Review of Local Government (General) Regulations 2005

DISCUSSION PAPER – SEPTEMBER 2014

Local Government Division
Department of Premier and Cabinet

Tasmanian Government

Contents

Introduction

The *Local Government (General) Regulations 2005* (the Regulations), which are available at www.thelaw.tas.gov.au, expire on 29 June 2015 and must be replaced or redeveloped by this time.

The aim of this Discussion Paper is to stimulate stakeholder consideration of the effectiveness of the Regulations and options for amendment and improvement.

The list of issues provided below is not intended to be exhaustive and the Department of Premier and Cabinet's Local Government Division (LGD) welcomes feedback on any other matters associated with the Regulations.

The Discussion Paper has been informed by preliminary feedback received from key stakeholders and from inter-jurisdictional comparisons.

Local government, and other key stakeholders, will be provided with the opportunity to provide further feedback regarding any proposed amendments to the Regulations.

Any proposed amendments to Part 2 (Elections) of the Regulations will not take effect until after the 2014 local government elections.

Issues to consider

PART 2 – ELECTIONS

Regulations 4 to 22

Elections of mayor/deputy mayor by councillors (Division 1)

Section 43A of the *Local Government Act 1993* provides that, if there is no nomination for the office of mayor/deputy mayor, the councillors of the council are to elect one of their number.

Division 1 of the Regulations prescribes the process relating to the 'around the table' election of mayors/deputy mayors.

Consideration should be given as to whether the process under Division 1 is workable and whether local government would benefit from the development of a template 'nomination form' under subregulation 4(b).

Hearing and determination of election dispute (Division 2)

Division 2 prescribes processes relating to election disputes, including parties to an election dispute, hearings, giving of evidence, witnesses, expenses, Orders/Rules of the Supreme Court and costs.

Consideration should be given as to whether there are any issues associated with the prescribed processes.

Drawing or casting of lots (Division 3)

Division 3 prescribes processes relating to the drawing and casting of lots, including the ordering of candidates on ballot papers under Schedule 1.

Consideration should be given as to whether there are any issues associated with the prescribed processes.

Electoral advertising (Division 4) – Time/space restrictions

Regulation 21 provides that a person must not publicly display posters/signs containing advertising relating to the election of a candidate, if the poster/sign (or the group of posters/signs) exceeds three square metres. Additionally, this regulation provides that a candidate must not display more than 50 posters/signs containing advertising relating to the election of that candidate.

Regulation 22 prescribes the following limits on the amount of advertising candidates can purchase during an election period:

- radio (10 minutes);
- television (50 minutes); and
- newspapers (two pages in a daily newspaper and five pages in any other newspaper).

Division 4 also provides that a person must not display posters/signs, or purchase advertising time/space, without the written authority of the candidate.

Consideration should be given as to whether these electoral advertising time/space limits are necessary, current and appropriate.

Electoral advertising (Division 4) – Expenditure restrictions

Regulation 22 provides that the total expenditure for the purchase of advertising time/space by or on behalf of a candidate must not:

- in respect of a single election, exceed a total amount of $5 000; and
- in respect of a single election for a councillor and an election for a mayor and deputy mayor, exceed a total amount of $8 000.

It is important to note that the advertising and expenditure limits under Division 4 apply only to the election period, which is defined under section 3 of the Local Government Act as "… the period starting on the 30th day before the date of notice of election and ending at the end of the polling period".

While outside the scope of this review, it should be noted that under section 279 of the Local Government Act, it is a requirement for candidates (within 45 days of the declaration of the poll results) to submit a statement to the Tasmanian Electoral Commissioner detailing what campaign advertising they paid for. The Act also includes offence provisions relating to electoral advertising that is in breach of the Regulations, or has been printed/published/broadcast/distributed without the written consent of the candidate.

Consideration should be given as to whether the prescriptive limit on electoral advertising expenditure under Division 4 of the Regulations is necessary, current and appropriate.

Electoral advertising – Disclosure of donations (new)

Tasmania does not currently require local government candidates to publicly disclose donations received during an election. Rather, the emphasis is on restricting campaign expenditure during an election under Division 4.

Consideration should be given as to whether the Local Government Act and Regulations should be expanded to require candidates to disclose donations received each financial year.

Furthermore, consideration should also be given as to whether this requirement would be in addition to, or instead of, requiring persons/candidates to comply with the current election expenditure caps.

This is a question of whether there is more value in prescribing restrictions on expenditure, or requiring disclosure of donations, or both.

Disclosing campaign donations would ensure public transparency regarding the level of financial and in-kind support given to candidates by individuals/organisations throughout the year. Transparency in political financing arguably protects against any actual or perceived impact that electoral donations may have on political decision making.

Restricting expenditure provides a more level playing field for candidates during local government election campaigns. This is based on the premise that the greater the electoral spending, the greater potential a candidate has to communicate with voters, influence their voting behaviour and affect electoral outcomes. Additionally, the existing expenditure caps mean that if a candidate received a large campaign donation, he/she would be unable to spend any amount above the limit prescribed, or exceed the prescribed limits regarding advertising, during an election.

Tasmania is the only state to restrict campaign spending. All other states in Australia require candidates to disclose donations received, and New South Wales and Western Australia also require candidates to disclose electoral expenditure during each election period and each financial year.

Some states also have bans on anonymous gifts to candidates, and New South Wales has a number of additional political donation bans including indirect campaign contributions where the value of the gift/service provided by the same donor exceeds $1 000 in the same financial year, and bans on political donations from tobacco/liquor/gambling industries, property developers and industry representative organisations or close associates of any of these.

At the State level in Tasmania, there are currently no restrictions on who can donate to a candidate/party and how much they can donate. There are also no Tasmanian laws requiring candidates to report donations they receive over the course of their campaign. However, the *Commonwealth Electoral Act 1918* requires political parties represented in the Tasmanian Parliament to report political donations to the Australian Electoral Commission.

Electoral advertising (Division 4) – Internet (new)

Consideration should be given as to whether Division 4 should be expanded to regulate electoral advertising via the internet.

For example, the current electoral advertising restrictions under regulation 22 do not encompass purchasing of advertising on the internet.

It is important to note that the Government is considering amendments to the Local Government Act to ensure that the current requirements relating to electoral advertising under sections 278 and 311 apply to electoral advertising via the internet. Amongst other things, the Government is considering whether to include the requirement that electoral advertising via the internet be authorised by candidates.

PART 2A – CODE OF CONDUCT

Regulations 22A to 22U

Outside scope of review

Part 2A is outside the scope of this review because the Government is considering amendments to the Local Government Act, and the Regulations, to provide a new code of conduct process under the Local Government Amendment (Code of Conduct) Bill 2014.

Stakeholders will be consulted on the draft Bill.

PART 3 – TENDERING AND CONTRACTING

Regulations 23 to 29

Part 3 prescribes the following matters in relation to tendering and contracting:

- public tenders (regulation 23);
- open tenders (regulation 24);
- multiple-use registers (regulation 25);
- multiple-state tenders (regulation 26);
- non-application of public tender process (regulation 27); and

- codes for tenders and contracts (regulation 28).

Threshold for public tenders (regulation 23)

Section 333A of the Local Government Act requires a council to invite tenders for any contract it intends to enter into for the supply of goods and services at or above the prescribed amount.

The prescribed amount (under regulation 23) is currently set at $100 000 (excluding GST).

Given that prices for goods and services have increased since the Regulations commenced in 2005, it should be considered whether the procurement threshold should be increased and if so, by what amount.

In 2014, the procurement thresholds relating to when Tasmanian Government agencies are required to seek quotes, or go to open tender, were increased. The open tender threshold for agency procurement was increased from $100 000 to $250 000. This increase took into account rising costs and was aimed at reducing red tape for both agencies and suppliers.

In considering whether the local government procurement threshold should be increased, it is important to note that councils can consider conducting a tender process involving amounts below the prescribed threshold, to ensure that the best value is obtained for the goods and services.

Code for tenders and contracts – Buying local (regulation 28)

Section 333B of the Local Government Act provides that a council must adopt a code relating to tenders and contracts that is consistent with the matters and principles prescribed under Regulation 28 of the Regulations.

One of the prescribed principles is 'enhancement of the capabilities of local business and industry'.

It should be considered whether the inclusion of this principle goes far enough to enhance opportunities for local business to tender for local government goods and services.

The Tasmanian Government introduced a 'Buy Local' policy in 2014. The purpose of this policy is to increase awareness among agencies regarding the benefits of buying locally, and improving access to government contracts for small and medium enterprises.

The Policy mandates agency procurement planning to ensure a focus on maximising opportunities for local businesses, before going to the market. The Government has also developed a guide promoting the benefits of buying locally to agencies and includes tips for supporting local business. More information regarding the Government's procurement requirements is available at www.purchasing.tas.gov.au.

Information sheet (new)

LGD has included a new 'Tendering and Contracting Information Sheet' on its website (www.dpac.tas.gov.au/divisions/local_government) to provide guidance to councils when inviting tenders and contracts for the supply of goods and services.

PART 4 – MISCELLANEOUS

Regulations 29 to 39 cover the following miscellaneous matters:

- incapacity to perform duties as councillor;
- customer service charter;
- service rate;
- variation factors;
- instalment payments;
- publication of details of register of money;
- notice of proposed by-law;
- compulsory acquisition of land;
- criteria for city status; and
- plan of boundaries of towns.

LGD is not aware of any current issues relating to these regulations, however consideration should be given as to whether there are any concerns.

PART 4 – DECLARATION OF OFFICE

Regulation 40 and Schedule 2

Section 321 of the Local Government Act provides that any person elected as councillor must make a declaration, as prescribed under regulation 40.

Schedule 2 sets out the wording of the declaration of office, which currently reads:

> *'I…having been elected as…to the…Council, do solemnly declare that I will faithfully carry out the functions and exercise the powers vested in me by virtue of that office to the best of my ability and in accordance with the law.'*

Consideration should be given as to whether the form of the declaration should be expanded to include an oath that the councillor will comply with the council's code of conduct.

The purpose of this amendment would be to emphasise the importance of a council's code of conduct, which sets out the standard behaviour that councillors are required to meet when carrying out their roles and functions.

It is important to note that the Government is currently considering a new and improved code of conduct process with stronger sanctions in relation to councillor code of conduct complaints.

PART 4 – COUNCILLOR ALLOWANCES

Regulation 42 and Schedule 4

2014 review of councillor allowances

Subregulation 42(2) specifies the allowances payable to councillors, mayors and deputy mayors following the last review in 2008. The allowances payable from 1 November 2008 are set out in Schedule 4.

Subregulation 42(2) establishes an indexation process so that councillor allowances are adjusted from 1 November each year by the inflationary factor for the current year.

At its August 2014 meeting, the Premier's Local Government Council (PLGC) agreed that there would be no full review of councillor allowances in 2014 and that current arrangements should continue.

In light of this PLGC decision, amendments relating to councillor allowances will not be considered as part of this review.

PART 4 – EXPENSES FOR COUNCILLORS

Regulation 43

Currently, a councillor is entitled to be reimbursed for reasonable expenses in accordance with the policy adopted under Schedule 5 of the Local Government Act, in relation to:

- telephone rental and telephone calls;
- travelling; and
- care of any child of the councillor.

It should be considered whether this regulation should be expanded to provide that a councillor is entitled to be reimbursed for reasonable expenses for any person that the councillor has caring responsibilities for, not just his/her children.

LGD has also identified a typographical error in regulation 43, in that it should read '…of the Act', rather than '…to the Act'.

COUNCIL LAND INFORMATION CERTIFICATES (SECTION 337 CERTIFICATES)

Subregulation 42(2) and Schedules 6 and 7

Overview

Section 337 of the Local Government Act provides that a person may apply to a council for a land information certificate (section 337 certificate). Typically, these certificates are provided by councils as part of the property conveyancing process, for the purpose of providing prospective purchasers of a property with information the council has on record in respect of the specified property.

The form of a section 337 certificate is prescribed under Schedule 6 of the Regulations.

Attached to the certificate are answers to a series of set questions relating to the property, which are prescribed under Schedule 7.

Schedule 6 – The form of a section 337 certificate

Currently, the form of the certificate requires applicants to identify the land to which the certificate relates, by stating:

- the specified land (property address);
- the Unique Property Identification Number(s) (UPI's) or Property Identification Number(s) (PID's); and
- the title reference.

LGD has received preliminary feedback that UPI and PID references should not form part of the section 337 application. This is because PID was not designed to be used beyond its statutory purpose and UPI is no longer the relevant reference.

Furthermore, identifying a property by PID can cause issues as there are many properties in Tasmania that have multiple titles within a single PID. This has the potential to create legal complications in terms of clearly defining land. It becomes a question of whether the section 337 certificate relates to the PID or to the individual titles.

In light of this, it appears that the most appropriate way to identify the property to which the section 337 certificate relates is by specifying the property address and title reference.

Therefore, consideration should be given as to whether schedule 6 should be amended to remove PID and UPI references. This would mean that the property to which the section 337 certificate relates is identified by its address and title reference.

Consideration should also be given as to whether a section 337 certificate can relate to more than one title reference, as is currently the case, or whether a person should be required to apply for one certificate per title reference.

The section 337 application form under Schedule 6 also asks for the 'specified highway(s) (public road or street frontage)'. LGD has received preliminary advice that clarification is needed regarding properties that are situated on a corner, as not all applicants are specifying both street frontages for corner properties on the current form.

Consideration should therefore be given as to whether it is necessary to amend Schedule 6 to provide clarity regarding corner properties.

Part 1of Schedule 7 – Statutory notices and orders (questions 1 to 4)

Consideration should be given as to whether a new question should be added asking if the council has a record of having issued an infringement notice on the owner for non-compliance with an abatement notice under section 204A of the Local Government Act.

Part 2 of Schedule 7 – Health and environmental matters (questions 5 to 11)

LGD has received preliminary feedback that the following question should be added:

> *'Defective and unhealthy premises - Does the property have a Kingston Sheetmetal stainless steel water tank installed and if so, is the tank signposted to advise that the water contained within is not suitable for drinking?'*

The Department of Health and Human Services has issued a public health warning regarding stainless steel tanks bought from the manufacturer Kingston Sheetmetal. The health risk associated with the tanks relates to lead exposure to people that drink the water.

LGD has also received feedback that a new question should be added regarding whether the council has issued an order relating to water quality under section 129 of the *Public Health Act 1997*. This would allow prospective purchasers to weigh-up any risks and potential limitations on their use of the property prior to purchase.

Furthermore, LGD has received feedback that councils should be required to disclose whether contaminated site notices have been served on the specified property. This is to ensure that purchasers are aware of any contamination risks associated with the property.

Part 3 of Schedule 7 – Planning and development (questions 12 to 21)

Clarifying the purpose of section 337 certificates

Consideration should be given as to whether an introductory statement is included in Part 4 which explains to prospective purchasers that the specified land is subject to planning provisions in a planning scheme. For example, the land may be subject to additional planning

provisions relating to local heritage, or natural hazards/risks (such as bushfire, landslide, flooding, inundation and contamination) as indicated through the applicable planning scheme by overlays or maps depicting land covered by such issues.

This introductory statement could also explain to purchasers that any change of land use or further development of the specified land will require confirmation from the council as to whether a planning or building permit is required.

The inclusion of this introductory statement is based on the premise that section 337 certificates should not be relied upon by prospective purchasers to provide a comprehensive list of statutory planning provisions/controls relating to the property, or advice on property development requirements.

As an alternative to this introductory statement, specific questions could be added requiring councils to report on any additional planning provisions relating to the specified property.

Planning restrictions – Questions 14

The relevance of question 14 should be considered as there is a range of potential planning provisions, in addition to buffer zones, that could be perceived as restrictions affecting the specified land.

A buffer zone, generally speaking, refers to an area surrounding existing industrial land uses, or utilities such as sewerage treatment plants. Such buffer zones may be set out as distances in a table of recommended attenuation distances for different activities, or easements from powerlines etc.

Furthermore, this question does not take into account that there are non-confirming land use rights and interim planning scheme dispensations that may apply to the specified land.

The question could be replaced with the aforementioned introductory statement, or expanded to require councils to report on any additional planning provisions relating to the specified property.

Building line or setback – Question 15

The relevance of question 15 should be considered as it only refers to one of a number of planning provisions that could apply under the zone for the specified land. For example, the question does not include existing or future road corridors under a planning scheme.

LGD has received preliminary feedback that this question could be amended to read:

> *'Building line or setback'*
>
> *(a) Does the planning scheme determine a building setback?*
>
> *(b) If YES to (a), what is the building line or setback applicable in relation to the specified land? Provide particulars for the zone and any variation required under a Code or Specific Area Plan.*

Building line or setback – Question 16

The relevance of question 16 should be considered given the introduction of planning directives that enable some development in some zones without a planning permit.

Important note following question 20

Consideration should be given as to whether the 'important' note following question 20 should be changed to reflect recent amendments to the *Historic Cultural Heritage Act 1995*. LGD has received advice that the note should be amended to read:

> *'If the specified land has historic cultural heritage significance and is listed on the Tasmanian Heritage Register, any work or development must be approved by the Tasmanian Heritage Council under the Historic Cultural Heritage Act 1995. Approval may be in the form of a permit or certificate of exemption. Enquiries should be directed to Heritage Tasmania'.*

Tasmanian planning reform – Moving to a single statewide planning scheme

The Government is working to establish a single statewide planning scheme and once this planning scheme is introduced, further revision of Part 3 (including questions 12, 13 and 20) may be required.

Part 4 of Schedule 7 – Highway construction, maintenance and access matters

LGD has received preliminary feedback that a new question should be added asking a council to disclose whether it has received proclamation of an intended line of a State highway under section 9A of the *Roads and Jetties Act 1935*, or proclamation of limited

access roads under section 52A. The reasoning behind adding this question is that the applicable planning scheme may or may not reflect an intended line or limited access.

LGD also received feedback that Part 4 should include a note that makes reference to the Historic Cultural Heritage Act and directs enquiries to Heritage Tasmania, similar to the existing note following question 20 in Part 3.

Furthermore, LGD has been advised that another note should be included in Part 4, which explains that the specified land may be impacted by limitations on access and other State road planning matters, and directing enquiries to the Department of State Growth, or the rail authority if the matter relates to rail lines.

Part 5 of Schedule 7 – Reticulated stormwater and drainage services

No preliminary feedback received.

Part 6 of Schedule 7 – Building and plumbing matters

Building permit – Question 37

LGD has received preliminary feedback that question 37 should be expanded to ask the council whether a protection work notice has been lodged in relation to the specified property under Part 9 of the *Building Act 2000*.

LGD has also received feedback that question 38(b) should be expanded to ask the council to provide the number of occupancy permits issued and specify what they covered.

Occupancy permit – Question 38

Question 38 asks whether the council has a record of having issued an occupancy permit in relation to building work on the specified land.

LGD has received preliminary feedback that question 38 should be expanded to require a council to advise as to whether it is aware of an occupancy permit(s) having been issued by a private building surveyor under the Building Act. It should be considered whether this would be an appropriate question for councils to answer.

Furthermore, LGD has received feedback that question 38 should be expanded to include temporary occupancy permits granted under section 105 (Temporary occupancy) of the Building Act.

LGD has also received feedback that question 38(b) should be expanded to ask the council to provide the number of occupancy permits issued and specify what they covered.

Certificate of completion – Question 39

LGD has received preliminary feedback that question 39(b) should be expanded to ask the council to provide the number of completion certificates issued and specify what they covered.

Certificate of permit of compliance – Question 42

LGD has received preliminary feedback that:

- the title of question 42 should be changed to 'Certificate of material compliance, permit to proceed, or a permit of substantial compliance';
- the term 'issued' in question 42(b) should be replaced with 'granted'; and
- a new question 42(c) should be added, which asks whether the council has a record of a permit to proceed having been granted under section 180 (Granting permit to proceed) of the Building Act.

Building notice or order – Question 44

LGD has received preliminary feedback that the title of question 44 should be changed to 'notice or order relating to a building or building work'. Furthermore, LGD has been advised that question 44(b) should be amended to read "…in relation to a building or building work on the specified land…".

Other outstanding notices or orders – Question 45

LGD has received preliminary feedback that question 45(b) should be expanded to include a building order issued by a private building surveyor that has not been complied with (by the owner), and subsequently forwarded to the council under section 192 of the Building Act.

Residential building insurance cover – Question 46

LGD has received preliminary feedback that this question should be deleted as residential building insurance cover under the *Housing Indemnity Act 1992* has not been required to be purchased since 1 July 2008.

Error in question numbering

LGD notes that the numbering of the questions between Parts 4 and 5 needs to be corrected, as the questions currently jump from 28 to 31.

Current review of the Tasmanian building regulatory framework

The Government is undertaking a comprehensive review of the building regulatory framework in Tasmania. The purpose of this review is to ensure that only the regulation which is still relevant to Tasmania today and into the future remains part of the framework.

Further revision of Part 6 may be required upon completion of the building regulatory framework review.

General – Electronic delivery

LGD has received preliminary feedback from a number of key stakeholders calling for section 337 certificates to be delivered electronically.

While there may be benefits associated with moving to online section 337 certificates, amending the Regulations to mandate electronic delivery is not currently being considered as part of this review.

This is because such a move may be resource intensive for councils and there are a number of broader issues that would need to be addressed. Furthermore, there is nothing precluding individual councils from moving to online section 337 certificates, if they consider this appropriate.

That said, moving to electronic delivery of section 337 certificates may be something that the Government may consider in the future.

General – Standardised certificate layout

LGD has received preliminary feedback that it would be helpful to conveyancing practitioners if the layout of section 337 certificates (including annexure statements) was standardised across councils.

In light of this feedback, it should be considered whether there would be value in developing a model section 337 certificate template for use by councils, or whether it is

considered that Schedules 6 and 7 are sufficient in terms of prescribing the content of the certificates.

General – Reporting on other matters

LGD has received preliminary feedback that councils should be able to report on any other outstanding matter relating to the specified property that is not covered by the Schedule 7 questions.

In considering whether this should be made explicit in the Regulations, it is important to note that there is nothing precluding a council from including additional matters in the section 337 certificates, if it so wishes.