

# FACT SHEET

## ***Local Government Amendment (Targeted Review) Bill 2017***

The Local Government Amendment (Targeted Review) Bill 2017 makes amendments to the *Local Government Act 1993* (the Act) following a targeted review of that Act.

The majority of the amendments will commence on the date that the Bill receives Royal Assent. In summary those changes include:

### **1. Minor Boundary Adjustment**

The Bill will amend section 16 of the Act to streamline the process for boundary adjustments that are a minor in nature. A Local Government Board review will no longer be required for minor boundary adjustments, where there is agreement from the councils involved and consent from any affected owners of land. This will reduce red tape and costs associated with this process.

### **2. Mayors**

The Bill will amend section 27 of the Act to clarify the role of the mayor to include carrying out civic and ceremonial functions, promoting good governance and chairing meetings in a manner that supports decision-making processes. These strengthens and emphasizes the role that Mayors play.

The role of a mayor to oversee the councillors in the performance of their functions and in the exercise of their powers has been removed as there is no executive power for mayors to properly perform this function (and nor was there clear support for providing mayors with such executive power). Further, good governance is now being included as a function of the mayor which should encapsulate aspects of performance.

### **3. Ministerial Orders**

The Bill provides the Minister with the ability to issue Ministerial Orders in relation to such matters as the role of mayors, functions of elected members, functions of general managers, the appointment and performance of general managers and the role of general manager's liaising with the mayor.

It is intended that the sector raise with the Minister any areas where there may be a systemic lack of clarity on any particular matter for addressing through a Ministerial Order. Ministerial Orders will prescribe high-level principles and are more flexible than making amendments to the Act. They can be introduced, amended and removed in a more timely manner, while allowing for consultation with the sector, and will be subject to review and disallowance by Parliament, similar to subordinate legislation.

### **4. Audit Panel Members**

Several consequential amendments will be made to the Act under the Bill to ensure that members of an audit panel are bound by both confidentiality and interest requirements under the Act to reflect that audit panel members consider and review sensitive or confidential information.

## **5. Petitions**

The Bill amends section 57 to ensure that the Act is more contemporary to accommodate online or electronic petitions by prescribing the requirements for petitions that are created in hard copy or electronically online.

## **6. General Managers**

The Bill clarifies appointments of acting general managers. The amendments aim to cover already existing methods or arrangements for acting appointments by councils and provides them with the ability of determining whichever practise may best suit their policies. For example, a council could choose to have a standing acting arrangement in all absences of the general manager, or choose to appoint a new acting arrangement each time for every absence.

Section 65 will be amended under the Bill to clarify that a general manager must ensure that they must certify and keep records of any qualified advice that has been received verbally. This ensures that such advice is accurately recorded and that all elected members receive the same advice to help promote effective decision-making.

## **7. Financial and Administration**

The Bill provides several consequential amendments in order to accommodate the new model financial statements, including amending annual reporting requirements such as “senior positions” to “key management personnel” in line with the Australian Accounting Standards Board AASB 124.

Under section 82A, a council will also be able to authorise a general manager to continue to meet current and accruing requirements where it may not have adopted its estimates before the end of the 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.

## **8. Scope of Local Government Board Review**

The scope of a Local Government Board review will be clarified under the Bill. It encapsulates that a review looks at all aspects of the operation of a council including the performance and exercise of the council's functions and powers, the administrative operation, governance and decision making.

## **9. Performance Improvement Directions**

The Bill introduces newly created Performance Improvement Directions that are intended to be a ‘middle ground’ option between an investigation by the Director of Local Government and a Board of Inquiry. A Performance Improvement Direction will be able to be applied to a council, all councillors or individual councillors.

It is anticipated that Performance Improvement Directions will be used as an efficient and effective tool to provide early intervention and rapidly improve performance before it escalates and impacts more seriously the operations or governance of a council. In this regard it is intended that Performance Improvement Directions may lessen the need for a Board of Inquiry review.

Performance Improvement Directions will only be made on the recommendation of the Director of Local Government where the Director believes that there has been a failure to comply with statutory requirements under the Act or any other Act. The Director must give reasons for his or her recommendation.

The Minister is then to determine whether he or she wishes to issue a Performance Improvement Direction, and must consult upon the draft Performance Improvement Direction with the council or councillor affected prior to doing so.

The Performance Improvement Direction will stipulate what actions are required, who must take those actions, reporting 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 or initiating a Board of Inquiry or Local Government Board Review.

The proposal for Performance Improvement Directions received general support from local government.

## **10. Boards of Inquiry**

The Bill amends processes and outcomes of Boards of Inquiry (Boards) in order to assist future Boards of Inquiry to operate efficiently and effectively, reduce the social and economic impacts upon the community or ratepayers of a municipality.

There will be more flexibility to suspend individual, several or all councillors during any stage of the Board of Inquiry. Suspended councillors will remain suspended for the duration of the Board of Inquiry. This is to ensure that suspension is available such that a Board of Inquiry can continue its work efficiently and effectively. The Bill makes consequential amendments to section 3 (Interpretation) in order to ensure voting can still occur where a council may have several, but not all, councillors suspended. Consequential amendments will also be made to the arrangements around the appointment of a commissioner on dismissal or suspension of all councillors.

The Bill clarifies and tightens Board of Inquiry processes in order to allow a Board to operate more efficiently. A Board will now be able to request information or access to information within a certain timeframe and with associated penalty for non-provision of requested information. This aims to encourage persons to provide information to Boards quickly to assist the Board with its progress and reduce delays and costs.

The Bill also clarifies that Boards of Inquiry will not be required under the Bill to hold a public hearing or permit the cross-examination of a witness by a legal practitioner or agent.

It will now be an offence for a person, including a councillor or suspended councillor, from disclosing information that has been provided to them by the Board in the course of its inquiry on the condition that that information be kept private and confidential. This amendment is to protect and ensure that all persons affected are treated equitably and that the progress of a Board of Inquiry is not impacted by the release of confidential information, particularly before the final report has been released and made public.

There will be more flexibility to dismiss an individual, several or all councillors following a Board of Inquiry process.

Consequential amendments will be made to ensure that where some, but not all, councillors are dismissed or suspended, there is adequate provision to allow for an absolute majority to be formed. There will also be changes to section 341 immunity provisions to ensure that it is consistent for both Local Government Boards and Boards of Inquiry.

## **11. Director of Local Government**

The Bill clarifies the powers of the Director of Local Government with respect to his or her ability to investigate matters or handle complaints.

The provisions will now clarify the ability of the Director to determine the procedure for handling or investigating complaints. The Director can accept or reject a complaint, as well as investigate or dismiss such a complaint.

There will be stand alone provisions with respect to the Director's ability to investigate complaints or other matters, that is, own motion investigations instigated by the Director. The provisions will clarify that the Director may determine the procedure for such investigations as well as the ability to refer any information gained from an investigation to approved third party authorities such as the Integrity Commission.

These amendments will ensure that complaints and investigations are handled with greater efficiency.

## **12. Electoral Matters**

Consequential amendments extend local government election dates by one week. These changes are considered necessary to accommodate for business changes to Australia Post's delivery services that would adversely impact postal voting. This ensures that adequate time is given for voters to return their postal votes in the mail.

The Bill also provides an amendment to address a technical issue with respect to automatic vacation of office in certain situations where a councillor moves from one municipality to another and there may be transitional issues with respect to enrolling on the respective House of Assembly and general manager's electoral roll. In summary, it will provide a grace period of 30 days to councillors, under such transitional circumstances, to ensure they are properly enrolled such that they are not automatically vacated.

## **13. Part 3 of the Bill**

These sections under the Bill are intended to commence on a later date to be proclaimed in order to allow those affected stakeholders the time and opportunity to prepare for the upcoming amendments.

### **a. Gifts and Donations Register**

The Bill requires general managers to maintain a gifts and donations register for elected members. This amendment may not apply to the upcoming 2018 local government elections.

The details will be prescribed in amending legislation to the *Local Government (General) Regulations 2015* and there will be opportunity during that process for

consultation with the local government sector, other key bodies and the community.

**b. Model Financial Statements**

Under the new section 83A, councils will be required to report using model financial statements that have been issued by the Director of Local Government, in conjunction with the Tasmanian Audit Office. This amendment will commence on a day to be proclaimed, being 1 July 2019, to provide councils with time to prepare for the first model financial statement reporting period.

**c. Electoral Advertising (Internet)**

The Bill contains several consequential amendments to include electoral advertising “on the internet” at a date to be proclaimed. These amendment may not apply to the upcoming 2018 local government elections. These amendments aim to ensure that the Act is contemporary and reflects that more candidates are using internet advertising to promote their campaigns.