

Amendments to the *Local Government (General) Regulations 2015* – Stakeholder Consultation

Consultation

The Local Government Division is seeking comment on the following three amendments to the *Local Government (General) Regulations 2015* (General Regulations):

1. The introduction of a gifts and donations register as per the new Part 5A of the *Local Government Act 1993*. Consultation is focused largely on the gifts and donations register and comment is sought on the **attached** table which summarises the key issues and possible changes to the General Regulations.
2. Amending regulation 22 to increase the current electoral advertising expenditure limit by a monetary amount as per Recommendation 28 of the Targeted Review Steering Committee. The Local Government Division recommends commencing the new expenditure limits at an agreed amount indexed by CPI each year.
 - Currently, regulation 22 of the General Regulations states that the advertising expenditure limit for a candidate in a single election is \$5,000, while the expenditure limit for a candidate standing for councillor and a mayor or deputy mayor is \$8,000.
 - It is proposed that the advertising expenditure for a candidate in a single election be raised to \$6,500, and the expenditure for a candidate standing for councillor and a mayor or deputy mayor be raised to \$10,500, indexed by CPI each subsequent year. These figures reflect the CPI increase on the current amount since they were last set in 2005 (rounded to the nearest \$500).
 - The intent is to ensure that the levels set out in the General Regulations in 2005 are adjusted for inflation and then automatically indexed each subsequent year, ensuring real values are maintained. The General Regulations will be amended according to the latest CPI calculations at the time of drafting.
 - In addition, the amount indexed each subsequent year could be rounded to the nearest \$500 for ease of administering the limits.
3. Amending the Declaration of Office such that elected members are required to engage in ongoing professional development and abide by the principles of good governance, as per Recommendation 5 of the Steering Committee.
 - It is suggested that the Declaration could be amended by including the following provisions immediately after (b):
 - (c) *engage in ongoing professional development; and*
 - (d) *abide by the principles of good governance.*
 - In addition to the amendment to the Declaration of Office in the General Regulations, the Local Government Division will be considering how such a Declaration would be practically complied with. We welcome feedback from the

sector as to how this may occur. A preferred option would be for councils to self-report. In addition, the Local Government Division could undertake auditing and/or public reporting.

The General Regulations will be supported by detailed Guidelines and there may be consequential amendments to the *Local Government (Model Code of Conduct) Order 2016* as required, to ensure consistency across both instruments, particularly in relation to compliance matters. The sector will be consulted on any proposed amendment to the Model Code of Conduct.

Submissions

Submissions are to be made in writing and are to be provided either by email to lgd@dpac.tas.gov.au or by post to:

Local Government Division
Department of Premier and Cabinet
GPO Box 123
HOBART TAS 7001

All submissions must be received by close of business on **Monday 18 December 2017**.

Important information to note

All submissions will be treated as public information and will be published on DPAC's website once consideration of the submissions has concluded. However, if you wish your submission to be treated as confidential, whether in whole or in part, please note this in writing at the time of making your submission, and clearly indicate which parts of your submission are confidential, and advise the reasons as to why.

Please note that your name, or the name of your organisation making a submission, will be disclosed unless you request otherwise. In the absence of a clear indication that a submission is intended to be treated as confidential (or parts of the submission), DPAC will treat the submission as public.

The Right to Information Act 2009 and confidentiality

By law, information provided to the Government may be provided to an applicant under the provisions of the *Right to Information Act 2009* (RTI). If you have indicated that you wish all or part of your submission to be treated as confidential, your statement detailing the reasons will be taken into account in determining whether or not to release the information in the event of an RTI application for assessed disclosure.

Should you have any questions regarding the consultation on the amendments to the General Regulations, please contact DPAC's Local Government Division by email at lgd@dpac.tas.gov.au or by telephone on (03) 6232 7022.

Gifts and Donations - Amendments to the *Local Government (General) Regulations 2015*

	Issue	Summary/intent	Possible changes to the Regulations
1	What is in scope?	<p>The Act prescribes compulsory disclosure of gifts and donations received by a councillor.</p> <p>The policy will apply to all gifts and donations made to elected members during a financial year.</p>	The Regulations could stipulate that disclosure relates to a councillor's public duties as distinct from their private capacity.
2	What is exempt?	Personal gifts (received not in connection with an election of a candidate) are exempted in the majority of other jurisdictions.	It is suggested that private gifts (i.e.: gifts made to an individual that are not substantially related to their role as an elected member) or a disposition of property under a will are exempted from disclosure.
3	Definitions	<p>The majority of jurisdictions that have legislated for this matter all have similar definitions of "gift", therefore it is suggested that a similar definition be adopted from these jurisdictions.</p> <p>An example is the definition in the City of Brisbane Regulation 2012: A gift is the transfer of money, other property or other benefit—</p> <p>(i) without consideration; or</p> <p>(ii) for a consideration substantially less than full consideration</p>	<p>The definition of "gift" may include a transfer or loan of money, other property or other benefit that is without consideration or for a consideration substantially less than full consideration.</p> <p>It is suggested that the definition of "donation" include a "political donation".</p>
4	Minimum threshold amount (\$) for disclosure	<p>Only gifts or donations over a certain value need to be declared.</p> <p>Currently across jurisdictions this ranges from \$200 (Qld, WA), \$500 (SA, Vic) and \$1,000 (NSW).</p>	<p>The two options proposed for a minimum threshold are:</p> <p>Option 1 - \$50</p> <p>Option 2 - \$200</p>

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		<p>Considering the size of local governments across Tasmania, and the thresholds and sizes of the other jurisdictions, it is suggested that any gift or donation exceeding \$50 should be declared.</p>	<p>Currently, the majority of councils have policies in place with a minimum threshold of \$50 and \$150, with some thresholds for disclosure ranging between \$200 and \$500.</p>
5	<p>Notification requirements – reporting period – councillor requirements – ALL gifts and donations</p>	<p>(New) section 56A(2)(c) – <i>be provided to the general manager within the period prescribed by the regulations.</i></p> <p>For electoral (campaign) donations, local government jurisdictions have varying reporting periods within which a disclosure return needs to be lodged - from 3 days up to 10 weeks.</p> <p>In its 2014 report <i>Election Funding, Expenditure and Disclosure in NSW: Strengthening Accountability and Transparency</i>, ICAC reviewed best practice examples of disclosure data systems (in the context of election donations). Of particular note, timely reporting was ideally in real-time or continuous.</p> <p>Recently, the Queensland Government introduced real-time donation disclosure for local government elections, requiring disclosure within 7 days of receipt of donations above the disclosure threshold (\$500).</p>	<p>The Local Government Division would be interested in stakeholders' views on the best practice for the timing of disclosure of gifts and donations in Tasmania.</p>
6	<p>Notification requirements – successful candidates – electoral/campaign gifts and donations</p>	<p>It is expected that amendments to the regulations will not be made and in force until approximately July 2018. With local government elections to be held in October 2018, it is suggested that a transitional arrangement could be put in place to account for the compressed timeframe and the</p>	<p>2018 election – it is suggested that any successful candidate will be required to disclose any electoral gift or donation received during the 90 day period prior to closing day of the polling period.</p> <p>Subsequent elections – it is suggested that any successful candidate will be required to disclose</p>

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	Issue	Summary/intent	Possible changes to the Regulations
		need for candidates to be aware of their disclosure obligations.	any electoral gift or donation received during the 180 day period prior to closing day of the polling period. Disclosure to the general manager of these electoral gifts and donations could be done within 45 days of a candidate receiving a certificate of election.
7	Register - details	<p>The new section 56B(2) requires the register to include the following information:</p> <ul style="list-style-type: none"> (a) the name of the councillor; (b) a description of the gift or donation; (c) any other information required by the regulations to be included. <p>Some councils are currently maintaining gift registers - an example of what Hobart City Council is reporting is available on their website: https://www.hobartcity.com.au/Council/Aldermen</p> <p>In addition, LGAT circulated a draft template register (and policy) to councils in March 2014, which the sector could adopt.</p>	<p>In addition to that required under section 56B(2) of the Act, the register could also contain the following information:</p> <ul style="list-style-type: none"> - Donor name; - Donor's suburb/locality; - Date received; and - Estimated value of the gift/donation.
8	Register – availability	It is standard practice in other jurisdictions that registers are available publically.	It is suggested that councils are to ensure that a copy of the register may be viewed by the public – at the council's public office and on its website.

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			The Local Government Division is interested in stakeholder views on the timing of when registers should be made available to the public.
9	Register – updates	Regular updating of registers is consistent with standard practice throughout other jurisdictions.	It is suggested that registers are updated monthly, to ensure the register remains current.
10	Compliance and monitoring	<p>General managers are responsible for keeping the register up to date with any disclosed gift or donation.</p> <p>The new section 56A contains a penalty provision for non-disclosure which would be investigated by the Director of Local Government.</p> <p>Currently, the Model Code of Conduct contains provisions relating to “Gifts and Benefits”. These will be amended in conjunction with amendments to the Regulations to ensure that there is consistency and clarity as to the appropriate investigative body for any alleged breach.</p> <p>The sector will be consulted on any amendments to the Model Code of Conduct.</p>	<p>There are no proposed amendments to the Regulations in relation to compliance.</p> <p>A detailed Guideline will be issued following the amendments to the Regulations.</p> <p>Amendments to the Model Code of Conduct will be done in conjunction with the amendments to the Regulations.</p>