



City of **HOBART**

10 May 2019

Department of Justice

Office of the Secretary

GPO Box 825 Hobart TAS 7001

SUBMISSION TO MAGISTRATES COURT (CRIMINAL & GENERAL DIVISION) BILL

Dear Sir/Madam,

The Hobart City Council is responsible for the carriage and enforcement of a number of regulatory frameworks including the *Land Use Planning and Approvals Act 1993*, *Building Act 2016*, *Local Government (Highways) Act 1982*, *Traffic Act 1925* and associated *Road Rules 2009* and the *Dog Control Act 2000*. A core function of council's duties under these frameworks is the prosecution for various offences, typically, when all other suitable compliance avenues have been exhausted or in cases of a serious breach.

Under section 77 of the *Justices Act 1959* council are able to be awarded costs of and incidental to the making of a complaint which results in a successful conviction for an offence. The *Magistrates Court (Criminal and General) Division Bill* replaces section 77 with the following:

154. Costs

(2) Except as provided by this or any other Act, an involved person in relation to proceedings under this Act is not liable for the costs of another involved person.

The proposed amendment to the costs recovery regime, in my view, is a cause for significant concern. It ought to be noted at the outset that municipal authorities are to be distinguished from other regulatory authorities such as the Police or Office of the Director of Public Prosecutions in that they do not ordinarily retain in-house professional legal services. This is primarily due to the significant costs associated with doing so which are unable to be justified by the number of matters which require those services. The reality is that councils must often engage external legal services providers to assist with discharging their statutory obligations.

Of the legislative instruments identified above, only the *Land Use Planning and Approvals Act 1993* provides specifically for the capacity of the prosecuting authority to recover costs of and incidental to a successful complaint. I fear that without clear and broad power to recover costs in successful prosecutions under appropriately limited circumstances, municipal authorities will be at best deterred and at worst prevented from performing their regulatory functions to which they are entrusted. This effect will be intensified in frameworks where the penalties applicable are comparatively insignificant to the cost of making a complaint.

The ability of council to be able to recover costs in these matters is significant as it affords protection to council from instances such as undue expense (whether professional legal, witness or court costs) caused by defendants who undertake to have council prove a complaint notwithstanding the overwhelming case brought against them or otherwise conduct their defence in an unreasonable or belligerent fashion. Further, I fear that it will result in additional strain on the court system with more defendants opting, without the need to have regard to a potential adverse costs order, to purposefully conduct their defence in a manner which in all circumstances unreasonably prolongs proceedings.

I strongly urge the Department of Justice to re-consider the proposed changes to the legislative framework concerning a complainant's ability to recover costs associated with a successful prosecution in this Bill.

The views expressed in this letter are the views of the officers of the Hobart City Council and are not the views of the elected members of the City of Hobart.

Regards,

A handwritten signature in black ink, appearing to read 'N. Heath', written in a cursive style.

(Nick Heath)

GENERAL MANAGER