

# Local Government Review Bill 2020

## LGA Submission August 2020

The Local Government Review Bill 2020 ('the Bill') was introduced in the House of Assembly by the then Minister for Transport, Infrastructure and Local Government on 17 June.

The following table summarises the substantive changes proposed in the Local Government Review Bill 2020 and sets out the LGA position on the proposed reforms. The LGA has facilitated a consultation process with the local government sector and the positions taken in this paper result from feedback from member councils as well as previous endorsed positions of LGA General Meetings and the LGA Board.

The 'LGA Guidance' colour code indicates the sector's general reaction to the State Government proposal. In many cases, while offering general support, the LGA believes that the proposal can be further improved. Recommended amendments are contained in the LGA Comments section in the table.

The LGA and member councils have been engaging with the State Government in a mature and constructive manner through the 2019 'Local Government Reform' consultation process and through various working groups and other forums since. The Bill includes many of the reforms previously advocated by the LGA, particularly in relation to an improved framework for managing issues of behaviour.

Unfortunately, the Bill also includes unwarranted and expensive proposals that can replace local decision making on local priorities and services with broad powers for a Minister to direct a council in these matters, such as setting a cap on council rates. These policies have failed interstate and left communities with poor quality infrastructure and less choice about council services. We don't want to see that happen in South Australia, so the LGA has a longstanding policy position to oppose rate capping in any form.

The LGA has made additional submissions to the State Government on several legal and technical issues. This submission does not include all of those matters.

The Bill is expected to be debated in the House of Assembly in September 2020 and the Legislative Council in October and the LGA looks forward to working constructively with all parties and crossbench members to achieve sensible and effective reforms that will deliver lasting benefits to South Australian communities.

Which section of the Act does it amend?	What does it do?	LGA Guidance	LGA Comments
<p>6</p> <p>Principal role of council.</p>	<p><b>New.</b></p> <p>“6(b) to make decisions about the provision of various public services and facilities that will benefit the community in the context of the capacity and willingness of ratepayers to pay for those services and facilities.”</p>		<p>This is a sound principle for local government.</p> <p>However, legal advice provided to the LGA warns that the proposed changes may inadvertently create a new range of enforceable rights. Clarification is required to ensure that these sections set out the general principles underpinning the Act without creating a new set of mandatory compliance obligations and administrative processes that expose councils and ratepayers to higher costs.</p>
<p>7</p> <p>Functions of a Council</p>	<p><b>New.</b></p> <p>(ba) to determine the appropriate financial contribution to be made by ratepayers to the resources of the council.</p>		<p>This is a sound principle for local government.</p> <p>However, legal advice provided to the LGA warns that the proposed changes may inadvertently create a new range of enforceable rights. Clarification is required to ensure that these sections set out the general principles underpinning the Act without creating a new set of mandatory compliance obligations and administrative processes that expose councils and ratepayers to higher costs.</p>
<p>8</p> <p>Principles to be observed by a council</p>	<p>(ea) Seek to collaborate, form partnerships and <i>share resources</i> with other councils...</p> <p>(h) seek to ensure that council resources are used fairly, effectively and efficiently <i>and council services, facilities and programs are provided effectively and efficiently.</i></p> <p>(ia) seek to balance the provision of services facilities and programs with the financial impact of the provision of those services, facilities and programs on ratepayers.</p>		<p>This is a sound principle for local government.</p> <p>However, legal advice provided to the LGA warns that the proposed changes may inadvertently create a new range of enforceable rights. Clarification is required to ensure that these sections set out the general principles underpinning the Act without creating a new set of mandatory compliance obligations and administrative processes that expose councils and ratepayers to higher costs.</p>

Which section of the Act does it amend?	What does it do?	LGA Guidance	LGA Comments
<p>11A Number of elected members</p>	<p>The number of members of a council (including the Mayor) will be capped at 12.</p> <p>Remove current Representation Review clauses.</p> <p>New requirement to review number of wards and number of electors per ward. But no longer need to review the number of members.</p> <p>If a council conducts a review by 2022, they can implement this change for 2022 council elections.</p> <p>If not, then must implement by the 2026 elections.</p>		<p>Councils generally support the removal of the Representation Review clauses</p> <p>During sector consultation in 2019, most councils preferred to retain their current arrangements.</p> <p>A number of councils impacted by this change express concern about the number of citizens per elected representative in larger councils if member numbers are capped at 12. Some councils highlighted that a reduction in the number of members was not supported by their community during previous representation review consultations.</p> <p>This section would be improved if exceptions could be made for very large councils.</p> <p>If implemented, a transition period may be required for impacted councils.</p>
<p>12 Rep review process -deleted</p>	<p>If a council has area councillors but not wards, they will not need to perform a representation review.</p> <p>Councils must consult with the public re the representation report. The resulting report must include public submissions.</p>		
<p>44 Delegations</p>	<p>Amendment to include Joint Planning Boards as a possible delegate.</p>		<p>Councils retain the ability to make decisions about delegations and the terms and conditions of a delegation. There is no requirement to make a delegation.</p>

Which section of the Act does it amend?	What does it do?	LGA Guidance	LGA Comments
<p>50</p> <p>Current public consultation sections deleted</p>	<p><b>New.</b></p> <p>Introduces one Community Engagement Charter for the whole local government sector.</p> <p>This will replace many individual sections requiring councils to report info, consult, publish in newspapers, keep hard copy at principal office, etc</p> <p>The Charter will be decided by the Minister and Gazetted and will apply across all councils.</p> <p>Some parts will be mandatory, others will be up to council policy (See 50A).</p> <p>The Minister approves and varies the Charter, after consultation with the LGA.</p>		<p>The concept of a state-wide Community Engagement Charter is consistent with the LGA's previous local government reform submission.</p> <p>Consolidating consultation arrangements within one state-wide charter could lead to savings and efficiencies by reducing duplication and allowing for more targeted and effective consultation to occur.</p> <p>Local government will be consulted on the development of and any variation to the Charter, via a process facilitated by the LGA.</p> <p>To be effective, it is considered that the Charter needs to:</p> <ul style="list-style-type: none"> <li>• Clarify the matters that councils must consult on, but not require councils to consult on minor or uncontroversial decisions; and</li> <li>• Ensure complaints about non-compliance with the Charter are dealt with in an efficient manner through an administrative process.</li> </ul>
<p>50A</p>	<p>Each council must have its own policy on how to implement the Community Engagement Charter.</p>		<p>A large number of sections in the Act relating to specific consultation on specific matters are deleted, as a consequence of new ss 50 and 50A.</p> <p>Councils must consult with the community regarding adoption of their Policy or if they want to vary it. This policy must be consistent with the Charter.</p> <p>The sections relating to consultation will be improved if complaints that have not been resolved through council grievance policies are referred to the SA Ombudsman. Currently appeals are made directly to the Supreme Court of SA, which is expensive and time consuming for all parties.</p>

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54 Casual vacancy	<p>If a council member resigns to take up another position (eg Mayor) their position as member becomes vacant.</p> <p>Councils can go to next election without filling the casual vacancy if an election is to be held within the next 12 months (currently 7 months) or January 1.</p>		<p>This proposal is consistent with the LGA's previous local government reform submission.</p>
55A Elected Members running for Parliament	<p>If a council member runs for State Parliament, they are automatically granted a 'leave of absence'.</p> <p>The leave commences at the close of nominations –even if the member/candidate is campaigning earlier.</p> <p>The provision applies to any council office - including council committees and subsidiaries.</p> <p>If a candidate withdraws their nomination, - they are automatically reinstated to their council position.</p> <p>Members will not receive remuneration/ allowances during the leave period.</p> <p>In subsection 5, candidates can't use council facilities in this leave period.</p>		<p>This proposal is consistent with the LGA's previous local government reform submission.</p> <p>During previous elections, there have been inconsistent approaches by candidates in relation to standing down from council roles and payment of allowances. These proposed provisions create a level playing field for all council members.</p>

Which section of the Act does it amend?	What does it do?	LGA Guidance	LGA Comments
58 Role of Principal Member (usually called Mayor)	<p>New sections clarifying the role of a principal member of council. This includes:</p> <ul style="list-style-type: none"> <li>• “Providing leadership and guidance to the council.</li> <li>• To lead the promotion of positive and constructive working relationships amongst members of the council</li> <li>• To provide guidance to council members on the performance of their role; and</li> <li>• To support council members understanding on the separation of responsibilities between elected representatives and employees of the council.”</li> </ul>		The proposed section states general principles, setting out what the principal member’s leadership role entails.
59 Role of members of council	<p><b>New.</b> It will be a role of council members to act with integrity.</p>		The existing Act and Bill contain specific sections about integrity, which are still primarily regulated by ICAC, the OPI and Ombudsman.
62 General Council Member duties	The prohibitions on disclosure of confidential council information are extended to documents that the council member “knows or ought reasonably to have known is ...required to be treated confidentially”.		This change will clarify council member confidentiality obligations and make it easier to establish that a breach has occurred.

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68 Council Member Register of Interests	<p>(1a) If a council member fails to return their Register after a defined period (in most cases 12 months) the member will be suspended.</p> <p>(1b) If a member is suspended under this section, so are their member allowances.</p> <p>(3a) If the member subsequently submits a return, to the satisfaction of the CEO, the CEO will publish a notice on website to this effect.</p> <p>(3a)(b) The suspension is revoked upon publication of this notice.</p> <p>(3b) If the failure to submit a return continues, the CEO may refer to SACAT</p>		<p>Consultation with member councils in 2019 showed support for clear consequences for a breach of this requirement.</p> <p>Councils do not support proposals to bestow a discretion on CEOs in respect of behavioural issues for elected members. Any role for the CEO in behaviour management should be merely administrative in nature.</p>
70 Inspection of a Register	<p>The Register will now no longer publish the home address of a councillor.</p> <p>Additional information can be suppressed for personal safety.</p>		<p>This proposal is consistent with the LGA's previous local government reform submission.</p>
73 Register of gifts and benefits	<p>The Minister will declare the threshold amount for the purpose of this clause.</p> <p>The Minister must consult the LGA prior to making this declaration.</p>		<p>This proposal is consistent with the LGA's previous local government reform submission.</p>

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74-75C Conflicts of Interest	<p>The three categories of Conflict of Interest are reduced to two: 'General Conflicts of Interest' and 'Material Conflicts of Interest'.</p> <p>A member of a council will not be regarded as having a conflict of interest in a matter if the interest is held in common with a 'substantial proportion' of the ratepayers, electors or residents of the council area (if that interest is equal).</p> <p>Onus is on the council member to declare/decide whether they have a conflict. Failure to declare a conflict can result in penalties.</p>		<p>The new sections are simpler and less confusing. They should allow greater council member participation in decision-making where there is no actual conflict, or the conflict can be managed appropriately.</p> <p>The proposals will be further improved with clarification about:</p> <ul style="list-style-type: none"> <li>• circumstances where the council has nominated an elected member to the board of another legal entity,</li> <li>• mechanisms for abstaining; and</li> <li>• the 'substantial proportion' test.</li> </ul>
75E Member 'Behaviour Standards'	<p>The Minister may publish and vary 'Member Behaviour Standards'. These Standards are not set out in the Bill.</p> <p>They apply State-wide.</p> <p>The Minister must consult the LGA first.</p> <p>Minister's decision will be published in the <i>Government Gazette</i>.</p>		<p>These standards will be reviewable by Parliament, which provides a level of oversight of the decisions made by a Minister.</p>

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<p>75F</p> <p>Council Behavioural Support Policies (CBSP).</p>	<p>Council may implement their own policies on how to support “appropriate behaviour by members of the council”. These can’t be inconsistent with the Behavioural Standards.</p> <p>Council must review these within 6 months of general elections.</p> <p>Council must consult the public on these.</p> <p>Council members must comply with their CBSPs.</p>		<p>Sector feedback indicated that dedicated meetings (usually just after elections), where councillors deliberated and then agreed on behavioural standards, led to strong improvements in meeting culture.</p> <p>The Bill will enable each council to address these issues and to approve their own policy.</p> <p>Members may face sanctions for a breach of a CBSP.</p> <p>The Council itself can impose limited sanctions (see s262C).</p> <p>A breach of the CBSP could constitute ‘misbehaviour’ (s262E), could be referred to the new Behavioural Standards Panel and could result in more serious sanctions or penalties.</p>
<p>75G</p> <p>Council member health and safety obligations</p>	<p><b>New.</b></p> <p>Council members are not ‘workers’ for the purpose of the WHS Act. But they will now have specific WH&amp;S obligations.</p> <p>Council members must not adversely affect the health and safety of other members of council or employees.</p> <p>Could include a direction that a member of a council not attend a meeting of the council.</p> <p>Council members must follow the reasonable directions of a responsible person (usually the CEO) in this respect.</p>		<p>There is general support for the need to clarify the powers available to take steps to ensure the health and safety of council staff and elected members.</p> <p>There was general opposition to proposals that bestow a discretion on CEOs in respect of behavioural issues for elected members.</p> <p>The sector acknowledged the difficulties in identifying an acceptable administrative process that would resolve the wide range of issues that arise.</p>

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76 Member Allowances	<p>Remaining: Member Allowances set by Remuneration Tribunal.</p> <p>LGA to pay Remuneration Tribunal their “reasonable costs”.</p>		<p>The proposal is supported in principle. As drafted, the LGA’s exposure to the costs of this process is unlimited. The proposal would be improved with:</p> <ul style="list-style-type: none"> <li>• A cap on the total costs of the LGA; and</li> <li>• A mechanism to ensure a reasonable contribution of costs must be paid by councils who, in future, are not members of the LGA.</li> </ul>
80A Training & Development	<p>‘LGA Training Standards’ will still be specified in the Regs.</p> <p>Each council must adopt their own policy for conduct and completion of training and development by their members.</p> <p>If a council member has not completed the training, the CEO must suspend the council member unless the council member satisfies the CEO that good reasons exist.</p> <p>(See s262 for referral to Behavioural Standards Panel and penalties. )</p>		<p>Councils supported suspension of councillors who had not completed the mandatory training.</p> <p>Councils do not support proposals to bestow a discretion on CEOs in respect of behavioural issues for elected members. Any role for the CEO in behaviour management should be merely administrative in nature.</p>

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80B Suspension of Council Member subject to an intervention order	Suspend a council member who is the subject of an intervention order.  The CEO will have a discretion to suspend a member		Councils supported the suspension of a member who is the subject of an intervention order.  Councils do not support proposals to bestow a discretion on CEOs in respect of behavioural issues for elected members. Any role for the CEO in behaviour management should be merely administrative in nature.
90(3)(o) Meetings held in public	New exemption, allowing councils to discuss potential award recipients in confidence.		This is a minor but welcome amendment.  This will allow the names of award-winners to not enter the public domain until the award is presented.
S90(8) Informal Meetings held in public	The rules relating to informal gatherings are simplified.  The Bill replaces 'informal gatherings or discussions' with a simpler scheme of clearly defined 'information and briefing sessions'.		The current provisions are confusing and unintentionally broad.  These new sessions will enable councils to more easily discuss and better understand their business but will also retain the expectation that these sessions cannot be used to obtain, or effectively obtain, decisions that should be made in a public council meeting.
New S90A	The concept of 'Information or briefing session' is described more carefully. If it is one of these, it needs to be open to the public and a record made.  The CEO makes decisions regarding whether a matter will be on the agenda and if the group has 'effectively made the decision'.		As per S90(8) above.

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S92 Access to meetings and documents	<p>Councils must already have a Code of Practice about meetings and access to documents. The new obligation requires councils to consult with the public before adopting, altering or substituting this Code.</p> <p>Council reporting obligations are taken out of the various sections of the Act and will be replaced by a schedule, making it easier for councils and the public to understand what needs to be reported (and how).</p>		<p>Almost all of the prescriptive reporting consultation provisions are removed from the Act and will be replaced by a schedule. This will provide greater clarity and transparency as all consultation requirements will be listed together in a single schedule.</p> <p>Similarly, the Bill also removes requirements to have documents available to the public (online or in office) e.g. sections 77, 79, 105, 252, 259. This removes prescriptive requirements and provides greater flexibility to councils to provide information to the community in different ways.</p>
97(3)(a) Terminate a CEO	<p>Before council can terminate a CEO's employment, they must have regard to advice from a "qualified independent person".</p> <p>Definition: "a legal practitioner OR someone determined by the council to have appropriate qualifications or experience in human resource management".</p>		<p>Councils generally supported this proposal although concern was expressed about the cost impact on smaller councils.</p>
98 Fill CEO Vacancy	<p>Councils no longer need to advertise in a newspaper -instead, can use a website.</p> <p>Selection Panel: At least one is not a council member or member of staff.</p> <p>Before the CEO appointment, council must obtain and consider independent advice on the assessment of applications and recommendation on appointment</p>		<p>Councils generally supported this proposal although concern was expressed about the cost impact on smaller councils.</p>

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99 (ia) and (ib) Role of CEO	<p>New subsections relating to CEO functions.</p> <p>A CEO must:</p> <ul style="list-style-type: none"> <li>- ensure council has effective policies systems procedures, etc</li> <li>- Report annually to the relevant audit and risk committee on the council's internal audit process.</li> </ul>		<p>The section clarifies a role that most council CEOs perform already.</p>
99A Remuneration Tribunal extends to CEOs	<p>The Remuneration Tribunal will determine minimum and maximum remuneration for CEOs.</p> <p>The Remuneration Tribunal may have regard to any matter set out in the Regulations.</p> <p>ss(4) remuneration may differ based on geographical factors or other factors.</p> <p>Amounts may be indexed.</p> <p>The LGA will pay for the Remuneration Tribunals' reasonable costs.</p> <p>Councils must ensure the remuneration they pay is within the range set by the Remuneration Tribunal.</p>		<p>The proposed provisions are modelled on the Western Australia legislative scheme and were broadly supported by councils and the LGA in previous local government reform submissions.</p> <p>As drafted, the LGA's exposure to the costs of this process is unlimited. The proposal would be improved with:</p> <ul style="list-style-type: none"> <li>• A cap on the total costs of the LGA; and</li> <li>• A mechanism to ensure a reasonable contribution of costs must be paid by councils who, in future, are not members of the LGA.</li> </ul>

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102A CEO Performance review	<p><b>New.</b></p> <p>A CEO Performance Review must occur at least once a year <u>and</u> “if relevant” before reappointment.</p> <p>Council must obtain independent advice by “qualified independent person” who is not a member of council and determined by the council (same as the requirements for CEO termination but a legal practitioner is not listed as an option. see 97(3), above).</p>		Councils generally supported this proposal although concern was expressed about the cost impact on smaller councils.
110 Code of conduct for employees	This is replaced by s119A		The employee register is designed to mirror the requirements for council members. CEOs have responsibility to manage this through council policies and industrial arrangements.
110A Duty to protect confidential information	<p>Duty of employees to protect confidential information.</p> <p>Adds a new limb “employee knew or ought to have known that the information is to be treated confidentially”.</p>		This is consistent with the clarification for council members’ confidentiality obligations.
119A Register of Gifts and Benefits for Employees	This was previously dealt with by Code of Conduct. The limit is intended to be the same as is currently declared by Minister.		The aim is for consistency in these arrangements, for employees and council members.

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<p>120A</p> <p>Employee Behavioural standards</p>	<p>Council must prepare and adopt standards.</p> <p>An employee must comply with these standards.</p> <p>These standards will set out:</p> <ul style="list-style-type: none"> <li>- grounds for suspending or dismissing, disciplinary action against the employee.</li> </ul> <p>Before a council adopts or alters these standards, they must consult with relevant industrial association re the Employee Behavioural standards and any subsequent variation.</p> <p>Within 6 months of periodic election, council must review these standards.</p>		<p>While the council will adopt the overall policy, the CEO otherwise remains in charge of employee matters.</p> <p>The LGA will consult with member councils and with the relevant trade unions on the implementation of this clause.</p>
<p>122</p> <p>Strategic Management Plan</p>	<p>A Council's Long-Term Financial Plan (LTFP) must be for a 10-year period.</p> <p>The LTFP must:</p> <p><b>(New)</b></p> <ul style="list-style-type: none"> <li>- outline council's approach to funding services and infrastructure</li> <li>- Set out council total revenue for the period</li> <li>- Outline the sources of revenue including fees, grants, rates and charges.</li> </ul> <p>(3a) Regulations may require the inclusion of other information.</p>		<p>The LGA acknowledges the significant work that almost all councils have undertaken in developing their LTFPs and is comfortable with this codification of existing practice.</p> <p>Note that the Consultation Charter arrangements:</p> <ul style="list-style-type: none"> <li>• will require councils to consult with their communities on their LTFPs; and</li> <li>• are likely to require councils to undertake further consultation before changes are made to the LTFP.</li> </ul>
<p>123</p>	<p>An Annual Business Plan (ABP) must include:</p>		<p>The LGA supports transparent and accountable decision making. However, this section would impose a series of</p>

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Annual Business Plan	<ul style="list-style-type: none"> <li>- <b>New:</b> a statement on the proposed change in total revenue from general rates for the financial year and if ABP sets out a growth component in relation to general rates it may only relate to growth in the no of rateable properties and must not relate to the growth in the value of rateable properties.</li> <li>- an explanation of how the proposed change is consistent with the council's LTFP.</li> <li>- A summary of other reasons for the proposed change.</li> <li>- Details of impact of the proposed change on average rates for each land use category.</li> <li>- The advice received from the 'Designated Authority' (which looks like being the Essential Services Commission of SA); and</li> <li>- The council's response to the advice which must set out whether the proposed change in total revenue from general rates is consistent with the advice and if not the reasons for the inconsistency.</li> </ul> <p>(3a) The <b>draft</b> ABP must be provided to the Designated Authority by 31 Dec in the FY preceding and must include:</p> <ul style="list-style-type: none"> <li>- The proposed change in total revenue from general rates.</li> <li>- The council's view of the impact of the change.</li> </ul>		<p>expensive and unwarranted new requirements on councils in drafting and adopting their Annual Business Plan and Budget, and increase costs to ratepayers.</p> <p>This proposal introduces another layer of bureaucracy and gives a significant role to an unelected body that has no relationship with or accountability to the local community.</p> <p>This process will place councils in a continuous cycle of administrative planning and reporting that will detract from the councils' role in providing local services and facilities that benefit the local community.</p> <p>The Minister can increase the range of matters that the DA is required to consider. So, the cost impact of this clause could climb further, over time.</p> <p>The timeframes outlined in this section are unrealistic and unworkable. A council will be required to be significantly advanced in drafting an Annual Business Plan and Budget in December – 6 months prior to the commencement of the new financial year. This provides limited flexibility to respond quickly and effectively to changing economic and social circumstances, such as those we have experienced in 2020 during the Covid-19 public health emergency.</p> <p>Councils are already required to consult with their communities on their draft ABP. Thus, councils may receive conflicting advice from the DA and their communities. Ultimately councils are accountable to the community for their decisions about local plans, priorities and budgets and it is not appropriate for an Authority to override the needs and wants of the community.</p> <p>In 2019, the South Australian Productivity Commission undertook an Inquiry into Local Government Costs and</p>

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	<ul style="list-style-type: none"> <li>- Information about consideration given by council to alternatives to the proposed change including total revenue resulting from such alternative measures.</li> </ul> <p>(d) information as to how the proposal is consistent with the Council's LTFP.</p> <ul style="list-style-type: none"> <li>- Any other matter set out in the in Regs.</li> </ul> <p>The Designated Authority must provide its advice back to the council by 31 March of each year.</p> <p>The Designated Authority must have regard to:</p> <ul style="list-style-type: none"> <li>- Information provided by, AND any matter directed by the Minister; and</li> <li>- Any other matter considered relevant by the Designated Authority.</li> </ul>		<p>Efficiency. The Inquiry found that SA councils are achieving high levels of efficiency and did not make any recommendations that are consistent with the rate capping proposals contained within the Bill.</p> <p>The Commission did, however, find that regulatory compliance costs and the expansion of mandated responsibilities under state legislation have created additional cost pressures for councils.</p> <p>This Bill introduces a range of new compliance requirements that will need to be funded by councils. The costs of this process are likely to be significant. A 'Designated Authority' (likely to be ESCOSA) will need to undertake an individual assessment of every councils plans and budget, every year.</p> <p>As a reference, the Essential Services Commission in Victoria spent \$2 million in 2018/19 administering its local government regulatory role.</p> <p>Every extra dollar that is needed to fund new reporting requirements in an extra dollar that needs to be paid by ratepayers, or one less dollar that is invested in local services and facilities.</p> <p>This proposal is inconsistent with the LGA's longstanding policy position to oppose rate capping in any form.</p>
125 Internal Control policies	New Regulation making powers. Councils must ensure their policies, practices and procedures comply with these Regulations.		<p>This is a potentially significant power and has the potential for the State government to significantly encroach on the decision-making of local representatives.</p> <p>The scope of the section extends to any policy, procedure, etc that could be deemed an 'internal control'.</p>

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			The section could be used to effectively take away almost all council discretion and undermines the role of local government as an independent, democratic sphere of government.

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<p>126</p> <p>Audit and Risk Committee</p>	<p>A majority of members of council Audit and Risk Committees must not be members of the council and may not be an employee of the council.</p> <p>The role of these committees is expanded to include 'risk'.</p> <p><b>New</b> functions include:</p> <ul style="list-style-type: none"> <li>- Monitoring expenses of council.</li> <li>- to make recommendations for improvements based on previous audit/risk assessments.</li> <li>- Review powers when CEO assists audit committee.</li> <li>- Liaise with council auditor in accordance with the Regulations</li> </ul> <p>(g) <b>if</b> a council has an internal audit function - to review/comment on an annual report by CEO in internal report re the scope of internal audit work; and</p> <ul style="list-style-type: none"> <li>- The objectivity and standard demonstrated in the carrying out of the function.</li> </ul> <p>If a council does <b>not</b> have internal audit function, the CEO must report on polices of council etc</p> <p>The must be one meeting of the Audit and risk Committee each quarter.</p> <p>Audit and risk Committee must provide a report to council every 3 months.</p>		<p>The LGA's previous local government reform submission provided broad support for an expanded role for council Audit Committees.</p>

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126A	Regional audits permitted, where 2 or more councils share audit resources. This is optional.		This option would be available for regional councils who struggle to recruit qualified independent auditors. Most eligible councils expressed scepticism that this option would prove useful.
128 Auditor	Councils must use a different audit firm at least every 5 years.  Then a council must wait five years before re-engaging that same auditor.		
129 Conduct of Audit	<b>If</b> the SA Auditor-General exercises (existing) powers to perform the council audit, then a normal audit is not required.  <b>If</b> the Auditor -General conducts the audit, the council must pay for the reasonable costs incurred.		Whilst this clause was broadly supported, the sector believes it unreasonable for a council to pay for the costs of the Auditor-General if they have already paid the costs of another independent external auditor.
151 Basis of rating	Delete council power to use 'site value' as a means of rating. All councils will use 'capital value' method.		The OLG advise that currently only 8 councils use the 'site value' method.  This change was broadly supported by the sector, but it is noted that many of the submissions were received from councils that would not be directly impacted by this change.  A small number of councils did not support this proposal and will need transitional arrangements and external support, if this change is mandated.
170 Notice of declaration of rates	Requirements to give the public notice of the declaration of rates.		The specific requirements to give the public notice of the declaration of rates will be set out in the Community Engagement Charter.

Which section of the Act does it amend?	What does it do?	LGA Guidance	LGA Comments
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Which section of the Act does it amend?	What does it do?	LGA Guidance	LGA Comments
184(14) Non-payment of rates	The policy intention of this subsection has been frustrated by drafting issues.		The section should clarify the power of the Valuer-General to remove a caveat or other encumbrance.
194 Revocation of community land	Simplification of current unwieldy process to revoke community lands. Cases where the Minister will be required to make the decision is clarified.  More situations where councils can make the decision to revoke uncontroversial community land (eg unmade roads).  Does not apply to Adelaide Parklands.		This change is supported, subject to some legal concerns about the effectiveness of the proposed drafting solution.
222 (1a) – permits for mobile food vending business	Removal of automatic granting of permits to mobile food vendors (food trucks).		Mobile food vending business will now be treated like any other business seeking a council permit. This is consistent with ongoing submissions from the sector and LGA advocacy.
262A Council Member Behaviour	First step requires the council deal with issue in accordance with their (new) behaviour management policy and behaviour support policy.		Council has initial obligation to deal with council member behavioural issues, according to their own 'Code'.  This is consistent with previous LGA local government reform submissions.
262C Member Behaviour - Action	Council has powers to insert consequences/ penalties into their policy for breaches of their Council policy. Councils may:  (a) censure  (b) Require a public apology.  (c) Require the councillor to undertake a specified course of training or instruction.		Most councils welcomed these proposals.

Which section of the Act does it amend?	What does it do?	LGA Guidance	LGA Comments
	<p>(d) remove or suspend the member from 1 or more offices held by the member</p> <p>In dealing with these, council must proceed with as little as possible formality and technicality</p> <p>The clause has been designed in an attempt to enable councils to operate without requiring lawyers.</p> <p>Council can refuse to deal with a matter because it is frivolous, vexatious, trivial. Council can also decide to take a matter no further.</p>		
262D - Member Behaviour - Reasons	If a council refuses to deal with a complaint or determines to take no further action, then the council must provide written reasons.		This is a new administrative step that, ideally, will be part of an overall scheme that is faster and less expensive than currently operating.
262E Behaviour Panel	<p>Misbehaviour means a failure by a member of council to comply with a requirement under 262C(1) or a failure to comply with a council behaviour management policy.</p> <p>A failure to comply with an agreement reached following mediation, conciliation arbitration, dispute resolution process (ie a councillor has agreed and re-negged).</p> <p>Misbehaviour, repeated behaviour and serious misbehaviour are defined. 'Serious misbehaviour' means bullying or harassment of another member or employee of council.</p>		<p>Classifying these levels of poor behaviour will enable the new Behaviour Panel to issue guidelines on likely penalties.</p> <p>The proposal will give the Panel power to define bullying and harassment, for the purposes of the Local Government Act.</p>

Which section of the Act does it amend?	What does it do?	LGA Guidance	LGA Comments
S262F Panel	<p>Local Government Behaviour Panel will have 3 members:</p> <ol style="list-style-type: none"> <li>1. Jointly appointed by Minister and LGA</li> <li>2. appointed by Minister</li> <li>3. appointed by LGA</li> </ol>		<p>This proposal is consistent with the LGA's previous local government reform submissions.</p>
262J	<p>Remuneration and expenses of the Panel will be determined by Governor.</p>		<p>Councils broadly supported the sector meeting the costs of the Panel.</p> <p>As drafted, the LGA's exposure to the costs of this process is unlimited. Further, the Minister has a power to bestow other functions on the Panel. The proposal would be improved with:</p> <ul style="list-style-type: none"> <li>• A cap on the total costs of the LGA; and</li> <li>• A mechanism to ensure a reasonable contribution of costs must be paid by councils who, in future, are not members of the LGA.</li> </ul>
S262N	<p>The Panel must:</p> <ul style="list-style-type: none"> <li>- Publish guidelines</li> <li>- Publish model behavioural management policies</li> <li>- Practice directions</li> </ul> <p>Panel can perform other functions assigned.</p>		<p>The LGA already performs a supportive role, assisting councils to manage behaviour and other governance issues. This support role will continue, regardless of the final form of the Act.</p> <p>The sector does not support a transfer of these roles to the Panel coupled with an obligation for the sector to pay for such additional Panel costs.</p> <p>Extra LGA and sector funding needs to be <i>by agreement</i>.</p>

Which section of the Act does it amend?	What does it do?	LGA Guidance	LGA Comments
S262Q Referral	Matters can be referred to the Panel by <ul style="list-style-type: none"> <li>- Resolution of council</li> <li>- CEO of council</li> <li>- at least 3 members of council</li> <li>- the Minister</li> </ul> + any person dissatisfied with council decision		<p>The sector generally supported mechanisms for councils, staff and Elected members to refer matters to the Panel.</p> <p>This clause needs to distinguish members of the public complaining about council member behaviour (already dealt with by s273 with appeals to Ombudsman) and complaints from staff and council members. The public already have the ability to complain about council member behaviour. There is no need (and have been no calls) for an additional grievance process for members of the public.</p> <p>Council staff and Members should have access to the Panel where internal council processes have not been successful. The Panel is established to solve this specific problem.</p>
S262S	Panel <b>may</b> arrange for investigations, compel reports from council, etc.		Council will often conduct an initial investigation. While the Panel should be a fast and low-cost forum, it may need to (but should not be required to) conduct its own investigation.
262W Powers of the Behaviour Panel.	The Panel may: <ul style="list-style-type: none"> <li>- Reprimand</li> <li>- Direct a council to censure</li> <li>- Require a public apology</li> <li>- Require a training or development.</li> <li>- Require reimbursement of money.</li> <li>- Remove or suspend an office in capacity as member of another body</li> <li>- Suspend for up to 3 months</li> <li>- Direct council to lodge complaint with SACAT (SACAT can suspend for longer or remove a person from council).</li> </ul>		<p>The LGA queries why the Panel refers censures back to councils and doesn't have the power to censure, itself.</p> <p>The proposal would be improved if the Panel itself issued censures.</p>

Which section of the Act does it amend?	What does it do?	LGA Guidance	LGA Comments
S262Y	<p>If corruption or integrity issue - it goes to Office of Public Integrity.</p> <p>Council or Panel can refer a matter to OPI.</p>		
<p>S273</p> <p>Action a Minister can take on Report</p>	<p>A Minister may, on the basis of information received from:</p> <ul style="list-style-type: none"> <li>• ICAC</li> <li>• Ombudsman</li> <li>• A Designated Authority under s123</li> <li>• A report of the Small Business Commissioner</li> <li>• A report of the behavioural standards panel; or</li> <li>• A report of a council administrator,</li> </ul> <p>ask council why s/he shouldn't direct the council.</p> <p>If not satisfied, the Minister can <b>direct</b> the council</p>		<p>This is the clause that gives the Minister broad powers to direct a council on matters arising out of these bodies.</p> <p>Councils already publicly consult and report on Annual Business Plans and Budgets, which outline proposed rate increases. Councils' Audit Committees and the Auditor General also have a broad mandate to review a councils' financial decisions.</p> <p>Ultimately, councils are accountable to the community and are held to account via democratic elections that are held every 4 years.</p> <p>This proposal centralises more power with an individual Minister, who will be given extremely broad scope to direct a council in relation to its budget and the delivery of local services and projects.</p> <p>The Minister's direction does not need to be consistent with the advice of the body who has prepared a report. When the DA (for example) makes a recommendation, the Minister is thereby empowered to give a direction which has the opposite effect.</p> <p>This proposal is inconsistent with the LGA's longstanding policy position to oppose rate capping in any form.</p>
Rating Equity	<p>State legislation requires councils to give discounts on council rates to electricity generators, community housing providers and other private sector organisations.</p>	Not yet included.	<p>Legislation should clarify that councils set council rates. If the State Government wishes to offer a discount to particular private sector bodies, it should fully fund this discount.</p>