

CLAUSE NOTES

Local Government (Miscellaneous Amendments) Bill 2013

PART 1 – PRELIMINARY

Clause 1: Short title

Clause 1 is a formal provision specifying the title of the proposed Act.

Clause 2: Commencement

Clause 2 is a formal provision specifying that all but Part 4 of the Bill will commence on the day it receives Royal Assent. Part 4 (financial and asset management provisions) will commence by proclamation.

PART 2 – BUILDING ACT 2000 AMENDED

Clause 3: Principal Act

Clause 3 identifies that the amendments contained in Part 2 of the Bill relate to the *Building Act 2000*.

Clause 4: Section 3 amended (Interpretation)

Clause 4 amends section 3 of the *Building Act 2000* as follows:

Subclause (a) amends the definition of building order to include a building order relating to a dilapidated building.

Subclause (b) inserts three new definitions – ‘dilapidated building’, ‘dilapidated building notice’ and ‘dilapidated building report’.

Clause 5: Sections 167A (Dilapidated building report) and 167B (Dilapidated building notice) inserted

New section 167A inserted into the *Building Act 2000* to provide a general manager of a council with a new power to address issues associated with dilapidated buildings.

Subsection 167A(1) provides that if a general manager is of the opinion that a building may be a dilapidated building, then the general manager may inspect the building and is to prepare a report on the matter.

Subsection 167A(2) provides that the dilapidated building report is to state whether or not the building is a dilapidated building, the building work or other work the general manager considers necessary to ameliorate the condition of the building and any other relevant matter.

Subsection 167A(3) provides that the general manager may obtain a statement on any matter relating to a dilapidated building report from a building practitioner or any other person the general manager thinks fit.

New Section 167B inserted into the *Building Act 2000*.

Subsection 167B(1) provides that if the dilapidated building report states that a building is a dilapidated building, the general manager may issue a dilapidated building notice to the building owner.

Subsection 167B(2) provides that the dilapidated building notice is to require the owner to show cause within the specified period why the owner should not carry out the building work or other work specified in the report. Subsection 167B(2) also provides that the dilapidated building notice is to be accompanied by a copy of the dilapidated building report.

Clause 6: Section 173A inserted (Building order relating to dilapidated building)

New section 173A inserted into the *Building Act 2000* to provide that if the general manager does not revoke the dilapidated building notice, then the general manager is to serve a building order relating to the dilapidated building.

Subsection 173A(2) provides that the building order is to require the owner to carry out building work or other work to ameliorate the dilapidated building.

Subsection 173A(3) provides that a dilapidated building order may be combined with another building order under the *Building Act 2000*.

Clause 7: Section 200 amended (Amendment or revocation of building order)

Clause 7 amends section 200 of the *Building Act 2000* to provide that if an owner is served with a building order after being issued a dilapidated building notice, and there is a change of circumstances after the original notice was issued, the owner may request the general manager to amend or revoke the building order. Clause 7 also amends section 200 to provide that the general manager may then amend or revoke the building order, or revoke or issue an amended dilapidated building notice.

PART 3 – LOCAL GOVERNMENT ACT 1993 AMENDED

Clause 8: Principal Act

Clause 8 identifies that the amendments contained in Part 3 of the Bill relate to the *Local Government Act 1993*.

Clause 9: Section 3 amended (Interpretation)

Clause 9 amends section 3 of the *Local Government Act 1993* as follows:

Subclauses (a), (b), (c), (d), (e), (g), (h), (j), (k), (m), (n), (o) and (p) relocate the definitions relating to local government elections from Part 15 to section 3.

Subclause (f) amends the definition of electoral advertising to clarify that it means any advertising in respect of a campaign for election by a candidate or intending candidate, that is, it includes advertising by third parties in addition to personal advertising by candidates.

Subclause (i) amends the definition of general manager to include that, in Part 15, it includes a person nominated under section 253A. Under section 253A, the Electoral Commissioner may nominate a person to exercise the powers and perform the functions of a general manager in relation to an election for a proposed municipal area.

Subclause (l) amends the definition of municipal area so that it also includes a proposed municipal area.

Clause 10: Section 32 amended (Approval and certification of rules)

Clause 10 amends section 32 of the *Local Government Act 1993* to clarify that the general manager is to have a copy of the rules (for a proposed authority) approved under subsection 32(1) to be certified by a legal practitioner as being in accordance with the law.

Clause 11: Section 47 amended (Councillor resignations)

Clause 11 removes subsection 47(6) of the *Local Government Act 1993* as it is no longer relevant following the introduction of all-in, all-out council elections every four years.

Clause 12: Section 48 amended (Declaration of interest by councillor)

Clause 12 amends section 48 of the *Local Government Act 1993* to provide that the references to 'interest' are consistent with the definition of 'having an interest' provided in section 49.

Clause 13: Section 48A amended (Declaration of interest by member)

Clause 13 amends section 48A of the *Local Government Act 1993* to provide that the references to 'interest' are consistent with the definition of 'having an interest' provided in section 49.

Clause 14: Section 54 amended (Register of interests of councillors)

Clause 14 amends section 54 of the *Local Government Act 1993* to clarify that the interests referred to are those declared interests the general manager is notified of under section 48(4).

Clause 15: Section 132 amended (Certificate of liabilities)

Clause 15 amends subsection 132(4) of the *Local Government Act 1993* to remove a typographical error.

Clause 16: Section 137 amended (Sale of land for unpaid rates)

Clause 16 amends subsection 137(8) of the *Local Government Act 1993* to clarify the procedure if a council cannot sell land for unpaid rates.

Clause 17: Section 153 amended (Publication of by-laws)

Clause 17 amends section 153 of the *Local Government Act 1993* to require councils to publish adopted model by-laws in the *Gazette*, as well as by-laws made by councils.

Clause 18: Section 154 amended (Repeal and amendment of by-laws)

Clause 18 amends section 154 of the *Local Government Act 1993* to provide clarity in relation to model by-laws, specifically that model by-laws cannot be repealed or amended in the same way as other by-laws.

Subsection 154(3) is amended to clarify that it does not relate to a model by-law.

Clause 19: Section 155 amended (Expiry of by-laws)

Clause 19 amends section 155 of the *Local Government Act 1993* to clarify that model by-laws adopted by a council expire 10 years after the date on which they take effect.

Clause 20: Section 156A amended (Regulatory impact statement)

Clause 20 amends section 156A of the *Local Government Act 1993* to clarify when a council is to prepare a regulatory impact statement in relation to by-laws.

Subsection 156A(5A) is inserted to clarify that the motion of intention to make a by-law is to be made before a regulatory impact statement is submitted to the Director of Local Government under section 156A.

Clause 21: Section 157 amended (Notice of proposed by-law)

Clause 21 amends section 157 of the *Local Government Act 1993* by inserting a requirement that the notice of proposed by-law is to be displayed on the website of the council.

Clause 22: Section 158 amended (Proposed by-laws open to inspection and may be purchased)

Clause 22 amends subsection 158(a) of the *Local Government Act 1993* to clarify that this section only relates to by-laws that the council proposes to make and not to model by-laws.

Subsection 158(ab) inserts a requirement that the notice of a proposed by-law and the regulatory impact statement is to be displayed on the website of the council until the date specified in the notice referred to in section 157.

Clause 23: Section 159 amended (Submissions in respect of proposed by-law)

Clause 23 amends section 159 of the *Local Government Act 1993* to clarify that this section only relates to by-laws that a council proposes to make and not to model by-laws.

Clause 24: Section 160 amended (Alterations to proposed by-laws)

Clause 24 amends section 160 of the *Local Government Act 1993* to clarify that this section only relates to by-laws that a council proposes to make and not to model by-laws.

Clause 25: Section 163 (Commencement of by-law)

Clause 25 amends section 163 of the *Local Government Act 1993* to clarify that this section also relates to model by-laws adopted by a council.

Clause 26: Section 164 amended (By-law to Director)

Clause 26 amends section 164 of the *Local Government Act 1993* to clarify that this section only relates to by-laws that a council proposes to make and not to model by-laws.

Clause 27: Section 165 amended (Title and numbering of by-laws)

Clause 27 amends section 165 of the *Local Government Act 1993* to clarify that this section also relates to model by-laws.

Clause 28: Section 166 amended (Copies of by-laws)

Clause 28 amends section 166 of the *Local Government Act 1993* to require that copies of all current by-laws are to be available on the website of the council.

Clause 29: Sections 170A and 170B inserted (Model by-laws)

New section 170A inserted into the *Local Government Act 1993* to outline the requirements for undertaking a regulatory impact statement in relation to model by-laws.

New section 170B inserted to provide that the Minister may arrange for public consultation in respect of model by-laws.

Clause 30: Section 171 amended (Making of model by-laws)

Clause 30 amends section 171 of the *Local Government Act 1993* to provide that the Minister may make or amend model by-laws dealing with any or all of the subjects on which any council has power to make by-laws.

Subsection 171(2)(a) is amended to provide that a model by-law is to be published in the *Gazette* together with the regulatory impact statement prepared under section 170A, if required.

Subsection 171(2)(b) is amended to clarify that the regulatory impact statement, if any, is to be laid before both Houses of Parliament, with the model by-law.

Clause 31: Section 172 amended (Council may adopt model by-laws)

Subsection 172(5) of the *Local Government Act 1993* is amended to provide that on publication of the adoption in the *Gazette*, the model by-law has, until altered or repealed by the council, the same effect as if it had been made by the council except that sections 162 (Certification of by-law) and 164 (By-law to Director) do not apply.

Subsection 172(5A) is inserted to clarify that if a model by-law (the amending by-law) amends another model by-law that has been adopted by a council, the amending by-law is to be taken to be the model by-law adopted by the council.

Subsection 172(5B) is inserted to provide that a council that adopts a model by-law is to affix its common seal to two copies of the model by-law and is to forward one copy to the Director of Local Government.

Clause 32: Section 174 amended (Repeal of model by-law)

Subsection 174(1A) of the *Local Government Act 1993* is inserted to provide that the Minister's notification of a repealed model by-law is to specify whether subsection (3) (repeal of any other by-law dealing with matters provided for by the model by-law) applies in relation to the notification.

Subsection 174(3) is inserted to provide that if a notification of the repeal of a model by-law specifies that this subsection applies, then a model by-law adopted by a council that consists of the template model by-law, is repealed.

Clause 33: Section 200 amended (Abatement notices)

Clause 33 amends subsection 200(1)(a) of the *Local Government Act 1993* to change 'its' to 'the' to clarify the municipal area that applies to abatement notices.

Clause 34: Section 204A inserted (Infringement notice for non-compliance with abatement notice)

New section 204A inserted into the *Local Government Act 1993* to provide an authorised officer of a council with the power to issue and serve an infringement notice, if a person fails to comply

with an abatement notice (under section 200(3)) and does not appeal against the notice to the Magistrates Court.

Section 204A also provides that an infringement notices carries a penalty of three penalty units (\$390.00 in 2013) and is to be issued in accordance with the *Monetary Penalties Enforcement Act 2005*.

Clause 35: Section 253 repealed (Interpretation of Part 15 – Council elections)

Clause 35 repeals section 253 of the *Local Government Act 1993* because the definitions relating to council elections are to be included under section 3. (Interpretation).

Clause 36: Section 254 amended (Entitlement to be on list of electors and to vote in election)

Clause 36 amends section 254 of the *Local Government Act 1993* to clarify a person's entitlement to be on the list of electors and to vote in an election.

Clause 37: Section 255 amended (Voting by corporations)

Clause 37 amends section 255 of the *Local Government Act 1993* to clarify that the general manager is, subject to existing provisions, to accept the nomination by a corporation on the enrolment of a person and include the person on the roll by the general manager. It also establishes the priority of the earlier nomination for an elector nominated by more than one corporate body.

Clause 38: Section 257 amended (Electoral enrolment form)

Clause 38 amends section 257 of the *Local Government Act 1993* to clarify who is entitled to lodge an electoral enrolment form in respect of the electoral area.

Clause 39: Section 258 amended (Electoral roll)

Clause 39 amends section 258 of the *Local Government Act 1993* to clarify that it is necessary to lodge an electoral enrolment form before being enrolled on the electoral roll kept by a general manager.

Clause 40: Section 259 amended (Inspection of electoral roll)

Clause 40 amends section 259 of the *Local Government Act 1993* to allow any person, rather than only an elector or corporate body, to inspect the electoral roll kept by a general manager and to clarify that an objection to the omission of a person's name requires that person to have lodged an electoral enrolment form.

Clause 41: Section 261 amended (List of electors)

Clause 41 amends section 261 of the *Local Government Act 1993* to make it an offence for a candidate, who has been provided

with a copy of the list of electors, to use that list except for a purpose in connection with the election. The penalty is a fine not exceeding 50 penalty units.

Clause 42: Section 261A inserted (Inspection of list of electors)

New section 261A inserted into the *Local Government Act 1993* to allow inspection of the list of electors kept under subsections 261(1) and (2).

Clause 43: Section 262 amended (Reviews)

Clause 43 amends section 262 of the *Local Government Act 1993* to replace the incorrect reference to 'section 289' with the correct reference to 'section 286'.

Clause 44: Section 270 amended (Eligibility for nomination as councillor)

Clause 44 clarifies that a candidate for the office of councillor must be enrolled on an electoral roll in respect of the municipal area.

Clause 45: Section 271 amended (Notice of nominations)

Clause 45 amends section 271 of the *Local Government Act 1993* to clarify that at least two persons on an electoral roll must sign a person's notice of nomination to be a candidate.

Clause 46: Section 272 amended (Acceptance or rejections of nomination)

Clause 46 amends section 272 of the *Local Government Act 1993* to remove the term 'Electoral Commissioner' and replace it with the 'Tasmanian Electoral Commission'.

Clause 47: Section 278 amended (Electoral advertising)

Clause 47 clarifies that the electoral advertising regulations apply to all persons.

Subsection 48(6) amends subsection 278(1) by inserting a new offence provision proscribing a person from using or displaying a council logo in any electoral advertising. The penalty is a fine not exceeding 20 penalty units.

Subsection 48(7) excludes the Electoral Commissioner from subsection 48(6).

Clause 48: Section 284 amended (Ballot material)

Clause 48 amends section 284 of the *Local Government Act 1993* to allow the Electoral Commissioner to publish candidate statements on the internet.

Clause 49: Section 286 amended (Supplementary issue of ballot material)

Clause 49 amends Section 286 of the *Local Government Act 1993* to provide that supplementary ballot material is to be provided if the elector may be entitled to vote but is not on the list of electors.

Clause 50: Section 286A inserted (When ballot paper sent as supplementary election material may be accepted)

New section 286A inserted into the *Local Government Act 1993* to specify that, in the event there has been a supplementary issue of ballot material, the votes are to be included in the counting in the circumstances specified.

Clause 51: Section 296 inserted (Procedures for voting by persons outside Tasmania)

New section 296 inserted into the *Local Government Act 1993* to allow the Tasmanian Electoral Commission to establish procedures to enable approved electors to vote by email if they are outside Tasmania at the time of the election.

Clause 52: Section 305 amended (Recount of votes)

Clause 52 amends section 305 of the *Local Government Act 1993* by removing the term 'Electoral Commissioner' and replacing it with 'Tasmanian Electoral Commission'.

Clause 53: Section 306 amended (Keeping of electoral material)

Clause 53 amends section 306 of the *Local Government Act 1993* to provide that ballot papers are only to be examined for the purpose of filling a vacancy or other approved purpose.

Clause 54: Section 307 amended (Casual vacancies)

Clause 54 removes subsection 307(3B) of the *Local Government Act 1993* as it is no longer relevant following the introduction of all-in, all-out council elections every four years, and four-year terms for mayors and deputy mayors.

Subsection 307(7) is inserted to provide that the Electoral Commissioner must not disclose the results of a recount in respect to a hypothetical casual vacancy.

Clause 55: Section 308 amended (By-elections)

Clause 55 amends section 308 of the *Local Government Act 1993* to remove the subsections that are no longer relevant following

the introduction of all-in, all-out council elections every four years, and four-year terms for mayors and deputy mayors.

Clause 56: Section 310 amended (Adjournment of poll)

Clause 56 amends section 310 of the *Local Government Act 1993* to remove 'Electoral Commissioner' and replace it with 'Tasmanian Electoral Commission' in section 310.

Clause 57: Section 341 amended (Immunity from liability)

Clause 57 amends section 341 of the *Local Government Act 1993* to expand the 'immunity from liability' provision to members of code of conduct panels, audit panels and the Standards Panel. Clause 57 is also amended to provide that a liability that would lie against a member of a Standards panel, lies against the Local Government Association of Tasmania.

PART 4 – LOCAL GOVERNMENT ACT 1993 FURTHER AMENDMENT

Clause 58: Principal Act

Clause 58 identifies that the amendments contained in Part 4 of the Bill relate to the *Local Government Act 1993*.

Clause 59: Section 66 amended (Strategic plan)

Clause 59 amends section 66 of the *Local Government Act 1993* to provide the requirement for strategic plans to be in respect of at least a ten year period instead of at least five years. As all plans (other than annual plans) under Part 7 of the Act are now required to be reviewed and adopted every four years, provisions referring to 'updating an existing strategic plan' and 'updated strategic plan' have been removed.

Clause 60: Section 68 amended (Proposed strategic plan)

Clause 60 amends section 68 of the *Local Government Act 1993* to remove the requirement for councils to invite submissions when updating an existing strategic plan as all plans (other than annual plans) under Part 7 of the Act are now required to be reviewed and adopted every four years.

Clause 61: Section 69 amended (Public inspection of strategic plan)

Clause 61 amends section 69 of the *Local Government Act 1993* to remove the requirement for councils to make a copy of the strategic plan available for inspection when updating their strategic plan, as all plans (other than annual plans) under Part 7 of the Act are now required to be reviewed and adopted every four years.

Clause 62: Sections 70, 70A, 70B, 70C, 70D and 70F inserted.

New section 70 (Long-term financial management plans) inserted into the *Local Government Act 1993* to require councils to have a long-term financial management plan.

Subsection 70(1) requires a council to prepare a long-term financial management plan.

Subsection 70(2) provides that the plan is to be for at least ten years.

Subsection 70(3) prescribes the objectives of the plan. The plan is to be consistent with the strategic plan, refer to the long-term strategic asset management plan, and also include any matters specified by the Minister in an order.

New section 70A (Financial management strategies) inserted into the *Local Government Act 1993* to require councils to have a financial management strategy.

Subsection 70A(1) requires a council to prepare a financial management strategy.

Subsection 70A(2) provides that the financial management strategy is to be consistent with the strategic plan and contain any matters specified by the Minister in an order.

New section 70B (Long-term strategic asset management plans) inserted into the *Local Government Act 1993* to require councils to have a long-term strategic asset management plan.

Subsection 70B(1) requires a council to prepare a long-term strategic asset management plan.

Subsection 70B(2) provides that a council is to relate the plan to all major assets that are within a class of assets specified by the Minister in an order.

Subsection 70B(3) provides that the plan is to be for at least ten years.

Subsection 70B(4) prescribes the objectives of the plan. The plan is to be consistent with the strategic plan, refer to the long-term

financial management plan, and also include any matters specified by the Minister in an order.

New section 70C (Asset management policies) inserted into the *Local Government Act 1993* to require councils to have an asset management policy.

Subsection 70C(1) requires a council to prepare an asset management policy.

Subsection 70C(2) prescribes the objectives of the asset management policy. The policy is to be consistent with the strategic plan, guide development of the long-term financial and strategic asset management plans, and is to include any matters specified by the Minister in an order.

New section 70D (Asset management strategies) inserted into the *Local Government Act 1993* to require councils to have an asset management strategy.

Subsection 70D(1) requires a council to prepare an asset management strategy.

Subsection 70D(2) prescribes the objectives of the asset management strategy. The strategy is to be consistent with the strategic plan, and is to include any matters specified by the Minister in an order.

New section 70E (Review of plans, strategies and policies) inserted into the *Local Government Act 1993* to require councils to review all plans, strategies and policies (other than the annual plan) developed under Part 7 of the Act.

Subsection 70E(1) requires a council to review the plans, strategies and policies at least once every four years.

Subsection 70E(2) requires a council to notify the Director of Local Government when a plan, strategy or policy has been adopted by the council.

New section 70F (Orders determining the minimum requirements of plans, &c., and classes of assets) inserted into the *Local Government Act 1993* to provide that the Minister, by order, may

prescribe the minimum requirements of the plans, strategies, policies and classes of assets.

Subsection 70F(1) provides that the Minister, by order, may prescribe the minimum requirements of the plans, strategies and policies.

Subsection 70F(2) provides that any plan, strategy or policy may contain matters additional to those required by Ministerial order.

Subsection 70F(3) provides for the Minister, by order, to prescribe classes of assets to be considered as major assets.

Subsection 70F(4) requires the Minister to consult councils in the development of any orders under this section.

Clause 63: Section 84 amended (Financial statements)

Clause 63 amends section 84 of the *Local Government Act 1993* to require councils to report on financial and asset management indicators as part of their annual financial statements.

Subsection (2)(db) requires councils to contain financial and asset management indicators, that have been declared by Ministerial order, in their financial statements.

Subsection 84 (2A) provides that the Minister, by order, may specify which financial and asset management indicators are to be included in the financial statements of councils.

Subsection 84 (2B) requires the Minister to consult councils in the development of orders under section 70(F).

Clause 64: Part 8, Division 4 inserted

New Part 8, Division 4 (Audit panels) inserted into the *Local Government Act 1993* to require councils to establish an audit panel. The new Division also prescribes the functions and responsibilities of audit panels.

New section 85 (Audit panels) inserted into the *Local Government Act 1993* to require that a council is to establish an audit panel and that the constitution of the panel is to be prescribed by the Minister, by order.

New section 85A (Functions of audit panels) inserted into the *Local Government Act* to prescribe the minimum functions of audit panels.

Subsection 85A(1) inserts the requirement for the audit panel to assess a council's performance with respect to its financial sustainability and management, all plans required under Part 7 of the Act, financial safeguards and any other matters as specified by the Minister, by order.

New section 85B (Orders in relation to audit panels) inserted into the *Local Government Act 1993* to provide that the Minister may make orders pertaining to audit panels and their function.

Subsection 85B(1) provides that the Minister, by order, may specify the constitution of an audit panel, minimum skills and experience of audit panel members, the roles and functions of an audit panel and any other matters pertaining to audit panels.

Subsection 85B(2) provides that the Minister is to consult with councils in developing any orders pertaining to audit panels.

PART 5 – CONCLUDING PROVISION

Clause 65: Repeal of Act

Clause 65 is a formal provision that is included in all Amendment Bills.