

DRAFT SECOND READING SPEECH

HON. PETER GUTWEIN MP

Local Government Amendment (Targeted Review) Bill 2017

check Hansard for delivery

I move – That the Bill now be read for the second time.

Madam Speaker, in July 2015, I announced a targeted review of the *Local Government Act 1993* that was aimed at improving the governance arrangements within our councils in line with community expectations for transparency and accountability.

I established a Steering Committee to undertake the review, chaired by the Department of Premier and Cabinet's Deputy Secretary, with representatives from the Department's Local Government Division (LGD), the Local Government Association of Tasmania (LGAT) and the Local Government Professionals Australia (Tasmania).

This Bill is a culmination of the outcomes of that review presented to me by the Steering Committee and considerable public consultation undertaken with the community, key stakeholders and the local government sector.

Community expectations with respect to governance standards have increased over time for all levels of government. It is important that local government in Tasmania is able to respond to these expectations. The proposed amendments to the Local Government Act are a key component to support local government in this endeavour. This will be further supported through non-legislative measures, including work to be done by the Local Government Division through its education program to promote a learning and development culture.

The Government is committed to improving the efficiency and effectiveness of local government to reduce costs to the Tasmanian community and ratepayers. While the majority of councils and councillors generally perform their functions to the satisfaction of most of their community, there is strong support from the community and indeed the sector itself, for better mechanisms to address under performance or dysfunction before those issues create significant problems, such as those evident in the Huon Valley and Glenorchy in recent times.

Madam Speaker, this Bill is about ensuring that there are suitable mechanisms and tools in place to support good governance and performance within the sector. In this regard, amendments under the Bill introduce a new performance tool as well as tighten and clarify already existing Board of Inquiry processes.

The Bill firstly introduces Performance Improvement Directions that can be implemented by the Minister for Planning and Local Government to address issues that may be arising in a council. The use of a Performance Improvement Direction would aim to avoid having to initiate a Board of Inquiry or Local Government Board review.

Performance Improvement Directions will aim to provide early intervention to resolve matters of performance when they first arise, before they escalate and impact more seriously upon the operations or governance of a council. It is anticipated that such early intervention may act to mitigate negative impacts and costs upon the Tasmanian community.

The Minister will be able to issue a Performance Improvement Direction on the recommendation of the Director of Local Government, where the Director believes that there has been a failure to comply with the statutory requirements under the Act or any other Act. The Minister will also be required to consult with the council or councillor(s) affected, prior to issuing such a Direction.

Any Performance Improvement Direction that is issued will stipulate what actions are required and who must take those actions. It may also contain reporting requirements on those actions as well as what the consequences are for failing to comply with the direction. The consequences of failing to comply include: suspension for a period of time not exceeding six (6) months; or initiating a Board of Inquiry or Local Government Board Review.

Consultation indicated general support for the introduction of Performance Improvement Directions. Such early intervention should be beneficial to both the sector and the Tasmanian community and is a welcomed alternative option for addressing such issues.

Madam Speaker, as I mentioned, the Bill also aims to amend the processes and outcomes of Boards of Inquiry in order to assist future Boards to operate efficiently and effectively, as well as reduce the social and economic impacts upon the Tasmanian community and ratepayers.

Indeed, as has been recently demonstrated, it is disappointing that the Tasmanian community has, and can be, adversely impacted as a result of matters not being able to be resolved quickly and a Board of Inquiry being delayed from undertaking its processes and review.

In order to address these issues, the Bill provides amendments that support Boards of Inquiry; providing flexibility and tightening of processes in order to allow future Boards to operate more efficiently. These amendments will not have retrospective application upon the current processes already underway.

Under the Bill, there will now be greater flexibility to suspend individual, several or all councillors during any stage of a Board of Inquiry. A suspension will continue for the entire duration of the Inquiry, to ensure that a Board can continue its work efficiently and effectively. Consequential amendments will also be made to ensure that a council can continue to function where some or all councillors are under suspension. This will be accompanied by the ability for the Minister to recommend (following a recommendation from a Board of Inquiry) to the Governor to exercise the power to dismiss individual, several or (as currently provided for) all councillors. While it is anticipated that such provisions would be rarely exercised, it is important to build in the flexibility to the Act, should the circumstances and necessity for its exercise arise in the future.

The Bill provides several amendments to assist Boards of Inquiry with their progress and reduce delays and costs associated with their review. There are amendments to provide Board of Inquiry's with greater ability to access and request information within a certain

timeframe, as well as an offence for a person who, unless otherwise required or allowed by law, from disclosing private or confidential information that has been provided to them by the Board of Inquiry. The applicable penalty for the latter will be a fine not exceeding 50 penalty units. Where the defendant is a councillor, there will also be an ability for a court (either in addition to or in substitution for the penalty) to make an order to dismiss that councillor or bar them from nominating as a candidate from any election for a period of 7 years. These penalties will be consistent with penalties for other similar offences already in the Act.

Madam Speaker, the Bill also aims to clarify the investigatory powers of the Director of Local Government to ensure that he or she is equipped to handle complaints received of alleged non-compliance and offences, and undertake investigations with greater flexibility and efficiency.

The Bill separates and clarifies the investigation of complaints received by the Director, and the Director's ability to instigate own motion investigations. The Bill provides the Director with the ability to determine the way in which he or she handles or investigates complaints, including flexibility to reject, investigate or dismiss such a complaint.

Amendments under the Bill will also clarify the circumstances in which the Director can refer information gained from an investigation to approved third parties, such as the Integrity Commission.

These changes to the Director's powers do not materially expand the role and powers of the Director, but rather clarify and better support the Director's existing jurisdiction under the Act so that he or she can perform the function as intended.

Madam Speaker, the Bill also proposes Ministerial Orders as a tool that the local government sector and the Minister for Planning and Local Government can use together to set agreed, high-level principles with respect to particular matters that may need further clarity. Over time, as there are more changes in community expectations on the roles of key members within the sector, there may need to be a more flexible and adaptive way of responding and clarifying these roles.

Ministerial Orders are a more flexible and adaptive way of responding to a need for more clarity upon certain areas of the Act. They can be introduced, amended and removed in a more timely manner than amendments to the Act, while allowing for consultation with the sector.

Ministerial Orders will be available to be implemented under several areas, including: the functions of mayors, functions of elected members, functions of general managers, the appointment and performance of general managers and the function of general manager's liaising with the mayor.

I am aware that there has been concern that such Ministerial Orders could be used as a tool to unduly interfere with the independence and autonomy of the sector. That is not the intention. The intention is that the sector will be able to raise any areas where there may be a systemic lack of clarity that should be addressed through a Ministerial Order, and the sector would work together with the Government to address these matters. In order to address

concerns of undue interference, in addition to the requirement to provide notice and consultation with the sector, Ministerial Orders will be subject to review and disallowance by Parliament, similar to subordinate legislation.

The Bill makes specific changes to the role of mayor in response to changing expectations from the community and the sector. The amendments strengthen and clarify the role of the mayor, as well as attempt to focus and acknowledge the important leadership aspect. The new amendments include carrying out the civic and ceremonial functions of the mayoral office and promoting good governance by and within the council. Complementary amendments around commitments to abiding by principles of good governance and ongoing learning and development are proposed to be made later, to the Declaration of Office for all elected members, under the *Local Government (General) Regulations 2015*. There will be further opportunity for consultation with the sector when the amendments are proposed to those regulations.

In light of these inclusions, the function of the mayor to oversee the performance of councillors in the exercise of their functions has been removed. If the function were to be retained, mayors should be provided with executive power to fulfil the function. However, there is no clear community or sector support for fundamentally empowering the role of mayor to this extent over other elected members.

Madam Speaker, the Bill also aims to increase accountability and transparency within the sector by introducing the requirement for general managers to maintain a mandatory gifts and donations register for elected members and a complimentary requirement for elected members to notify the general manager of gifts or donations they have received.

Amending the Act is just the first step in providing the framework. The specific details surrounding the gifts and donations register will be prescribed under the *Local Government (General) Regulations 2015* and there will need to be further extensive consultation and collaboration between the Government and the sector in order to ensure that the framework represents what the sector has envisioned.

I commend the sector on its approach to gifts and donations, and the Tasmanian community can be assured that the sector has a proactive approach to transparency.

The Bill also includes a number of additional and consequential amendments to assist in providing a more modern, efficient and effective framework for local government under the Act:

- The boundary adjustment approval process has been simplified for adjustments that are minor in nature;
- Electoral timeframes, including the timeframe for nominating as a candidate, have been extended to allow for changes to Australia Post's delivery schedules;
- The Bill clarifies that Councils may accept electronic petitions;

- The provisions relating to qualified advice have been improved to ensure that councillors receive transcripts or copies of the advice provided to enhance informed decision making;
- There is clarification in relation to the appointment of acting general managers to provide councils with clear options to decide how best to manage absences;
- The Bill clarifies that audit panel members are subject to similar conflict of interest provisions as councillors and members of council committees, and what action to take if there is identified interest. In addition, audit panel members are now specifically included in the definition of member within the offence provisions of the Act, such as disclosure of information, improper use of information and misuse of office;
- Schedule 5 of the Act is amended to provide 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;
- The Bill introduces a requirement for councils to prepare financial statements in line with model financial statements provided by the Auditor-General through the Director of Local Government;. This amendment will commence at a later date to be proclaimed to allow councils time to prepare for the implementation of the new changes;
- Councils will also now report on “key management personnel” to reflect changes to Accounting Standards;
- Councils will now be able to authorise a general manager to continue to meet current and accruing requirements during July and August where the council may not have adopted its budget estimates before the end of the previous financial year;
- The Bill clarifies that a reference to the Act includes a reference to any subordinate legislation made under the Act; and
- The Bill provides that the definition of “advertising” for local government elections includes advertising on the internet. It is my intention to commence these amendments prior to the October 2018 local government elections, subject to consultation with the Tasmanian Electoral Commission.

Madam Speaker, I commend the Bill to the House.