

South Australia

Local Government (Financial Management) Regulations 2011

under the *Local Government Act 1999*

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Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Local Government (Financial Management) Regulations 2011*.

2—Commencement

These regulations will come into operation on 1 May 2011.

3—Interpretation

In these regulations—

Act means the *Local Government Act 1999*;

Australian Accounting Standard means an Australian Accounting Standard published by the Australian Accounting Standards Board, as in force from time to time;

budget means—

- (a) a budget prepared by a council under section 123 of the Act; or
- (b) a budget prepared by a subsidiary under clause 9 of Schedule 2 of the Act; or
- (c) a budget prepared by a regional subsidiary under clause 25 of Schedule 2 of the Act;

financial statements has the same meaning as in paragraph 10 "Complete Set of Financial Statements" of the *Australian Accounting Standard* AASB 101;

full cost attribution basis means a system under which all costs, including indirect and overhead costs, are allocated to a function, activity, good or service on a reliable and consistent basis (which may be unique to a particular council, council subsidiary or regional subsidiary);

material has the same meaning as in *Australian Accounting Standard* AASB 101;

Model Financial Statements means the Model Financial Statements referred to in regulation 4(2).

4—Adopted standards and statements

- (1) For the purposes of the definition of *Australian Accounting Standard*—
 - (a) the Australian Accounting Standards Board is declared to be a prescribed body under section 303(4) of the Act; and
 - (b) a copy of the Australian Accounting Standards must be kept available at the principal office of the administrative unit of the Public Service primarily responsible to assist the Minister in the administration of this Act for the purposes of section 303(7)(c) of the Act.
- (2) For the purposes of the definition of *Model Financial Statements*—
 - (a) the LGA is declared to be a prescribed body under section 303(4) of the Act; and
 - (b) the document entitled the *Model Financial Statements* published by the LGA on 23 August 2006, as in force from time to time, is adopted by these regulations pursuant to section 303(4) of the Act; and
 - (c) the principal office of the LGA (at 148 Frome Street, Adelaide, 5000 or, if the LGA moves its principal office, at that new address) is specified for the purposes of section 303(7)(c) of the Act.
- (3) An alteration to the Model Financial Statements by the LGA has no force or effect for the purposes of subregulation (2)(b) unless or until the Minister has provided his or her written approval to the making of the alteration.

Part 2—Financial accountability

5—Long-term financial plans

A long-term financial plan developed and adopted for the purposes of section 122(1a)(a) of the Act must include—

- (a) estimated financial statements with respect to the period of the long-term financial plan, which must be presented, other than notes and other explanatory documentation, in a manner consistent with the Model Financial Statements; and
- (b) a summary of proposed operating and capital investment activities presented in a manner consistent with the note in the Model Financial Statements entitled *Uniform Presentation of Finances*; and
- (c) estimates with respect to an operating surplus ratio, a net financial liabilities ratio and an asset sustainability ratio presented in a manner consistent with the note in the Model Financial Statements entitled *Financial Indicators*.

6—Annual business plans

Pursuant to section 123(2)(g) of the Act, an annual business plan (including a draft for the purposes of public consultation) must include information with respect to the following additional matters:

- (a) the reason why the council has adopted its valuation method for rating purposes;

- (b) if differential rates are used, the reasons and justifications for the differentiation, and the expected level of revenue to be raised by each differential rate;
- (c) if applicable, the use and level of a fixed charge component of a general rate;
- (d) the use and level of any separate rate, service rate or service charge, including the reasons for the rate or charge;
- (e) the council's policy on discretionary rebates and remissions, with particular reference to the rebates that will apply for more than 1 financial year and including information on how a rebate is designed to meet the purpose behind the rebate;
- (f) issues concerning equity within the community and the impact of rates across the area;
- (g) the application or operation of a minimum amount payable by way of rates (if applicable).

7—Budgets

Pursuant to section 123(10)(b) of the Act, each budget of a council under the Act must—

- (a) include budgeted financial statements, which must be presented, other than notes and other explanatory documentation, in a manner consistent with the Model Financial Statements; and
- (b) state whether projected operating income is sufficient to meet projected operating expenses for the relevant financial year; and
- (c) include a summary of operating and capital investment activities presented in a manner consistent with the note in the Model Financial Statements entitled *Uniform Presentation of Finances*; and
- (d) include estimates with respect to the council's operating surplus ratio, net financial liabilities ratio and asset sustainability ratio presented in a manner consistent with the note in the Model Financial Statements entitled *Financial Indicators*.

8—Provision of subsidiary budgets to councils

- (1) For the purposes of clause 9(2)(e) of Schedule 2 of the Act, a copy of a budget adopted by a subsidiary must be provided to the chief executive officer of the relevant council within 5 business days after its adoption.
- (2) For the purposes of clause 25(2)(e) of Schedule 2 of the Act, a copy of a budget adopted by a regional subsidiary must be provided to the chief executive officer of each constituent council within 5 business days after its adoption.

9—Review of budgets

- (1) A council, council subsidiary or regional subsidiary must prepare and consider the following reports:
 - (a) at least twice, between 30 September and 31 May (both dates inclusive) in the relevant financial year (where at least 1 report must be considered before the consideration of the report under subregulation (1)(b), and at least 1 report must be considered after consideration of the report under subregulation (1)(b))—a report showing a revised forecast of its operating and capital investment activities for the relevant financial year compared with the estimates for those activities set out in the budget presented in a manner consistent with the note in the Model Financial Statements entitled *Uniform Presentation of Finances*;
 - (b) between 30 November and 15 March (both dates inclusive) in the relevant financial year—a report showing a revised forecast of each item shown in its budgeted financial statements for the relevant financial year compared with estimates set out in the budget presented in a manner consistent with the Model Financial Statements.
- (2) A council must also include in a report under subregulation (1)(b) revised forecasts for the relevant financial year of the council's operating surplus ratio, net financial liabilities ratio and asset sustainability ratio compared with estimates set out in the budget presented in a manner consistent with the note in the Model Financial Statements entitled *Financial Indicators*.

10—Report on financial results

A council, council subsidiary or regional subsidiary must, by no later than 31 December in each year, prepare and consider a report showing the audited financial results of the council, council subsidiary or regional subsidiary (as the case may be) for the previous financial year compared with the estimated financial results set out in the budget presented in a manner consistent with the Model Financial Statements.

Part 3—Accounting principles

11—Accounting standards

- (1) A council, council subsidiary or regional subsidiary must ensure that all accounting records, accounts and financial statements are prepared and maintained in accordance with all relevant Australian Accounting Standards.
- (2) Unless otherwise required or permitted by another law, a council, council subsidiary or regional subsidiary must ensure that reporting on a function, activity, good or service of the council, council subsidiary or regional subsidiary contained in its financial statements, or in any other external financial report prepared by the council, council subsidiary or regional subsidiary, is made according to a full cost attribution basis.
- (3) For the purposes of subregulation (2), an external financial report is a report of a financial nature prepared for the information and use of a person or body external to the council, the council subsidiary and the council which established the subsidiary, or the regional subsidiary and any constituent council (as the case may be).

12—Revaluation of assets

A council, council subsidiary or regional subsidiary must undertake a revaluation of all material non-current assets in accordance with the requirements of *Australian Accounting Standard* AASB 116.

Part 4—Financial statements

13—Form of financial statements

The financial statements of a council, council subsidiary or regional subsidiary (other than notes and other explanatory documentation) must be in accordance with the requirements set out in the Model Financial Statements.

14—Certification of financial statements

The financial statements of a council, council subsidiary or regional subsidiary must include a statement, in a form determined by the Minister, signed by—

- (a) in the case of a council—the chief executive officer and the principal member of the council; or
- (b) in the case of council subsidiary or regional subsidiary—the chair of the board of management,

certifying that—

- (c) the financial statements comply with relevant legislation and Australian Accounting Standards; and
- (d) the financial statements present a true and fair view of the—
 - (i) financial position; and
 - (ii) results of the operations; and
 - (iii) cash flows,of the council, council subsidiary or regional subsidiary (as the case may be) for the financial year; and
- (e) internal controls implemented by the council, council subsidiary or regional subsidiary (as the case may be) provide a reasonable assurance that its financial records are complete, accurate and reliable and were effective throughout the financial year; and
- (f) the financial statements accurately reflect the accounting and other records of the council, council subsidiary or regional subsidiary (as the case may be); and
- (g) —
 - (i) in the case of a council—the chief executive officer and the principal member; or
 - (ii) in the case of council subsidiary or regional subsidiary—the chair,have been authorised by the council, council subsidiary or regional subsidiary (as the case may be) to certify the annual financial statements in their final form.

15—Prescribed day

The prescribed day for the purposes of section 127(2)(a) of the Act is the second Friday in September in the financial year immediately following the end of the relevant financial year.

16—Provision of information

- (1) Pursuant to section 127(4) of the Act, a council must, on or before 30 November in each year, submit a copy of the audited financial statements of the council for the immediately preceding financial year to—
 - (a) the Minister; and
 - (b) the presiding member of the South Australian Local Government Grants Commission.
- (2) The statements submitted under subregulation (1) must be accompanied by information that accords with the "Supplementary Return to the Financial Statements" issued by the South Australian Local Government Grants Commission for use by councils.
- (3) The chief executive officer of the council must certify that the information provided under subregulation (2) has been reconciled to, and is consistent with, the audited financial statements of the council.

Part 5—Audit committees

17—Membership

- (1) The audit committee of a council—
 - (a) must have between 3 and 5 members (inclusive); and
 - (b) must include at least 1 person who is not a member of the council and who is determined by the council to have financial experience relevant to the functions of an audit committee; and
 - (c) must not include, as a member, the council's auditor under section 128 of the Act.
- (2) The audit committee of a council subsidiary—
 - (a) must have between 3 and 5 members (inclusive); and
 - (b) must include at least 1 person who is not a member of the board of management of the subsidiary and who is determined by the council to have financial experience relevant to the functions of the audit committee; and
 - (c) must not include, as a member, the council's auditor under section 128 of the Act or the auditor of the subsidiary under Part 6.
- (3) The audit committee of a regional subsidiary—
 - (a) must have between 3 and 5 members (inclusive); and
 - (b) must include at least 1 person who is not a member of the board of management of the regional subsidiary and who is determined by the constituent councils to have financial experience relevant to the functions of the audit committee; and

- (c) may include members who are members of a constituent council; and
- (d) must not include, as a member, a constituent council's auditor under section 128 of the Act or the auditor of the subsidiary under Part 6.

18—Exemption

- (1) The Minister may, by notice in the Gazette, grant a regional subsidiary, on application by its constituent councils, an exemption from the requirement in clause 30 of Schedule 2 of the Act to establish an audit committee.
- (2) An exemption under subregulation (1) may be subject to conditions specified by the Minister.
- (3) The Minister may, by subsequent notice in the Gazette, vary or revoke an exemption, or a condition imposed in relation to an exemption.

Part 6—Audit

Division 1—Audit standards

19—Audit standards

- (1) An audit of the financial statements of a council, council subsidiary or regional subsidiary must be carried out in accordance with the Auditing Standards and Auditing Guidance Statements published (and amended from time to time) by the Auditing and Assurance Standards Board established under the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (2) In forming an audit opinion for a council under section 129(3)(a) of the Act, the auditor must give due consideration to the adequacy of the council's policies, practices and procedures of internal control under section 125 of the Act.

Division 2—Subsidiaries

20—Auditor of subsidiary

- (1) A council subsidiary or regional subsidiary must have an auditor.
- (2) The auditor must be—
 - (a) a registered company auditor; or
 - (b) a firm comprising at least 1 registered company auditor.
- (3) A person is not eligible to be the auditor of a subsidiary if—
 - (a) the person is a member of the board of management of the subsidiary; or
 - (b) the person is a member of the council which established the subsidiary or, in the case of a regional subsidiary, a member of a constituent council; or
 - (c) the person is a nominated candidate for election as a member of the council which established the subsidiary or, in the case of a regional subsidiary, is a nominated candidate for election as a member of a constituent council.
- (4) The office of auditor of a subsidiary becomes vacant if—
 - (a) the auditor dies; or

- (b) the auditor resigns by written notice to the person who has been appointed to chair the board of management of the subsidiary; or
- (c) the auditor is not or ceases to be eligible for appointment as the auditor; or
- (d) the auditor accepts remunerated office or employment from the subsidiary or—
 - (i) in the case of a council subsidiary—the council which established the subsidiary; or
 - (ii) in the case of a regional subsidiary—a constituent council; or
- (e) the term of appointment of the auditor expires and the auditor is not reappointed; or
- (f) the auditor is removed from office by the subsidiary for reasonable cause.

21—Reporting

- (1) The financial statements of a subsidiary prepared for a particular financial year must be audited by the subsidiary's auditor.
- (2) The financial statements for a financial year must be finalised and audited in sufficient time to meet the requirements of the relevant council or councils under clause 12(2) or 28(1) of Schedule 2 of the Act (as the case may be).
- (3) Unless otherwise required by an Australian Accounting Standard, a council must, in respect of each subsidiary established by the council or for which the council is a constituent council (as the case may be) include, by way of a note to its financial statements—
 - (a) information that identifies the subsidiary, and describes its nature and purpose; and
 - (b) information on the financial contributions that have been made by the council to the subsidiary, or by the subsidiary to the council, during the financial year; and
 - (c) other financial information relevant to the relationship between the council and the subsidiary (from a financial perspective), including information relating to financial guarantees provided by the council, and to any contingent liabilities that may exist.
- (4) The chief executive officer of a council must ensure that any audited financial statements of a subsidiary received for the purposes of clause 12(3)(a) or 28(2)(a) of Schedule 2 of the Act are laid before the council as soon as is reasonably practicable following their receipt by the chief executive officer on behalf of the council (and, in any event, no later than the second meeting of the council following that receipt).

Division 3—Independence of council auditor

22—Independence of council auditor

- (1) Subject to subregulation (2), a council, council subsidiary or regional subsidiary must not engage its auditor to provide services to the council outside the scope of the auditor's functions under the Act.

- (2) A council, council subsidiary or regional subsidiary may engage its auditor to certify that a grant or subsidy received by the council, council subsidiary or regional subsidiary (as the case may be) has been acquitted in accordance with any conditions required by the provider of the grant or subsidy.
- (3) The following persons must each provide, on an annual basis, a statement that provides a certification as to compliance for the relevant financial year with the requirement that the auditor be independent of the council, council subsidiary or regional subsidiary (as the case may be):
- (a) in a case involving a council or council subsidiary—the chief executive officer of the relevant council and the presiding member of the audit committee of the relevant body;
 - (b) in a case involving a regional subsidiary—
 - (i) the chief executive officer of each constituent council; and
 - (ii) the chair of the board of management of the regional subsidiary; and
 - (iii) the presiding member of the audit committee of the regional subsidiary (unless the subsidiary is exempt from the requirement to have an audit committee).
- (4) A statement under subregulation (3) must accompany the financial statements for the relevant body.
- (5) The auditor of a council, council subsidiary or regional subsidiary must provide a statement to the following effect:
- I confirm that, for the audit of the financial statements of for the...../..... financial year, I have maintained my independence in accordance with the requirements of APES 110—Code of Ethics for Professional Accountants, Section 290, published by the Accounting Professional and Ethical Standards Board, and in accordance with the requirements of the *Local Government Act 1999* and the *Local Government (Financial Management) Regulations 2011* made under that Act.
- (6) A statement under subregulation (5) must accompany the audited financial statements of the relevant body.
- (7) The Minister may, on application by a council, by notice in the Gazette, grant an exemption from the operation of this regulation, or a part of this regulation.
- (8) An exemption under subregulation (7) may be subject to conditions specified by the Minister.
- (9) The Minister may, by subsequent notice in the Gazette, vary or revoke an exemption, or a condition imposed in relation to an exemption.
- (10) The Minister must not act under subregulation (9) except on the application of, or after consultation with, the relevant council.

Part 7—Other matters

23—Long service leave

- (1) Section 106 of the Act applies to the following authorities or bodies:
 - (a) the LGA;
 - (b) a control board established under section 15 of the *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986* (and continued in existence under clause 45 of Schedule 4 of the *Natural Resources Management Act 2004*);
 - (c) an organisation involved in local government group training that is registered with the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Training and Skills Development Act 2008*.
- (2) For the purposes of applying section 106 of the Act to an organisation referred to in subregulation (1)(c), employment or periods of service outside the local government sector are to be disregarded.
- (3) If an employee leaves the service of 1 council (Council A) and enters the service of another council (Council B) in circumstances in which the employee is entitled to the benefit of section 106(1) of the Act, the contribution to be made by Council A to Council B is to be calculated in accordance with the following formula:

$$C = \frac{1.3 \times r \times n}{52}$$

where—

C is the amount of the contribution;

r is the rate of ordinary pay of the employee at the date of termination of employment with Council A;

n is the number of completed weeks of service of the employee at the date of termination of employment with Council A, including any previous periods of service which are to be aggregated with the period of service with Council A so as to form a continuous period of service for the purposes of section 106(1) of the Act but not including a period of service in respect of which the employee has been granted long service leave or received payment in lieu of long service leave.

- (4) If—
 - (a) a contribution is made under section 106 of the Act by 1 council to another council in respect of a particular employee; but
 - (b) the service of the employee ceases before an entitlement to long service leave or payment in lieu of long service leave arises, and the employee does not within 13 weeks of the cessation of service again become entitled to the benefit of section 106(1),

the council that received the contribution must refund the amount of the contribution to the council by which the contribution was paid.

(5) If a council receives a refund under this regulation, but the council itself derived portion of the amount refunded from some other council, the council must refund that portion of the amount to that other council.

(6) In this regulation—

council has the same meaning as in section 106 of the Act;

ordinary pay means a person's ordinary weekly rate of pay within the meaning of the *Long Service Leave Act 1987*.

24—Duty to insure against liability

For the purposes of section 142(1) of the Act, a council must take out and maintain insurance to cover its civil liabilities at a minimum level of cover of \$50 million.

Schedule 1—Revocation of *Local Government (Financial Management) Regulations 1999*

The *Local Government (Financial Management) Regulations 1999* are revoked.

Legislative history

Notes

- Variations of this version that are uncommenced are not incorporated into the text.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2011	33	<i>Gazette 29.4.2011 p1300</i>	1.5.2011: r 2
2013	160	<i>Gazette 14.6.2013 p2580</i>	1.7.2013: r 2