

TASMANIA

**LOCAL GOVERNMENT AMENDMENT
(MISCELLANEOUS) BILL 2018**

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**LOCAL GOVERNMENT AMENDMENT
(MISCELLANEOUS) BILL 2018**

*(Brought in by the Minister for 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 (Miscellaneous) Act 2018*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Principal Act

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

*No. 95 of 1993

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4. Section 16 amended (Municipal areas)

Section 16 of the Principal Act is amended by inserting after subsection (5) the following subsection:

- (5AA) The Governor, by order, may amend or substitute any item in column 1 of Schedule 3 or substitute that Schedule so as to give effect to an order made under subsection (5).

5. Section 28D amended (Documents relating to agendas)

Section 28D(1) of the Principal Act is amended by omitting “a” second occurring and substituting “the next”.

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

Section 28V(3) of the Principal Act is amended by inserting after paragraph (f) the following paragraphs:

- (fa) be accompanied by a statutory declaration, signed by the complainant or by each complainant, verifying the accuracy of the information contained in the complaint; and
- (fb) contain details of all reasonable efforts made by the complainant to resolve the issue that is the subject of the complaint; and

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

Section 28X(2) of the Principal Act is amended by omitting “amend the complaint with the consent of the Code of Conduct Panel” and substituting “not amend the complaint”.

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

Section 28ZB of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “or vexatious” and substituting “, vexatious or trivial”;
- (b) by inserting the following paragraph after paragraph (a) in subsection (1):
 - (ab) that the complainant has not made a reasonable effort to resolve the issue that is the subject of the complaint; or
- (c) by omitting from subsection (2) “or vexatious” and substituting “, vexatious or trivial”.

9. Section 28ZE amended (Conduct of investigations generally)

Section 28ZE of the Principal Act is amended by inserting after subsection (5) the following subsection:

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- (5A) If a general manager, council employee or councillor provides any information or document in response to a request under subsection (4), the general manager, council employee or councillor is to provide a statutory declaration verifying the accuracy of that information or document.

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

Section 28ZK of the Principal Act is amended as follows:

- (a) by inserting in subsection (4) “, and an item in relation to the determination report is placed on the agenda for,” after “tabled at”;
- (b) by inserting in subsection (5)(a) “, and an item in relation to the determination report is placed on the agenda for,” after “tabled at”;
- (c) by inserting the following subsections after subsection (5):
- (6) Any person who receives a determination report must keep the determination report confidential until an item in relation to the determination report is placed on the agenda for a meeting of the relevant council.

Penalty: Fine not exceeding 50 penalty units.

- (7) Any person who receives an addendum must keep the addendum confidential.

Penalty: Fine not exceeding 50 penalty units.

- (8) Subsection (7) does not apply in respect of –

(a) the circulation of the addendum to councillors as part of the documents that are provided to the councillors in relation to a meeting referred to in subsection (5); or

(b) discussing the addendum with another person to whom the addendum is provided as part of the documents provided in accordance with this section.

11. Section 28ZNA inserted

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

28ZNA. Costs of training to be borne by council

- (1) In this section –

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determination report means the written determination of a code of conduct complaint by the Code of Conduct Panel as required by section 28ZJ.

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

12. Section 28ZP amended

Section 28ZP of the Principal Act is amended as follows:

- (a) by renumbering the section as subsection (1);
- (b) by inserting the following subsection after subsection (1):
- (2) If a determination is the subject of a review, the requirement under section 28ZK(4) or (5) that an item in relation to the determination report is to be included on the agenda in relation to a council meeting that is open to the public does not apply until the review is completed.

13. Part 5: Heading amended

Part 5 of the Principal Act is amended by omitting “**INTERESTS**” from the heading to that Part and substituting “**PECUNIARY INTERESTS**”.

14. Section 52 amended (Non-application of Part)

Section 52(1)(d) of the Principal Act is amended by inserting “all” after “payable to”.

15. Section 55 amended (Interests of employees and general manager)

Section 55 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

(2) The general manager must –

- (a) advise the council of the existence of any interest notified under subsection (1); and
- (b) keep a register of any such interest.

Penalty: Fine not exceeding 50 penalty units.

16. Section 56A amended (Councillors and candidates to notify gifts and donations)

Section 56A of the Principal Act is amended by inserting after subsection (1) the following subsections:

(1A) A candidate who, within 120 days before the closing of the polls, receives –

- (a) a gift, or donation, prescribed by the regulations for the purposes of subsection (1); or
- (b) a gift or donation within a class prescribed by the regulations for the purposes of subsection (1) –

must notify the general manager of the relevant council of that gift or donation within 14 days of receiving it.

Penalty: Fine not exceeding 10 penalty units.

(1AB) Notification under subsection (1A) is to include the following:

- (a) the name of the candidate;
- (b) a description of the gift or donation;
- (c) the name of the donor, if known;
- (d) the candidate's relationship to the donor, if known;

- (e) the suburb or locality in which the donor resides, if known;
- (f) the date on which the gift or donation was received;
- (g) the estimated monetary value of the gift or donation.

(1AC) The general manager is to include in the register kept under section 56B any information received under this section.

17. Section 56B amended (Gifts and donations register)

Section 56B of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or candidates” after “councillors”;
- (b) by inserting in subsection (2)(a) “or candidate” after “councillor”;
- (c) by inserting the following subsection after subsection (2):

(3) The register is to be –

- (a) available for public inspection at the relevant council’s office; and
- (b) available on the relevant council’s website; and
- (c) updated at least monthly.

18. Section 64 amended

Section 64 of the Principal Act is amended as follows:

- (a) by renumbering the section as subsection (1);
- (b) by inserting the following subsection after subsection (1):
 - (2) The general manager is to –
 - (a) keep a register of any delegation; and
 - (b) make the register available for inspection at a public office of the council.

19. Section 70G inserted

After section 70F of the Principal Act, the following section is inserted in Division 2:

70G. Plans, strategies and policies to be published on council website

- (1) 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.
- (2) A plan, strategy or policy is to remain on the website until the plan, strategy or policy is repealed or replaced.

20. Section 72 amended (Annual report)

Section 72(1)(ba) of the Principal Act is amended by inserting “that were received and the number” after “complaints”.

21. Section 85 amended (Audit panels)

Section 85 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) An audit panel is not a special committee for the purposes of this Act.

22. Section 178 amended (Sale, exchange and disposal of public land)

Section 178 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) Before a council resolves to sell, lease, donate, exchange or otherwise dispose of public land owned by it, the council must obtain an independent valuation of the land.

23. Section 186 amended (Towns)

Section 186(1)(c) of the Principal Act is amended by omitting “alter” and substituting “adjust”.

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24. Section 188 amended (Boundaries of towns)

Section 188(1) of the Principal Act is amended by omitting “alteration” and substituting “adjustment”.

25. Section 210 amended (Local Government Board)

Section 210(2)(b) of the Principal Act is amended by omitting “Local Government Managers Australia (Tasmania)” and substituting “Local Government Professionals Australia (Tasmania)”.

26. Section 214E amended (Result of review)

Section 214E(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (c) “alter” and substituting “adjust”;
- (b) by omitting from paragraph (q) “alter” and substituting “adjust”.

27. Section 222 amended (Access to documents, &c.)

Section 222(1)(a) of the Principal Act is amended by omitting “and records” and substituting “or records”.

28. Section 224A inserted

After section 224 of the Principal Act, the following section is inserted in Division 1:

224A. Board of Inquiry to provide report, &c. to Director

If a Board of Inquiry submits a report of its findings and recommendations to the Minister and the Minister does not direct the Board of Inquiry to reconsider its report, the Board of Inquiry is to provide to the Director copies of the report and all documentation and other evidence on which the findings and recommendations in the report were based.

29. Section 226 amended (Dismissal of councillors)

Section 226 of the Principal Act is amended by inserting after subsection (2) the following subsection:

(2A) On receipt of a recommendation by the Minister, the Governor, by order, may dismiss the councillor or all councillors.

30. Section 228 amended (Confidentiality)

Section 228 of the Principal Act is amended by inserting “other than those used by the Director for the purposes of an investigation under section 339E or 339EA” after “*Right to Information Act 2009*”.

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31. Section 270 amended (Eligibility for nomination as councillor)

Section 270(1)(c) of the Principal Act is amended by inserting “223A,” after “section 48(6),”.

32. Section 308 amended (By-elections)

Section 308 of the Principal Act is amended by inserting after subsection (1AA) the following subsection:

(1AAB) A by-election is not to be held if a councillor –

- (a) is suspended under section 28ZI(2)(e), 215(5) or 214O; and
- (b) resigns while serving that suspension.

33. Section 310A inserted

After section 310 of the Principal Act, the following section is inserted in Division 9:

310A. Non-application of Division

This Division does not apply in relation to the vacancies in the offices of councillors of a council caused by the dismissal of all the councillors under this, or any other, Act.

34. Section 338 substituted

Section 338 of the Principal Act is repealed and the following sections are substituted:

338. Information

(1) In this section –

relevant person or body means the Minister, the Treasurer, the Director or the Board.

(2) A relevant person or body may –

(a) require a council to provide to the relevant person or body information in relation to the activities of the council; and

(b) require a council to produce, or give access to, any documents, or records, that are in the possession or control of the council; and

(c) inspect and take copies of, or take extracts from, any such information, document or record.

(3) A council on which a requirement is imposed under subsection (2) must comply with the requirement as soon as practicable.

Penalty: Fine not exceeding 50 penalty units.

338AA. Director may require information, &c., for purposes of investigation

(1) For the purposes of investigating any matter under section 339E or 339EA, the Director may –

(a) require any person to produce, or give access to, any information, documents or records that the Director considers may be relevant to the investigation and that are in the possession or control of the person; and

(b) inspect and take copies of, or take extracts from, any such information, document or record; and

(c) require any person to give such assistance as the Director requires.

(2) A person on whom a requirement is imposed under subsection (1) must comply with the requirement as soon as practicable.

Penalty: Fine not exceeding 50 penalty units.

35. Section 338A amended (Disclosure of information)

Section 338A(1) of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraph:

- (b) that is, on the condition that it be kept confidential, given to the councillor by the mayor, deputy mayor, chairperson of a meeting of the council or council committee or the general manager.

36. Section 339 amended (Improper use of information)

Section 339 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or a former councillor, member or member of an audit panel,” after “a member of an audit panel”;
- (b) by inserting in subsection (2) “or former employee” after “An employee”;
- (c) by omitting from subsection (2) “such an employee” and substituting “an employee of the council or authority”;
- (d) by inserting the following subsection after subsection (2):
 - (2A) A person must not make improper use of any information acquired by the person in relation to a code of conduct investigation.

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Penalty: Fine not exceeding 50
penalty units.

37. Section 339EA amended (Investigations of complaints and other matters)

Section 339EA of the Principal Act is amended by inserting after subsection (3) the following subsection:

(3A) In carrying out an investigation under this section, the Director may require a Board of Inquiry to provide the Director with any information arising from the Board's investigation that the Director considers relevant to the Director's investigation.

38. Section 339F amended (Customer service charter)

Section 339F(4) of the Principal Act is amended by omitting "at least once every 2 years" and substituting "within 12 months after a council election".

39. Section 340A amended (Allowances)

Section 340A(5) of the Principal Act is amended by inserting "or section 214O" after "section 215(5)".

40. Schedule 5 amended (Office of Councillors)

Clause 3(1) of Schedule 5 to the Principal Act is amended as follows:

- (a) by omitting from paragraph (ea) “the Legislative Council, or the House of Assembly” and substituting “any Parliament in Australia”;
- (b) by omitting from paragraph (eb) “the Legislative Council, or the House of Assembly, and is such a member for 12 months continuously during that term of office as a councillor” and substituting “any Parliament in Australia”.

41. Repeal of Act

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