—



Documents listed in section 132(3) of the Act are required to be made available on the council website.



Documents listed in Schedule 5 of the Act are only required to be made available at the council office.

However, councils generally go well past these legislative requirements and do a good job in providing full and complete information on policies, decisions, meetings, current consultations and a range of other matters, generally on their website.

ISSUES

6.2

Councils have advised that having two lists within the Act is confusing to both councils and members of the public, as it is not clear what needs to be provided on a website and/or in paper form. The Act creates an unnecessary burden on local government to navigate the separate requirements.

Additionally, the requirement to have material available at a council office does meet current community expectations that information should be available on a website, enabling access at all hours of the day. Councils must spend time and money printing material that is now rarely accessed in this form.

PROPOSALS FOR REFORM

6.3

There is an opportunity to simplify and improve the requirements that apply to the release of information by councils.

It is proposed that any document that is required to be made public must be published on council websites (a council's Assessment Record would be exempt from this requirement for commercial and safety reasons).

This would remove the requirement to have physical documents available at a council's principal office, and the requirement to fix and pay a fee for documents. Councils may be required to print a copy of any document and allowed to charge a fee for this service.

It is also proposed that the Act include a single list of the documentation required to be available on a council's website.

This list will include all documentation/reports associated with agendas or minutes of council or council committee meetings, subject to the related motion's confidentiality orders (noting that the vast majority of councils make this information available already).

REGISTERS OR ANNUAL REPORT? HOW COUNCILS RELEASE INFORMATION

Councils are required to record some information on registers that are updated on a continual basis. This is information that may have an impact on council members' decision making, or is not available in other council material.

These registers include—



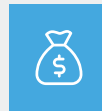
The register of remuneration, salaries and benefits—containing information about salaries and employment benefits paid by the council. This includes details of the chief executive officer's salary package.



The register of interests for council members and the council's chief executive officer and identified senior officers.



The register of community land in the council area.



The register of allowances and benefits paid to council members.



The register of the council's by-laws.



A register recording gifts and benefits received by council members above a prescribed amount (currently \$50).

It is proposed to amend the Act to require council registers to be placed on the council's website. Councils must also publish an annual report at the end of the financial year. This annual report is required to include a range of information such as—



The council's audited financial statement.



A report on freedom of information requests received by the council.



A report on the council's performance in implementing its strategic management plans, and its performance against its annual business plan.



Training and development activities for members of the council during the year.

Annual reports are easily found on council websites, and are therefore a convenient source of information about council activities, processes and expenditure. They ensure transparency without the administrative burden of constantly updating and maintaining multiple registers.

It is proposed to increase the material required to be included in a council's annual report to include—



A summary of travel undertaken by council members and staff over the year and the relevant costs.



A summary of credit card expenditure by council members and council staff, and remunerations claimed by members and staff.



A report from the Chair of the council's audit/governance committee on the governance standards of the council.

7 COMMUNITY LAND REVOCATIONS

BACKGROUND

7.1

The Act establishes a framework for the classification of most land owned by a council or under a council's care, control and management as 'community land'.

The community land framework aims to ensure a consistent, strategic and flexible approach to the administration and management of local government land, with the objective of protecting community interests in land for current and future generations.

Once classified as community land the land—



Cannot be disposed of, except in prescribed cases.



May require the preparation and adoption of a management plan.



Can be leased or licensed but only in accordance with prescribed requirements.



Can be used for business or commercial purposes, subject to the use being authorised in an approved management plan for the land.

Section 194 of the Act sets out the process for the revocation of community land classification. Councils must prepare a report outlining the reasons for the proposal, stating their intention in regard to the future use of the land, and capturing any implications of the decision. Councils must also consult on the proposal, in line with the council's public consultation policy.

This report, and any matters that arose during public consultation, must be submitted to the Minister responsible for the Act for approval. Once this approval is received, the council makes the final decision to revoke community land classification.

The Act also safeguards the community land classification of certain land of significant community value. Schedule 8 of the Act contains provisions relating to specific pieces of land where the land's community land classification is irrevocable. These provisions also often include site-specific land use and management requirements that must remain in place for the benefit of the community. These can be as specific as caring for a particular tree, or requirement to maintain a caravan park or other community facility.

ISSUES

7.2

The process outlined above is a 'one size fits all' approach to revoking community land classification. It does not consider the level of impact on a community that a revocation would have, but requires all proposals to undergo the same process before requesting ministerial approval

In some cases, the cost and effort of the revocation process outweighs the benefit of the outcome, as a proposal may have little to no impact on the community. For example, a proposal may be to revoke the community land status of an unmade road that passes through private property, or of a small portion of land purely used for operational reasons. However, in other circumstances, the revocation of community land is contentious.

In more significant proposals, the future use of land may be a relevant consideration before a council's proposal is approved by the Minister. Currently, there is no general ability to impose conditions on an approval (unless State Government financial assistance was previously given to the council to acquire the land).

Concerns were also raised that the Act prevents councils changing the management of a piece of land where the owner of the land cannot be found, particularly given that councils can take actions to sell land for unpaid rates when this is the case.

Ideas were also submitted that the requirements set out in Schedule 8 of the Act that apply to specific pieces of land are too restrictive, and do not allow councils to modify their management of this land to meet modern community expectations.

PROPOSALS FOR REFORM

7.3

It is proposed to introduce a streamlined process for the revocation of community land status, by establishing two ‘categories’ of proposals within the Act. Administrative, or minor, proposals would not require ministerial approval. General, or more significant, proposals would continue to require ministerial approval. The Minister would also be provided with the ability to attach conditions to the approval of a general proposal.

It is proposed to enable limited amendments to Schedule 8 to allow minor changes to the management of prescribed land. These amendments would be made by regulation, however, regulations would not be able to change the community land status, or the chief use of these pieces of land.

It is proposed to clarify that a council does not need to undertake the process to revoke the community land classification of Crown land where the council’s care, control and management of the land has been withdrawn under the *Crown Land Management Act 2009*.

It is proposed to enable a council to revoke the classification of land as community land where owners cannot reasonably be found.

Finally, it is proposed to provide a mechanism to allow councils to acquire private roads where the owner consents, where the owner is deceased or where the owner cannot reasonably be found and to allow the council to retain or transfer the land to another party.

8 AUTHORISATIONS AND PERMITS FOR USE OF COUNCIL ROADS

BACKGROUND

8.1

Councils manage most of the roads across our State—they are a core service that councils provide to their community. While roads, and infrastructure associated with a road, such as footpaths and stormwater drainage, are provided for the public’s use, there are times when people or businesses need access to them, or need to make changes to them for their own purposes.

Accordingly, the Act allows councils to provide authorisations for the alteration of a public road, and permits for the use of a public road for business purposes.

Authorisations for road alterations are commonly provided for activities such as building driveway crossovers; landscaping a road verge; and laying stormwater and other pipes under roads.

Permits for the use of a road for business purposes enables activities such as footpath dining; food trucks; flower sales and ride-sharing operations. Permits and authorisations are also provided to enable property development, such as the use of a crane or concrete truck when needed.

Councils have a free hand to decide whether or not they should grant an authorisation or permit and, if they do, they can apply conditions as they see fit. One exception to this is the permits that are provided to food trucks. Following changes to the Act in 2017, councils must issue permits to food trucks, and are required to establish policies and guidelines that comply with the regulations.

ISSUES

8.2

Issues raised by councils in regard to these sections of the Act focused on what they perceive to be a heavy-handed approach, particularly in regard to the requirement that councils must consult with their communities before issuing permits or authorisations for activities that would impede traffic on the road to 'a material degree'.

This consultation must include a notification in a newspaper circulating in the council area; notification on the council's website; and allow at least 21 days for submissions. While this may be appropriate for significant works, councils have raised concerns that it this process may be required in circumstances where works are minimal, such as the need to block a road for a short period of time. The consultation period is seen as both excessive and impractical in these instances.

Councils have also raised concerns regarding the current rules about food trucks, and have sought more flexibility for councils to determine whether or not to provide permits to food trucks, and to apply conditions freely.

However, other comments about permits and authorisations reflect a view that councils' ability to grant permits and authorisations as they see fit, and to apply whatever conditions they wish, results in inconsistent approaches across councils that can be onerous, and subject to change at short notice. This can result in additional costs for businesses and their customers, and, in some instances, place the future of a business at risk.

PROPOSALS FOR REFORM

8.3

It is proposed that the consultation requirements for issuing permits and authorisations be reviewed in accordance with a review of councils' public consultation more widely (as discussed earlier in this Reform Area).

It is also proposed that the specific provisions relating to mobile food vendors be removed. These would be replaced by a general 'right of appeal' where a council has unreasonably issued or refused to issue a permit or authorisation to a business (including food trucks), or a council's use of permits or authorisations has unreasonably impacted business. This appeal could be made to the Small Business Commissioner, who has an existing role to manage any conflicts between food trucks and other businesses.

9 MISCELLANEOUS REFORMS

The Local Government Reform process also allows for a number of inconsistencies within the Act to be addressed, and for provisions to be updated where necessary.

Other proposals to simplify regulations are therefore to—

1. Repeal section 269 of the Act that requires a report to be prepared between 30 June 2002 and 31 August 2002 and tabled in Parliament.
2. Clarify that certain documents may be served on or by a council by electronic communication when indicated or agreed by a party. Remove references to 'facsimile transmission' and 'facilities of a document exchange' (for example, sections 83(6), 279 and 280 of the Act).
3. Amend the meeting regulations to achieve better integration between Regulation 12(3) and Regulation 21. This will clarify that a council's CEO can submit a report to a council meeting recommending revocation or amendment of a previous council resolution.
4. Standardise the requirement of a council to review its optional meeting code of practice to match the review requirements of its Access to meetings and documents—code of practice (section 92 of the Act).

REFORM AREA 3

SIMPLER REGULATION SUMMARY OF REFORM PROPOSALS

COMMUNITY ENGAGEMENT

4.1 Replace the prescriptive community engagement requirements in the Local Government Act with a more flexible 'Community Engagement Charter'.

4.2 Review the requirements for councils to publish notices.

INTERNAL REVIEW OF COUNCIL DECISIONS

4.3 Allow councils to refuse a request for an internal review of a council decision where the request is substantially similar to a matter that has been reviewed, or is under review through another process.

4.4 Enable councils to charge a small fee for internal review requests.

4.5 Set a time limit on which requests for internal review of decisions can be made.

4.6 Require councils to consider recommendations for improved administrative practices in their annual report on internal reviews.

INFORMAL GATHERINGS AND DISCUSSIONS

4.7 Remove the 'informal gatherings' provisions in the Act, in favour of establishing a new category of meetings, such as 'information or briefing sessions'.

4.8 Require councils to publish details of information sessions held, what was discussed, who attended, and whether the session was open or not.

REGISTER OF INTERESTS

4.9 Compile all council members' registers of interest into one, simple plain English form.

4.10 Publish council members' Register of Interests in full on the council website (with the exception of specific residential address information)

PUBLICATION OF INFORMATION

- 4.11** Require councils to publish any document that is currently available at a council office on its website (with the exception of the Assessment Record)
- 4.12** Remove the requirement for councils to have documents 'available for inspection', but require them to print a copy at request (for a fee).
- 4.13** Include a single list of all material to be published on a council's website in the legislation.

COMMUNITY LAND REVOCATIONS

- 4.14** Create two categories of community land revocation proposals within the Act ('administrative' and 'significant') and require Ministerial approval only for 'significant' proposals.
- 4.15** Enable limited amendments to Schedule 8 to allow minor changes to the management of prescribed land.
- 4.16** Clarify that councils do not need to undertake community land revocation proposal where the council's care, control and management of the land has been withdrawn under the *Crown Land Management Act 2009*.
- 4.17** Enable a council to revoke the classification of land as community land where owners cannot reasonably be found.
- 4.18** Provide a mechanism to allow councils to acquire private roads where the owner consents, where the owner is deceased or where the owner cannot reasonably be found and to allow the council to retain or transfer the land to another party.

AUTHORISATIONS AND PERMITS FOR USE OF COUNCIL ROADS

- 4.19** Review the public consultation requirements that apply to permits and authorisations, in line with a new community engagement approach.
- 4.20** Remove specific provisions regarding mobile food vendors, in favour of a 'general right of appeal' where a council has unreasonably affected a business.

REFORMING LOCAL GOVERNMENT

IDEAS FOR REFORM CONSULTATION SUMMARY

WHAT WE RECEIVED



Over 80 submissions received



170 yourSAy surveys completed



37 ideas shared through yourSAy online discussion



Over 700 ideas for reform

WHO WE HEARD FROM



51%
Public



31%
Councils



11%
Elected Members



7%
Professional Body

WHAT AREAS INTERESTED YOU MOST



24%
Council member capacity and conduct



19%
Lower costs and enhanced financial accountability



29%
Local Government representation



28%
Simpler regulation

WHAT YOUR IDEAS WERE ABOUT

REFORM AREA ONE	48%	Code of conduct	15%	Council member training
	24%	Conflict of interest	13%	Council member performance
REFORM AREA TWO	23%	Financial management	20%	Benchmarking
	21%	Audit committees	16%	Auditing
	20%	Rating		
REFORM AREA THREE	31%	Voting method	9%	Representation reviews
	19%	Candidate disclosure	8%	Elections
	15%	Nominations	8%	Supplementary elections
	10%	Candidacy		
REFORM AREA FOUR	25%	Council meetings	19%	Section 270 reviews
	23%	Consultation/ engagement	11%	Transparency
	22%	Informal gatherings		

TIMELINE FOR REFORM

STAGE ONE

MARCH — APRIL

Call for ideas consultation

STAGE TWO

JULY — AUGUST — NOVEMBER — 2020

Release of discussion paper

Engagement on proposals

Release of Draft Bill



Government of South Australia

Department of Planning,
Transport and Infrastructure

PROPOSALS FOR LOCAL GOVERNMENT REFORM
AUGUST 2019 - DISCUSSION PAPER