

Number 3

C A B I N E T G U I D E

Consultation
Assessing community needs



Government
of South Australia

IMPORTANT NOTE:

The information in this Guide is current as of the date of publication but the procedures it describes are subject to change.

Please check with the Department (see the contacts listed below) if you intend to rely on this information after January 2016

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Introduction

Early and genuine consultation is fundamental to the proper development of policy throughout government but it is particularly important in the preparation of high quality advice to Cabinet.

This Guide will help policy practitioners throughout the public sector to properly consider how, when and who to consult to ensure that Cabinet is fully aware of the implications of the decisions it is asked to make.

Applying this Guide

This Guide will be useful for Ministerial office staff and all agency staff who are involved in preparing matters for Cabinet.

The importance of consultation

Early and genuine consultation is fundamental to the proper development of policy and to ensuring that high quality and timely advice is provided to Cabinet.

This essential requirement is too often not met for a number of reasons, including:

- pressure caused by unrealistic or shortened timeframes for a proposal, which compress key decision-making points
- a fundamental lack of understanding of the importance of the role of Cabinet and the value of good consultation in achieving robust and timely outcomes.

Consultation may be inadequate because:

- not all relevant parties are involved
- it is superficial
- issues raised by those consulted are inadequately addressed
- relevant parties are consulted too late in the process.

Consultation on the substance of submissions must take place at an early stage in the development of proposals. Once a Cabinet submission has been lodged with Cabinet Office it is essentially too late to overcome any significant deficiencies in the consultation process.

No submission can be regarded as ready for Cabinet if it has not been the subject of proper consultation. Comments made by agencies on submissions circulated by Cabinet Office after they have been lodged cannot be expected to address any major unresolved issues.

Internal government consultation

Ministers are expected to consult with their Ministerial colleagues on all submissions that may be relevant to them before those submissions come to Cabinet. They are also encouraged to consider joint submissions when working on shared or similar initiatives.

Prior consultation with agencies which have a policy interest or relevant responsibility is imperative to facilitate the Cabinet decision making process and to avoid delays.

Where it is intended to release a draft bill for public consultation, Ministers must consult with key stakeholders, including relevant agencies, before the submission is brought to Cabinet recommending public release.

The contact officer actually consulted should be identified by title. Individuals need not be named, but details should be given of the section and agency consulted, and whether they supported the proposal. If necessary, summarise the agency's views. Providing contact details facilitates later direct contact to follow up any issues raised. It is expected that officers consulted about Cabinet submissions will ascertain their agency's views and communicate them clearly. This will promote the exchange of frank and relevant advice between officers of different agencies.

It is expected that relevant divisions and units within the agency preparing the submission will have been consulted and any difficulties at this level will have been resolved.

Initial contact for consultation on the following matters should be made with the indicated agencies:

- economic, financial and budgetary issues (the relevant Department of Treasury and Finance account manager)
- information and communication technology (ICT) requirements and components, issues and impact (the Office of the Chief Information Officer)
- staffing or employment issues (Commissioner for Public Employment and the Public Sector Workplace Relations Division of the Department of the Premier and Cabinet)
- social inclusion (Social Inclusion Unit)
- environmental and sustainability issues (the Department for Environment and Heritage and the Sustainability and Climate Change Office of the Department of the Premier and Cabinet)
- regional issues (the Department of trade and Economic Development)
- regulatory impacts (Cabinet Office)
- business impacts (the Department of Trade and Economic Development)
- family and social impact (the Department for Families and Communities)
- gender and women's issues (Office for Women)
- young people and youth issues (Office for Youth).

The Office of the Executive Committee of Cabinet provides directorate services and high-level policy advice to the Executive Committee of Cabinet, which oversees the implementation of South Australia's Strategic Plan across government. The Plan, which was first launched in March 2004 and is continually updated in light of ongoing community engagement, has a number of specific targets and sets the strategic priorities for government.

Agencies should also be aware of Primary Industries and Resources SA's (PIRSA) statewide industry development role across the agricultural, food, fisheries, aquaculture, minerals, petroleum and energy sectors. Possible impacts on these sectors should be discussed with appropriate PIRSA staff. Initial contact should be made with Manager, Executive Services.

The Department of Further Education, Employment, Science and Technology should be consulted for all matters relating to science, technology and innovation.

An agency's Records Manager, Freedom of Information Officer or Privacy Officer should be consulted in the first instance regarding information handling matters. Further advice may be sought from Policy and Legislative Services in State Records of South Australia.

The Chief Executive of the Department of the Premier and Cabinet, and through him the Premier, should be consulted on any major organisational changes that will impact on corporate structures, as the Premier is responsible for the management of the public sector under the *Public Sector Act 2009*. Early consultation on these issues with the Commissioner for Public Sector Employment and with the Department's Public Sector Workplace Relations specialists is also highly desirable.

The Crown Solicitor should be consulted if the proposal has legal or legislative consequences. The Crown Solicitor's Office provides a complete legal service to its clients in the same way as does a private law firm. The Crown Solicitor has the added duty of ensuring the legal integrity of government transactions. As a result, the Office is the repository of specialist knowledge in areas of public law, public revenue, public risk and liability, government policy and intergovernmental issues that is not available elsewhere.

The Crown Solicitor's Office is the principal provider of legal services to Government and has an understanding of whole of government issues and the workings of government. Under the government's prudential management regime, the involvement of the Crown Solicitor's Office is mandatory in all major projects.

Details of the services provided by the Crown Solicitor and how they may be accessed are set out in the [Crown Solicitor's Client Handbook](#).

Where a policy proposal or contract is intended to apply broadly across government, agencies should consider whether the proposal might be in conflict with prudent commercial practice.

If so, the agency should consult the Project Analysis Branch within the Department of Treasury and Finance and any government business enterprises particularly affected on whether the proposal should nevertheless apply to Government business enterprises as public sector agencies.

If a proposal or contract is to apply to Government business enterprises, it should clearly indicate that it does apply.

Consultation with Local Government

Consideration should be given to the possible impact of any proposal on Local Government.

The State-Local Government Relations Agreement, signed by the Premier and the President of the Local Government Association on 8 March 2004, recognises that the State and Local Government, through the Local Government Association, aim to improve consultation arrangements and communication practices and build a closer, more productive working relationship. The agreement 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.

Alongside the overarching statement on the working relations between the two spheres of government, the *agreement* sets out annual priority areas for joint action by State and Local Government.

Whole of government policy and legislative frameworks as they affect local government are consistent with striving for greater alignment of policy deliberations, coordination of activities and more strategic approaches between the two spheres of government on matters of mutual interest (see Objective 5 of South Australia's Strategic Plan).

The State-Local Government Legislative Proposals Consultation Flowchart (see below) provides a communication and consultation guide for State agencies and Local Government on when and how to consult in the development of major legislative changes impacting on Local Government.

The development of consultation guidelines seeks to address concerns about consultation and coordination arrangements between the two spheres of government and provide for greater certainty of processes as legislative proposals are developed. Rather than adopting lengthy descriptive guidelines with rigid timelines, the approach has been to produce a simplified flowchart outlining suggested key steps in the consultation process between State and Local Government.

Timely and effective consultation with the Local Government Association (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 that meet "significant impact" criteria. Only these will move to the "advanced consultation" stage.

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 introduction of the

legislative proposal. Such an approach maintains the spirit of the guidelines and will assist to minimise 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 divided into three stages: Assessment, Advanced Consultation and Parliament.

Assessment

A key feature of the Flowchart is the preliminary assessment by a State agency or Minister as to whether a particular legislative proposal will have a significant impact on the Local Government sector. The lead State agency needs to ask itself to what extent does the legislative proposal impact on Local Government.

The following table gives examples under four broad categories of impact on Local Government:

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>	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.

Category	Legislative proposal – example	Step to take
2	<p>Proposals that:</p> <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 Act 2004</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, or landowner, 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>. 	Proceed to Advanced Consultation (stage 2)

Category	Legislative proposal – example	Step to take
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 consultation, notification and communication processes
4	No impact on Local Government	No consultation necessary

It is important that State agencies think broadly about possible impacts on Local Government. If agencies are unsure about whether a legislative proposal may impact on Local Government, or whether a matter that affects a number of councils should be the subject of consultation with Local Government, then agencies are encouraged to discuss the proposal with the Office for State/Local Government Relations.

If proposed legislation is assessed to have a significant impact on Local Government, the responsible Minister or agency undertakes advanced consultation with the Local Government sector through the LGA. This involves special arrangements over and above those that would usually apply to other stakeholders.

Advanced consultation

This stage is a collaborative process that involves the LGA, as managers of consultation for the Local Government sector, and the relevant Minister or State agency reaching agreement in advance (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 the consultation processes and decision-making processes are both open and that 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.

Advanced consultation between the State and Local Government on legislative proposals could take a number of forms, depending on the nature of the proposed legislation.

Options include:

- The lead State agency could establish a State-Local Government working group
- 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
- The lead State agency could, by agreement, arrange or attend briefing sessions with the Local Government sector
- The LGA or the responsible State Minister may produce documents to communicate with councils such as circulars, letters or reports relating to the review of legislation
- The LGA may also establish Local Government working groups or technical reference groups to contribute to advice on proposals
- Documentation, such as a covering letter to councils or other stakeholders, circulars and media releases, could be jointly prepared and signed by both the responsible Minister and LGA President.

Appropriate approaches to 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.

Parliament

This stage involves reaching understandings wherever possible between the responsible Minister and the LGA on a substantial amount of the legislative proposal, and negotiations on the residual areas of dispute (or 'sticking points').

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 should be discussed with the LGA, where possible
- In any areas of continuing disagreement, State agencies may advise the Minister for State/Local Government Relations.

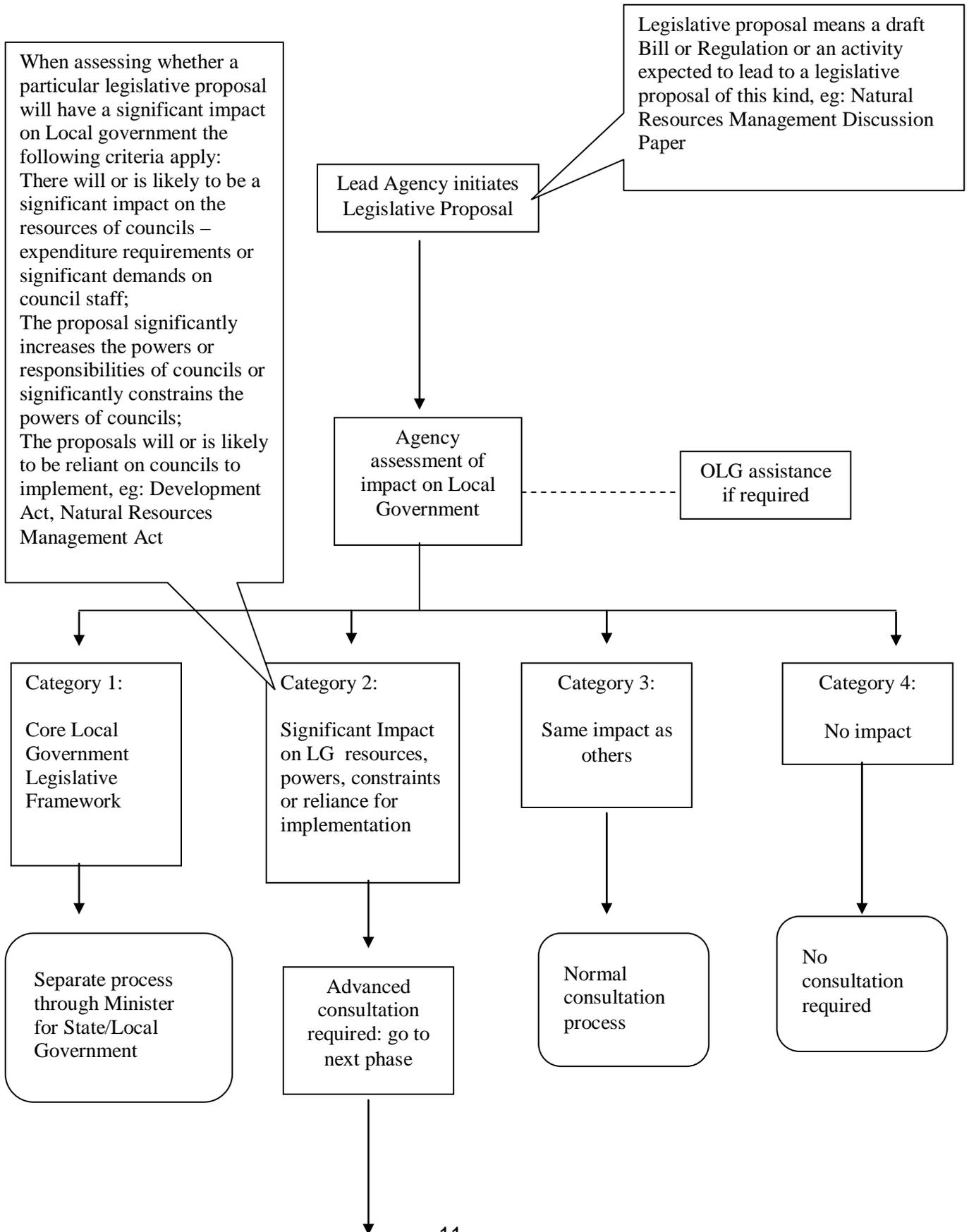
It must be remembered that the Local Government Association has a legitimate advocacy and lobbying role that it can exercise on behalf of its members on areas of continuing disagreement. The Association has the responsibility to manage and encourage greater strategic and collaborative action within the Local Government sector. As well as enhancing consultation

and clarifying processes, the Flowchart is designed to reinforce the need for Local Government to come to a common position and to keep to agreed approaches or positions.

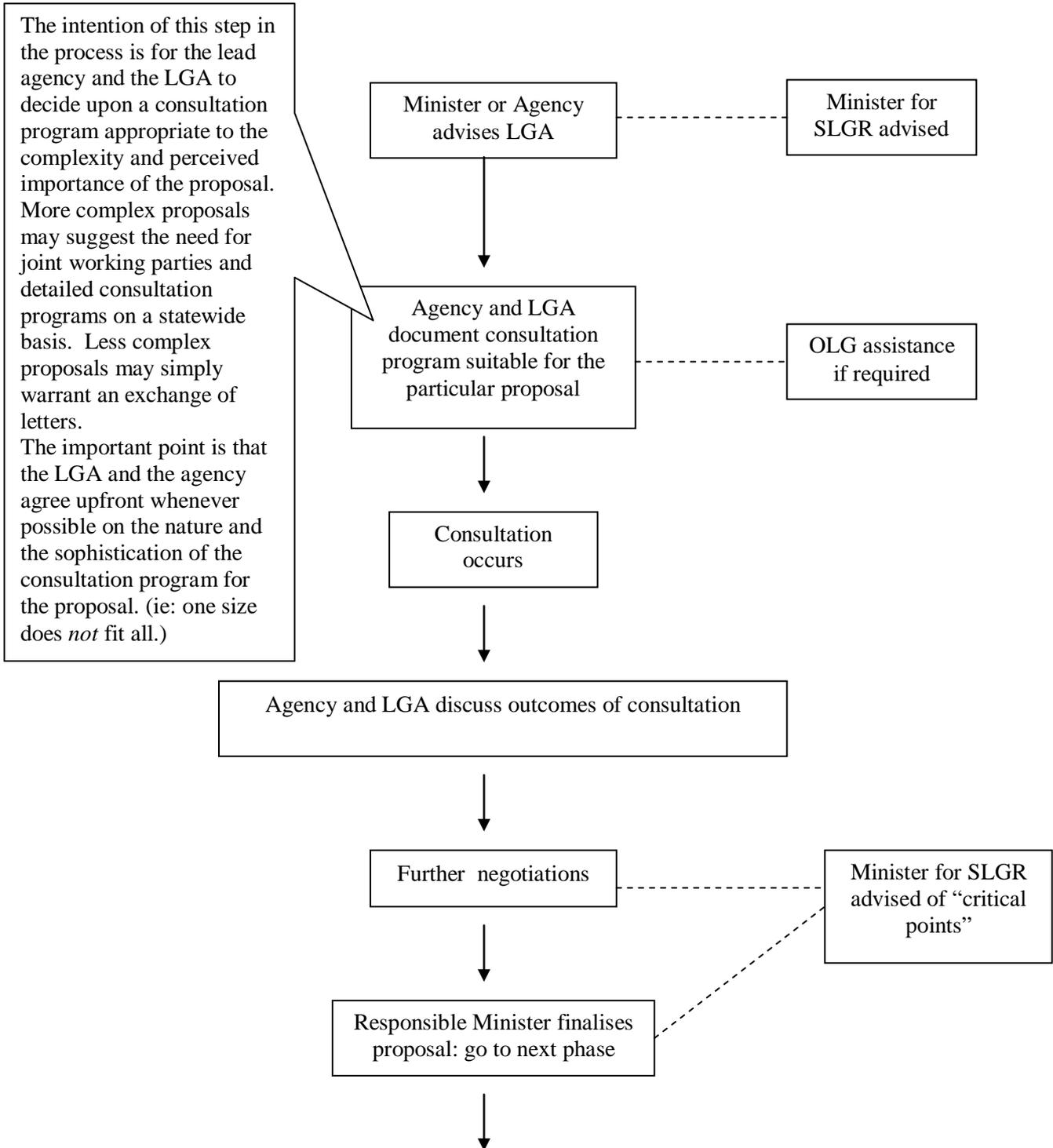
The Office for State/Local Government Relations can assist agencies in assessing and responding to LGA positions.

State-Local Government Consultation Flowchart

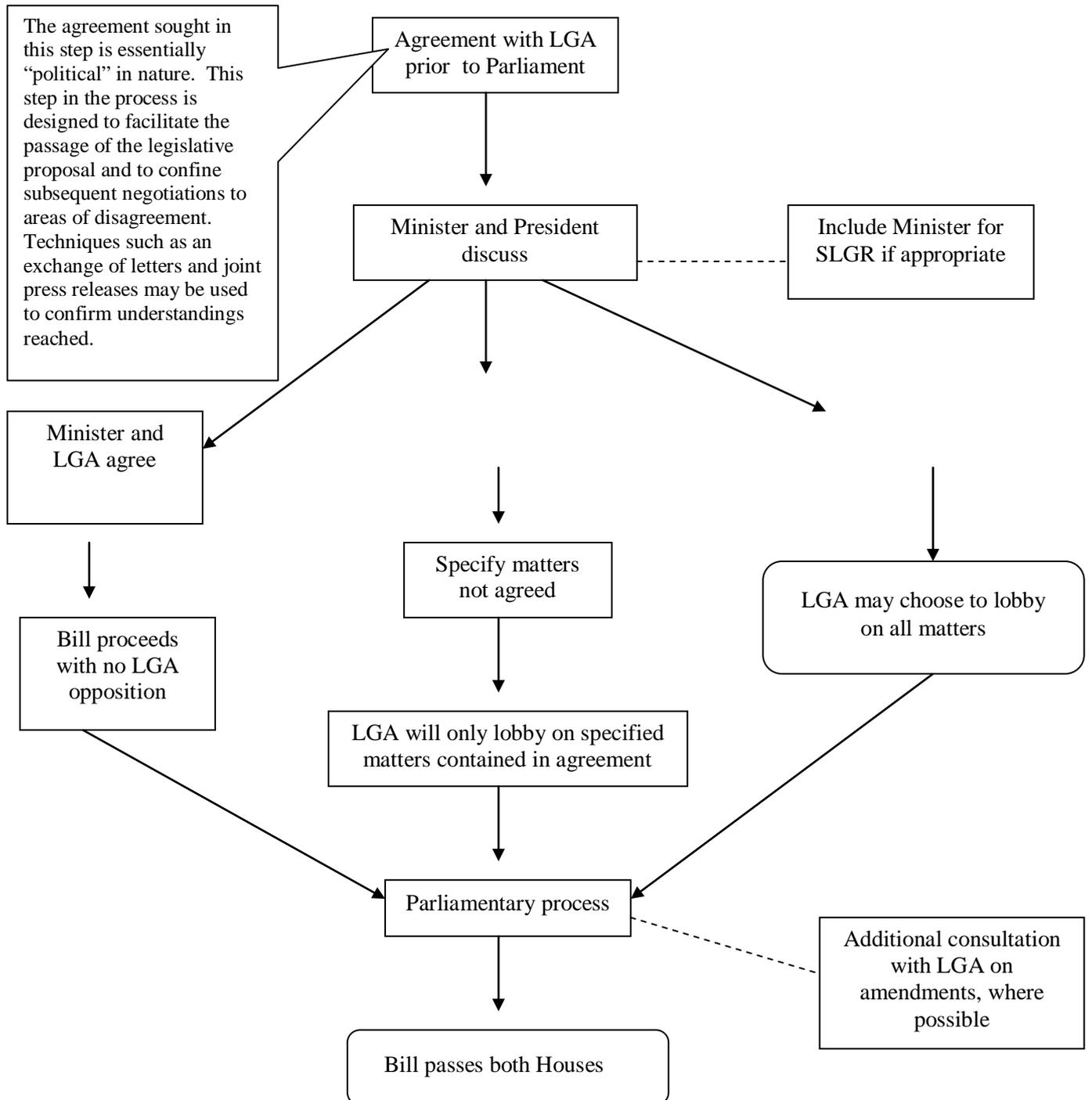
Legislative Proposals Impacting on Local Government: Assessment Phase



Legislative Proposals Impacting on Local Government: Advanced Consultation Phase



Legislative Proposals Impacting on Local Government: Parliament Phase



Public consultation

If the Government does not have a firm policy on a new proposal and it is one in which certain sections of the community have a strong interest, a public consultation process may be appropriate. Depending on the nature of the proposal either a Cabinet submission or a Cabinet Note could be prepared to obtain approval for a detailed consultation process or to simply advise Cabinet of the proposed process.

Where it is intended to release a draft bill for public consultation, Ministers must consult with key stakeholders, including relevant agencies, before the submission is brought to Cabinet recommending public release.

Consultation with other agencies or with community groups or affected individuals may take place by way of personal discussions, or through the work of a representative committee or reference group, or by producing a discussion paper and asking for comments. The method chosen should keep the proposal as confidential as possible, consistent with proper consultation.

In the course of consultation a range of options and possible initiatives may be discussed, but it should be made clear that aspects of any proposal under discussion may eventually find their way into a Cabinet submission—which must be kept confidential.

The social inclusion initiative approach, including joined-up government and collaboration with the not-for-profit and private sectors, requires that the role of these sectors in service delivery and social inclusion be considered when designing government initiatives. Appropriate consultation with these sectors must be undertaken.

The proper basis for all public consultation is:

- a clear statement of the topic
- mutual understanding of the purpose of consultation
- mutual understanding of the level of consultation
- clear advice from the start about how the information gathered will be used.

Planning for consultation is essential: to get the most out of the exercise by helping agencies to: define the problem, identify key stakeholders, select techniques and budgets and provide appropriate feedback and recommendations.

The first step is to identify whether the process is really intended to inform or to seek information. If fundamental decisions have been already made and no capacity exists for community input to influence outcomes then agencies are not consulting the community, they are informing them.

If agencies are seeking involvement from a community to: inform a decision, make a decision, take ownership, or assess potential impact then agencies are genuinely consulting.

Agencies should recognise that consultation can be time consuming and resource intensive for stakeholders. Consultation fatigue can occur where particular groups in a community are consulted on a multitude of issues over time. This can become burdensome when conducted through a number of different processes and it is made worse if the groups consulted do not consider that their views have been taken into account. Efforts should be made to avoid consultation fatigue by working with other agencies or by integrating consultation with other processes to avoid duplication.

Consultation should assist in refining the cost-benefit analysis of proposals, taking into account the impact mentioned on interested parties. It should also help with the design of an implementation strategy and any administrative arrangements (public and private) necessary to put them into effect. As well as helping to refine proposals, the consultation process can be used to build support and to help identify those groups who have problems with them.

Reporting to Cabinet on the outcome of the consultation

Cabinet needs full details of the consultative process leading to the preparation of Cabinet submissions.

Submissions should clearly specify not only the titles of the people and organisation consulted, but also the outcomes of that consultation, particularly where there is disagreement or opposition or where alternative views and options are proposed. The details should be included in the body of the Cabinet submission itself (unless they are extensive when they should be given in an attachment to the submission).

Significant groups with an interest in the proposal should be listed with details of the outcome of any consultation and the support that may be expected from them. Possible lines of criticism should also be outlined together with arguments to be used in rebuttal.

Contacts

Department of the Premier and Cabinet:

- Cabinet Office: Senior Cabinet Clerk ☎8226 3525
- Boards and Committees inquiries ☎8226 5557
- Strategic Engagement and Communications Unit ☎8226 2029
- State Records of South Australia ☎ 8204 8786

Commissioner for Public Sector Employment ☎ 8226 2721

Budget Branch: Department of Treasury and Finance ☎8226 9730

Government Employee Housing ☎ 8226 5430

Government Office Accommodation Committee ☎8226 5240

Department for Communities and Social Inclusion ☎ 8413 9016

Email: DCSIncabinet@dcsi.sa.gov.au

Office for Women ☎ 8303 0959

Department of State Development

- Business and regional impact inquiries ☎ 8226 3821

Department for Environment, Water and Natural Resources: ☎ 8204 9395

Primary Industries and Resources SA: Executive Services ☎ 8226 0393

Office of the Chief Information Officer ☎ 8226 8114

Further information

The Queensland [Policy Handbook](#) contains detailed guidance on consultation:

[The Guide to Regional Consultation for SA Government agencies](#) includes detailed guidance designed, in part, to “...encourage open, accountable and responsive decision-making which is

- informed by effective communication and consultation between the agency and the community
- based on using appropriate and cost-effective methods to inform and involve the local community, key stakeholders and interested parties.”

