

The Hon Vickie Chapman MP



Government
of South Australia

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Mr John Moyle
Chief Executive Officer
City of Tea Tree Gully

By email: john.moyle@cttg.sa.gov.au

Dear Mr Moyle

As you may be aware, the South Australian Civil and Administrative Tribunal (SACAT) recently considered an application by the Chief Executive Officer (CEO) of the District Council of Tumby Bay (the Council) to restore the Mayor and all six councillors to office following their respective offices becoming vacant as a result of failures to lodge their ordinary returns in 2019.

I am advised this situation has affected the whole of Council membership twice in the past 20 years. The first occurred after the commencement of the *Local Government Act 1999* (the Act), when the requirements were still new. Despite this rare occurrence, it is timely to remind all elected council members and CEOs of their obligations in relation to the lodging of returns under the Act.

Primary returns

Each person who is elected or appointed to a council for the first time, or elected or appointed after a period of absence during which time they were not a council member, must submit a primary return to the CEO **within six weeks** after election or appointment.

Ordinary returns

Each member is required to submit an ordinary return (which is an annual return) to the CEO **within 60 days after 30 June each year**.

It is important to note that members who are required to submit a primary return will be required to submit two returns—the primary and the ordinary—within the 10-month time frame following a periodic election.

Failure to submit a return

If a member fails to submit a return within the time allowed, the CEO of the council is required to notify the member as soon as practicable, by registered mail, and provide specific information about the consequences of failing to submit the return.

If a member fails to submit a return within one month of the time allowed, their office becomes vacant. Section 40 of the Act, however, provides that 'no act or proceedings of a council is invalid by reason of a vacancy or vacancies in the membership of the council'.

Changes under the Statutes Amendment (Local Government Review) Bill 2020

Under changes proposed by the Statutes Amendment (Local Government Review) Bill 2020 (the Bill), the failure of a member to submit a return within one month of the time allowed will result in an automatic suspension, without allowance, rather than a vacancy.

The member will remain suspended until they submit the return. If the suspension continues for longer than a prescribed period (proposed to be 12 months), the council must apply to SACAT for an order disqualifying the member from office.

Please note that I am not proposing any further amendments to the Act in relation to these requirements at this time.

Following passage of the Bill through Parliament, in anticipation of the commencement of the relevant provisions, the Office of Local Government will prepare guidance material on these new requirements.

Additionally, Local Government Association of South Australia (LGA) has published a document entitled *Guidelines for Primary and Ordinary Returns for Council Members*. I have asked the LGA to consider any changes to these guidelines to clarify the current requirements.

I also encourage your council to consider the procedures or systems it can put in place to ensure compliance with these requirements.

Yours sincerely



VICKIE CHAPMAN MP
DEPUTY PREMIER
MINISTER FOR PLANNING AND LOCAL GOVERNMENT