



**Review of the
*Local Government (General
Regulations) 2005***

Submission

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Introduction

The Local Government Association of Tasmania (LGAT/The Association) is incorporated under the *Local Government Act 1993* and is the representative body for Local Government in Tasmania.

The objectives of the Association are:-

- To promote the efficient administration and operation of Local Government in the State of Tasmania;
- To watch over and protect the interests, rights and privileges of municipal Councils in the State of Tasmania;
- To foster and promote relationships between Local Government in the State of Tasmania with both the Government of Tasmania and the Government of the Commonwealth of Australia;
- To represent the interests of the members of the Association generally, and in such particular matters as may be referred to the Association by its members; and
- To provide such support services to the members of the Association as the Association may by resolution in meeting determine.

General Comments

The Association appreciates the work of the Local Government Division in developing a robust and clear discussion paper and the opportunity to consult with our Members. This submission has been developed in collaboration with member Councils. Where a Council has made a direct submission to this process, any omission of these specific Council comments in the LGAT submission should not be viewed as lack of support by the Association for that specific issue.

In general there is a high level of support for most of the proposals in the paper. Comment is made in relation to individual aspects of the discussion paper in the following table. Where there is no specific comment made, this means there was general acceptance.

Issue	Comment
Part 2 - Elections	
Elections of Mayor/Deputy Mayor by Councillors (Division 1)	<p>The feedback from one council with experience of electing the Deputy Mayor from around the table was that the current provisions are workable but that a template form would be of assistance to Councils who are undertaking such a vote in the first instance.</p> <p>There was however, a view that it may be easier to simply prescribe the minimum information to be included.</p> <p>One respondent also noted that the process appears long winded especially given the opening up of eligibility requirements diminishing the risk of occurrence. They suggested that similar to political parties at State and Federal Level, Council at its first meeting could call for nominations and conduct a secret ballot on the same night with the count being undertaken by the General Manager.</p>
Hearing and Determination of Election Dispute (Division 2)	<p>One council noted that it appears that the process and the cost to undertake an election dispute are extremely onerous and costly. It would seem that it would be more cost efficient to have a tribunal process in place instead of using the Supreme Court process.</p>
Drawing or Casting of Lots (Division 3)	<p>It was suggested that the method used for the State election, that being the Robson Rotational method might be a better approach.</p>
Electoral Advertising (Division 4) Time/Space Restrictions	<p>Restrictions are supported.</p> <p>There appears to be a disconnect and/or duplication between the offences under Section 278 of the Act and the offences under Regulation 22 of the General Regulations (different references to</p>

	<p>purchased electoral advertising and electoral advertising etc). It is considered the offences ought only be in the Act and the regulations ought only prescribe standards.</p> <p>In relation to existing limitations for electoral advertising it considered that it is appropriate to have these limits remain as is demonstrated in the proliferation of current signage.</p> <p>It is also considered that proper provision ought be made in relation to the maximum standard for size for election signage and time period for which these can be displayed that is consistent across the State. Whilst the Regulations attempt to do this in relation to size they do not include an appropriate time period and they do not 'codify' electoral signage requirements for Council elections which still rely upon further restrictions under planning schemes. It is considered that the legislation providing for electoral signage ought override and oust any jurisdiction from planning scheme requirements to allow for consistency to occur. To the extent this cannot be undertaken in Regulations then consideration ought to be given to providing clarity in the Act accordingly.</p> <p>Councils indicated there should be no restriction on how you spend the budget allocated – it should be able to be spent in the form the Candidate deems most beneficial.</p> <p>One council felt that spending limits should be the same for Councillor as Mayor/Deputy Mayor and that the base line needed to be higher and indexed.</p> <p>Further it was noted by one council that advertising should be restricted to the municipality in which that candidate is running.</p>
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Electoral Advertising (Division 4) Expenditure Restrictions	The removal of expenditure limits (other than review) is not supported. It is deemed necessary to ensure all candidates are on an equal footing with regard to advertising.
Electoral Advertising – Disclosure of Donations (New)	<p>This appears to be largely supported. It was noted by some councils that it would be appropriate to limit the amount of donations received to the expenditure limits such that donations are clearly used for the purposes of election campaigning and cannot be considered to be for any personal or monetary gain for a candidate.</p> <p>One council indicated that if donations could not be limited to expenditure and expenditure limits could not be set they then felt consideration ought to be given to banning of donations associated with Local Government elections.</p> <p>There was a clear feel that donations received outside of the prescribed electoral period, if allowed, should be mandatorily disclosed.</p>
Electoral Advertising – Internet Advertising (New)	While agreement it should be included, there may need to be clarification to ensure there is a distinction between advertising and the use of social media. It was clearly felt that this should apply to paid advertising only.
Part3 Tendering and Contracting	
Threshold for Public Tenders (Regulation 23)	<p>There was not a unanimous position on this but the majority of replies supported increasing the threshold although not all felt it should necessarily align with State Government, noting this may exclude too many purchases from the tender process.</p> <p>One council noted that the current threshold is a large purchase for many councils. Another that it may have adverse affects on the market.</p> <p>One suggestion was that if this change goes ahead councils should ensure there are good governance processes in place for internal</p>

	audit panels to review tenders (say between \$150-\$250K) for transparency and probity.
Code for Tenders and Contracts – buying local (Regulation 28)	<p>This was generally supported – as was the idea of a more collaborative approach with local suppliers to build capacity and capability, ultimately providing opportunities to tender for Local and State Government work.</p> <p>Some councils noted that sometimes buying local can cost more than say, buying from a neighbouring town. Therefore, the question was raised: How local is local? LGA, Region, Tasmania?</p> <p>One council suggested that it may be prudent to include provisions of the of the State Government ‘Buy Local’ policy in regulation 28.</p>
Part 4 Miscellaneous	
Part 4 Declaration of Office	<p>The proposal regarding the form of the declaration seems to be largely accepted but some queries as to its necessity given councillors have to carry out the office in accordance with the law which includes abiding by their Code of Conduct.</p> <p>There was one suggestion that it ought also to apply to the Office of Mayor (and Councillor) and Deputy Mayor (and Councillor) as separate and distinct to the general office of Councillor to acknowledge the importance and role of those Offices.</p>
Part 4 Councillor Allowances	
Expenses	Some questions were raised: Should there be an upper limit? Would it also apply for principal carer for partner? Should the care definition be expanded to include anyone under the care of a Councillor or the carer of a Councillor?

Council Land Information Certificates (Section 337 Certificates)	
Overview	<p>Agreement that it is confusing in the current drafted form and creates difficulty for Council Officers when completing – giving rise to potential for errors and liability for Council and confusion for end users. There are too many double negatives used and it should be redrafted in plain English.</p> <p>Further, in general a narrowing is supported so that Councils only provide information which is within their remit. Councils should not be responsible for disclosing information that is generated by third parties (eg Tasmanian Heritage Council).</p> <p>It is felt there is an over reliance on the 337 Certificate in the conveyance process which exposes Councils to potential professional indemnity claims. One council indicated support for more onus on the vendors and their agents to disclose material information.</p>
Schedule 6 = Form of the 337 Certificate	<p>While the UPI reference is rarely used, PID's are regularly used and can apply across multiple titles. PIDs make it easier to process certificates when a property is being subdivided and can be used for double checking purposes.</p> <p>If there is a move to single titles then a Section 337 Certificate should only relate to a single title as the information may be distinct and separate to other titles (e.g. title which has a house built on it and one which does not).</p> <p>There is a danger in dropping data sets that have the potential to facilitate process improvement because of issues with data quality rather than taking steps to improve that quality. There needs to be:</p> <ul style="list-style-type: none"> • A unique identifier at the lowest level of a property record.

	<ul style="list-style-type: none"> • The identifiers must be provided in the certificate process to facilitate future electronic (self service) processes. • The identifiers must be able to be linked or aggregated to enable a property view of the records as distinct from the title view of the records. • Applications should be made at the title level but a council may chose to charge a fee at a property level. • Processes should support/encourage changes such as property amalgamation/adhesion where appropriate. • The issue of corner properties is resolved by a unique identifier. <p>One council indicated that another issue that should also be included in the 337 certificate is kennel licences issued in the area.</p>
<p>Part 1 of Schedule 7 – Statutory Notices and Orders (Q1-4)</p>	<p>The inclusion of a question in relation to the issue of an infringement notice on an owner for non-compliance with an abatement notice is not supported or even considered relevant to a Section 337 Certificate. This would be more appropriately placed on the 132. Certificate of Liabilities.</p> <p>The Section 337 Certificates relate to matters attributable to the land.</p> <p>A relevant question as to whether or not an abatement notice has been complied with (such that the responsibility may refer on to a new owner) is considered sufficient. It is noted that an infringement notice is attached to a person only and creates no liability whatsoever to the new purchaser of the land.</p>
<p>Part 2 of Schedule 7 – Health and</p>	<p>While the question in relation to the Kingston Sheet metal stainless steel water tanks is not</p>

<p>Environmental Matters (Q5-11)</p>	<p>opposed in itself it is noted that councils would not have a record in relation to such tanks being installed and the question as currently described would require council inspections of every property. If the question is to be included then it must be qualified as to “does the Council have a record of the property having a...”.</p> <p>The question regarding water quality (s129 Public Health Act) is not supported because it cannot be relied upon to give all the relevant information about water quality and therefore is potentially misleading. The absence of any Water Quality Order issued by Council does not necessarily mean there is no issue with water quality. For example, small private water suppliers such as rural B&B premises are not required to undertake water quality testing at this time. A ‘no’ answer to this question may lead the buyer to presume that the water quality meets the standards when this is actually unknown.</p> <p>Similarly it is difficult to provide certainty in relation to information on contaminated sites as contaminated site notices alone are not an indication of whether the property is contaminated. Some sites have the potential to be contaminated due to sensitive previous use. An absence of a contaminated site notice should not be assumed to mean there is an absence of contamination.</p>
<p>Part 3 of Schedule 7 – Planning and Development (Q12-21)</p>	<p>Question 16 is considered as being still relevant as it is a question in relation to a matter of fact whether or not a planning permit has been issued or not. Whether or not some development may be subject to a planning directive and can be conducted without a planning permit or whether a development is exempt is not relevant.</p> <p>It was suggested by one council that there may be benefit in an introductory statement, clarifying there are many factors to be considered, not just zoning. More than that</p>

	<p>is too time consuming at a sale point given how few would need that level of detail.</p> <p>Question 14 needs clarification for overlays and buffer zones – there is legal concern regarding the restrictive nature of these.</p> <p>Question 15, regarding building line or setback may also need to include some general comment, that there may be an opportunity for discretion to apply to the setback under the Interim Planning Scheme.</p>
Part 3 of Schedule 7 – Building (Q34-46)	<p>Building Permit (Question 37) – Inclusion is not unanimously supported as this relies on the Building Surveyor lodging with the Council after completion and not all councils provide the service of Building Surveying.</p> <p>Occupancy permit (Question 38) – It was not unanimously agreed that this should be included, as again it relies on the Private Surveyor lodging/supplying a copy to the Council.</p>
Part 4 of Schedule 7 – Highway Construction, Maintenance and Access Matters	<p>Is a section 337 the best way to support the principle of disclosing information that affects the potential use and enjoyment of a property?</p> <p>Should the title process be enhanced so that this type of information is disclosed on the title and maintained by State Government rather than individual councils?</p> <p>The State as custodian of title records and with its mapping capabilities should be able to administer its own proclamation.</p> <p>A similar process to Part 5 Agreements under LUPA could be used.</p>
General – Electronic Delivery	<p>In general it was not felt this should be mandated but that any provision that may clarify electronic delivery over and above that of the Electronic Transactions Act 2000 may be of assistance.</p> <p>Some councils indicated they have been</p>

	<p>thinking of doing this anyway given cost saving on postage and speed in delivering information but noted there may be issues in relation to willingness to receive and sized limits.</p> <p>One suggestion was the establishment of a pricing structure for hardcopy certificates to encourage a move to electronic processes.</p> <p>One council indicated they did not support this change.</p>
General – Standardised Certificate Layout	One council felt this was not necessary as Schedule 6 clearly sets out the content of the 337 Certificate. However others felt this would be beneficial - but as a sample or illustrative format that councils can work towards as software enhancements are made.
General – Reporting on Other Matters	Councils can already include further information it wishes on the Certificate so this is not really deemed necessary.
Other Matters Raised	
Regulation 31 Service Rate	The comments on this section relate to on-site waste water management. One council noted that it would appear to be more appropriate for the property owners to have a contract with the company that installed the system. With this said Council would then not need to have a service rate.
Regulation 32 Variation factors	One council noted that in relation to (d) land use codes provided to council by the Valuer-General. In the past they found that some of these codes did not relate to the zone in their planning schemes.
Regulation 33 Instalment payments	One council indicated that they felt this figure should be raised to say \$250.
Regulation 34 publication of details of	One council queried the relevance of this

register of money	section and if deemed still relevant suggested the amount of \$50 be increased to say \$250.
Regulation 35 Notice of proposed by-law	Model by-laws should be developed by utilising by-laws already developed and approved for use by Local Government. These by-laws can then be implemented by councils if they wish.
Incapacity to Perform Duties as a Councillor	<p>One council noted that this section could be extremely difficult to administer and certainly would appear discriminate against people who have a physical disability, which may be obvious to all, but that person was elected through the due process at a Local Government Election</p> <p>Another council raised that there should be a requirement in the Regulations for a Councillor to attend a certain number of Council Meetings each year otherwise their position becomes vacant. – eg 7 as a minimum to ensure there is always a quorum with reducing councillor numbers.</p>