

Understanding changes to the Local Government Act

LGNSW Annual Conference
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Today's Agenda:

- Objectives
- Background to the review
- Understanding the Phase 1 amendments
- Phase 2 and beyond



Background to the Review

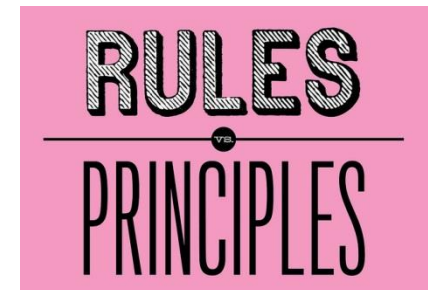


Some of the wins so far...

- IP&R Guidelines now mandated by Regulation rather than being at the discretion of the OLG
- Minister is required to consider criteria before appointing a financial controller or temporary adviser
- Auditor-General's role has been clarified

Phase 1 amendments - overview

- Principles-based legislation, roles and functions
- Elected officials and governance
- Administrative processes and delegations
- Council staff
- Administrators and financial controllers
- IP&R
- Internal and council audits
- Transitional provisions



Staged Implementation of Phase 1

- 30 August, 23 September, 1 October

Not yet commenced:

- Process for reducing the number of councillors or council meetings
- Pecuniary interest/code of conduct changes
- Code of meeting practice
- Audit, Risk and Improvement Committee
- Streamlining of IP&R
- Financial controller provisions

Topics to focus on?

- Functions of GMs?
- Council structure?
- Delegations?
- Governance (code of conduct)?
- Financial controllers?
- Audits?
- Something else?



Guiding principles: Overview

- Purposes of the Act
- Guiding principles for councils
- Principles of sound financial management
- IP&R principles



Purposes of Act (s7)

WHY
ARE
WE
HERE?



Before

- Legal framework
- Regulation of relationships
- Community participation
- Council functions
- ESD

Now

- Higher level with less detail
- Legal framework
- Responsibilities and powers
- Democratically elected
- Community engagement
- Accountable, sustainable and flexible

Guiding principles for councils (s8)

Before: Council charter

Now:

- Guiding principles for councils (s8A)
 - Exercise of functions generally
 - Decision-making
- Principles of sound financial management (s8B)
- IP&R principles (s8C)

Roles and Functions: Overview

- Governing body
- Mayor
- Councillors
- General manager
- Administrator
- Financial controller

Role of the Governing Body (s223)

Before

- Direct and control the affairs of the council



Now

- As before plus:
- 11 points re civic leadership, community engagement, financial sustainability, performance etc
- + Consult with the GM

Role of Mayor (s226)

Before

- Policy-making between meetings
- Preside at meetings
- Civic and ceremonial functions

Now

- As before plus:
- 11 points re leadership, strategy, spokesperson, consultation, IP&R, partnerships and representation, etc



Role of Councillors (s232)

Before

- Dual role re member of the governing body and as an elected person

Now

- Refocused on individual responsibilities rather than responsibilities as members of governing body
- Accountable for the performance of the council

Functions of General Manager (s335)

Before

- Day to day operations of council organisation and implementation of council decisions
- Appoint, direct and dismiss staff

Now

- The same functions re staff, but clarifies the relationship with the mayor and councillors, and ties the GM's functions more closely to IP&R

Elected Officials: Overview

- Reduce the number of councillors
- Mayor's term of office
- Oath or affirmation of office
- LG Remuneration Tribunal
- Filling casual vacancies – use of count-back
- Conduct of meetings (not commenced as at 9/10/16)
- Professional development

Reduce number of councillors (s224A) without a constitutional referendum

Before

- Was available for all councils for a 5 month window in 2011

Now

- Available for councils prescribed by Regulation, for a window between commencement and 12 months prior to election

*not commenced as at 9 October 2016

Term of the Mayor (ss230 and 234)

Before

- 1 year
- Differing views about when a councillor-elected mayor ceased to hold office

*2 year terms do not apply to councils pending amalgamation (cl116 Transitional provisions)

Now

- 2 years*
- Councillor-elected mayors cease to hold office on election day or if they otherwise cease to hold office as a councillor



Oath or affirmation of office (s233A)

New provision

- Must take at/before the first meeting after election
- Take before the GM, a lawyer or a JP
- Can't attend meetings until taken
- Recorded as AWOL if not taken
- After missing 3 meetings, office becomes vacant
- GM to keep records



LG Remuneration Tribunal (s242A)

Before

- In making determinations, the Tribunal has to apply the same policies as the IRC has to consider when making or varying awards for public sector employees

Now

- Does not apply to a determination about a change of council category

Filling Casual Vacancies (s291A)

Before

- Vacancies within the first 18mths after election could be filled by count-back rather than by-election (in some circumstances)

Now

- Count-back option will only be available once a Regulation has been made and a date prescribed

Conduct of Meetings (s360)

Before

- Council may adopt a code of meeting practice

Now

- Council must adopt a code within 12 mths of election
- Model code may have mandatory provisions which can't be changed

*not commenced as at 9 October 2016



Reduction in No. of Meetings (s365A)

New Provision

- Council may make an application to the Minister to reduce the number of meetings per year
- Only applies to councils prescribed by regulation
- Only applies between commencement of the section and up to 12 months before the next election

*not commenced as at 9 October 2016



Professional Development (s232)

New provision

- Role of a councillor (s232(1)(g)) includes “to make all reasonable efforts to acquire and maintain the skills necessary to perform the role of a councillor”
- New regulation-making power for induction courses and other professional development for mayors and councillors (Schedule 6, Item 13A)
- Note – no reg has been made yet

Governance - Overview

- All pecuniary interest provisions will be consolidated into a new Code of Conduct
 - Part 2 of Chapter 14 will be deleted, and most of the requirements brought across as mandatory requirements in the Code of Conduct (cl124 of the transitional provisions)
 - Part 3 of Chapter 14 has been narrowed to deal with persons other than councillors and administrators
- *not commenced as at 9 October 2016

Governance – Pecuniary Interests

- The Act now includes specific reference to pecuniary interests as a type of conduct that can be addressed in the code (other types of conduct brought forward from old Schedule 6A to new s440AAA)
- The regulations may provide that the Code of Conduct is to apply to committees of council and advisers to council (s440(2))

*not commenced as at 9 October 2016

Governance – Pecuniary Interests

Before

- All pecuniary interest breaches are referred to NCAT

Now

- Pecuniary interest breaches by councillors and administrators will be referred to OLG and addressed under the misconduct provisions of the Act – may include referral to NCAT

*not commenced as at 9 October 2016

Governance – Pecuniary Interests

Before

- All pecuniary interest breaches are referred to NCAT

Now

- Allegations of breaches by non-councillors will still go to NCAT
- But complainants will no longer have to sign a statutory declaration to verify a complaint (s460)

Powers of Minister (s370A)

- Old s458
- Added clarification that councillors who are approved by the Minister to attend a meeting and vote on a matter in which they have a pecuniary interest have not engaged in misconduct

*not commenced as at 9 October 2016

Governance – Delegates (s482(4A))

New provision

- Options for NCAT have been provided re a complaint that is proven against a delegate of a council (other than the GM)

*not commenced as at 9 October 2016

Administrative Processes and Delegations - Overview

- Expenses and provision of facilities policies
- Delegation of functions



Expenses and Provision of Facilities Policies (ss 252 and 253)



Before

- Policy to be adopted annually, within 5 months
- Copy of policy and statement of submissions to be sent to CE OLG

Now

- Policy to be adopted each council term, within 12 months
- Not required to send to CE OLG

Delegation of functions (s377)

Before

- Could not delegate acceptance of tenders required under the Act
- Could not delegate granting of financial assistance

Now

- Restriction limited to acceptance of tenders for services currently provided by staff
- Can delegate financial assistance under certain circumstances

Council Structure & Staff - Overview

- Determination of structure
 - By whom, and how
 - Which bits of the structure
 - How often
- Senior staff contracts



Determ'n of Council Structure (s332)

Before

- Council decides org structure, senior staff positions and resources for employment of staff



Now

- Council must consult with GM and then decide senior staff positions, roles and reporting lines of senior staff positions, and resources for employment of staff



Det'n of Council Structure (ss 332, 333)

New/clarified provisions

- GM must consult council and determine the positions other than senior staff positions
- All positions are to give effect to the strategic plan priorities and delivery program of the council
- Also: Council ***must review*** and ***may redetermine*** the org structure within 12 months of an election

Senior Staff Contracts (s339)

Before

- GM must report annually to council on the contractual conditions of senior staff

Now

- Not required



Administrators and Financial Controllers - Overview

- Clarified the functions of the administrator
- Created a new financial controller role

Administrators (s258)

Before

- Administrator had the functions of the council



Administrator

Now

- Has the functions of a councillor and the mayor
- If more than one administrator is appointed, one will be specified as having the functions of the mayor



Financial Controllers (s438HB)

New Provisions

- Intended to provide an option for financial improvement that does not involve dismissing the council
- May be appointed by Minister as part of a performance improvement order
- Council can recommend appointment if they wish
- Paid by the council

*not commenced as at 9 October 2016



Financial Controllers (s438HC)

- Must authorise every payment made by the council
- Council, councillors and staff must cooperate with the financial controller
- Financial controller must be given 14 days to review and comment on any proposed compliance report

*not commenced as at 9 October 2016



Criteria for appointment (s438G)

- Minister required to consider criteria prescribed by the Regulations before appointing a financial controller or temporary adviser
- New Regulation-making power for the criteria to be specified

*not commenced as at 9 October 2016

IP&R (ss402 – 406)

Before

- Details are prescribed about how the IP&R documents are to be prepared
- CE to establish IP&R guidelines which must be complied with

Now

- Details have been moved to the Regulation
- Regulation can prescribe guidelines to be complied with

*not commenced as at 9 October 2016

State of the Environment Rpts (s428A)

Before

- SoE report must be included in council's annual report
- Must be prepared in accordance with IP&R guidelines

Now

- Removed
- IP&R guidelines likely to require reporting on environmental issues relevant to community strategic plan

*not commenced as at 9 October 2016



Audits - Overview

FINANCIAL AUDIT

- Auditor-General is auditor for councils (s422)
- AG can outsource (s422)
- Council pays costs (s422)
- Council can request audits as well (s421E)

PERFORMANCE AUDITS

- All or any activities of one or more councils (s421B)
- Results reported to Parliament (ss421B, 421C, 421D)

AUDIT, RISK AND IMPROVEMENT COMMITTEE

- Mandatory oversight body of prescribed activities
- Performance Improvement (s428A)
- Provision for Committee to be shared (s428B)



Council Audits

- AG can't question the merits of council's policy objectives (s422)
- Auditor has full and free access to documents, including bank statements (ss423, 424)
- AG (or authorised person) may direct a councillor or staff member to appear personally and provides books, records, etc (s423)
- Auditor must keep information confidential (unless required to report) (s425)



Council Audits

- AG is to advise Minister of matters of significance (s426)
- AG may report on local government on a sector-wide basis (s421C)
- Most audit reports except for annual council audits to be tabled before Parliament (s421D)



Council Audits (s415)



New provision

- Council's auditor must also audit council entities
- Council entities = partnership, trust, joint venture etc that a council has formed/helped form or has a controlling interest in
- Entities may be prescribed in or out by the regs

Presentation of audit reports (s419)

Before

- Council's auditor must attend the meeting at which the financial reports are presented, if required in writing by the council

Now

- Only required where the auditor was appointed by the Auditor-General (ie the actual Auditor-General cannot be compelled to attend)



Transitional arrangements

- New auditing arrangements commence from 2016/17 financial year for old councils (cl120)
- Old audit contracts for old councils cease to have effect from 1 October 2016 (cl120)
- All councils have to notify the AG by 31/12/16 of any council entities that it had at 1/7/16 (cl120)
- New councils may have one of the old auditors appointed by the AG as the auditor for 2016/17 (cl121)



Internal Audit Committee (new Part 4A)

- Council must appoint an Audit, Risk and Improvement Committee (s428A)
- Committee can be shared with another council (s428B)
- Councils have 6 months after the next election following the commencement to establish the committee (cl123 of transitional arrangements)

* not commenced as at 9 October 2016



Internal Audit Committee

- Committee can exclude GM from a meeting if it considers it appropriate to do so (s376)
- New reg-making power for financial management and auditing, and for Audit, Risk and Improvement Committees

* not commenced as at 9 October 2016

Questions?!



Next Steps in the Review

- Development of regulations, codes and guidelines
 - Bits of phase 1 still to start
 - Joint Organisations Bill
 - Phase 2 and onwards
-
- General Manager and Councillor reference groups



Phase 2 Amendments

- Elections of Mayors
- Assignment of Wards
- Hire Fees for Council Services
- Tendering Limits
- Sale of Council Property
- Body politic vs body corporate
- Use of mandatory guidelines
- Employment provisions
- Local Water Utilities
- Count-back system
- Other bright ideas for change?



YOUR TURN...



Phase 2 Amendments

- Hire Fees for Council Services
- Tendering Limits
- Sale of Council Property
- Body politic vs body corporate
- Use of mandatory guidelines
- Employment provisions
- Local Water Utilities
- Count-back system
- Elections of Mayors
- Assignment of Wards
- **Other bright ideas for change?**



For discussion:
Do you agree with the proposed changes?
What other changes are needed?

GM Reference Group

- Volunteers?
- Essential to have the views of GMs included
- Periodic teleconferences and email consultation
- Workshops as required





Want More Information?

- Further presentations from LGNSW
- Professional Development in a Box
- Good Governance Forum 2017
- LGNSW staff – see contacts page

*councillor and mayoral training and support also available if that would assist

LGNSW Contacts

Legal Advice

- Bruce McCann (02) 9242 4125

Act Review Input

- Jill Gallagher (02) 9242 4061

Training Enquiries and Bookings

- Sarah Artist (02) 9242 4182

Useful Links



Act location:

- <http://www.legislation.nsw.gov.au/#/view/act/2016/38>

Roadshow details:

- <https://www.olg.nsw.gov.au/news/16-33-2016-local-government-elections-hit-ground-running-councillor-workshops>

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