

# FACT SHEET

## Local Government (Miscellaneous Amendments) Bill 2013

The Local Government (Miscellaneous Amendments) Bill 2013 proposes a number of legislative amendments to provide:

- an improvement in local government financial and asset management capacity and practices;
- councils with the power to take action to rectify issues with dilapidated buildings;
- councils with enhanced powers to deal with nuisances, such as junk or car-wrecks in front yards;
- clarity and some minor changes to some of the electoral provisions of the *Local Government Act 1993*; and
- clarity to a number of other provisions contained within the Local Government Act.

### Financial and asset management

The Bill proposes a number of amendments to the Local Government Act to:

- require councils to maintain long-term financial management and strategic asset management plans (10 years) and financial and asset management strategies;
- require councils to maintain an asset management policy;
- require councils to review their long-term financial management and strategic asset management plans, financial management and asset management strategies and asset management policy every four years;
- require general managers to notify the Director of Local Government (as soon as practicable) when their long-term strategic asset management plan, long-term financial management plan, financial management strategy, asset management strategy and asset management policy have been adopted by the council;
- require councils to report financial and asset management sustainability indicators in their financial statements;
- require councils to maintain an audit panel;
- require councils to develop their strategic plan every 10 years, as opposed to at least every five years, to align and coordinate with the financial and asset management planning process; and

- provide a power for the Minister for Local Government to make orders regarding long-term financial management and strategic asset management planning, financial management and asset management strategies, asset management policies, audit panels and financial and asset management sustainability indicators.

## Dilapidated buildings

The Bill amends the *Building Act 2000* to provide general managers with appropriate discretionary powers to order building owners to carry out building work (or other work) to remedy the adverse effects of dilapidated buildings on local communities. These powers are subject to building owners' rights to make representations regarding building notices and to appeal against a building order.

A dilapidated building is defined as a building (which includes a structure) that because of neglect, disrepair, defacement or damage is of an appearance that is prejudicial to the visual amenity of its surroundings.

In practical terms, conditions such as broken windows, damaged roofs, peeling paint, graffiti or other defects may contribute to a general manager deciding that a building is dilapidated.

The dilapidated buildings process is consistent with the existing processes under Part 11 of the Building Act relating to the issuing of building notices and building orders.

Before forming a decision to remedy a dilapidated building, a general manager must notify the building owner (by a building notice) and invite representations from the owner. This provides the owner with the opportunity to express why they should not be required to carry out the proposed building work (or other work, such as removing graffiti) to ameliorate the dilapidated building.

Additionally, a building owner has appeal rights to the Resource Management and Planning Appeal Tribunal (RMPAT) against a building order issued in respect of a dilapidated building.

The process also provides the general manager with the opportunity to obtain information or advice from a building practitioner (or other person the general manager thinks fit) to assist with determining whether a building is a dilapidated building.

As per the existing building order provisions in the Building Act, a council may carry out the building work to ameliorate the dilapidated building, if a building order has not been complied with. The council can then recover the costs from carrying out any building works by selling building supplies, or

recovering expenses as a charge on the land and recoverable as if it were rates or charges under the Local Government Act.

Importantly, the proposed changes do not override the requirements under existing planning, building, heritage and environmental health legislation.

#### Nuisance provisions

The Bill provides additional powers under the existing nuisance provisions of the Local Government Act to allow councils to issue infringement notices if a person fails to comply with a nuisance abatement notice and does not appeal against the notice to the Magistrates Court.

This is intended to enhance the ability of councils to deal with nuisances, such as junk or car-wrecks in front yards, by providing an incentive for people to comply with nuisance abatement notices.

Infringement notices carry a penalty of three penalty units (currently \$390.00) and are to be in accordance with the *Monetary Penalties Enforcement Act 2005*.

Within 28 days of its issue date, a person who receives an infringement notice for abatement notice non-compliance must:

- pay the infringement notice; or
- apply to the Monetary Penalty Enforcement Service (MPES) for it to be withdrawn; or
- apply to the general manager of the council for it to be withdrawn; or
- lodge a notice to have the matter determined by a court.

If no action is taken by the person after 28 days, MPES can issue an enforcement order, which includes additional costs and may impose enforcement sanctions.

#### Electoral provisions

The changes to the electoral provisions of the Local Government Act are primarily technical in nature and include:

- allowing the Tasmanian Electoral Commission (TEC) to establish procedures for voting by email for people who are outside Tasmania at the time of the election and who meet other circumstances approved by TEC;
- strengthening the provisions around electoral advertising to include electoral advertising by third parties and to make it an offence for a council's logo to be used in electoral advertising;
- making it an offence for a candidate who has been provided with a copy of the list of electors to use the list, except for a purpose in connection with the election;

- allowing TEC to publish candidate statements online;
- transferring some of the Electoral Commissioner's more discretionary powers to the three member TEC;
- clearly setting out the requirements for entitlement to enrol and entitlement to vote in local government elections; and
- removing provisions consequential to the recent introduction of all-in, all-out council elections every four years, and four year terms for Mayors and Deputy Mayors.

### Model by-law provisions

The Bill clarifies the provisions of the Local Government Act relating to model by-laws, including clarifying:

- the onus to prepare regulatory impact statements for model by-laws;
- the requirements regarding public consultation on model by-laws;
- the process for council adoption of model by-laws;
- the requirements around publishing model by-laws in the *Gazette*;
- the process and requirements in the event of a repeal of a model by-law; and
- the commencement and expiry dates for model by-laws;

### By-law provisions

The Bill includes a minor change to the Local Government Act to strengthen the onus on a council to prepare a regulatory impact statement for a by-law. The Bill also clarifies that a council's 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.

Furthermore, the Bill requires councils to display copies of by-laws (and associated regulatory impact statements) on the website of the council.

### Pecuniary interests

The Bill includes minor changes to the pecuniary interest provisions of the Local Government Act. The changes clarify the linkages between the relevant sections and ensure consistency regarding the definition of 'having an interest'.

### Immunity from liability

The Bill amends an existing gap in the provisions of the Local Government Act relating to immunity from liability. This amendment ensures that members of a code of conduct panel, an audit panel, or a Standards Panel are protected

from personal liability regarding honest acts done or made in the exercise of their powers under the Act.

#### Other

The Bill incorporates a number of minor changes to the Local Government Act to fix linguistic errors and clarify linkages between relevant sections.