

**Legislative Council—No 120A**

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 1 December 2009

South Australia

**Local Government (Accountability Framework)  
Amendment Bill 2009**

A BILL FOR

An Act to amend the *Local Government Act 1999*.

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Local Government (Accountability Framework) Amendment Act 2009*.

#### 5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

#### 3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### 10 Part 2—Amendment of *Local Government Act 1999*

#### 4—Amendment of section 4—Interpretation

- (1) Section 4(1)—after the definition of *council subsidiary* insert:

*CPI* means the Consumer Price Index (All Groups Index for Adelaide) published by the Australian Bureau of Statistics;

- 15 (2) Section 4(1), definition of *supported accommodation* after paragraph (b) insert:

or

- (c) without limiting paragraph (b), accommodation for persons provided by housing associations registered under the *South Australian Co-operative and Community Housing Act 1991*;

## 5—Amendment of section 8—Principles to be observed by a council

(1) Section 8—delete ", in the performance of its" and substitute:

act to uphold and promote observance of the following principles in the performance of its

(2) Section 8—after paragraph (i) insert:

- (j) achieve and maintain standards of good public administration;
- (k) ensure the sustainability of the council's long-term financial performance and position.

## 6—Amendment of section 12—Composition and wards

(1) Section 12(4)—delete "every 8 years" and substitute:

each relevant period that is prescribed by the regulations

(2) Section 12(4a)—delete subsection (4a)

## 7—Amendment of section 44—Delegations

Section 44(3)(a)—delete paragraph (a) and substitute:

- (a) power to make a by-law or to determine that a by-law applies only within a part or parts of the area of the council;

## 8—Amendment of section 48—Prudential requirements for certain activities

(1) Section 48—before subsection (1) insert:

(aa1) A council must develop and maintain prudential management policies, practices and procedures for the assessment of projects to ensure that the council—

- (a) acts with due care, diligence and foresight; and
- (b) identifies and manages risks associated with a project; and
- (c) makes informed decisions; and
- (d) is accountable for the use of council and other public resources.

(a1) The prudential management policies, practices and procedures developed by the council for the purposes of subsection (aa1) must be consistent with any regulations made for the purposes of this section.

(2) Section 48(1)—delete "A council" and substitute:

Without limiting subsection (aa1), a council

(3) Section 48(1)(a)—delete paragraph (a)

(4) Section 48(1)(b)(ii)—after "\$4 000 000" insert:

(indexed)

(5) Section 48(1)(b)—after subparagraph (ii) insert:

or

(iii) where the council considers that it is necessary or appropriate.

(6) Section 48—after subsection (2) insert:

(2a) The fact that a project is to be undertaken in stages does not limit the operation of subsection (1)(b) in relation to the project as a whole.

5 (7) Section 48—after subsection (4) insert:

(4a) A report under subsection (1) must not be prepared by a person who has an interest in the relevant project (but may be prepared by a person who is an employee of the council).

10 (4b) A council must give reasonable consideration to a report under subsection (1) (and must not delegate the requirement to do so under this subsection).

(8) Section 48—after subsection (6) insert:

15 (6a) For the purposes of subsection (4a), a person has an interest in a project if the person, or a person with whom the person is closely associated, would receive or have a reasonable expectation of receiving a direct or indirect pecuniary benefit or a non-pecuniary benefit or suffer or have a reasonable expectation of suffering a direct or indirect detriment or a non-pecuniary detriment if the project were to proceed.

20 (6b) A person is closely associated with another person (the *relevant person*)—

(a) if that person is a body corporate of which the relevant person is a director or a member of the governing body; or

25 (b) if that person is a proprietary company in which the relevant person is a shareholder; or

(c) if that person is a beneficiary under a trust or an object of a discretionary trust of which the relevant person is a trustee; or

(d) if that person is a partner of the relevant person; or

30 (e) if that person is the employer or an employee of the relevant person; or

35 (f) if that person is a person from whom the relevant person has received or might reasonably be expected to receive a fee, commission or other reward for providing professional or other services; or

(g) if that person is a relative of the relevant person.

(6c) However, a person, or a person closely associated with another person, will not be regarded as having an interest in a matter—

(a) by virtue only of the fact that the person—

40 (i) is a ratepayer, elector or resident in the area of the council; or

(ii) is a member of a non-profit association, other than where the person is a member of the governing body of the association or organisation; or

(b) in a prescribed circumstance.

5 (6d) In this section, \$4 000 000 (indexed) means that that amount is to be adjusted for the purposes of this section on 1 January of each year, starting on 1 January 2011, by multiplying the amount by a proportion obtained by dividing the CPI for the September quarter of the immediately preceding year by the CPI for the September

10 (6e) In this section—

*employee* of a council includes a person working for the council on a temporary basis;

15 *non-profit association* means a body (whether corporate or unincorporate)—

(a) that does not have as its principal object or 1 of its principal objects the carrying on of a trade or the making of a profit; and

20 (b) that is so constituted that its profits (if any) must be applied towards the purposes for which it is established and may not be distributed to its members.

## **9—Amendment of section 49—Contracts and tenders policies**

(1) Before subsection (1) insert:

25 (a1) A council must develop and maintain procurement policies, practices and procedures directed towards—

(a) obtaining value in the expenditure of public money; and

(b) providing for ethical and fair treatment of participants; and

(c) ensuring probity, accountability and transparency in procurement operations.

30 (2) Section 49(1)—delete "A council" and substitute:

Without limiting subsection (a1), a council

(3) Section 49(2)—after paragraph (c) insert:

(d) be consistent with any requirement prescribed by the regulations.

## **10—Amendment of section 59—Roles of members of councils**

35 Section 59(1)(a)—after subparagraph (iii) insert:

(iv) to ensure, as far as is practicable, that the principles set out in section 8 are observed.

## **11—Amendment of section 74—Members to disclose interests**

(1) Section 74(4a)(c)—delete paragraph (c)

(2) Section 74—after subsection (4a) insert:

(4b) In addition, subsection (4) does not apply in a case where the interest of the member arises because of 1 or both of the following circumstances:

- 5 (a) the member or a person closely associated with the member is a member of, or director or member of the governing body of, a non-profit association;
- 10 (b) the member or a person closely associated with the member is a member of a body (whether incorporated or unincorporated) comprised of or including, or having a governing body comprised of or including, a person or persons appointed or nominated by the council.

(3) Section 74—after subsection (5) insert:

15 (5a) In addition to the operation of subsection (5), the Ombudsman may, on the complaint of a person with an interest considered by the Ombudsman to be sufficient in the circumstances, investigate an allegation of a breach of this section.

(5b) If the Ombudsman decides to conduct an investigation under subsection (5a)—

- 20 (a) the Ombudsman may exercise the powers of the Ombudsman under the *Ombudsman Act 1972* as if carrying out an investigation under that Act, subject to such modifications as may be necessary, or as may be prescribed; and
- 25 (b) at the conclusion of the investigation, the Ombudsman may prepare a report on any aspect of the investigation and may publish the report, a part of the report, or a summary of the report, in such manner as the Ombudsman thinks fit.

## 12—Amendment of section 84—Public notice of council meetings

30 (1) Section 84—after subsection (1) insert:

(1a) The chief executive officer must give the notice required under subsection (1) in the following manner:

- 35 (a) by causing a copy of the notice and the agenda for the meeting to be placed on public display at each office of the council that is open to the public for the general administration of council business within its area; and
- (b) by publishing the notice and the agenda for the meeting on a website determined by the chief executive officer.

40 (2) Section 84(2)—delete "Notice under subsection (1) is given by causing a copy of the notice and agenda for a meeting to be placed on public display at the principal office of the council—" and substitute:

The notice required under subsection (1) must be given—

(3) Section 84(2a)—delete "The" and substitute:

Without derogating from subsection (1a), the

(4) Section 84(3)—delete "subsection (2)" and substitute:

subsection (1a)(a)

5 (5) Section 84(4)—delete "under subsection (2)" and substitute:

, and continue to be published on the website, under subsection (1a)

### **13—Amendment of section 88—Public notice of committee meetings**

(1) Section 88—after subsection (1) insert:

10 (1a) The chief executive officer must give the notice required under subsection (1) in the following manner:

(a) by causing a copy of the notice and the agenda for the meeting to be placed on public display at each office of the council that is open to the public for the general administration of council business within its area; and

15 (b) by publishing the notice and the agenda for the meeting on a website determined by the chief executive officer.

(2) Section 88(2)—delete "Notice under subsection (1) is given by causing a copy of the notice and agenda for a meeting to be placed on public display at the principal office of the council" and substitute:

20 The notice required under subsection (1) must be given

(3) Section 88(2a)—delete "The" and substitute:

Without derogating from subsection (1a), the

(4) Section 88(3)—delete "subsection (2)" and substitute:

subsection (1a)(a)

25 (5) Section 88(4)—delete "under subsection (2)" and substitute:

, and continue to be published on the website, under subsection (1a)

### **14—Amendment of section 90—Meetings to be held in public except in special circumstances**

Section 90—after subsection (7) insert:

30 (7a) A council committee meeting will be taken to be conducted in a place open to the public for the purposes of this section even if 1 or more committee members participate in the meeting by telephone or other electronic means in accordance with any procedures prescribed by the regulations or determined by the council under section 89  
35 (provided that members of the public can hear the discussion between all committee members and subject to the qualification that a council may direct a committee not to use telephone or other electronic means for the purposes of its meetings).



### 15—Amendment of section 110—Code of conduct

Section 110—after subsection (3) insert:

- 5
- (3a) A code of conduct must be consistent with any principle or requirement prescribed by the regulations and include any mandatory provision prescribed by the regulations.
  - (3b) The Minister should take reasonable steps to consult with any registered association that represents the interests of employees of councils before a regulation is made under subsection (3a).

### 16—Amendment of section 123—Annual business plans and budgets

10 (1) Section 123(5)—delete "7 days" and substitute:

21 days

(2) Section 123—after subclause (5) insert:

- 15
- (5a) The council must ensure that provision is made for—
    - (a) a facility for asking and answering questions; and
    - (b) the receipt of submissions,on its website during the public consultation period.

### 17—Amendment of section 127—Financial statements

Section 127(1)—delete paragraphs (a) to (e) and substitute:

- 20 (a) financial statements and notes in accordance with standards prescribed by the regulations; and

### 18—Amendment of section 129—Conduct of audit

(1) Section 129(1)—delete subsection (1) and substitute:

- 25
- (1) The auditor of a council must undertake an audit of—
    - (a) the council's financial statements within a reasonable time after the statements are referred to the auditor for the audit (and, in any event, unless there is good reason for a longer period, within 2 months after the referral); and
    - (b) the controls exercised by the council during the relevant financial year in relation to the receipt, expenditure and investment of money, the acquisition and disposal of property and the incurring of liabilities.
- 30

(2) Section 129(3)—delete subsection (3) and substitute:

- 35
- (3) The auditor must provide to the council—
    - (a) an audit opinion with respect to the financial statements; and
    - (b) an audit opinion as to whether the controls audited under subsection (1)(b) are sufficient to provide reasonable assurance that the financial transactions of the council have been conducted properly and in accordance with law.

(3) Section 129(4)—delete "a report" and substitute:

written advice

(4) Section 129(4)—delete "the audit" and substitute:

an audit

5 (5) Section 129(5)—delete "report" and substitute:

advice

(6) Section 129(5a)—delete subsection (5a) and substitute:

(5a) The auditor will provide the opinions under subsection (3) and the advice under subsection (4)—

10 (a) to the principal member of the council (who must ensure that copies of the documents are provided to the chief executive officer, and that copies are provided to the other members of council for their consideration at the relevant meeting under subsection (5b) or subsection (5c)); and

15 (b) to the council's audit committee.

(5b) Unless subsection (5c) applies, the opinions and advice must be placed on the agenda for consideration—

(a) unless paragraph (b) applies—at the next ordinary meeting of the council;

20 (b) if the agenda for the next ordinary meeting of the council has already been sent to members of the council at the time that the opinions and advice are provided to the principal member of the council—at the ordinary meeting of the council next following the meeting for which the agenda has  
25 already been sent, subject to the qualification that this paragraph will not apply if the principal member of the council determines, after consultation with the chief executive officer, that the opinions and advice should be  
30 considered at the next meeting of the council as a late item on the agenda.

(5c) The opinions and advice may be the subject of a special meeting of the council called in accordance with the requirements of this Act (and held before the ordinary meeting of the council that would otherwise apply under subsection (5b)).

35 (5d) The opinions under subsection (3) may be kept confidential until they are received at the relevant meeting of the council held under subsection (5b) or subsection (5c).

40 (5e) The advice under subsection (4) may be kept confidential until it is received at the relevant meeting of the council held under subsection (5b) or subsection (5c) or, if the council so resolves at that meeting, until a later date specified by the council (being not later than 60 days after the date of the meeting).

(7) Section 129(6)(a)—delete "during the course of an audit"

(8) Section 129(6)(b)—delete "during the course of an audit"

(9) Section 129(6)—after paragraph (c) insert:

or

5           (d) an irregular or unauthorised act or omission, of a substantial nature, relating to the receipt, expenditure or investment of money, the acquisition or disposal of property, or the incurring of liabilities; or

          (e) the reasons for any adverse audit opinion and any recommendations given to the council by the auditor as a result of that opinion; or

10           (f) if an audit opinion is provided subject to qualifications or limitations—the reasons for the provision of the opinion on the qualified or limited basis; or

          (g) any other matter that, in the opinion of the auditor, ought to be reported to the Minister; or

          (h) any other matter of a kind prescribed by the regulations.

15           (10) Section 129—after subsection (8) insert:

          (9) The opinions under subsection (3), provided to a council under this section, must accompany the financial statements of the council.

### **19—Amendment of section 132—Access to documents**

20           (1) Section 132(3)—delete "should also, so far as is reasonably practicable," and substitute:

must

(2) Section 132(3)(f)—delete paragraph (f) and substitute:

          (f) by-laws made by the council and any determination in respect of a by-law made under section 246(3)(e);

25           (3) Section 132(3)—after paragraph (g) insert:

          (h) the audited financial statements of the council;

          (i) the annual report of the council;

30           (j) the council's most recent information statement under the *Freedom of Information Act 1991*, unless it is provided as part of the annual report of the council.

(4) Section 132—after subsection (4) insert:

          (4a) The Governor may by regulation amend the list of documents contained in subsection (3) from time to time.

### **20—Amendment of section 132A—Related administrative standards**

35           Section 132A(b)—delete paragraph (b) and substitute:

          (b) to achieve and maintain standards of good public administration.

### **21—Amendment of section 133—Sources of funds**

          Section 133, examples, paragraph (b)—delete paragraph (b)

## 22—Variation of section 151—Basis of rating

Section 151—after subsection (9) insert:

- 5 (10) A council must not, in relation to any financial year, seek to set fixed charges as a component of general rates under this Part at levels that will raise a combined amount from such charges that exceeds 50% of all revenue raised by the council from general rates under this Part.
- (11) A charge is not invalid because fixed charges imposed in relation to any financial year raise more than the amount referred to in subsection (10).

## 10 23—Amendment of section 152—General rates

- (1) Section 152(2)(a)—delete "paragraphs (b), (c) and (d)" and substitute:

the following paragraphs

- (2) Section 152(2)—after paragraph (b) insert:

(ba) a fixed charge cannot be imposed against—

- 15 (i) each site in a caravan park; or  
(ii) each site in a residential park within the meaning of the *Residential Parks Act 2007*;

## 24—Amendment of section 155—Service rates and service charges

- (1) Section 155—after subsection (2) insert:

20 (2a) Subsection (2) does not apply in prescribed circumstances.

- (2) Section 155(5)—after "future capital works" insert:

and including so as to take into account the depreciation of any assets

- (3) Section 155(5)—after "service in its area" insert:

25 (being a cost determined taking into account or applying any principle or requirement prescribed by the regulations)

- (4) Section 155(6) and (7)—delete subsections (6) and (7) and substitute:

- 30 (6) Subject to subsection (7), any amounts held in a reserve established in connection with the operation of subsection (5) must be applied for purposes associated with improving or replacing council assets for the purposes of the relevant prescribed service.
- (7) If a prescribed service under subsection (6), is, or is to be, discontinued, any excess of funds held by the council for the purposes of the service (after taking into account any expenses incurred or to be incurred in connection with the prescribed service) may be applied for another purpose specifically identified in the council's annual business plan as being the purpose for which the funds will now be applied.
- 35

(5) Section 155—after subsection 10 insert:

(11) If a prescribed service, in relation to a particular piece of land, is not provided at the land and cannot be accessed at the land, a council may not impose in respect of the prescribed service a service rate or annual service charge (or a combination of both) in relation to the land unless the imposition of the rate or charge (or combination of both)—

- (a) is authorised by the regulations; and
- (b) complies with any scheme prescribed by the regulations (including regulations that limit the amount that may be imposed or that require the adoption of a sliding or other scale established according to any factor, prescribed by the regulations, for rates or charges (or a combination of both) imposed under this section).

**25—Amendment of section 158—Minimum rates and special adjustments for specified values**

(1) Section 158(2)—after paragraph (b) insert:

(ba) a minimum amount cannot be imposed against—

- (i) each site in a caravan park; or
- (ii) each site in a residential park within the meaning of the *Residential Parks Act 2007*; and

(bb) if 2 or more pieces of ratable land within the area of a council constitute a single farm enterprise, a minimum amount may only be imposed against 1 of the pieces of land; and

(2) Section 158(2)—after paragraph (d) insert:

(da) a council may not apply this section so as to affect or alter a separate rate that would be otherwise payable under section 154 in relation to more than 35% of the total number of properties in the area that should be subject to the separate rate; and

(3) Section 158(2)(e)—delete paragraph (e) and substitute:

(e) a council cannot apply this section in respect of a general rate or a separate rate if the council has included a fixed charge as a component of that rate.

(4) Section 158—after subsection (5) insert:

(6) in this section—

*single farm enterprise* has the same meaning as under section 152.

**26—Amendment of section 161—Rebate of rates—community services**

Section 161(1)—delete "and administration" and substitute:

or administration (or both)

**27—Amendment of section 194—Revocation of classification of land as community land**

(1) Section 194(2)(a)—after "must prepare" insert:

and make publicly available

(2) Section 194—after subsection (2) insert:

(2a) The report prepared under subsection (2)(a) must be published in accordance with the regulations.

(2b) A public consultation policy for the purposes of subsection (2)(b) must include a period of at least 2 months from the first publication of a report under subsection (2a) for community consultation in relation to the proposal.

(2c) If during the period of 2 months referred to in subsection (2b) the council receives a petition in the prescribed form signed by not less than the prescribed number of electors (being electors at the time of signing), the proposal to revoke the classification of the land as community land cannot proceed unless the council obtains majority support for the proposal at a poll of electors for the area of the council conducted in accordance with subsection (2d).

(2d) The following provisions apply to a poll under subsection (2c):

(a) the *Local Government (Elections) Act 1999* will apply to the poll subject to modifications, exclusions or additions prescribed by regulation;

(b) the council will have majority support for the proposal to revoke the classification of the land as community land if a majority of electors voting at the poll approve the revocation;

(c) the council must publish the results of the poll in a newspaper circulating within the area of the council.

(3) Section 194(3)—delete "of subsection (2)" and substitute:

set out above, and subject to the outcome of any poll conducted under subsection (2c)

(4) Section 194—after subsection (6) insert:

(7) For the purposes of a petition under subsection (2c)—

(a) a person who signs another person's name to a petition or who knowingly signs a petition more than once, or who, not being an elector for the relevant council, knowingly signs a petition, is guilty of an offence;

(b) a person who gives or offers or promises to give any money or other material benefit to a person to obtain the person's signature to a petition is guilty of an offence;

(c) a person who, without reasonable excuse, hinders or obstructs a person from collecting signatures for a petition is guilty of an offence;

(d) a person who uses or makes available to any person any particulars obtained from a petition about a signatory to a petition for a purpose that is not connected with the administration of this Act is guilty of an offence.

(8) A person who is found guilty of an offence against subsection (7) is liable to a penalty not exceeding \$5 000.

(9) In subsection (2c)—

*prescribed number of electors* means, in relation to a petition that relates to a proposal to revoke the classification of land as community land—

(a) 200 electors in respect of places of residence within the area of the relevant council; or

(b) 5% of electors in respect of places of residence within the area of the relevant council,

whichever is the greater.

## **28—Amendment of section 201—Sale or disposal of local government land**

Section 201(2)(a)—delete paragraph (a) and substitute:

(a) the council may dispose of community land—

(i) if the land is to be amalgamated with 1 or more other parcels of land and the amalgamated land is to be (or to continue to be) community land; or

(ii) in any other case—after revocation of its classification as community land;

## **29—Amendment of section 202—Alienation of community land by lease or licence**

Section 202(4)—delete subsection (4) and substitute:

(4) A lease or licence is to be granted for a term not exceeding 21 years and the term of the lease or licence may be extended but not so that the term extends beyond a total of 21 years.

(4a) Subsection (4) does not prevent a new lease or licence being granted at the expiration of 21 years (subject to the other requirements of this Act or any other law).

## **30—Amendment of section 210—Conversion of private road to public road**

(1) Section 210(2)—after paragraph (a) insert:

(ab) if a person has some other form of registered legal interest over the road and the identity and whereabouts of that person are known to the council—give written notice to the person of the proposed declaration; and

(2) Section 210(3)—delete subsection (3) and substitute:

(3) The following applications may be made to the Land and Valuation Court in connection with a declaration under this section:

- 5
- (a) an owner of the private road may apply to the court for compensation for the loss of the owner's interest in the road;
  - (b) a person who has some other form of registered legal interest over the private road may apply to the court for compensation for the affect of the discharge of that interest.

10 (3a) An application under subsection (3) must be made within 5 years after the declaration is made under this section.

**31—Amendment of section 216—Power to order owner of private road to carry out specified roadwork**

Section 216—delete subsection (2) and substitute:

(2) Divisions 2 and 3 of Part 2 of Chapter 12 apply with respect to—

- 15
- (a) any proposal to make an order; and
  - (b) if an order is made, any order,

under subsection (1).

**32—Amendment of section 218—Power to require owner of adjoining land to carry out specified work**

20 Section 218(2)—delete subsection (2) and substitute:

(2) Divisions 2 and 3 of Part 2 of Chapter 12 apply with respect to—

- (a) any proposal to make an order; and
- (b) if an order is made, any order,

under subsection (1).

25 **33—Amendment of section 219—Power to assign a name, or change the name, of a road or public place**

(1) Section 219—after subsection (1) insert:

(1a) The council must assign a name to a public road created after the commencement of this subsection by land division.

30 (2) Section 219(4)—delete "a resolution assigning or changing" and substitute:

the assigning or changing of

(3) Section 219—after subsection (4) insert:

(5) A council must prepare and adopt a policy relating to the assigning of names under this section.

35 (6) A council may at any time alter its policy, or substitute a new policy.

(7) Public notice must be given of the adopting or altering of a policy under this section.



- (8) A reference in this section to land division is a reference to the division of an allotment under the *Development Act 1993* or to the dealing with land under the *Roads (Opening and Closing) Act 1991* so as to open a road.

5 **34—Amendment of section 220—Numbering of premises and allotments**

- (1) Section 220—after subsection (1) insert:

(1a) The council must assign a number (as part of its primary street address) to all buildings or allotments adjoining a public road created after the commencement of this subsection by land division.

10 (1b) A council must ensure that an assignment under subsection (1a) occurs within 30 days after the issue of certificate of title in relation to the relevant land division in accordance with any requirements prescribed by regulations made for the purposes of this subsection.

- (2) Section 220(3)—delete "a resolution adopting, altering or substituting" and substitute:  
15 the adopting, altering or substituting of

- (3) Section 220(4)—delete "resolution" and substitute:  
decision of the council to adopt, alter or substitute a numbering system

**35—Substitution of section 237**

Delete section 237 and substitute:

20 **237—Removal of vehicles**

(1) If a vehicle has been left on a public road or place, or on local government land for at least 24 hours, an authorised person may place a prescribed warning notice on the vehicle.

25 (2) After 24 hours has expired since the placement of a prescribed warning notice, an authorised person may have the vehicle removed to an appropriate place.

(3) Subsections (1) and (2) do not apply in prescribed circumstances.

(4) The council must ensure that the owner of the vehicle is notified of the removal of the vehicle and of the place to which the vehicle was removed—

(a) by written notice in the prescribed form—

(i) served on the owner personally; or

(ii) served on the owner by the use of person-to-person registered post,

35 as soon as practicable after the removal of the vehicle; or

(b) if the owner is unknown or cannot be found—by public notice published in a newspaper circulating generally in the State within 14 days after the removal of the vehicle.

(5) If the owner of the vehicle does not, within 1 month after service or publication of the notice relating to the removal of the vehicle—

- (a) take possession of the vehicle; and
- (b) pay all expenses in connection with the removal, custody and maintenance of the vehicle and of serving, posting or publishing the notice,

the council must, subject to subsection (6)(b), offer the vehicle for sale by public auction or public tender.

(6) If—

- (a) the vehicle is offered for sale but is not sold; or
- (b) the council reasonably believes that the proceeds of the sale of the vehicle would be unlikely to exceed the costs incurred in selling the vehicle or the costs incidental to removing or holding the vehicle, or those costs combined,

the council may dispose of the vehicle in such manner as the council thinks fit.

(7) The council must apply any proceeds of sale of the vehicle as follows:

- (a) firstly, in payment of the costs of and incidental to the sale;
- (b) secondly, in payment of the costs of and incidental to the removal, custody and maintenance of the vehicle and of the notice served, posted or published under this section;
- (c) thirdly, in payment of the balance to the owner of the vehicle.

(8) If after reasonable inquiry following sale of the vehicle the owner of the vehicle cannot be found, the balance of the proceeds of the sale is to be paid to the council.

(9) If after taking reasonable steps the council cannot return property found in the vehicle—

- (a) the goods will be taken to be unclaimed goods for the purposes of the *Unclaimed Goods Act 1987*; and
- (b) the council will be taken to be a bailee of the goods under that Act.

### **36—Amendment of section 246—Power to make by-laws**

Section 246—after subsection (4) insert:

- (4a) If a council makes a determination under subsection (3)(e), the council must ensure that notice of the determination is published in the Gazette and in a newspaper circulating in the area of the council.

**37—Amendment of section 258—Non-compliance with an order an offence**

Section 258, penalty and expiation fee provisions—delete the penalty and expiation fee provisions and substitute:

Maximum penalty: \$2 500.

Expiation fee: \$210.

**38—Amendment of section 270—Procedures for review of decisions and requests for services**

(1) Section 270—before subsection (1) insert:

(a1) A council must develop and maintain policies, practices and procedures for dealing with—

(a) any reasonable request for the provision of a service by the council or for the improvement of a service provided by the council; or

(b) complaints about the actions of the council, employees of the council, or other persons acting on behalf of the council.

(a2) The policies, practices and procedures required under subsection (a1) must be directed towards—

(a) dealing with the relevant requests or complaints in a timely, effective and fair way; and

(b) using information gained from the council's community to improve its services and operations.

(2) Section 270(1)—delete "A council" and substitute:

Without limiting subsections (a1) and (a2), a council

(3) Section 270—after subsection (4) insert:

(4a) The policies, practices and procedures established under this section must be consistent with any requirement prescribed by the regulations.

(4) Section 270(5) after "a document concerning the" insert:

policies, practices and

(5) Section 270(6) after "may amend the" insert:

policies, practices or

**39—Amendment of section 271—Mediation, conciliation and neutral evaluation**

(1) Section 271(1)—after "mediation" insert:

, conciliation

(2) Section 271(2)—after "mediators" insert:

, conciliators

(3) Section 271(2)—after "mediator" insert:

, conciliator

(4) Section 271—after subsection (3) insert:

(3a) For the purposes of conciliation proceedings—

- 5
- (a) the conciliator may call a conference of the parties to the dispute and at that conference seek to identify the issues and to provide advice as to how the matter might be settled through the conciliation proceedings; and
- 10
- (b) the conciliator may make a recommendation for the resolution of the dispute; and
- (c) a conference may be adjourned from time to time by the conciliator; and
- 15
- (d) the conciliator may at any time bring the proceedings to an end if the conciliator considers that the proceedings will not result in a settlement of the matter.

#### **40—Insertion of sections 271A and 271B**

Before section 272 insert:

##### **271A—Provision of information to Minister**

- 20
- (1) A council must, at the request of the Minister, provide to the Minister specified information, or information of a specified kind, relating to the affairs or operations of the council.
- (2) A request by the Minister under subsection (1)—
- 25
- (a) must be in writing; and
- (b) must incorporate a statement setting out the reasons for the request; and
- (c) may specify a period within which the information must be provided.
- (3) A council may provide information in accordance with a request under subsection (1) even if—
- 30
- (a) the information was given to the council in confidence; or
- (b) the information—
- 35
- (i) relates to a matter dealt with on a confidential basis under Chapter 6 Part 3; or
- (ii) is held on a confidential basis under Chapter 6 Part 4.
- (4) The provision of information by a council under this section will not—
- (a) constitute a breach of, or default under, a contract, agreement, understanding or undertaking; or

- (b) constitute a breach of a duty of confidence; or
- (c) constitute a civil or criminal wrong; or
- (d) terminate an agreement or obligation or fulfil any condition that allows a person to terminate an agreement or obligation, or give rise to any other right or remedy; or
- (e) affect the status of any document for the purposes of the *Freedom of Information Act 1991* (and, in particular, if information is contained in a document that is an exempt document under that Act in the possession of the Council then the document will remain an exempt document in the possession of the Minister).

(5) A request under this section will not extend to information that is privileged on the ground of legal professional privilege.

**271B—Minister may take steps to ensure reasonable standards are observed**

- (1) The Minister may, after taking into account such matters as the Minister thinks fit, request a council—
  - (a) to obtain an independent assessment of its probity or its compliance with any requirement placed on the council under this or any other Act; or
  - (b) without limiting paragraph (a)—to take specified action to meet standards in the conduct or administration of the affairs of the council identified by the Minister as being consistent with the objects of this Act, or any principles or requirements applying under this Act.
- (2) However, the Minister should not act under subsection (1) unless satisfied that the particular circumstances warrant action being taken under this section.

**41—Amendment of section 272—Investigation of a council**

- (1) Section 272(1)—after paragraph (a) insert:
  - (ab) a council has failed to comply with a request under section 271A or 271B; or
- (2) Section 272(2)—delete "The Minister" and substitute:

Subject to subsection (2a), the Minister
- (3) Section 272—after subsection (2) insert:
  - (2a) The Minister is not required to give notice under subsection (2) if the Minister considers that the giving of notice would be likely to undermine the investigation.
  - (2b) The Minister must give due consideration to ensuring that an investigator appointed under subsection (1) has qualifications, accreditation, training or experience suitable for performing the particular investigation.

(4) Section 272(3)—after paragraph (d) insert:

(e) require a person who has access to information that is, in the opinion of the investigator, relevant to the investigation, to provide that information to the investigator in a form determined by the investigator;

(f) inspect—

(i) any building or other premises occupied by the council;

(ii) the operations of the council conducted in or on any building or other premises.

(5) Section 272—after subsection (6) insert:

(6a) If during the course of an investigation an investigator considers that other matters relating to the affairs or operations of the council should be subject to investigation or report, the investigator may, after consultation with the Minister, proceed to investigate (as necessary), and report on those matters.

(6b) The Minister must, as part of the consultation process under subsection (6a), give the council a reasonable opportunity to make submissions to the Minister in relation to the matter unless the Minister considers that providing such an opportunity would be likely to undermine the investigation.

(6c) The investigator or investigators must, at the request of the Minister, provide to the Minister an interim report relating to the investigation, or to any aspect of the investigation specified by the Minister.

(6d) The Minister must supply the council with a copy of a report provided under subsection (6c) and give the council a reasonable opportunity to make submissions to the Minister in relation to the matter unless the Minister considers that providing the report or such an opportunity would be likely to undermine the investigation.

(6) Section 272—after subsection (8) insert:

(8a) The Minister must also cause a copy of the report to be laid before both Houses of Parliament within 6 sitting days after it is presented to the Minister under subsection (7).

#### **42—Amendment of section 273—Action on a report**

(1) Section 273(2)(b)—after subparagraph (iii) insert:

or

(iv) that a council has failed to respond appropriately to a recommendation of the Ombudsman; or

(v) that a council has failed to address appropriately a matter that formed the basis of a request under section 271B,

(2) Section 273(2)(c)—after paragraph (iii) insert:

or

- (iv) a failure to comply with a direction under subsection (2)(b); or
- (v) a failure to comply with a requirement to take specified action in respect of a subsidiary for the purposes of section 275,

(3) Section 273(4)—delete subsection (4)

5 **43—Amendment of section 274—Investigation of a subsidiary**

(1) Section 274(3)—delete "The Minister" and substitute:

Subject to subsection (3a), the Minister,

(2) Section 274—after subsection (3) insert:

10

(3a) The Minister is not required to give notice under subsection (3) if the Minister considers that the giving of notice would be likely to undermine the investigation.

15

(3b) The Minister must give due consideration to ensuring that an investigator appointed under subsection (2) has qualifications, accreditation, training or experience suitable for performing the particular investigation.

(3) Section 274(4)—after paragraph (d) inset:

20

(e) require a person who has access to information that is, in the opinion of the investigator, relevant to the investigation, to provide that information to the investigator in a form determined by the investigator;

(f) inspect—

(i) any building or other premises occupied by the subsidiary;

(ii) the operations of the subsidiary conducted in or on any building or other premises.

25

(4) Section 274—after subsection (7) insert:

30

(7a) If during the course of an investigation an investigator considers that other matters relating to the affairs or operations of the subsidiary should be subject to investigation or report, the investigator may, after consultation with the Minister, proceed to investigate (as necessary) and report on those matters.

35

(7b) The Minister must, as part of the consultation process under subsection (7a), give the council or councils a reasonable opportunity to make submissions to the Minister in relation to the matter unless the Minister considers that providing such an opportunity would be likely to undermine the investigation.

**44—Amendment of section 294—Power to enter and occupy land in connection with an activity**

(1) Section 294(1)(c)—after subparagraph (iv) insert:

40

(iva) conduct surveys, inspections, examinations and tests, and carry out work;

(2) Section 294—after subsection (1) insert:

(1a) Subject to subsection (1b), an owner or occupier of the land must be given at least 48 hours notice in writing of an intention to exercise a power under subsection (1)(b) or (c).

(1b) Notice need not be given under subsection (1a) if—

(a) action is required to be taken in an emergency or it is otherwise impracticable to give 48 hours notice in the circumstances of the particular case; or

(b) the occupation of the land, or any activities on the land—

(i) are not expected to extend beyond 24 hours; and

(ii) are not expected to cause any material nuisance or damage; or

(c) the whereabouts of an owner or occupier of land cannot be found after making reasonable inquiries.

(3) Section 294(3)—delete subsection (3) and substitute:

(3) The council must—

(a) pay to the owner or occupier of the land rent on a quarterly or half-yearly basis, at a rate to be determined by agreement between the council and the owner or occupier or, in default of agreement, by the Land and Valuation Court; and

(b) pay to the owner or occupier of the land within 1 month after occupying the land—reasonable compensation for damage caused to any crops on the land; and

(c) within 6 months of ceasing to occupy the land—

(i) remedy damage to land caused by the council while in occupation of the land (to such extent as this may be reasonably practicable); and

(ii) pay to the owner or occupier of the land reasonable compensation for any other loss or damage caused by the council, including the full value of any earth, minerals or resources taken from the land.

(4) Section 294(8)—after definition of *minerals* insert:

*work* includes work associated with—

(a) the construction, maintenance, repair or replacement of infrastructure, equipment, connections, structures, works or other facilities (including dams or other structures or facilities associated with stormwater management or flood mitigation); or

(b) the provision of services or facilities that benefit the area of the relevant council; or

(c) the carrying out of any other function or responsibility of the relevant council.



**45—Repeal of section 295**

Section 295—delete the section

**46—Amendment of section 298—Power of council to act in emergency**

Section 298(3) and (4)—delete subsections (3) and (4)

5 **47—Amendment of section 302—Application to Crown**

Section 302—after its present contents (now to be designated as subsection (1)) insert:

(2) The Crown is bound by Chapter 10 of this Act.

**48—Insertion of section 302A**

After section 302 insert:

10 **302A—Whistleblowing**

Each council must ensure that a member of the staff of the council (with qualifications prescribed by the regulations) is designated as a responsible officer for the council for the purposes of the *Whistleblowers Protection Act 1993*.

15 **49—Amendment of Schedule 2—Provisions applicable to subsidiaries**

(1) Schedule 2, Part 1 clause 13(2)—delete ", unless exempted by the council,"

(2) Schedule 2, Part 1, clause 13(3)—after "the council" insert:

(and may include persons who are members of the council's audit committee)

(3) Schedule 2, Part 2, clause 30(2)—delete "its charter" and substitute:

20 regulation

(4) Schedule 2, Part 2, clause 30(3)—after "the constituent councils" insert:

(and may include persons who are members of a constituent council's audit committee)

**50—Amendment of Schedule 3—Register of Interests—Form of returns**

25 Schedule 3, clause 2(3)—after paragraph (a) insert:

(ab) the name and business address of any employer of the member and, if the member is employed, the name of the office or place where the member works or a concise description of the nature of the member's work; and

30 **51—Amendment of Schedule 4—Material to be included in the annual report of a council**

Schedule 4, clause 1, paragraph (e)—delete the paragraph

## 52—Amendment of Schedule 8—Provisions relating to specific land

Schedule 8—after clause 11 insert:

### 12—Frew Park

- 5
- (1) Frew Park is classified as community land and the classification is irrevocable.
  - (2) The Frew Park trust is revoked by force of this clause.
  - (3) In this clause—

*Frew Park* means the whole of the land comprised in Certificate of Title Register Book Volume 5638 Folio 340;

10 *Frew Park trust* means the declaration of trust dated 4 August 1896 by which Frew Park is held on trust for the inhabitants of the town of Mount Gambier.

## Schedule 1—Transitional provisions

### 1—Interpretation

15 In this Schedule—

*principal Act* means the *Local Government Act 1999*.

### 2—Transitional provision—audit opinions

- 20
- (1) Subject to subclause (2), the auditor of a council is not required—
    - (a) to undertake that part of an audit required by paragraph (b) of section 129(1) of the principal Act (as enacted by this Act); or
    - (b) to provide an audit opinion required by paragraph (b) of section 129(3) of the principal Act (as enacted by this Act),until—
    - 25 (c) in the case of a prescribed council—the audit in relation to the 2012/2013 financial year;
    - (d) in the case of any other council—the audit in relation to the 2015/2016 financial year.
  - (2) The Minister may, on the application of a prescribed council, grant a 1 year extension to the period that would otherwise apply under subclause (1)(c) with or without
  - 30 conditions.
  - (3) In this clause—

*prescribed council* means any of the following councils:

- 35
- (a) City of Burnside;
  - (b) City of Charles Sturt;
  - (c) City of Holdfast Bay;
  - (d) City of Mitcham;
  - (e) City of Onkaparinga;

- (f) City of Playford;
- (g) City of Port Adelaide Enfield;
- (h) City of Prospect;
- (i) City of Salisbury;
- 5 (j) City of Tea Tree Gully;
- (k) City of West Torrens;
- (l) The Corporation of the City of Adelaide;
- (m) The Corporation of the City of Campbelltown;
- (n) The Corporation of the City of Marion;
- 10 (o) The Corporation of the City of Norwood Payneham and St Peters;
- (p) The Corporation of the City of Unley;
- (q) The Corporation of the Town of Walkerville.

### **3—Transitional provision—Rebate of rates**

15 Despite the operation of section 161 of the principal Act, the rebate on rates on land being predominantly used for supported accommodation that consists of accommodation for persons provided by housing associations registered under the *South Australian Co-operative and Community Housing Act 1991* may, with respect to the following financial years, be as follows (if the council so decides):

- (a) 2010/2011—25% (or, at the discretion of the council, a higher rebate);
- 20 (b) 2011/2012—50% (or, at the discretion of the council, a higher rebate).