

Local Government Amendment (Miscellaneous) Bill 2006

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Local Government Act 1993* so as:

- (a) to clarify that informal votes are not to be taken into account for the purpose of determining whether a question at a council poll or constitutional referendum has been carried, and
- (b) to provide that if the holder of a civic office to whom leave of absence has been granted attends a council meeting, the leave of absence is taken to have been rescinded as regards any future council meeting, and
- (c) to provide that a by-election need not be held in relation to a vacancy that arises in a civic office in the last 12 months before a scheduled council election, and
- (d) to ensure that a council's power to grant leave of absence to the holder of a civic office is non-delegable, and
- (e) to enable a council to serve notices by way of electronic mail if the person to be served has requested that notices be so served, and
- (f) to make other minor amendments and to enact certain savings and transitional provisions.

This Bill also amends the *Local Government (General) Regulation 2005* in relation to a councillor's responsibilities in relation to leave of absence, and in relation to a general manager's responsibilities with respect to the information to be made available to councillors.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Local Government Act 1993* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Local Government (General) Regulation 2005* set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent. Section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Local Government Act 1993

Informal votes at council polls and constitutional referendums

Schedule 1 [1] amends section 20 so as to clarify that informal votes are not to be taken into account for the purpose of determining whether a question at a council poll or constitutional referendum has been carried.

Leave of absence for holders of civic office

Schedule 1 [2] amends section 234 so as to provide that if the holder of a civic office to whom leave of absence has been granted attends a council meeting, the leave of absence is taken to have been rescinded as regards any future council meeting.

Dispensing with by-elections

Schedule 1 [3] amends section 294 so as to provide that a by-election need not be held in relation to a vacancy that arises in a civic office in the last 12 months before a scheduled council election (that is, after 1 October in the year before the year in which the election is due to be held).

Delegation of power to grant leave of absence

Schedule 1 [4] amends section 377 so as to ensure that a council's power to grant leave of absence to the holder of a civic office is non-delegable. **Schedule 1 [5]** then turns each of the dot paragraphs in section 377 (1) into numbered paragraphs.

Service of notices by electronic mail

Schedule 1 [7] amends section 710 (2) so as to enable a council to serve notices by way of electronic mail if the person to be served has requested that notices be so served.

Schedule 1 [8] inserts new subsections (2A), (2B) and (2C) into section 710. The proposed subsections:

(a) require a council to obtain a person's written request to the use of electronic mail before it is authorised to send notices to the person in that form (proposed subsection (2A)), and

(b) require a person who wishes to withdraw such a request to do so by notice in writing (proposed subsection (2B)), and

(c) provide for how a person's email address is to be determined (proposed subsection (2C)).

Schedule 1 [9] amends section 710 (8) so as to provide that affidavit or oral evidence that the transmission of a notice by electronic mail has been initiated (that is, that the notice has been sent) is conclusive evidence that the notice has been served (regardless of whether or not it has been received). This amendment parallels the regime applicable to notices sent by post.

Schedule 1 [6] makes a consequential amendment to section 710 (2).

Savings and transitional provisions

Schedule 1 [10] amends clause 1 of Schedule 8 so as to enable regulations under the *Local Government Act 1993* to make provision of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [11] inserts a new Part at the end of Schedule 8 so as to enact particular provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Local Government (General) Regulation 2005

Councillors' responsibilities regarding leave of absence

Schedule 2 [1] inserts a new clause 235A. The proposed clause requires a councillor who applies for leave of absence from council meetings to identify the meetings from which the councillor intends to be absent and to give the council's general manager at least 2 days' notice of any intention to attend a meeting in respect of which he or she has been granted leave of absence.

General managers' responsibilities regarding information to be made available to councillors

Schedule 2 [2] inserts a new Division 11 into Part 13. The new Division contains a single clause, proposed clause 413A, that makes it the duty of a council's general manager to give timely information to councillors of any fine or other penalty, or any costs in relation to legal proceedings, for whose payment the council has become liable.