

CLAUSE NOTES

Local Government Amendment (Targeted Review) Bill 2017

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 Part 2 of the Bill will commence on the day the Act receives Royal Assent. Part 3 of the Bill will commence on a day or days to be proclaimed.

Clause 3: Principal Act

Clause 3 identifies that the amendments relate to the *Local Government Act 1993*.

Clause 4: Section 3 amended (Interpretation)

Clause 4 amends section 3 of the Act as follows:

Subclause (a) amends the definition of "absolute majority" to clarify that it is more than half of the elected councillors of the council who are not suspended.

Subclause (b) inserts a definition of "audit panel".

Subclause (c) amends the definition of "nomination period" to replace "7th" with "8th".

Subclause (d) amends the definition of "nomination period" to replace "5th" with "6th".

Subclause (e) inserts the definition of "performance improvement direction".

Clause 5: Section 16 amended (Municipal areas)

Clause 5 clarifies section 16 to allow the approval of minor boundary adjustments without the need for a Local Government Board review. This amendment also clarifies the general approval process for boundary adjustments.

Clause 6: Section 27 amended (Functions of mayors and deputy mayors)

Clause 6 amends section 27(1)(a) to (g) to clarify the leadership role of the mayor.

Subsection 27(1)(h) requires the mayor to liaise with the general manager on the activities and performance of the council and the general manager in the exercise of their functions.

Subsection 27(1)(i) provides that the functions of the mayor includes any function imposed by a Ministerial order issued under section 27A.

Subsection 27(1)(j) provides that the functions of the mayor include any other function imposed by this or any other Act.

Subsection 27(2)(a) clarifies that absent means absent from duty as Mayor or from the State, unavailable for duty as mayor or unable to perform the functions of mayor.

Clause 6 removes the function of the mayor to “oversee councillors”.

Clause 7: Section 27A inserted - Order relating to Mayor's functions

Clause 7 inserts a new provision to provide the Minister with the power to make, amend, revoke or substitute an order to clarify and/or specify the role and functions of the mayor, following consultation by the Minister with councils on the matters to be included, amended or substituted.

Any order made under the new section 27A may be combined with an order made under section 28AA, section 62A or section 62B.

Subsection 27A(5) provides that an order made under this section is subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.

Clause 8: Section 28AA inserted - Order relating to functions of councillors

Clause 8 inserts a new clause to provide the Minister with the power to make, amend, revoke or substitute an order to clarify the functions of councillors, following consultation with councils on the matters to be included, amended or substituted.

Any order made under the new section 28AA may be combined with an order made under section 27A, section 62A or section 62B.

Subsection 28AA(6) provides that an order made under this section is subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.

Clause 9: Section 53 amended (Notification of interest)

Clause 9 inserts a provision that any person who considers that an audit panel member has an interest in a matter being, or to be dealt with, by an audit panel is to notify the respective general manager. The general manager is to inform the audit panel member and all other members of that panel of that notification.

Clause 10: Sections 55B, 55C, 55D and 55E inserted

Clause 10 inserts new sections 55B, 55C, 55D and 55E.

The new section 55B provides that a member of an audit panel has an interest in the making of a recommendation or in a review by the audit panel if the panel was to make a recommendation or conclude a review in a particular manner and the panel member would receive, have an expectation of receiving or be likely to receive a pecuniary benefit or detriment by that outcome.

This section also applies to a close associate of an audit panel member.

Subsection 55B(3) provides that section 51 and 52 of the Act apply as if a reference to a member were a reference to a member of the audit panel.

The new section 55C(1) provides that an audit panel must not participate in any discussion, or vote, in relation to the making of a recommendation or review, if the member has an interest. A penalty of a fine not exceeding 20 penalty units may be applied.

The new subsection 55C(2) provides a penalty of a fine not exceeding 50 penalty units if a member of an audit panel fails to declare an interest before any discussion, or further discussions, relating to the recommendation or review takes place.

Subsection 55C(3) provides that chairperson of the audit panel is to record a declaration of an interest in the minutes of the meeting and any relevant written report the audit panel provides to the council.

Subsection 55C(4) provides that a member of an audit panel is to notify the general manager in writing of the details of any declared interest.

The new section 55D provides that a general manager is to keep a register of interests of members of the audit panel, which may be inspected by councillors of that council.

Subsection 55D(4) provides that the register is exempt from the provisions of the *Right To Information Act 2009*.

The new section 55E provides that a failure by an audit panel member to declare an interest does not invalidate any proceeding, review or recommendation of the audit panel.

Clause 11: Section 57 (Petitions)

Clause 11 amends section 57 to allow for the lodgement of electronic petitions, which are created and circulated electronically, to councils.

Clause 12: Section 58 amended (Tabling petition)

Clause 12 removes subsection (1)(a) of the Act to clarify the process of tabling petitions.

Clause 13: Section 61 amended (Appointment of general manager)

Clause 13 inserts a new clarifying provisions that provides that a council may appoint a person as general manager in accordance with any relevant order made under section 61A.

Clause 14: Section 61A and 61B inserted

Clause 14 inserts new sections 61A and 61B.

Section 61A provides the Minister with the power to make, amend, revoke or substitute an order to clarify the selection, appointment, reappointment and performance of a general manager, following consultation with councils on the matters to be included, amended or substituted.

Section 61B clarifies when a general manager is considered "absent" and the arrangements for acting general managers.

The new subsection 61B(2) clarifies that the mayor has the power to appoint a person to act in the office of general manager if the general manager is absent and no person has been appointed by the council, or that person is also absent.

The new subsection 61B(3) clarifies how the appointment of a temporary general manager by the mayor can end.

The new subsection 61B(4) provides the council with the power to appoint an acting general manager as a standing appointment.

The new subsection 61B(5) clarifies the extent of the appointment of an acting general manager.

Subsection 61B(6) provides that while an appointed person is acting as general manager, that person is taken to be the general manager.

Clause 15: Sections 62A and 62B inserted

Clause 15 inserts new sections 62A and section 62B.

Section 62A provides the Minister with the power to make, amend, revoke or substitute an order to clarify the functions and powers of a general manager, following consultation with councils on the matters to be included, amended or substituted.

Any order made under the new section 61A may be combined with an order made under section 27A, section 28AA, or section 62B.

Subsection 62A(6) provides that an order made under this section is subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.

Section 62B provides the Minister with the power to make, amend, revoke or substitute an order to clarify the manner in which general managers are to liaise with their mayors, following consultation by the Minister with councils on the matters to be included, amended or substituted.

Any order made under the new section 61B may be combined with an order made under section 27A, section 28AA, or section 62A.

Subsection 62B(6) provides that an order made under this section is subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.

Clause 16: Section 65 amended (Qualified persons)

Clause 16 amends section 65 to clarify that, if a council or council committee requires advice of a qualified person to make a decision, that the general manager certifies in writing that the advice was obtained and taken into account when providing general advice and a copy of the advice, or a written transcript or summary of that advice, if provided orally, is provided to the council or committee with the general manager's certificate.

Clause 17: Section 72 amended (Annual report)

Clause 17 amends section 72 to require councils to report in their annual report a statement in relation to each significant business activity undertaken by the council and the statement of revenue in relation to that significant business activity.

Subsection 72(1)(ab) is amended to require a council to report on "key management personnel" within the meaning of the Compiled Accounting Standard AASB 124.

Clause 18: Section 82A inserted

Clause 18 inserts a new section 82A to allow a council to authorise a general manager to continue to meet current and accruing requirements where the council may not have adopted its estimates before the end of the previous financial year. A general manager will be able to continue to meet current and accruing requirements for the months of July and August in that financial year.

Clause 19: Section 214A amended (Scope of Review)

Clause 19 amends section 214A to include that matters that may be taken into account by a Local Government Board review can include the whole or a part of a matter.

In addition, clause 19 amends section 214A to clarify that the operation of a council includes the performance and exercise of the council's functions and powers, and the administrative operation, governance and decision making of a council.

Clause 20: Part 12 B inserted - Performance Improvement Directions

Clause 20 inserts a new Part 12B - Performance Improvement Directions.

The new Part 12B inserts a new mechanism that will be used to require a council, a councillor or some councillors to take, refrain from taking, or ceasing taking an action to improve their performance with respect to statutory compliance.

The Performance Improvement Directions will act as an intermediary step between the Director of Local Government investigating a matter and the Minister requiring or initiating a Local Government Board Review or Board of Inquiry into the council, councillor or councillors.

New Section 214L provides that the Director of Local Government may recommend to the Minister that the Minister issue a performance improvement direction to a council, councillor or councillors if the Director is of the opinion that there has been a failure to comply with a statutory requirement under the Act or subordinate legislation that is not minor in nature, or there has been failure on a number of occasions to comply with a statutory requirement under any legislation.

The new section 214M provides the Minister with the power, following a recommendation from the Director, to issue, or refuse to issue, to a council, councillor or councillors a direction requiring a council, councillor or councillors to take, refrain from taking or cease taking an action. The Minister is to take into consideration any submissions from the affected council, councillor or councillors before issuing a direction.

Subsection (4) provides that a direction may set out the consequences of failing to comply with the direction.

The new section 214N requires the Minister to notify a council, councillor or councillors of a proposal to issue a direction, and provide the council, councillor or councillors with the opportunity to make submissions to the Minister on the proposed performance improvement direction.

The new section 214O provides the Minister with powers in the event that a council, councillor or councillors fails to comply with a performance improvement direction.

This new section allows the Minister to suspend a councillor, some councillors or all of the councillors from office for a period not exceeding 6 months; require the Local Government Board to carry out a general or specific review; or establish a Board of Inquiry to investigate the council.

The new subsection 214O(2) provides that, if the Minister suspends all of the councillors of a council, the Governor may appoint a commissioner for the period of the suspension and that Division 2 of Part 13 of the Act will apply.

Clause 21: Section 215 amended (Board of Inquiry)

Clause 21 amends section 215 to clarify that the Minister, if a Board of Inquiry is established, may suspend all or any of the councillors from office at any time during the inquiry until the Minister gives a direction under section 225(2) of the Act or an order by the Governor dismissing all or any councillors under section 226 takes effect.

Clause 22: Section 217 amended (Powers of Board of Inquiry)

Clause 22 amends section 217 to expand the power of a Board of Inquiry to require a person to provide written responses or information when requested by a Board of Inquiry.

Clause 22 further amends section 217 to apply a penalty of a fine of up to 50 penalty units to a person who fails to comply with the new power to require a person to provide written responses or information.

Clause 23: Section 218 amended (Procedure of Board of Inquiry)

Clause 23 clarifies that a Board of Inquiry is not required to hold a public hearing or permit the cross-examination of a witness.

Clause 24: Section 220 amended (Representation)

Clause 24 clarifies that a legal practitioner or agent representing a person is not entitled to cross-examine a witness without the permission of a Board of Inquiry.

Section 220 is further amended to clarify that a Board is not required to permit the cross-examination of a witness by that legal practitioner or agent.

Clause 25: Section 222 amended

Clause 25 provides that a person cannot refuse or fail to comply with a requirement to produce, or give access to, any documents and records which the Board of Inquiry considers may be relevant, providing the documents or records are within the possession or control of the person.

Section 220 provides for a penalty of a fine of up to 50 penalty units for failure to comply.

Clause 26: Section 223A inserted

Clause 26 inserts section 223A to provide that , except as required or allowed by the Act or another Act, a person must not disclose any information provided to them by a Board of Inquiry in the course of an inquiry on the condition that the person keep that information private and confidential.

The new section provides a penalty of a fine not exceeding 50 penalty units and allows that in addition to, or in substitution for, the imposition of a monetary penalty, the court may dismiss a defendant, if that person is a councillor, or bar a councillor or person from nominating as a candidate for any election for a period not exceeding 7 years.

Clause 27: Section 225 amended (Result of inquiry)

Clause 27 amends section 225 to provide the Minister, following the provision of a report from a Board of Inquiry, with additional powers to direct an individual councillor to do, or not do an action, as distinct from directing the whole council.

Clause 28: Section 226 amended (Dismissal of councillors)

Clause 28 amends section 226 to provide that the Minister may dismiss individual councillors in addition to the ability to dismiss the entire council.

In addition, clause 28 inserts a new subsection (1A) to clarify that "operation of the council" includes the performance and exercise of the council's functions and powers, the administrative operation, the governance and the decision making of the council.

Clause 29: Section 230 amended (Appointment of commissioner on suspension)

Clause 29 clarifies that a commissioner may be appointed if all of the councillors from a council are suspended.

Clause 30: Section 231 amended (Appointment of commissioner on dismissal)

Clause 30 clarifies that a commissioner may be appointed if all of the councillors from a council are dismissed.

Clause 31: Section 260 amended (Closure of electoral roll)

Clause 31 amends section 260 to extend the closing day of the electoral roll for another week in the electoral area.

Clause 32: Section 269 amended (Notice of election)

Clause 32 amends section 269 to extend the timeframe by a week as to when the Tasmanian Electoral Commissioner is to cause notice of an election to be advertised in a municipal area.

Clause 33: Section 274 amended (Election without poll)

Clause 33 amends section 274 to extend the timeframe by a week as to when new nominations may be made for unfilled vacancies.

Clause 34: Section 278 amended (electoral advertising)

Clause 34 removes "broadcast" as it is unnecessary duplication with an exclusion provided in subsection 278(4)(b) of the Act.

Section 278 is further amended by capturing a broadcast of electoral advertising that is repeated on the internet.

Clause 35: Section 338A amended (Disclosure of information)

Clause 35 clarifies that section 338A also relates to members of an audit panel.

Clause 36: Section 339 amended (Improper use of information)

Clause 36 clarifies that section 339 also relates to members of an audit panel.

Clause 37: Section 339A amended (Misuse of office)

Clause 37 clarifies that section 339A also relates to members of an audit panel.

Clause 38: Section 339E amended (complaints against non-compliance or offence)

Clause 38 amends section 339E of the Act to clarify the powers of the Director of Local Government in relation to the handling of complaints.

Clause 39: Section 339EA inserted (Investigations of complaints and other matters)

Clause 39 inserts a new section 339EA to clarify that the Director of Local Government can carry out an investigation without receiving a complaint in respect of any matter which could be the subject of a complaint under section 339E or any other matter relating to compliance with, or the administration of, the Act.

The new section 339EA provides that the Director can determine the procedure for investigations.

The new section 339EA also provides the Director with the power to provide information obtained from an investigation to another authority that the Director considers appropriate.

Clause 40: Section 34I amended (Immunity from liability)

Clause 40 clarifies that a person who is performing a function or power under the Act is not personally liable in respect of any act done or omitted to be done, provided it is done or omitted to be done in good faith.

Subsection 34I(3) provides that a liability that would lie against a member of the Board, the Executive Officer of the Code of Conduct Panel, a member of the Code of Conduct Panel, a member of a Board of Inquiry or a commissioner lies against the Crown.

Clause 41: Section 348A inserted

Clause 41 clarifies that a reference to the Local Government Act includes a reference to any subordinate legislation made under the Act.

Clause 42: Schedule 5 amended (Office of councillors)

Clause 42 provides a transitional period to allow councillors, that may need to change their stated electoral roll address, the time to ensure they can update their electoral details so that they are not automatically vacated from office, provided they are eligible.

Clause 43: Principal Act

Clause 43 identifies that the amendments relate to the *Local Government Act 1993*.

Clause 44: Section 3 amended (Interpretation)

Clause 44 amends section 3 (interpretation) of the Act as follows:

Subclause (1) amends the definition of "electoral advertising" to include "on the internet".

Subclause (b) inserts a definition of "model financial statements".

Clause 45: Part 5A inserted (Gifts and Donations)

The new section 56A inserts a new requirement for a councillor to notify the general manager of a council, in a specified form, if they receive a gift or a donation as prescribed under the *Local Government (General) Regulations 2015*.

The Local Government General Regulations will be amended, following further consultation with local government, to provide the details concerning the notification of gifts and donations.

The new section 56B provides that the general manager is keep a gifts and benefits register in a specified form.

Clause 46: Section 83A inserted (Model financial statements)

Clause 46 inserts a new section 83A.

Section 83A requires councils to prepare financial statements in line with model financial statements issued by the Director of Local Government for each financial year. These statements will be provided to the Director from the Tasmanian Auditor-General.

Clause 47: Section 84 amended (Financial statements)

Clause 47 clarifies that the financial statements are to be in the form, and contain the information, as set out in the model financial statements.

Clause 48: Repeal of Act

Clause 48 is a formal provision that repeals this Amendment Act on the 365th day from the day on which all of the provisions of this Act commence.