Proclamation of Local Government Amendment (Code of Conduct) Act 2015

The Local Government Amendment (Code of Conduct) Act 2015 (the Amendment Act), which incorporates a number of amendments to the Local Government Act 1993 (the Act), commenced on 13 April 2016. The Act has been amended to provide a new local government code of conduct framework for Tasmanian councillors and a number of other miscellaneous changes, as outlined below.

New local government code of conduct framework

The local government code of conduct framework is prescribed under Part 3, Division 3A (Code of conduct, complaints and complaint resolution) of the Act.

The key aspects of the new code of conduct framework include:

- the Model Code of Conduct (made by order of the Minister for Planning and Local Government) which prescribes the standard of behaviour that all Tasmanian councillors are required to meet when performing their role;
- the Minister's independent Local Government Code of Conduct Panel (the Panel) which is responsible for the investigation and determination of code of conduct complaints;
- that code of conduct complaints are lodged with the general manager of the relevant council, and can be made within six months of the councillor allegedly contravening the code of conduct;
- new powers for the Panel to suspend councillors for serious breaches of the code of conduct;
- new ability for the Panel to dismiss frivolous and vexatious complaints;
- new power for the Minister to remove a councillor from office if he/she has received a suspension sanction for three code of conduct breaches during one term of office or two consecutive terms of office;
- new offence provision providing that if a councillor fails to comply with a sanction imposed by the Panel, that councillor may face a penalty of a fine not exceeding 50 penalty units, which currently equates to $7 700; and
- an appeal right from a Panel determination to the Magistrates Court (Administrative Appeals Division) on the basis that the Panel failed to comply with the rules of natural justice.
Further information regarding the new code of conduct framework is available via the following information sheets:

- Information sheet: Local Government Code of Conduct – Information for General Managers; and

**New requirement – Annual report to contain code of conduct complaint information**

Section 72 (Annual report) of the Act has been amended to require a council to report in its annual report the number of code of conduct complaints that were upheld by the Code of Conduct Panel during the preceding financial year and the total costs met by the council during the preceding financial year in respect to all code of conduct complaints.

**Change to council notification requirements – Annual General Meetings**

Section 72B (Annual General Meeting) of the Act has been amended to provide that a council is only required to publish one newspaper notice regarding its Annual General Meeting (AGM), instead of the previous requirement to publish two notices.

**Change to council notification requirements – Impounded animals**

Section 195 (Notice of impounding) of the Act has been amended to provide that a council is only required to publish one newspaper notice regarding an impounded animal for which the owner cannot be found, instead of the previous requirement to publish two notices.

The single newspaper notice is to contain the particulars specified in the prescribed 'notice of impounding' under section 195 of the Act. This includes a statement that fees/costs/charges may be payable in relation to the animal's impounding (and the amounts if known at the time) and the instances in which a council may sell/give away/destroy the impounded animal.

Section 196 (Fees, costs and charges) of the Act has been amended to remove the requirement for a council to notify the owner of an impounded animal, in writing, of the fees/costs/charges payable in respect of an impounded animal, as this information is now included in the single newspaper notice under section 195 of the Act.

Section 197 (Sale or destruction of unclaimed animals) has been amended to remove the requirement for a council to publish a second newspaper notice notifying the owner of an impounded animal of when the council may sell/give away/destroy an impounded animal, as this information is contained in the single newspaper notice under section 195 of the Act.
New power for Director of Local Government to dismiss complaints under the Act

Without limiting the ability of the Director of Local Government to determine the procedure for handling and investigating complaints of non-compliance or offences made under the Act, the Director now has the overt power (under section 339E of the Act) to dismiss a complaint received under the Act on the basis that the complaint is frivolous or vexatious.

Disclosure of information – Refined process regarding a general manager providing a councillor with information relevant to an agenda item

Section 28D (Documents relating to agendas) has been amended to provide a specific dispute resolution process regarding the relevance of documents relating to an agenda item of a council meeting. The new process provides that, in respect to a document relating to an agenda item of a council meeting, a general manager may withhold from a relevant document private and confidential information relating to a person, if that private and confidential information is not relevant to the agenda item. If a general manager refuses to provide a document (either in whole or part) on the basis that he or she considers that it is not relevant to an agenda item, the councillor requesting the document may seek a decision of the council regarding the document and the general manager is to comply with the council decision.

Section 28D has also been amended to include 'information' relating to council agendas, in addition to 'documents'. The effect of this amendment is that section 28D will now deal with documents and information in possession of the council that directly relate to an item on the agenda of a council meeting. This amendment does not affect the intent or functioning of section 28D, it simply provides clarity and ensures consistency with other sections of the Act which relate to council information and documents relating to functions of councillors.

Section 338A (Disclosure of information) of the Act has also been amended to exclude the application of the offence provisions relating to disclosure of information from any other disclosure of information requirement under the Act or any other law.

Change to eligibility criteria for nominating as a councillor in Tasmania

Section 270 (Eligibility for nomination as councillor) of the Act has been amended to restrict the eligibility criteria for nominating as a councillor to persons who have their principal place of residence in Tasmania. Section 315 (False or misleading statements) of the Act has also been amended to provide that it is an offence to make a false or misleading statement in relation to making a notice of nomination as a candidate for the office of councillor.

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