

Delegations
Chapter 4

“Each Council will need to review delegations of its powers and functions next year in response to the new legislative framework.

When reviewing existing delegations or making new ones for immediate use after 1.1.2000, councils may wish to consider framing and adopting, as an interim measure, a delegation for the CEO to exercise some key powers and functions in the Act.”

The delegation powers under Local Government Act 1999 (the 1999 Act) (s44) are similar to delegation powers in the 1934 Act. However, councils:

- can delegate to a subsidiary and an authorised person;
- cannot delegate the power to make a by-law;
- cannot delegate the power to fix, vary or revoke certain fees or charges under s188 (see below).

Section 15 of the Local Government (Implementation) Act 1999 (“the Implementation Act”) provides that any delegation of a council in operation under the 1934 Act will continue in operation under or for the purposes of the 1999 Act.

Councils will need to undertake a comprehensive review of their delegations next year as a result of:

- new powers and functions under the 1999 Act which councils may wish to delegate;
- differences between the provisions of the 1934 Act and the 1999 Act which are significant enough for councils to re-examine the extent and conditions of delegation;
- transfer of powers and functions to other legislation requiring a change to the instrument of delegation;
- changes in delegation powers;
- additional provisions in relation to the powers of authorised officers which may necessitate an evaluation of current appointments and training.

DELEGATIONS OF NEW POWERS

The 1999 Act has replaced a number of powers currently contained in the 1934 Act with broader and more flexible powers. For example,

- provisions relating to councils’ powers to conduct road works or allow the alteration of a road have been replaced by more flexible and less prescriptive powers (ss. 212, 213 and 221) in Chapter 11;
- the large number of current provisions (Part 17 and in by-law making powers of the 1934 Act) governing authorisations, licences and permits for encroachments, street traders, restaurants and other business activities, are replaced by broader authorisation and permit provisions (ss. 221 to 225 inclusive);
- powers in relation to trees on roads require councils to take account of specific matters in considering whether the vegetation is appropriate for the site, and put procedures in place to deal with requests to avert damage to property (ss. 232 and 245).

Councils may wish to specifically examine these changed powers for interim delegation requirements.

TRANSFER OF PROVISIONS

Provisions relating to the re-alignment of roads (ss. 308 to 310a inclusive of the 1934 Act) will now be dealt with under the “Confused Boundary” provisions in the Survey Act 1992 (s50) and the Real Property Act 1886 (s255). Consequently, a change in instruments of delegation may be required.

With respect to the transfer of traffic and parking provisions associated with the introduction of the Australian Road Rules on the 1.12.1999, councils should have already changed their delegation arrangements.

CHANGES IN DELEGATION POWERS

The Council may be affected by changes in the delegation powers with respect to fees and charges, and debts.

The power of delegation under the 1999 Act does not extend to fixing, varying or revoking certain fees or charges under s188. However, the restriction on delegation does not apply to fixing, varying or revoking fees and charges under s188 for

- the use of Council properties or facilities,
- services supplied to a person at his or her request, or
- carrying out work at a person's request.

The 1999 Act no longer specifies that such fees must be fixed by resolution.

Councils may wish to consider delegating the power to fix these fees and charges in some or all cases. Charges need not be fixed by reference to the cost to the Council, so Councils delegating power to fix them may also need to consider the basis for the charging formula which is to be applied under delegated authority.

Writing off of bad debts (s.165 of the 1934 Act) has been amended to require Councils to set an amount above which the delegation will not apply (s.143). Councils which have delegated this power without a limit will need to fix one.

INTERIM DELEGATIONS

Despite the transitional provision relating to delegations,

- changes in powers from the 1934 Act to the 1999 Act, and/or
- the limited or specific scope of existing instruments of delegation

may mean there is insufficient capacity after 1.1.2000 for employees to make some types of decisions under delegated Council authority. Alternatively, there may be uncertainty about the power for some decisions on behalf of the Council to continue to be made by committees or employees under delegated authority as necessary.

This is not something about which general advice can be provided, as it will depend on the range and form of delegations that are currently in place in each council.

The CEO will need to examine current delegations against the 1999 Act, and identify any powers or functions that should be delegated for operations to continue as normal, particularly for decisions which must be made within short timeframes in the early months of next year.

Councils may need to consider framing and adopting, on an interim basis, delegations for the CEO to exercise some key powers and functions not adequately covered by the carry over of existing delegations under section 15 of the Implementation Act.

Do you have other transition issues on delegations not covered by this circular and need further information? For advice or assistance in relation to this circular or the new Local Government legislation, you are welcome to contact us at:

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