

CLAUSE NOTES

Local Government Amendment (Miscellaneous) Bill 2018

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 the Act will commence on the day it receives Royal Assent.

Clause 3: Principal Act

Clause 3 identifies that the amendments contained in the Bill relate to the *Local Government Act 1993* (the Act).

Clause 4: Section 16 amended (Municipal areas)

Clause 4 inserts a new section 5AA expressly enabling the Governor to make an order to give effect to a minor boundary adjustment recommended by the Minister under section 16(4A) of the Act.

Clause 5: Section 28D amended (Documents relating to agendas)

Clause 5 clarifies that a councillor may request documents relating to 'the next' council meeting and not past council meetings.

Clause 6: Section 28V amended (Making code of conduct complaint against councillor)

Clause 6 inserts a new subsection 28V(3)(fa) and 28V(3)(fb).

Subsection 28V(3)(fa) requires complaints to be accompanied by a statutory declaration from the complainant verifying the accuracy of the information contained in the complaint

Subsection 28V(3)(fb) requires the complainant to detail efforts made by the complainant to resolve the issue that is the subject of the complaint.

Clause 7: Section 28X amended (Amendment of code of conduct complaint)

Clause 7 amends subsection 28X(2) of the Act to provide that a complaint may not be amended once a Code of Conduct Panel has commenced an investigation into the code of conduct complaint.

Clause 8: Section 28ZB amended (Dismissal of code of conduct complaint on initial assessment)

Clause 8 broadens the basis on which a chairperson of a Code of Conduct Panel can dismiss a complaint at the initial assessment stage.

Subsection 28ZB(1)(a) is amended to allow dismissal on the basis that the complaint is 'trivial'.

Subsection 28ZB(1)(ab) is inserted to allow dismissal of a complaint on the basis that the complainant has not made a reasonable effort to resolve the issue that is the subject of the complaint.

Subsection 28ZB(2) is amended to allow the chairperson of a Code of Conduct Panel to direct a complainant to not make a further complaint in relation to the same matter, if the complaint was dismissed on the basis that it was trivial.

Clause 9: Section 28ZE amended (Conduct of investigations generally)

Clause 9 inserts subsection 28ZE(5A), which requires any person who has been requested under Section 28ZE (4) to provide any information or document is to provide a statutory declaration verifying the accuracy of that information or document.

Clause 10: Section 28ZK amended (Notification of determination of code of conduct complaint)

Subsection 28ZK(4) is amended to require a general manager who receives a determination report (with no addendum) to include the report within an item on the agenda for the first meeting of the relevant council at which it is practicable and which is open to the public.

Subsection 28ZK(5)(a) is amended to require a general manager who receives a determination report and also an addendum to include the report (but not the addendum) within an item on the agenda for the first meeting of the relevant council at which it is practicable and which is open to the public.

Subsection 28ZK(5)(b) is amended to require a general manager who receives a determination report and also an addendum to include the report and the addendum within an item on the agenda for the first meeting of the relevant council at which it is practicable and which is closed to the public.

Subsection 28ZK(6) is inserted and provides that a report with or without an addendum is not to be included within an item on the agenda for a meeting of the relevant council while the determination is subject to review.

Subsection 28ZK(7) is inserted and provides a person who receives a determination report must keep it confidential until the determination report is included within an item on the agenda for a meeting of the relevant council. The maximum penalty for breach of this provision is set at 50 penalty units.

Subsection 28ZK(8) is inserted and provides a person who receives an addendum must keep the addendum confidential. The maximum penalty for a breach of this provision is set at 50 penalty units.

Subsection 28ZK(9)(a) is inserted and provides that subsection (8) does not apply when the circulation of the addendum to councillors is as part of the documents that are provided to the councillors in relation to a meeting referred to in subsection (5).

Subsection 28ZK(9)(b) is inserted and provides that subsection (8) does not apply when discussing the addendum with another person to whom the addendum is provided as part of the documents provided in accordance with this section.

Clause 11: Section 28ZNA inserted

Clause 11 inserts a new section 28ZNA.

Subsection 28ZNA(1) provides a definition for 'determination report' for the purpose of the section.

Subsection 28ZNA (2) clarifies that if a councillor is required to undergo training as a result of a determination report, the costs associated with that training are to be borne by the relevant council.

Clause 12: Part 5: Heading amended

Clause 12 amends the Part 5 heading to clarify that the part relates to 'pecuniary interests'.

Clause 13: Section 52 amended (Non-application of Part)

Clause 13 amends section 52(1)(d) by clarifying that the conflict of interest provisions do not apply in relation to allowances where the matter relates to the payment of allowances or expenses that relates to all councillors at the council.

Clause 14: Section 55 amended (Interests of employees and general manager)

Clause 14 amends section 55(2) by omitting the current section and replacing it with a new section 55(2) which:

- provides that a general manager must advise the council of any employee's or general manager's interest; and
- provides that the general manager must keep a register of any such interests; and
- sets the maximum penalty for a breach of this section at 10 penalty units.

Clause 15: Section 56B amended (Gifts and donations register)

The new subsection 56B(3) provides that the register is to be:

- available for public inspection at the relevant council's office;
- available on the relevant council's website; and
- updated at least monthly.

Clause 16: Section 61 amended (Appointment of General Manager)

Clause 16 amends section 61 by clarifying that, where a council recruits for a general manager position, then the council is to advertise and invite applications in the local daily newspaper.

Clause 17: Section 64 amended

Clause 17 inserts a new subsection 64(2) is inserted which provides that the general manager is to keep a register of any delegation and make the register available for inspection at a public office of the council.

Clause 18: Section 70G inserted

Clause 18 inserts a new section 70G which provides that:

- Within one month after a council adopts a plan, strategy or policy under this part, the council is to publish on its website a copy of the plan, strategy or policy; and
- A plan, strategy or policy is to remain on the website until the plan, strategy or policy is repealed or replaced.

Clause 19: Section 72 amended (Annual report)

Clause 19 amends section 72(1)(ba) by providing that a council must prepare an annual report containing a statement of the total number of code of conduct complaints that were received during the proceeding financial year (in addition to those that were upheld, either wholly or in part).

Clause 20: Section 85 amended (Audit panels)

Clause 20 amends section 85 by adding subsection 85(3) which provides that an audit panel is not a special committee for the purposes of the Act.

Clause 21: Section 186 amended (Towns)

Clause 21 amends section 186(1)(c) to provide consistent terminology throughout the Act (replacing 'alter' with 'adjust').

Clause 22: Section 188 amended (Boundaries of towns)

Clause 22 amends section 188 to provide consistent terminology throughout the Act.

Clause 23: Section 210 amended (Local Government Board)

Clause 23 amends section 210 to reflect that Local Government Managers Australia (Tasmania) has formally changed its name to Local Government Professionals Australia (Tasmania).

Clause 24: Section 214E amended (Result of review)

Clause 24 amends section 214E(1) to provide consistent terminology throughout the Act.

Clause 25: Section 222 amended (Access to documents, &c.)

Clause 25 amends section 222(1)(a) to provide consistency by omitting 'and records' and substituting 'or records'.

Clause 26: Section 224A inserted

Clause 26 inserts section 224A, which provides that after a Board of Inquiry is completed the Director of Local Government is the record keeper of all documents and evidence.

Clause 27: Section 226 amended (Dismissal of councillors)

Clause 27 amends section 226 by inserting section 226(2A) to make explicit and remove any doubt that the Governor may dismiss a councillor or all councillors on the recommendation of the Minister under section 226(1).

Clause 28: Section 228 amended (Confidentiality)

Clause 28 amends section 228 by clarifying that, if Board of Inquiry documents or records are used by the Director of Local Government for the purposes of an investigation under section 339EA, those documents are not exempt from the *Right to Information Act 2009*.

Clause 29: Section 228A inserted

Clause 29 inserts section 228A, which expressly provides that the Director of Local Government may request from a Board of Inquiry information that relates to an investigation by the Director and that the Board is to comply with the request.

Clause 30: Section 270 amended (Eligibility for nominations as councillor)

Clause 30 amends section 270(1)(c) by clarifying that a person is not eligible to nominate as a councillor if they have been barred by a court from nominating under Section 223A of the Act.

Clause 31: Section 310A inserted

Clause 31 inserts section 310A, which provides that Division 9 of Part 15 (these provisions deal with the filling of casual vacancies) does not apply in relation to the vacancies in the offices of councillors of a council caused by dismissal of all the councillors under this, or any other, Act.

Clause 32: Section 338 substituted

Clause 32 repeals the existing section 338 of the Act and substitutes a new section 338 and 338AA which:

- Clarifies the information-gathering powers of the Director in relation to an investigation under section 339EA; and
- Sets a maximum penalty of 50 penalty units for a breach of this provision.

Clause 33: Section 338A amended (Disclosure of information)

Clause 33 amends section 338A(1)(b) by clarifying that the term 'on the condition that it be kept confidential' applies to information given to the councillor by the mayor, deputy mayor, chairperson of a meeting of the council or council committee or general manager.

Clause 34: Section 339 amended (Improper use of information)

Clause 34 amends section 338A(1) to:

- Specify that a former councillor, member or member of an audit panel must not improperly use council information; and
- Include former council employees as well as current employees.

Subsection 339(2A) is inserted to provide that a person must not make improper use of any information acquired by the person in relation to a code of conduct investigation. It also sets the maximum penalty of 50 penalty units for a breach of this provision.

Clause 35: Section 339F amended (Customer service charter)

Clause 35 amends section 339F(4) to provide that a council's customer service charter must be reviewed within 12 months after a council election.

Clause 36: Section 340A amended (Allowances)

Clause 36 amends section 340A(5) to clarify that a councillor will not be entitled to allowances if they are suspended because of a Performance Improvement Direction issued under section 214O.

Clause 37: Transitional provisions consequent on *Local Government Amendment (Miscellaneous) Act 2018*

Clause 37 inserts section 349B, which provides that any complaint received by a general manager before the commencement day will be dealt as if the amendment Act had not commenced, while any complaint received on or after the commencement day will be subject to the new provisions.

Clause 38: Schedule 5 amended (Office of Councillors)

Clause 38 amends Clause 3(1) of Schedule 5 to extend the circumstances where a vacancy in the position of councillor will automatically occur to include when a councillor becomes a member of any Parliament in Australia.

Clause 39: Repeal of Act

Clause 39 is a standard provision included in Bills to enable the automatic repeal of amendment Acts.