

Act Amendments

| Reference in Act | Details on the amendment | Council Proposed Position |
|------------------------|--|--|
| Interpretation | | |
| Section 3 | <p><u>Interpretation</u></p> <p>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:</p> <ol style="list-style-type: none"> 1. Amending the definition of ‘absolute majority’ so that it reflects situations where a councillor or several councillors are suspended. 2. 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. 3. A new definition of ‘model financial statements’. This amendment is covered in more detail later in the Bill. 4. 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. 5. Increasing the timeframes for postal voting in local government elections by 1 week. 6. Introducing a definition for ‘performance improvement direction’. Performance improvement directions are explained in more detail later in this document. | Support |
| Municipal Areas | | |
| Section 16 | <p><u>Boundary Adjustments</u></p> <p>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 be amended so that the process for boundary adjustments is clearer.</p> | Support The Council will need to consult with affected landowners. |

| Reference in Act | Details on the amendment | Council Proposed Position |
|---------------------------------|--|--|
| Mayors and Deputy Mayors | | |
| Section 27 | <p><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.</p> | <p>Support The Council’s submission called for a greater leadership role for the mayor. Many of the amendments to the role of the Mayor which are being suggested make what was implicit now explicit.</p> |
| Subsection 27(2)(a) | <p><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.</p> | <p>Support This request was included in the Council’s submission.</p> |
| Section 27A | <p><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.</p> | <p>Council consideration required There is little information as to the detail of a Ministerial Orders. Council officers have made contact with the LGAT in order to gain further information on the Ministerial Orders and their potential impact.</p> |
| All Elected Members | | |
| Section 28AA | <p><u>Ministerial Orders</u> A new provision which provides the Minister with the power to issue a Ministerial Order to clarify the 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.</p> | <p>Council consideration required The Council’s submission did request clarification around what constituted strategic matters which are the responsibility of the council and operational matters which are the responsibility of the general manager, as per the example cited. The attention of Aldermen is again drawn to the fact that there is little information around the detail of the proposed Ministerial Orders.</p> |

| Reference in Act | Details on the amendment | Council Proposed Position |
|---|---|---|
| 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. | Support |
| Gifts and Donations | | |
| Part 5A Section 56A | <u>Requirement to notify a gift/donation</u> This new provision requires a councillor to notify the general manager of a council if they receive a gift or 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. | Support |
| 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 the 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. | In principle support An opportunity to provide clarity and consistency as well as a cohesive standardised approach is valuable, however, the detail will be in the <i>Regulations</i> |
| 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. | Council consideration required Little information around the level of detail which may be in a Ministerial Order |
| 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. | Council consideration required Little information around the level of detail which may be in a Ministerial Order |
| Section 61B | <u>Appointment of Acting General Manager</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. The amendment will reduce ambiguity. | Support |

| Reference in Act | Details on the amendment | Council Proposed Position |
|----------------------|---|--|
| Section 62A | <p><u>Ministerial Orders – Functions</u></p> <p>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.</p> | <p>Council consideration required</p> <p>Little information around the level of detail which may be in a Ministerial Order</p> |
| Section 62B | <p><u>Ministerial Order – Liaison</u></p> <p>A new provision which provides the Minister with the power to make a Ministerial Order that provides clarity around the requirement of general managers to ‘liaise’ with mayors.</p> <p>Such a Ministerial Order would cover, more broadly, the nature of the liaison with the general manager and mayor and better describe expectations around the nature of the liaison required between the mayors and general managers.</p> | <p>Council consideration required</p> <p>Little information around the level of detail which may be in a Ministerial Order</p> |
| Section 65 | <p><u>Written advice Qualified Persons</u></p> <p>This section has been amended to ensure that any qualified advice, including verbal advice, is provided to councillors in writing.</p> <p>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.</p> | <p>In principle support</p> <p>The Council in its submission asked for clarification around section 65, however, the proposed amendment still doesn’t clarify what is qualified advice and when it is required. The application of the amendment may have practical implications particularly around how meetings are conducted</p> |
| Annual Report | | |
| Section 72 | <p>An existing requirement under subsection 84(2)(da) has now been moved to section 72 such that this is reported under the Annual Report.</p> <p>This amendment ensures best practice in financial management in line with Australian Accounting Standards (AASB 124).</p> | <p>Neutral.</p> <p>S84(2)(da) is the disclosure in the financial statements of significant business activities. Moving this requirement to S72 seems to simply move the disclosure out of the financial statements to elsewhere in the annual report. On this basis, recommend a neutral position.</p> |

| Reference in Act | Details on the amendment | Council Proposed Position |
|-----------------------------------|---|--|
| Model Financial Statements | | |
| Section 83A | <p>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.</p> <p>There will be a transitional period provided to allow councils enough time to prepare for the requirement of model financial statements.</p> <p>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.</p> | <p>Oppose.</p> <p>Model financial statements are a good initiative but should only be used as a guide. The interpretation and application of accounting standards is not always clear cut and professional opinions and conclusions vary. In these circumstances the Auditor-General's opinion is just that – an opinion. The Auditor –General's office acknowledge this. Mandating in legislation the adoption of the model financial statements, which would reflect the Auditor-General's opinion of interpretations and applications, would be a retrograde step. Further, the final responsibility for the preparation and fair presentation of the financial report always rests with the entity concerned. Under this proposal, this basic tenet would no longer apply – because the responsibility for the preparation and presentation of the financial report would seem to lie with the Auditor-General.</p> |
| Subsection 84(2)(b) | <p>Subsection 84(2)(b) has been removed because the new model financial statements will necessarily incorporate related parties disclosures under the accounting standard (ASSB 124), therefore avoiding any unnecessary duplication within the legislation.</p> | <p>Support</p> |

| Reference in Act | Details on the amendment | Council Proposed Position |
|---|--|---|
| Local Government Board | | |
| Section 214A | <p><u>Scope of the Review</u> This section has been amended to clarify the scope of a Local Government Board Review. This amendment clarifies the intention of this provision and reflects the changes that are being made to section 226 around the operations of the council to include matters such as governance and performance.</p> | Support |
| Performance Improvement Directions | | |
| NEW Part 12B | <p><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.</p> | Support Appears to be an effective way of dealing with the non-performance of a council, a councillor or some councillor(s) |
| Board of Inquiry | | |
| Subsection 215(5) | <p><u>Suspension of councillors</u> This section has been amended so that an individual councillor, or 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.</p> | Council consideration required This amendment does demonstrate good governance |

| Reference in Act | Details on the amendment | Council Proposed Position |
|------------------------------|--|---------------------------------------|
| Section 217 | <p><u>Requests for information</u></p> <p>This section provides the Board of Inquiry with the power to require a person to provide written answers to a formal request for information.</p> <p>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.</p> | Support |
| Section 225 | <p><u>Result of Inquiry</u></p> <p>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.</p> | Council consideration required |
| Section 226 | <p><u>Dismissal of councillors – Individuals</u></p> <p>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.</p> | Council consideration required |
| Section 226 (1A) | <p>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 that phrase operates as intended to capture these areas of operation.</p> | Council consideration required |
| Sections 230 and 231 | <p>These two sections have been amended to clarify that the commissioner is only appointed when all the councillors are either dismissed or suspended.</p> | Council consideration required |
| Election Dates | | |
| Sections 260, 269 and 274 | <p><u>Elections</u></p> <p>All the dates under these sections have been increased by 1 week.</p> <p>This is to accommodate changes to 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.</p> | Support |
| Electoral Advertising | | |
| Subsection 278(3) | <p>This subsection has been amended to delete ‘broadcast’ as it is unnecessary duplication with an exclusion described in subsection 278(4)(b).</p> | Support |

| Reference in Act | Details on the amendment | Council Proposed Position |
|---|--|---|
| Performance Improvement Directions | | |
| Section 341 | <p><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 Statutory Authorities (<i>Protection from Liability</i>) Act 1993.</p> | <p>Support Appears to just be a rewording</p> |
| References to Act | | |
| Section 348A | This section clarifies references within the Act to orders and regulations and their status. | Support |
| Office of Councillors | | |
| Schedule 5, Clause 3(f) | <p>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 manager’s 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 automatically vacated from office due to this technicality.</p> <p>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.</p> <p>The automatic vacation provision will continue to operate if the councillor is not entitled to remain in office, due to their electoral status.</p> | Support |

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 have sought the Council's views on these additional matters

| Reference in Act | Details on the amendment | Council Proposed Position |
|--|---|--|
| 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. | Support |
| Section 339E (Complaints against non-compliance or offence) | Considering clarifying this provision so that: <ul style="list-style-type: none"> • 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 be more appropriate 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. <p>These amendments could make the investigation provisions clearer.</p> | Support |
| 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. | Support. However, if the budget is not approved then the rates are not approved, therefore, clarification is needed regarding this (no power to raise rates? Could councils raise rates based on the prior year, then adjust when the budget is approved?) |
| Financial Administration and 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 manger. This would assist in the efficient operation of section 72 (Annual Report) and other relevant financial administration provisions under the Act. | Support |

| | | |
|--------------------|--|--|
| 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. | In principle support The Council in its submission called for an amendment to cater for online petitions, however, some further work will need to be done on the practical difficulties in implementing this recommendation. |
|--------------------|--|--|