

STATE-LOCAL GOVERNMENT CONSULTATION FLOWCHART LEGISLATIVE PROPOSALS – SUMMARY PAPER

Introduction

- The Minister's Local Government Forum developed the State-Local Government Consultation Flowchart – Legislative Proposals [Flowchart] as part of the *State-Local Government Relations Agreement* [Agreement].
- The *Agreement* commits State and Local Government (through the Local Government Association [LGA]) to improving consultation arrangements and communication practices, and building closer, more productive working relationships between the two spheres. It is designed to guide the relationship between the two spheres of Government and acknowledges that both Local Government and the State Government have distinct responsibilities and interests, but need to consult on matters where they have a shared interest.
- The Consultation Flowchart [Flowchart] seeks to provide State and Local Government with greater certainty of processes as the State and Local Government work more closely together on developing major legislative change impacting on Local Government. The Flowchart is a communication and consultation guide for the State Government and Local Government during the development of legislative proposals that have a significant impact on Local Government.

Rationale

- In the past Local Government has legitimately raised concerns about experiences in consultation processes on a number of pieces of legislation under development that had a major impact on Local Government. Similarly, Ministers and State agencies have expressed concern about difficulties in consulting with the Local Government sector during the development of legislative proposals.
- Other States have developed guidelines for improving communication between State and Local Government.
- Rather than adopting lengthy descriptive guidelines with rigid timelines, the South Australian approach is to produce a simplified Flowchart outlining suggested key steps in the consultation process between State and Local Government.
- Timely and effective consultation with the LGA on legislative proposals significantly impacting on the Local Government sector will minimise risks by testing and building support, providing a smoother process as the legislative proposals enter the Parliament.
- The Flowchart seeks to deal only with a limited number of proposals, those of particular relevance and major interest to Local Government, which meet “significant impact” criteria. Only these will move to the “advanced consultation” stage. In this context, advanced consultation means special arrangements over and above that which would usually be the case for stakeholders.
- There will always be some cases where legislative proposals must be dealt with rapidly and full advanced consultation is not possible or practical. In circumstances where matters are pressing, a brief explanation, or notification in confidence, could be provided to the LGA prior to Gazettal/tabling of the legislative proposal. Such an approach maintains the spirit of the guidelines and will assist by minimising criticism as far as possible.
- Obtaining a collective Local Government view is vital to State agencies, particularly as legislative proposals enter the Parliament. There will still be cases where individual councils express contrary views; however, the LGA has the responsibility to manage and encourage greater strategic and collaborative action within the Local Government sector.
- The Flowchart is not an impact assessment statement. The Flowchart is a specific tool for consultation processes about legislative and policy issues where Local Government has a significant interest and it has been designed for the use of State agencies and the LGA.

Explanatory notes

- The Flowchart contains explanatory notes, including a definition of “significant impact”. Additionally, oblong shaded boxes in the Flowchart represent an exit point from the process, with relevant steps outside the Flowchart identified.
 - The Flowchart covers three stages – Assessment; Advanced Consultation; and Parliament.
1. **Assessment** - A key feature of the Flowchart process is the initial step of assessment of the likely impact of a legislative proposal for Local Government. The lead State agency needs to ask itself to what extent does the legislative proposal impact on Local Government.

The Assessment stage has four broad categories as follows, in terms of their relevance to, and impact on Local Government. The following also provides examples, inclusive of where Local Government may have an interest in some legislative aspects –

Category	Legislative proposal - example	Step to take
1	Changes to the core legislation forming the framework for Local Government and dealing with the Local Government system, eg <i>Local Government Act 1999</i> , <i>Local Government (Elections) Act 1999</i> , <i>City of Adelaide Act 1998</i> , <i>Constitution Act 1934 [Part 2A]</i> , <i>Outback Areas Community Development Trust Act 1978</i> , <i>Local Government Finance Authority Act 1983</i> , <i>SA Local Government Grants Commission Act 1992</i>	<ul style="list-style-type: none"> • Changes are generally jointly developed with, or driven by, the Local Government sector. • Agencies proposing consequential amendments to Local Government framework legislation should consult with the Office for State/Local Government Relations in the first instance.
2	Proposals that <ul style="list-style-type: none"> • apply to all public officers including Local Government members or officers, or to Local Government as part of the public sector, eg <i>Freedom of Information Act 1991</i>; <i>Ombudsman Act 1972</i>; <i>Land Acquisition Act 1969</i>, <i>State Records Act 1997</i>, <i>Government Business Enterprises (Competition) Act 1996</i>, or • relate to the roles, functions and objectives of councils set out in sections 6, 7 and 8 of the <i>Local Government Act 1999</i> or confer or constrain council responsibilities or powers, eg <i>Development Act 1993</i>; <i>Natural Resources Management Bill</i>, <i>Environment Protection Act 1993</i>; or • impact on Local Government resources or operations as a public land holder, user of State Government services, or major employer, eg <i>Crown Lands Act 1929</i>; <i>Valuation of Land Act 1971</i>, <i>Roads (Opening and Closing) Act 1991</i>, or • rely on Local Government for implementation, eg <i>Zero Waste SA</i>; <i>Dog and Cat Management Act 1995</i>. 	If yes, proceed to Advanced Consultation (stage 2)
3	Other legislation – <ul style="list-style-type: none"> • impacts on Local Government similar to other stakeholders; or • has minimal impact on Local Government 	Usual consultative/notification communication processes
4	No impact on Local Government	No consultation necessary

Dotted lines indicate assistance and/or advice at points in the process. It is important that State agencies think broadly about possible impacts on Local Government. If State agencies are unsure about whether a legislative proposal may impact on Local Government, or whether a matter that affects some/a number of councils should be the subject of consultation with Local Government, then agencies are encouraged to discuss the proposal with the Office of Local Government [OLG].

The Flowchart proposes that if a legislative proposal fits the criteria for significant impact on Local Government, the responsible Minister/State agency will undertake advanced consultation with the Local Government sector through the LGA (NB in this context advanced consultation would mean special arrangements over and above that which would usually be the case for stakeholders).

2. Advanced Consultation – This stage is a collaborative process with the LGA, as managers of consultation for the Local Government sector, and the relevant Minister and State agency reaching agreement “upfront” wherever possible on the nature of the consultation program.

At this stage, the lead State agency, or responsible Minister, writes to the LGA to advise of the proposal and seek written LGA views regarding the extent to which the LGA decides to be involved, name of a contact officer, and whether the LGA has a policy on the matter to hand.

What is important is that consultation processes and decision-making processes are open and the views of those consulted are considered. In instances where the State position may vary from the Local Government position, this is to be respected by State and Local Government representatives, including in any presentations.

Engagement opportunities between the State and Local Government on legislative proposals involve a number of options and these, in part, depend on the subject field. Some options and possible directions are listed below:

<p>The lead State agency could establish a State-Local Government working group, if appropriate.</p>	<p>Agreement may be reached for the LGA to undertake a council survey inviting comment on early policy directions or to prompt discussion amongst regional associations.</p>
<p>The lead State agency could, by agreement, arrange or attend briefing sessions with the Local Government sector.</p>	<p>The LGA or the responsible State Minister may produce documents to communicate with councils such as circulars, letters, reports relating to the review of legislation.</p>
<p>The LGA may also establish Local Government working groups/technical reference groups to contribute to advice on proposals.</p>	<p>Give consideration to jointly preparing documentation such as a covering letter to councils (and other stakeholders) signed by both the responsible Minister and LGA President, joint circulars, joint media releases.</p> <p>Documents marked as confidential or draft, or any instructions about circulation of a document, are to be respected. Cabinet submissions are confidential to the State Government and must not be circulated externally.</p>
<p>Handling sensitive issues: Approaches to any particularly sensitive or urgent proposals can be raised during meetings between the responsible State Minister for the proposal and the President of the LGA, and could involve the Minister for State/Local Government Relations, if required.</p>	<p>If a matter that is being drafted is confidential: Ask the LGA in writing if it is prepared to “take on” advice on a confidential basis. That is, to receive advice that the State Government is moving ahead with a particular policy direction and the time when this is likely to occur.</p>

OLG can assist agencies in assessing and responding to LGA positions. For example, in relation to proposals that apply to Local Government as part of the public sector, OLG can provide advice about how the objectives can be met while taking account of the differences between State and Local Government and the overall framework for Local Government accountability.

Cabinet submissions already provide the capacity for impacts of proposals to be documented and results of consultation with Local Government should be included in the relevant part of the Cabinet submission.

3. Parliament – this stage involves confirming understandings on a substantial amount of the legislative proposal and negotiations on any residual areas of dispute/“sticking points”.

Overall, the aim is to reach agreement on a substantial amount of the legislative proposal. However, there may be “sticking points” where agreement is unable to be reached. At this point, negotiations should be confined to specified areas in dispute.

The specific arrangements for consultation and negotiation during the Parliamentary phase will obviously vary depending on the nature of each legislative proposal, but the following general points are made:

- Letters of exchange between the responsible Minister and the President will secure clear understandings of significant areas (and confirm areas of continuing disagreement).
- Proposed amendments raised during the Parliamentary debate are to be discussed with the LGA, where possible.
- In any areas of continuing disagreement, or where agreement has not been able to be reached on a particular aspect, State agencies may advise the Minister for State/Local Government Relations of these areas.
- It is recognised that these guidelines may need to be varied in particular circumstances by either party, but notice will be provided to the other party wherever possible.
- At this stage, the State agency is likely to have:
 - agreement of the LGA on specified proposals; and
 - agreement or understanding of compromises reached on particular proposals; and
 - an understanding of the areas of continuing disagreement (if any).
- The LGA has an advocacy/lobbying role which it can exercise where it has advised the lead State agency of its continuing disagreement on an issue or where agreement has not been able to be reached.

For additional advice contact:

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