

3.7 REVIEW OF THE LOCAL GOVERNMENT ACT (UPDATED)

Contact Officer – Katrena Stephenson

Decision Sought

That Members note the report.

Background

Late on Friday 24 March LGAT received consultation documents relating to amendments to the *Local Government Act 1993* (see Attachments).

LGAT has now provided those to councils for feedback into a consolidated sector response. Feedback is required by Monday 1 May.

The amendments are largely as foreshadowed in LGAT General Meeting reports and in the presentation last General Meeting by the Director Local Government, Alex Tay. They also largely reflect the feedback from previous consultation with the sector and the report from the Steering Committee.

Key areas of likely interest include:

- 1 The introduction of powers to make Ministerial Orders to expand and clarify matters in relation to the function of the Mayor, functions of councillors, appointment and performance monitoring of the General Managers, functions of the General Manager, and liaison between Mayors and General Managers. There are no draft orders at this stage and it should be noted that they must be developed in consultation with the sector.
- 2 The role of the Mayor has been expanded.
- 3 There are detailed provisions in relation to gifts and benefits. These were not part of the original consultation or the Steering Committee report but appear to align with the requirements of State Government.
- 4 There is clarification that qualified advice must be provided in writing.
- 5 Model Financial Statements are introduced with a transitional period.
- 6 The scope of the Local Government Board review has been broadened to include matters such as governance and performance.
- 7 The Director would be provided the power to issue Performance Improvement Directions following an investigation possibly preventing the need for a Board of Inquiry or LG Board Review.
- 8 The Minister would have the power to suspend individual councillors prior to or during a Board of Inquiry Process. Individual councillors (as opposed to the whole council only) may be dismissed following a Board of Inquiry process.
- 9 Election timeframes have been increased to allow for longer postal delivery times.
- 10 Electoral advertising is to include internet based advertising.
- 11 Minor boundary adjustments can be made without a LG review process.

Budget Impact

Does not apply.

Current Policy

Strategic Plan:

- Priority Area 2: Sector Profile and Reform.

ACT AMENDMENTS	
The people who lead and serve our community	
Reference in Act	Details on the amendment
Interpretation	
Section 3	<u>Interpretation</u> The interpretation section has had minor amendments to include new and amended definitions to give effect to other areas within the Act that have been amended: amending the definition of ‘absolute majority’ so that it reflects situations where a councillor or several councillors are suspended. a new definition for ‘audit panel’. This amendment will require minor consequential amendments to relevant offence sections within the Bill where audit panel members are to be included. A new definition of ‘model financial statements’. This amendment is covered in more detail later in the Bill. Amending ‘electoral advertising’. In particular, the definition of ‘electoral advertising’ has been amended to include advertising on the internet. This is to reflect that the Internet continues to play a larger role in electoral campaigns in federal, state and local government elections. This amendment aims to capture internet advertising as it is not currently captured and amending the Act will ensure the legislation reflects and accommodates what is already occurring in the sector. Increasing the timeframes for postal voting in local government elections by 1 week. Introducing a definition for “performance improvement direction”. Performance improvement directions are explained in more detail later in this document.
Municipal Areas	
Section 16	<u>Boundary Adjustments</u> This section has been amended such that a Local Government review is not required to approve minor boundary adjustments. This will make the process for minor boundary adjustments more efficient. The section has also been amended so that the process for boundary adjustments is clearer.

ACT AMENDMENTS	
The people who lead and serve our community	
Reference in Act	Details on the amendment
Mayors and Deputy Mayors	
Section 27	<u>Role of the Mayor</u> The role of the mayor has been expanded under the legislation. The amendments are to give mayors a greater leadership responsibility and further distinguish the role of mayor as distinct to the role of elected members.
Subsection 27(2)(a)	<u>Deputy Mayors</u> The word “absent” has been amended to better reflect the broad circumstances in which mayors sometimes need deputy mayors to act in the role of mayor.
Section 27A	<u>Ministerial Orders - Functions of the Mayor</u> A new provision has been inserted which provides the Minister for Planning and Local Government (the Minister) with the power to make an order to expand and clarify the role of the mayor. The Minister, with consultation from the sector, can implement (or amend) such an order where there may be a need to clarify these matters. A Ministerial Order would be binding without adding further detail into the legislation. Further, amending a Ministerial Order would not require any amendments to the legislation and it therefore affords both the Minister and the sector more flexibility.
All Elected Members	
Section 28AA	<u>Ministerial Orders</u> A new provision which provides the Minister with the power to issue a Ministerial Order to clarify functions of councillors for example, what are strategic matters that should be decided by councillors and operational matters that are the function of the general manager (council administration) to decide.

ACT AMENDMENTS	
The people who lead and serve our community	
Reference in Act	Details on the amendment
Audit Panel Members	
Sections 53, 54A, 55B, 338A, 339 and 339A	These sections have been amended to ensure that the relevant offence provisions also apply to members of an audit panel. The relevant offences are: failure to declare a pecuniary interest, disclosure of information, improper use of information and misuse of office.
Gifts and Donations	
Part 5A Section 56A	<u>Requirement to notify of gift/donation</u> This new provision requires a councillor to notify the general manager of a council if they receive a gift or a donation as prescribed under the regulations. The <i>Local Government (General) Regulations 2015</i> will be amended to provide the details around the notification of gifts and donations.
Part 5A Section 57	<u>Gifts and Donations Register</u> This new provision establishes that a gift and donation register must be kept by the general manager of a council. The <i>Local Government (General) Regulations 2015</i> will be amended to prescribe the details for the register, including what items need to be disclosed, when and how, and any thresholds or limitations.
General Manager	
Section 61	<u>Appointment of a General Manager</u> This section has been amended so that councils need to take into account any relevant Ministerial Orders when they are appointing a person as general manager.

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Reference in Act	Details on the amendment
Section 61A	<u>Ministerial Orders – Appointment and Performance</u> A new provision which provides the Minister with the power to issue a Ministerial Order that details the high-level principles regarding the selection, reappointment and the monitoring of and appraisal of performance for general managers.
Section 61B	<u>Appointment of Acting General Managers</u> This section has been amended to clarify the appointment/reappointment of acting general managers. The current provisions are unclear and may create confusion around this process. This amendment will reduce ambiguity.
Section 62A	<u>Ministerial Orders - Functions</u> A new provision which provides the Minister with the power to make a Ministerial Order to clarify the functions and powers of the general manager.
Section 62B	<u>Ministerial Order – Liaison</u> A new provision which provides the Minister with the power to make a Ministerial Order that provides clarity around the requirement for general managers to “liaise” with mayors. Such a Ministerial Order would cover, more broadly, the nature of the liaison between the general manager and the mayor and better describe expectations around the nature of the liaison required between mayors and general managers.
Section 65	<u>Written advice Qualified Persons</u> This section has been amended to ensure that any qualified advice, including verbal advice, is provided to the councillors in writing. This amendment aims to ensure that such advice is adequately recorded and is accurate. Providing qualified advice in writing ensures that all elected members receive the same advice, supports effective decision making and is important for transparency and accountability.

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Reference in Act	Details on the amendment
Annual Report	
Section 72	An existing requirement under subsection 84(2)(da) has now been moved to section 72 such that this is reported under the Annual Report. This amendment ensures best practice in financial management in line with Australian Accounting Standards (AASB 124).
Model Financial Statements	
Section 83A	This is a new section that requires councils to issue their financial statements in line with model financial statements issued by the Director of Local Government for each financial year. The Tasmanian Auditor-General will be required to provide a set of model financial statements to the Director of Local Government to issue. There will be a transitional period provided to allow councils enough time to prepare for the requirement of model financial statements. Model financial statements will reduce complexity within the legislation because they will necessarily incorporate any other changes in accounting standards or other relevant legislation. They will also help make this financial information easier to compare across councils.
Subsection 84(2)(b)	Subsection 84(2)(b) has been removed because the new model financial statements will necessarily incorporate related parties disclosures under the accounting standards (AASB 124), therefore avoiding any unnecessary duplication within the legislation.
Local Government Board	
Section 214A	<u>Scope of Review</u> This section has been amended to clarify the scope of a Local Government Board review. The amendment clarifies the intention of this provision and reflects the changes that are being made to section 226 around the

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Reference in Act	Details on the amendment
	operations of the council to include matters such as governance and performance.
Performance Improvement Directions	
NEW Part 12B	<u>Performance Improvement Direction</u> A Performance Improvement Direction (PID) is a new, simple and streamlined mechanism that will be used to require a council, a councillor or some councillor(s) to do something to rapidly improve their performance. Generally, a PID will act as an (optional) intermediary step between the Director of Local Government investigating a matter and the Minister requiring a Local Government Board Review or Board of Inquiry into the council, councillor or councillor(s) in question. PIDs are intended to be an efficient and cost effective method of improving council performance in appropriate circumstances where the Minister is of the view that a Local Government Board Review or Board of Inquiry may not be necessary, or may prevent the need for a Board of Inquiry or Local Government Board review.
Board of Inquiry	
Subsection 215(5)	<u>Suspension of councillors</u> This section has been amended so that an individual councillor, or a number of councillors, or all councillors may be suspended and such a suspension can occur at any time during the Board of Inquiry process. It also clarifies that councillors remain suspended until such time as a decision is made by the Minister or the Governor following the final report of a Board of Inquiry. These amendments would give the Minister greater flexibility and allow Boards of Inquiry to be tailored to specific and sometimes changing circumstances. It may also improve efficiency and mitigate any impacts upon the community while an inquiry is ongoing.
Section 217	<u>Requests for information</u> This section provides the Board of Inquiry with the power to require a person to provide written answers to a formal request for

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Reference in Act	Details on the amendment
	information. This amendment will allow Boards of Inquiry to operate more efficiently and ensure that information is provided in a timely manner such that the process is not hindered.
Section 225	<u>Result of Inquiry</u> Several subsections of section 225 have been amended to ensure that individual councillor(s) are also captured under these provisions such that the Minister has the power to direct an individual councillor.
Section 226	<u>Dismissal of councillors - Individuals</u> This section has been amended to clarify that individual councillors can also be dismissed (rather than all councillors). This amendment will provide the Minister with the flexibility to dismiss an individual councillor, several or all councillors.
Section 226(1A)	This section has been amended to further clarify what is intended by the phrase “operation of the council”. This phrase is to include one or more of the matters listed, including the administrative operation or the governance of the council. The amendment will ensure the phrase operates as intended to capture these areas of operation.
Sections 230 & 231	These two sections have been amended to clarify that the commissioner is only appointed when <u>all</u> of the councillors are either dismissed or suspended.
Election Dates	
Sections 260, 269 and 274	<u>Elections</u> All the dates under these sections have been increased by 1 week. This is to accommodate changes in Australia Post's services which have increased the time taken for mail to be delivered. This amendment will allow greater time for local government postal votes to be returned.

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Reference in Act	Details on the amendment
Electoral Advertising	
Subsection 278(3)	This subsection has been amended to delete 'broadcast' as it is unnecessary duplication with an exclusion described in subsection 278(4)(b).
Performance Improvement Directions	
Section 341	<u>Immunity from Liability</u> This section has been amended to clarify and ensure it operates efficiently in light of other statutory immunities available under the <i>Statutory Authorities (Protection from Liability) Act 1993</i> .
References to Act	
Section 348A	This section clarifies references within the Act to orders and regulations and their status.
Office of Councillors	
Schedule 5, Clause 3(f)	This amendment is designed to address an unintended technical consequence that arises from the current operation of Schedule 5, Clause 3 (Vacation of Office). It impacts councillors who are moving residence from their elected municipality into another municipality but who are eligible to be enrolled on the general managers electoral roll in respect to their elected municipality and therefore remain eligible to hold office. The Act does not provide enough time for changes in their electoral details to occur and could result in a councillor becoming

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Reference in Act	Details on the amendment
	automatically vacated from office due to this technicality. The aim of this amendment is to provide a transitional period to give councillors who are eligible to remain in office the time to ensure they can update their electoral details so that they are not automatically vacated. The automatic vacation provision will continue to operate if the councillor is not entitled to remain in office, due to their electoral status.

ADDITIONAL MATTERS

The following have not been included in the draft amendment Bill however are being considered for inclusion. These have been identified since the conclusion of the Steering Committee's recommendations to the Minister and are generally aimed at strengthening existing provisions, rather than introducing materially new provisions. The Department of Premier and Cabinet would appreciate your feedback on these additional matters.

Reference in Act	Details on the amendment
Section 339A (Misuse of Office)	Considering clarifying this provision so that it also includes an "attempt" to procure, the doing, or not doing anything to gain an advantage or to avoid a disadvantage.
Section 339E (Complaints against non-compliance or offence)	Considering clarifying this provision so that: - the Director of Local Government has the power and ability to refer such matters of non-compliance to third parties or other investigative authorities where the Director considers the matter may more appropriately be handled within their jurisdiction; - the matters which the Director can investigate are clarified; and - the Director, in determining the procedure for handling complaints or investigating matters, can also authorise a person to undertake an investigation. These amendments could make the investigation provisions clearer.
Financial Administration	Considering including a similar provision to the <i>Public Account Act 1986</i> that allows general managers to continue to run the council and expend funds until the council adopts the estimates in the situation where a council does not approve its estimates prior to 1 July of any year. This would allow councils to continue to operate efficiently in such circumstances.
Financial Administration & Section 3 (Interpretation)	Considering including a definition of 'senior positions' within a council as it is currently not defined and could be further clarified to avoid confusion. This could encapsulate those senior employees who are direct reports to a general manager. This would assist in the efficient operation of section 72 (Annual Report) and other relevant financial administration provisions under the Act.
Petitions (Part 6)	Considering including within the Act a power to prescribe for online petitions. This recommendation was made by the Steering Committee, however there are practical difficulties in implementing this recommendation, including the cost of information technology to validate the process. This amendment would require further detail and prescription under a future amendment to the regulations.

Department of Premier and Cabinet

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Dear Dr Stephenson

I am writing to you regarding the targeted review of the *Local Government Act 1993* that was initiated by the Minister for Planning and Local Government, the Hon Peter Gutwein MP, in mid-2015.

As you are aware from your membership of the Steering Committee undertaking the targeted review, initial consultation began in early 2016. Following this, the Steering Committee presented the Minister with a suite of recommendations in September 2016. The recommendations focused on improving governance and ensuring that the legislative framework for local government is effective and efficient. In late 2016, the Government agreed to draft an amendment Bill to adopt the majority of recommendations of the Steering Committee through changes to the Act.

The proposed draft Local Government Amendment (Targeted Review) Bill 2017 is now ready to be released for public consultation and I invite the Local Government Association of Tasmania to provide its comments on the draft Bill. Please find attached a copy of the draft Bill as well as a summary table that outlines each of the amendments and reasoning behind them. Links to the relevant documents can be found on the Department of Premier and Cabinet (DPAC)'s website at http://www.dpac.tas.gov.au/divisions/local_government.

The key legislative amendments are as follows:

- providing the Minister with the ability to issue Ministerial Orders in relation to such matters as the role of mayors, functions of elected members and general managers;
- a greater focus and commitment from elected members to engage in ongoing professional development and abide by the principles of good governance.
- implementing Performance Improvement Directions as a quicker way of addressing issues in a council to potentially avoid a Board of Inquiry or Local Government Board review;
- improving the outcomes for Boards of Inquiry in terms of recommendations that can be made following an inquiry that provide greater efficiencies and flexibility; and
- requiring general managers to maintain a gifts and donations register for the purpose of mandatory disclosure of gifts and campaign donations by local government elected members.

At the end of the summary table there are also some other proposed amendments that are not yet included within the draft Bill but are being considered for inclusion. These have been identified since the conclusion of the Steering Committee's recommendations to the Minister and are generally aimed at strengthening existing provisions, rather than introducing materially new provisions. DPAC would appreciate your organisation's comments on these additional matters.

Submissions are to be made in writing and are to be provided either by email to lgd@dpac.tas.gov.au or by post to:

Local Government Division
Department of Premier and Cabinet
GPO Box 123
HOBART TAS 7001

All submissions must be received by close of business on **Friday 5 May 2017**.

Important information to note

All submissions will be treated as public information and will be published on DPAC's website once consideration of the submissions has concluded. However, if you wish for your submission to be treated as confidential, whether in whole or in part, please note this in writing at the time of making your submissions, and clearly indicate which parts of your submission are confidential, and advise the reasons as to why.

Please note that your name, or the name of the organisation making a submission, will be disclosed unless you request otherwise. In the absence of a clear indication that a submission is intended to be treated as confidential (or parts of the submission), DPAC will treat the submission as public.

Copyright in submissions remains with the author(s), not with the Government. DPAC will not publish submissions containing defamatory or offensive material.

The *Right to Information Act 2009* and confidentiality

By law, information provided to the Government may be provided to an applicant under the provisions of the *Right to Information Act 2009* (RTI). If you have indicated that you wish all or part of your submission to be treated as confidential, your statement detailing the reasons will be taken into account in determining whether or not to release the information in the event of an RTI application for assessed disclosure.

Accessibility

When seeking submissions from other organisations or members of the general public, DPAC requests that they are provided in an accessible format. However, documents received from external parties may not be accessible to users with assistive technologies.

Should your organisation have any questions regarding the review please contact DPAC's Local Government Division by email at lgd@dpac.tas.gov.au or by telephone on 6232 7022.

Yours sincerely



for
Greg Johannes
Secretary

24 March 2017

Attachments

TASMANIA

**LOCAL GOVERNMENT AMENDMENT
(TARGETED REVIEW) BILL 2017**

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LOCAL GOVERNMENT AMENDMENT (TARGETED REVIEW) BILL 2017

*(Brought in by the Minister for Planning and Local
Government, the Honourable Peter Carl Gutwein)*

A BILL FOR

An Act to amend the *Local Government Act 1993*

Be it enacted by Her Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Local Government
Amendment (Targeted Review) Act 2017*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Principal Act

In this Act, the *Local Government Act 1993** is
referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as
follows:

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- (a) by omitting the definition of *absolute majority* and substituting the following definition:

absolute majority means –

- (a) if no councillors are suspended, more than half of the number of councillors to be elected to a council; or
 - (b) if one or more councillors are suspended, more than half of the number of councillors to be elected to a council after subtracting the number of councillors who are suspended;
- (b) by inserting the following definition after the definition of *assets*:

audit panel means the audit panel established under section 85;

- (c) by inserting the following paragraph after paragraph (e) in the definition of *electoral advertising*:

(f) on the internet;

- (d) by inserting the following definition after the definition of *model code of conduct*:

model financial statements means the model financial statements published, and provided to councils, under section 83A, as replaced from time to time;

- (e) by omitting “7th” from the definition of *nomination period* and substituting “8th”;
- (f) by omitting “5th” from the definition of *nomination period* and substituting “6th”;
- (g) by inserting the following definition after the definition of *partner*:

performance improvement direction means a direction issued to a council or councillor under section 214M;

5. Section 16 amended (Municipal areas)

Section 16 of the Principal Act is amended by omitting subsections (4) and (5) and substituting the following subsections:

- (4) The Minister, on receiving a report on a review made under section 214D that recommends an adjustment of the boundary of a municipal area or an electoral boundary within a municipal area, regardless of whether the adjustment is minor or significant in nature, may recommend to the Governor

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that an order be made so adjusting that boundary.

(4A) The Minister –

(a) on receiving –

(i) from the Board, made otherwise than in a report on a review made under section 214D; or

(ii) from the Director –

a recommendation that an adjustment, that is minor in nature, be made to the boundary of a municipal area, or an electoral boundary within a municipal area; and

(b) if satisfied that all owners of land who would be affected by the adjustment have been consulted by the relevant councils and have consented, in writing, to the adjustment –

may recommend to the Governor that an order be made so adjusting that boundary.

(5) The Governor, by order and on the recommendation of the Minister under subsection (4) or (4A), may do one or both of the following:

- (a) adjust a boundary of a municipal area;
- (b) if the municipal area is divided into electoral districts, adjust any boundary of any electoral district as may be necessary.

6. Section 27 amended (Functions of mayors and deputy mayors)

Section 27 of the Principal Act is amended as follows:

- (a) by omitting paragraphs (aa), (a), (b), (ba) and (c) from subsection (1) and substituting the following paragraphs:
 - (a) to act as a leader of the community of the municipal area; and
 - (b) to carry out the civic and ceremonial functions of the mayoral office; and
 - (c) to promote good governance by, and within, the council; and
 - (d) to act as chairperson of the council and to chair meetings of the council in a manner that supports decision-making processes; and
 - (e) to act as the spokesperson of the council; and

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- (f) to represent the council on regional organisations and at intergovernmental forums at regional, state and federal levels; and
- (g) to lead and participate in the appointment, and the monitoring of the performance, of the general manager; and
- (h) to liaise with the general manager on –
 - (i) the activities of the council and the performance and exercise of its functions and powers; and
 - (ii) the activities of the general manager and the performance and exercise of his or her functions and powers in supporting the council; and
- (i) to oversee the councillors in the performance of their functions and in the exercise of their powers; and
- (j) any function imposed by an order under section 27A; and
- (k) any other function imposed by this or any other Act.

- (b) by omitting from subsection (2)(a) “absent; and” and substituting “absent from duty as Mayor or from the State, otherwise unavailable for duty as mayor or unable to perform the functions of mayor; and”.

7. Section 27A inserted

After section 27 of the Principal Act, the following section is inserted in Division 3:

27A. Order relating to Mayor’s functions

- (1) The Minister, by order, may do any one or more of the following:
 - (a) clarify the functions of mayor;
 - (b) impose on mayors such functions as the Minister considers appropriate.
- (2) The Minister may amend, revoke, or revoke and substitute an order.
- (3) Before making, amending or revoking and substituting an order, the Minister must consult with the councils as to the matters the Minister is considering including in the order, the amended order or the substitute order.
- (4) An order under this section may be combined with an order under one or more of the following sections:

- (a) section 28AA;
- (b) section 62A;
- (c) section 62B.

8. Section 28AA inserted

After section 28 of the Principal Act, the following section is inserted in Division 3:

28AA. Order relating to functions of councillors

- (1) The Minister, by order, may clarify the functions of councillors.
- (2) The Minister may amend, revoke, or revoke and substitute an order.
- (3) Before making, amending or revoking and substituting an order, the Minister must consult with the councils as to the matters the Minister is considering including in the order, the amended order or the substitute order.
- (4) An order under this section may be combined with an order under one or more of the following sections:
 - (a) section 27A;
 - (b) section 62A;
 - (c) section 62B.

9. Section 53 amended (Notification of interest)

Section 53 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “councillor or member” and substituting “councillor, member or member of an audit panel”;
- (b) by omitting from subsection (1) “committee or controlling authority” and substituting “committee, controlling authority or audit panel”;
- (c) by omitting from subsection (2)(b) “councillor or member” and substituting “councillor, member or member of an audit panel”.

10. Section 54A amended (Register of interests of members)

Section 54A of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “authority.” and substituting “authority or of members of an audit panel.”;
- (b) by omitting from subsection (2) “committee or controlling authority” and substituting “committee, controlling authority or audit panel”.

11. Section 55B inserted

After section 55A of the Principal Act, the following section is inserted in Part 5:

55B. Interests of members of audit panels

- (1) A member of an audit panel must notify the general manager, in writing, of having an interest, as referred to in section 49, in any matter –
 - (a) in respect of which the audit panel is conducting, is or to conduct, a review; or
 - (b) which may affect the outcome of a review being, or to be, conducted by the audit panel; or
 - (c) in respect of which the audit panel is providing or making, or is to provide or make, advice or a recommendation; or
 - (d) which may affect any advice or recommendation the audit panel is providing or making, or is to provide or make.

Penalty: Fine not exceeding 50 penalty units.

- (2) Section 51 applies as if a reference to a member were a reference to a member of the audit panel.
- (3) The general manager is to –

- (a) advise the council of the existence of any interest notified under subsection (1); and
- (b) keep a register of any such interest.
- (4) Any register kept under subsection (3)(b) is exempt from the provisions of the *Right to Information Act 2009*.

12. Part 5A inserted

After section 56 of the Principal Act, the following Part is inserted:

PART 5A – GIFTS AND DONATIONS

56A. Councillor to notify of gifts and donations

- (1) A councillor who receives –
 - (a) a gift or donation prescribed by the regulations for the purposes of this section; or
 - (b) a gift or donation of a class prescribed by the regulations, for the purposes of this section –

must notify the general manager of that gift or donation.

Penalty: Fine not exceeding 10 penalty units.

- (2) A notice is to –

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- (a) be in writing; and
- (b) contain the details prescribed by the regulations; and
- (c) be provided to the general manager within the period prescribed by the regulations.

57. Gifts and donations register

- (1) The general manager is to keep a register of the gifts and donations referred to in section 56A(1) that have been received by councillors.
- (2) The register is to include the following information:
 - (a) the name of the councillor;
 - (b) a description of the gift or donation;
 - (c) any other information required by the regulations to be included.

13. Section 61 amended (Appointment of general manager)

Section 61 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1):

(1A) In appointing a person as general manager of the council, a council is to do so in accordance with any relevant order made under section 61A.

(b) by omitting subsection (6).

14. Sections 61A and 61B inserted

After section 61 of the Principal Act, the following sections are inserted in Division 1:

61A. Order relating to appointment and performance of general managers

(1) The Minister, by order, may do any one or more of the following:

- (a) specify the principles governing the selection of a general manager;
- (b) specify the matters, and classes of matters, that are to be taken into account when a council is selecting, or reappointing, a general manager;
- (c) specify the procedures to be followed by a council in relation to appointing, or reappointing, a general manager;
- (d) provide, or provide for the development of, the processes and procedures to be followed by

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a council in monitoring the performance of a general manager.

- (2) The Minister may amend, revoke, or revoke and substitute an order.
- (3) Before making, amending or revoking and substituting an order, the Minister must consult with the councils as to the matters the Minister is considering including in the order, the amended order or the substitute order.

61B. Acting general managers

- (1) For the purposes of this section, a general manager is absent if –
 - (a) he or she is absent from duty for any reason; or
 - (b) he or she is otherwise unavailable or unable to perform the functions of the office of general manager; or
 - (c) the position of general manager is vacant.
- (2) The mayor may appoint a person to act in the office of general manager if –
 - (a) the general manager is absent and no person holds an appointment under subsection (4); or

- (b) the general manager is absent and the person appointed under subsection (4) is absent from duty or otherwise unavailable or unable to act in the office of general manager.
- (3) An appointment under subsection (2) ends when the first of the following occurs:
 - (a) the general manager returns to duty;
 - (b) the term of the appointment expires;
 - (c) the mayor or the council revokes the appointment;
 - (d) a person is appointed as general manager under section 61.
- (4) The council may appoint a person to act in the office of general manager during every absence of the general manager.
- (5) An appointment under subsection (4) is for the term, not exceeding 5 years, specified in the appointment and ends when the first of the following occurs:
 - (a) the term of the appointment expires;
 - (b) the council revokes the appointment;

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- (c) if the appointment is to the holder of an office, the person ceases to hold that office.
- (6) While a person appointed to act in the office of general manager is acting as general manager, that person is taken to be the general manager.

15. Sections 62A and 62B inserted

After section 62 of the Principal Act, the following sections are inserted in Division 1:

62A. Order relating to general manager's functions generally

- (1) The Minister, by order, may clarify the functions of general managers by specifying matters, or classes of matters, that are operational or administrative in nature and so are to be performed by general managers.
- (2) The Minister may amend, revoke, or revoke and substitute an order.
- (3) Before making, amending or revoking and substituting an order, the Minister must consult with the councils as to the matters the Minister is considering including in the order, the amended order or the substitute order.

- (4) An order under this section may be combined with an order under any one or more of the following sections:

- (a) section 27A;
- (b) section 28AA;
- (c) section 62B.

62B. Order relating to general manager's function to liaise with mayor

- (1) The Minister, by order, may specify the manner in which general managers are to liaise with their mayors.
- (2) The Minister may amend, revoke, or revoke and substitute an order.
- (3) Before making, amending or revoking and substituting an order, the Minister must consult with the councils as to the matters the Minister is considering including in the order, the amended order or the substitute order.
- (4) An order under this section may be combined with an order under any one or more of the following sections:
 - (a) section 27A;
 - (b) section 28AA;
 - (c) section 62A.

16. Section 65 amended (Qualified persons)

Section 65 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

- (2) A council or council committee is not to decide on any matter which requires the advice of a qualified person without considering such advice unless –
 - (a) the general manager certifies, in writing –
 - (i) that such advice was obtained; and
 - (ii) that the general manager took the advice into account in providing general advice to the council or council committee; and
 - (b) a copy of that advice or, if the advice was given orally, a written transcript or summary of that advice is provided to the council or council committee with the general manager's certificate.

17. Section 72 amended (Annual report)

Section 72(1) of the Principal Act is amended by inserting after paragraph (c) the following paragraph:

- (caa) a statement of the operating, capital and competitive neutrality costs in respect of each significant business activity undertaken by the council during the preceding financial year together with a statement of the revenue associated with that activity;

18. Section 83A inserted

After section 83 of the Principal Act, the following section is inserted in Division 3:

83A. Model financial statements

- (1) The Auditor-General is to provide to the Director model financial statements to be used by the councils.
- (2) From time to time the Auditor-General may provide to the Director replacement model financial statements to be used by the councils that are to be substituted for the existing drafts for model financial statements.
- (3) On receipt of the model financial statements or replacement model financial statements, the Director –
 - (a) is to publish on the relevant website of the Department the model financial statements or replacement model financial statements for use by councils; and

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- (b) is to provide a copy of the model financial statements or replacement model financial statements to each council no later than the next occurring 30 June in preparation for use by the council in relation to its financial statements for the financial year ending on that 30 June.

19. Section 84 amended (Financial statements)

Section 84(2) of the Principal Act is amended as follows:

- (a) by omitting paragraph (b) and substituting the following paragraphs:
 - (a) be in the form set out in the model financial statements provided under section 83A; and
 - (b) contain the information required by those model financial statements; and
- (b) by omitting paragraph (da).

20. Section 214A amended (Scope of review)

Section 214A of the Principal Act is amended as follows:

- (a) by omitting “matters:” and substituting “matters, in whole or in part:”;

(b) by omitting paragraph (a) and substituting the following paragraph:

(a) the operation of a council, including the performance and exercise of the council's functions and powers, the administrative operation of the council, the governance of the council and the decision making of the council;

21. Part 12B inserted

After section 214K of the Principal Act, the following Part is inserted:

PART 12B – PERFORMANCE IMPROVEMENT DIRECTIONS

214L. Recommendation for issuing performance improvement direction

- (1) The Director may recommend to the Minister that he or she issue a performance improvement direction to a council or councillor.
- (2) Without limiting the situations in which the Director may make a recommendation under subsection (1), the Director may make a recommendation under that subsection if, in the Director's opinion, the council or councillor –

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- (a) has failed to comply with a statutory requirement under this or any other Act or under subordinate legislation made under this or any other Act and the Director considers that the failure is not of a minor nature; or
 - (b) has failed on a number of occasions to comply with a statutory requirement, or a number of different statutory requirements, under this or any other Act or under subordinate legislation made under this or any other Act, regardless of whether any such failure is of a minor nature.
- (3) The recommendation is to include the grounds on which the recommendation is based.

214M. Minister may issue performance improvement direction

- (1) On receipt of the recommendation of the Director provided under section 214L, the Minister may –
 - (a) issue to a council or a councillor a direction requiring the council or councillor to take, refrain from taking or cease taking an action for the purpose of complying with the statutory obligations of

the council or councillor under this or any other Act; or

- (b) refuse to issue such a direction.
- (2) The Minister may issue a direction to a council or councillor only if satisfied that it is appropriate to do so after considering any submissions made under section 214N(2)(d) and the recommendation of the Director provided under section 214L.
- (3) A direction may require the council or councillor –
 - (a) to take, refrain from taking or cease taking an action within the period specified in the direction; and
 - (b) to notify the Minister, in writing and within the period specified in the direction, of the steps the council or councillor has taken, or proposes to take, to comply with the direction.
- (4) A direction may set out the consequences of failing to comply with the direction.

214N. Right of council or councillor to make submissions

- (1) If the Minister is proposing to issue a performance improvement direction to a

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council or councillor, the Minister is to notify the council or councillor of that fact.

(2) The notice provided under subsection (1) is to –

- (a) be in writing; and
- (b) include a draft of the proposed performance improvement direction; and
- (c) include the grounds for the making of the performance improvement direction; and
- (d) notify the council or councillor that it, he or she may make written submissions to the Minister on the matter within the period, of not less than 14 days, specified in the notice.

(3) The council or councillor may make written submissions to the Minister in relation to the proposed performance improvement notice within the period specified in the notice under subsection (1).

214O. Consequences of failing to comply with performance improvement direction

(1) If a council or councillor fails to comply with a performance improvement

direction, the Minister may do one or more of the following:

- (a) suspend all of the councillors or the councillor from office for a period not exceeding 6 months;
 - (b) under section 214, require the Board to carry out a general review, or a specific review, of the council;
 - (c) under section 215, establish a Board of Inquiry to investigate the council.
- (2) If the Minister suspends all of the councillors of a council, the Governor, under Division 2 of Part 13, may appoint a person as commissioner for that council during that suspension and that Division applies in relation to the appointment of the commissioner.

22. Section 215 amended (Board of Inquiry)

Section 215 of the Principal Act is amended by omitting subsection (5) and substituting the following subsection:

- (5) If the Minister establishes a Board of Inquiry to investigate a council, the Minister, at any time during the inquiry, may suspend all the councillors, or any of the councillors, from office for the period ending on the day on which –

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- (a) the Minister gives a direction under section 225(2); or
- (b) an order under section 226 dismissing all the councillors or any councillor takes effect.

23. Section 217 amended (Powers of Board of Inquiry)

Section 217 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph before paragraph (a) in subsection (1):
 - (aa) require any person to provide, in writing and within the time specified in the requirement, answers to the questions asked, or the information specified, in the requirement; and
- (b) by inserting the following paragraph before paragraph (a) in subsection (2):
 - (aa) fail to comply with a requirement referred to in subsection (1)(aa); or

24. Section 225 amended (Result of inquiry)

Section 225 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2) “councillor,” after “a council,”;

- (b) by inserting in subsection (2)(a) “councillor,” after “council,”;
- (c) by omitting from subsection (2)(a) “its” and substituting “its, his or her”;
- (d) by inserting in subsection (2)(b) “councillor,” after “council,”;
- (e) by omitting from subsection (2)(b) “its” and substituting “its, his or her”;
- (f) by inserting in subsection (2)(c) “councillor,” after “council,”;
- (g) by omitting from subsection (2)(c) “its” and substituting “its, his or her”;
- (h) by inserting in subsection (2)(d) “councillor,” after “council,”;
- (i) by inserting in subsection (3) “councillor,” after “a council,”;
- (j) by inserting in subsection (3) “councillor,” after “require the council,”;
- (k) by inserting in subsection (3)(a) “councillor,” after “council,”;
- (l) by inserting in subsection (3)(b) “councillor,” after “council,”.

25. Section 226 amended (Dismissal of councillors)

Section 226 of the Principal Act is amended as follows:

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- (a) by inserting in subsection (1) “or councillor” after “a council”;
- (b) by omitting from subsection (1) “the councillors” and substituting “any councillor or all councillors”;
- (c) by inserting in subsection (1)(a) “councillor or” after “failure of the”;
- (d) by inserting in subsection (1)(b) “councillor or” after “conduct of the”;
- (e) by inserting the following subsection after subsection (1):

(1A) In subsection (1) –

operation of the council

includes the performance and exercise of the council’s functions and powers, the administrative operation of the council, the governance of the council and the decision making of the council.

- (f) by inserting in subsection (2) “councillor or” after “If a”;
- (g) by inserting in subsection (2) “councillor or all” after “dismiss the”;
- (h) by inserting in subsection (3) “a councillor or all” after “dismissal of”.

26. Section 230 amended (Appointment of commissioner on suspension)

Section 230 of the Principal Act is amended by inserting “all of” after “suspends”.

27. Section 231 amended (Appointment of commissioner on dismissal)

Section 231(1) of the Principal Act is amended by inserting “all of” after “dismissal of”.

28. Section 260 amended (Closure of electoral roll)

Section 260 of the Principal Act is amended by omitting “6th” and substituting “7th”.

29. Section 269 amended (Notice of election)

Section 269(1) of the Principal Act is amended by omitting “7th” and substituting “8th”.

30. Section 274 amended (Election without poll)

Section 274(3)(b) of the Principal Act is amended by omitting “4th” and substituting “5th”.

31. Section 278 amended (Electoral advertising)

Section 278(3) of the Principal Act is amended by omitting “publish, broadcast” and substituting “publish”.

32. Section 338A amended (Disclosure of information)

Section 338A(3) of the Principal Act is amended by inserting “or a member of an audit panel” after “law, a member”.

33. Section 339 amended (Improper use of information)

Section 339 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “councillor or a member” and substituting “councillor, a member or a member of an audit panel”;
- (b) by omitting from subsection (1) “councillor or member.” and substituting “councillor, member or member of an audit panel.”;
- (c) by omitting from subsection (4)(b) “councillor or member” and substituting “councillor, member or member of an audit panel”.

34. Section 339A amended (Misuse of office)

Section 339A of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) In this section –

member includes a member of an audit panel.

35. Section 341 amended (Immunity from liability)

Section 341 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsection:

(1) A person who is –

- (a) a councillor; or
- (b) a member of the Board; or
- (c) the Executive Officer; or
- (d) a member of the Code of Conduct Panel or an audit panel; or
- (e) a member of a Board of Inquiry; or
- (f) a member of a special committee or a controlling authority; or
- (g) a commissioner, or an employee, of a council –

does not incur any personal liability in respect of any act done or omitted to be done by the person in good faith in the performance or exercise, or the purported performance or purported exercise, of any function or power under this or

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any other Act or in the administration or execution, or purported administration or purported execution, of this Act.

- (b) by inserting in subsection (2) “a councillor, an employee of the council, or” after “lie against”;
- (c) by inserting the following subsection after subsection (2):
 - (3) A liability that would, but for subsection (1), lie against a member of the Board, the Executive Officer, a member of the Code of Conduct Panel, a member of a Board of Inquiry or a commissioner lies against the Crown.

36. Section 348A inserted

After section 348 of the Principal Act, the following section is inserted in Division 3:

348A. References to Act

A reference to this Act includes a reference to any regulations, rules, by-laws and orders made under this Act.

37. Schedule 5 amended (Office of Councillors)

Clause 3 of Schedule 5 to the Principal Act is amended by inserting after subclause (1) the following subclauses:

(1A) Despite subclause (1)(f), if –

- (a) a councillor is no longer eligible to nominate as a candidate under section 270 because the councillor ceases to be entitled under section 254(1) to be enrolled on the electoral roll kept under section 258(7) for an electoral district of the electoral area in respect of which he or she is a councillor; and
- (b) the councillor is entitled, by reason of section 254(2), to be enrolled on the electoral roll kept under section 258(1) in respect of that electoral area –

the councillor does not vacate the office of councillor on so ceasing to be eligible to nominate as a candidate under section 270 but, subject to subclause (1B), vacates the office at the end of the thirtieth day after ceasing to be eligible to so nominate unless the councillor lodges an electoral enrolment form under section 257 within that 30-day period.

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(1B) Despite subclause (1)(f), if a councillor referred to in subclause (1A) lodges an electoral enrolment form under section 257 before the end of the thirtieth day specified in that subclause, the councillor does not vacate the office of councillor.

38. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.