House of Assembly
As passed all stages and awaiting assent.
This is an unofficial copy and is subject to correction.

South Australia

Local Government (Financial Management and Rating) Amendment Bill 2005

A BILL FOR

An Act to amend the *Local Government Act 1999* and to make related amendments to the *City of Adelaide Act 1998* and the *Rates and Land Tax Remission Act 1986*.

Contents

Part 1—Preliminary

1 Short title
2 Commencement
3 Amendment provisions

Part 2—Amendment of *Local Government Act 1999*

4 Amendment of section 44—Delegations
5 Amendment of section 106—Certain periods of service to be regarded as continuous
6 Amendment of section 122—Strategic management plans
7 Substitution of Chapter 8 Part 2

Part 2—Annual business plans and budgets

123 Annual business plans and budgets

8 Amendment of section 125—Internal control policies
9 Amendment of section 126—Audit committee
10 Amendment of section 128—The auditor
11 Amendment of section 129—Conduct of annual audit
12 Amendment of section 130—CEO to assist auditor
13 Insertion of Chapter 8 Part 3 Division 5

Division 5—Other investigations

130A Other investigations

14 Amendment of section 132—Access to documents
15 Insertion of Chapter 8 Part 5

Part 6—Related administrative standards

132A Related administrative standards

16 Substitution of section 150
150 General principles

17 Amendment of section 151—Basis of rating
18 Amendment of section 152—General rates
19 Amendment of section 153—Declaration of general rate (including differential general rates)
20 Amendment of section 154—Separate rates
21 Amendment of section 155—Service rates and service charges

22 Amendment of section 156—Basis of differential rates
23 Amendment of section 158—Minimum rates and special adjustments for specified values
24 Amendment of section 166—Discretionary rebates of rates
25 Repeal of section 171
26 Amendment of section 181—Payment of rates—general principles
27 Amendment of section 182—Remission and postponement of payment
28 Insertion of section 182A
182A Postponement of rates—Seniors
29 Amendment of section 184—Sale of land for non-payment of rates
30 Insertion of section 187A
187A Administrative audits by Ombudsman
187B Investigation by Ombudsman
31 Amendment of section 270—Council to establish grievance procedures
32 Amendment of section 303—Regulations
33 Amendment of Schedule 2—Provisions applicable to subsidiaries
34 Amendment of Schedule 4—Material to be included in the annual report of a council
35 Amendment of Schedule 5—Documents to be made available by councils

Schedule 1—Related amendments and transitional provisions

Part 1—Amendment of *City of Adelaide Act 1998*

1 Repeal of sections 32 and 33
2 Amendment of section 34—Financial reporting

Part 2—Amendment of *Rates and Land Tax Remission Act 1986*

3 Amendment of section 3—Interpretation
4 Amendment of Schedule 1
5 Amendment of Schedule 4

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Local Government (Financial Management and Rating) Amendment Act 2005*.

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.

Part 2—Amendment of *Local Government Act 1999*

4—Amendment of section 44—Delegations

(1) Section 44(3)(d)—delete paragraph (d) and substitute:

(d) power to adopt or revise a strategic management plan of the council;

(da) power to adopt or revise an annual business plan or budget of the council;

(2) Section 44(3)(e)—delete "approved" and substitute:

adopted

5—Amendment of section 106—Certain periods of service to be regarded as continuous

Section 106(6)—delete subsection (6) and substitute:

(6) The regulations may—

(a) extend the operation of this section to other authorities or bodies; and

(b) modify the application of this section in relation to such an authority or body (in particular by requiring employment or periods of service outside the local government sector to be disregarded).

(7) In this section—

council includes a subsidiary constituted under this Act.

6—Amendment of section 122—Strategic management plans

(1) Section 122(1)(a)—delete "specified period" and substitute:

period of at least 4 years

(2) Section 122(1)—after paragraph (a) insert:

(ab) provide assessments that relate to the following matters (with particular reference to the relevant period):

(i) the sustainability of the council's financial performance and position; and

(ii) the extent or levels of services that will be required to be provided by the council to achieve its objectives; and

(iii) the extent to which any infrastructure will need to be maintained, replaced or developed by the council; and

(iv) anticipated changes in its area with respect to—

(A) real property development; and

(B) demographic characteristics of its community to the extent that is reasonable taking into account the availability of appropriate and accurate data; and

(v) the council's proposals with respect to debt levels; and

(vi) any anticipated or predicted changes in any factors that make a significant contribution to the costs of the council's activities or operations; and

(3) Section 122(1)(c)—delete paragraph (c)

(4) Section 122(1)(d)—after "the performance of the council" insert:

against its objectives

(5) Section 122(1)(e) and (f)—delete paragraphs (e) and (f) and substitute:

(e) identify the means by which its activities are to be carried out and its objectives achieved; and

(6) Section 122—after subsection (1) insert:

(1a) A council must, in conjunction with the plans required under subsection (1), develop and adopt—

(a) a long-term financial plan for a period of at least 10 years; and

(b) an infrastructure and asset management plan, relating to the management and development of infrastructure and major assets by the council for a period of at least 10 years,

(and these plans will also be taken to form part of the council's strategic management plans).

(7) Section 122(3) and (4)—delete subsections (3) and (4) and substitute:

(3) In addition to the requirements of subsection (2), a council must, in formulating its strategic management plans, have regard to—

(a) the council's roles and responsibilities under this or any other Act; and

(b) the council's objectives for its area.

(4) A council may review its strategic management plans under this section at any time but must—

(a) undertake a review of—

(i) its long-term financial plan; and

(ii) any other elements of its strategic management plans prescribed by the regulations for the purposes of this paragraph,

as soon as practicable after adopting the council's annual business plan for a particular financial year; and

(b) in any event, undertake a comprehensive review of its strategic management plans within 2 years after each general election of the council.

(4a) A council must, for the purposes of a review under subsection (4), take into account—

(a) in relation to a review under subsection (4)(a)(i)—a report from the chief executive officer on the sustainability of the council's long-term financial performance and position taking into account the provisions of the council's annual business plan and strategic management plans; and

(b) insofar as may be relevant—any other material prescribed by the regulations.

(8) Section 122—after subsection (7) insert:

(8) A council must, for the purposes of this section, specifically declare which plans will constitute the strategic management plans of the council.

7—Substitution of Chapter 8 Part 2

Chapter 8 Part 2—delete Part 2 and substitute:

Part 2—Annual business plans and budgets

123—Annual business plans and budgets

(1) A council must have, for each financial year—

(a) an annual business plan; and

(b) a budget.

(2) Each annual business plan of a council must—

(a) include a summary of the council's long-term objectives (as set out in its strategic management plans); and

(b) include an outline of—

(i) the council's objectives for the financial year; and

(ii) the activities that the council intends to undertake to achieve those objectives; and

(iii) the measures (financial and non-financial) that the council intends to use to assess the performance of the council against its objectives over the financial year; and

(c) assess the financial requirements of the council for the financial year and, taking those requirements into account, set out a summary of its proposed operating expenditure, capital expenditure and sources of revenue; and

(d) set out the rates structure and policies for the financial year; and

(e) assess the impact of the rates structure and policies on the community based on modelling that has been undertaken or obtained by the council; and

(f) take into account the council's long-term financial plan and relevant issues relating to the management and development of infrastructure and major assets by the council; and

(g) address or include any other matter prescribed by the regulations.

(3) Before a council adopts an annual business plan, the council must—

(a) prepare a draft annual business plan; and

(b) follow the relevant steps set out in its public consultation policy, taking into account the requirements of subsection (4).

(4) For the purposes of subsection (3)(b), a public consultation policy must at least provide for the following:

(a) the publication in a newspaper circulating within the area of the council of a notice informing the public of the preparation of the draft annual business plan and inviting interested persons—

(i) to attend—

(A) a public meeting in relation to the matter to be held on a date (which must be at least 21 days after the publication of the notice) stated in the notice; or

(B) a meeting of the council to be held on a date stated in the notice at which members of the public may ask questions, and make submissions, in relation to the matter for a period of at least 1 hour,

(on the basis that the council determines which kind of meeting is to be held under this subparagraph); or

(ii) to make written submissions in relation to the matter within a period (which must be at least 21 days) stated in the notice; and

(b) the council to make arrangements for a meeting contemplated by paragraph (a)(i) and the consideration by the council of any submissions made at that meeting or in response to the invitation under paragraph (a)(ii).

(5) The council must ensure that copies of the draft annual business plan are available at the meeting under subsection (4)(a)(i), and for inspection (without charge) and purchase (on payment of a fee fixed by the council) at the principal office of the council at least 7 days before the date of that meeting.

(6) A council may then, after considering—

(a) any submission made to the council during the public consultation period; and

(b) any new or revised information in the possession of the council that is relevant to the material contained in the draft annual business plan; and

(c) such other materials or information as the council thinks fit,

adopt its annual business plan (with or without amendment).

(7) Each budget of a council must—

(a) be considered in conjunction with the council's annual business plan (and must be consistent with that plan, as adopted); and

(b) be adopted by the council after the council has adopted its annual business plan.

(8) An annual business plan and a budget must be adopted by a council after 31 May for the ensuing financial year and, except in a case involving extraordinary administrative difficulty, before 31 August for the financial year.

(9) A council must, after adopting an annual business plan and a budget—

(a) ensure—

(i) that a summary of the annual business plan is prepared so as to assist in promoting public awareness of the nature of its services and its rating and financial management policies, taking into account its objectives and activities for the ensuing financial year; and

(ii) that a copy of the summary of the annual business plan accompanies the first rates notice sent to ratepayers after the declaration of its rates for the financial year; and

(b) ensure—

(i) that copies of the annual business plan and the budget (as adopted) are available for inspection (without charge) or purchase (on payment of a fee fixed by the council); and

(ii) that copies of the summary of the annual business plan are available for inspection and to take (without charge),

at the principal office of the council.

(10) The regulations may prescribe requirements with respect to the preparation, form and contents of—

(a) an annual business plan (including a draft for the purposes of public consultation), and the summary required under subsection (9); and

(b) a budget.

(11) However, in any event, the summary of the annual business plan must include an assessment of the extent to which the council's objectives for the previous financial year have been attained (taking into account the provisions of the annual business plan for that financial year).

(12) Subject to complying with a preceding subsection, any relevant document under this section will be in a form determined by the council.

(13) A council must, as required by the regulations, and may at any time, reconsider its annual business plan or its budget during the course of a financial year and, if necessary or appropriate, make any revisions.

(14) A rate cannot be challenged on a ground based on non-compliance with this section, or on a ground based on the contents of a document prepared or adopted by a council for the purposes of this section.

8—Amendment of section 125—Internal control policies

Section 125—after "an efficient and orderly manner" insert:

to achieve its objectives

9—Amendment of section 126—Audit committee

(1) Section 126(1)—delete "may" and substitute:

must

(2) Section 126(2) and (3)—delete subsections (2) and (3) and substitute:

(2) The membership of an audit committee—

(a) may include persons who are not members of the council; and

(b) may not include an employee of the council (although an employee may attend a meeting of the committee if appropriate); and

(c) may include, or be comprised of, members of an audit committee for another council; and

(d) must otherwise be determined in accordance with the requirements of the regulations.

(3) Section 126(4)—after paragraph (a) insert:

(ab) proposing, and providing information relevant to, a review of the council's strategic management plans or annual business plan; and

(ac) proposing, and reviewing, the exercise of powers under section 130A; and

(ad) if the council has exempted a subsidiary from the requirement to have an audit committee, the functions that would, apart from the exemption, have been performed by the subsidiary's audit committee; and

10—Amendment of section 128—The auditor

(1) Section 128(2)—after "the council" insert:

on the recommendation of the council's audit committee

(2) Section 128—after subsection (2) insert:

(2a) The audit committee must, in making a recommendation under subsection (2), take into account any factor prescribed by the regulations.

(3) Section 128—after subsection (4) insert:

(4a) The term of appointment of an auditor of a council must not exceed 5 years (and, subject to this section, a person may be reappointed at the expiration of a term of office).

(4) Section 128(6), (7) and (8)—delete subsections (6), (7) and (8) and substitute:

(6) A person's ability to hold office as an auditor of a council, and to be reappointed to that office, is subject to the qualification that if the person has held the office of auditor of the council for at least 5 successive financial years, or for 5 out of 6 successive financial years—

(a) the person may only continue in that office if he or she ensures that any individual who plays (or who has played) a significant role in the audit of the council for 5 successive financial years, or for 5 out of 6 successive financial years, does not then play a significant role in the audit of the council for at least 2 financial years; or

(b) the person may be reappointed to the office if at least 2 years have passed since he or she last held the office.

(7) The appointment of an auditor will be subject to any other terms or conditions prescribed by the regulations.

(8) A council, and the auditor of a council, must comply with any requirements prescribed by the regulations with respect to providing for the independence of the auditor.

(9) A council must ensure that the following information is included in its annual report:

(a) information on the remuneration payable to its auditor for work performed during the relevant financial year, distinguishing between—

(i) remuneration payable for the annual audit of the council's financial statements; and

(ii) other remuneration;

(b) if a person ceased to be the auditor of the council during the relevant financial year, other than by virtue of the expiration of his or her term of appointment and not being reappointed to the office—the reason or reasons why the appointment of the council's auditor came to an end.

(10) For the purposes of this section, a person plays a significant role in the audit of a council if the person would, if the council were a company, play such a role in the audit of the company within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth.

11—Amendment of section 129—Conduct of annual audit

(1) Section 129—after subsection (5) insert:

(5a) The auditor will provide the reports under subsections (3) and (4)—

(a) to the principal member of the council (who must ensure that a copy is provided to the chief executive officer, and that copies are provided to the other members of the council before the next meeting of the council); and

(b) to the council's audit committee.

(2) Section 129(9)—delete subsection (9)

12—Amendment of section 130—CEO to assist auditor

Section 130(1)—delete subsection (1) and substitute:

(1) The chief executive officer must, at the request of the auditor of the council, produce to the auditor for inspection the accounts, accounting records and other documents relating to the financial affairs or internal controls of the council, or to any other matter that is being examined or considered by the auditor.

13—Insertion of Chapter 8 Part 3 Division 5

After section 130 insert:

Division 5—Other investigations

130A—Other investigations

(1) A council may, as it thinks fit, request its auditor, or some other person determined by the council to be suitably qualified in the circumstances, to examine and report on any matter relating to financial management, or the efficiency and economy with which the council manages or uses its resources to achieve its objectives, that would not otherwise be addressed or included as part of an annual audit under Division 4 and that is considered by the council to be of such significance as to justify an examination under this section.

(2) An examination and report under subsection (1) may be requested—

(a) if appropriate, on the basis that it will be conducted in conjunction with an annual audit; or

(b) on the basis that it will be conducted as a separate examination and report.

(3) An examination under this section—

(a) is not to operate or apply so as to limit the role or functions of a council under this or any other Act, or the lawful role or functions of any member of a council; and

(b) is to be undertaken in such manner as the person conducting the examination thinks fit and without undue influence from a member of the council or the chief executive of the council.

(4) The chief executive officer must, at the request of a person conducting an examination under subsection (1)—

(a) produce to the person for inspection any documents relevant to the examination;

(b) provide to the person explanations or information required by the person.

Maximum penalty: $10 000.

(5) The report on an examination must be provided—

(a) to the principal member of the council (who must ensure that a copy is immediately 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 (6) or (7)); and

(b) to the council's audit committee.

(6) Unless subsection (7) applies, the report must be placed on the agenda for consideration—

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

(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 report is provided to the principal member of the council—at the ordinary meeting of the council next following the meeting for which the agenda has 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 report should be considered at the next meeting of the council as a late item on the agenda.

(7) The report 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 (6)).

(8) The report on an examination must be kept confidential until it is received at the relevant meeting of the council held under subsection (6) or (7) 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).

14—Amendment of section 132—Access to documents

(1) Section 132(3)(d)—delete ", rating policy"

(2) Section 132(3)—after paragraph (d) insert:

(da) the council's draft annual business plan, annual business plan (as adopted by the council) and the summary of the annual business plan required under Part 2 of this Chapter;

(db) the council's budget (as adopted by the council for a particular year);

15—Insertion of Chapter 8 Part 5

Chapter 8—after Part 5 insert:

Part 6—Related administrative standards

132A—Related administrative standards

A council must ensure that appropriate policies, practices and procedures are implemented and maintained in order—

(a) to ensure compliance with any statutory requirements; and

(b) to achieve and maintain standards that reflect good administrative practices.

16—Substitution of section 150

Section 150—delete section 150 and substitute:

150—General principles

A council should, when making and adopting policies and determinations concerning rates under this Act, take into account the following principles:

(a) rates constitute a system of taxation for local government purposes (generally based on the value of land);

(b) rating policies should make reasonable provision with respect to strategies to provide relief from rates (where appropriate), and any such strategies should avoid narrow or unreasonably restrictive criteria and should not require ratepayers to meet onerous application requirements;

(c) the council should, in making any decision, take into account the financial effects of the decision on future generations,

(but a challenge to a rate cannot be based on the extent to which a council has (or has not) applied these principles).

17—Amendment of section 151—Basis of rating

(1) Section 151(1)(b)—delete paragraph (b)

(2) Section 151(8)—delete "seven days before the date of that meeting" and substitute:

21 days before the end of the period for public consultation

(3) Section 151—after subsection (8) insert:

(8a) Subject to complying with the requirements of this section—

(a) a report required under subsection (5)(d) may form part of the council's draft annual business plan (and that plan as adopted); and

(b) the public consultation required under subsection (7) may be undertaken as part of the public consultation required with respect to the council's draft annual business plan.

(4) Section 151(10)—delete subsection (10)

18—Amendment of section 152—General rates

(1) Section 152(1)(b)—delete paragraph (b)

(2) Section 152(2)—delete "(b) or"

19—Amendment of section 153—Declaration of general rate (including differential general rates)

(1) Section 153(1)(b)—delete "(unless the council has based its general rates entirely on a fixed charge)"

(2) Section 153(3)—delete subsection (3) and substitute:

(3) A council must, in declaring a general rate under this section, determine whether it will fix a maximum increase in the general rate to be charged on any rateable land within its area that constitutes the principal place of residence of a principal ratepayer (and a council is, by force of this subsection, authorised to fix such a maximum).

(4) For the purposes of subsection (3)—

(a) any maximum increase may be set according to such method as the council thinks fit; and

(b) the council may fix conditions that may apply in order for a ratepayer to qualify for the benefit of a maximum increase (including that some or all of any increase in the general rate for particular land is not attributable to a change in the valuation of the land due to development (including by virtue of a change in use) that has been undertaken (or occurred) in relation to the land).

(5) A council must not—

(a) declare a general rate until after it has adopted its annual business plan and its budget for the financial year to which the rate relates; and

(b) except in a case involving extraordinary administrative difficulty, declare a general rate for a particular financial year after 31 August in that financial year.

20—Amendment of section 154—Separate rates

(1) Section 154(2)(b)—delete "under or with the approval of the Minister,"

(2) Section 154(2)—after paragraph (b) insert:

(c) a fixed charge.

(3) Section 154(3)—delete subsection (3)

21—Amendment of section 155—Service rates and service charges

(1) Section 155(1), definition of ***prescribed service***, paragraph (a)—delete paragraph (a) and substitute:

(a) the treatment or provision of water;

(2) Section 155(1), definition of ***prescribed service***—after paragraph (b) insert:

(ba) a television transmission (or retransmission) service;

(3) Section 155(3)—delete subsection (3) and substitute:

(3) A service rate, or annual service charge, may vary—

(a) according to whether the land to which it applies is vacant or occupied; or

(b) according to any other factor prescribed by the regulations and applied by the council.

(4) Section 155(4)—delete "service charge" and substitute:

annual service charge

(5) Section 155(5)—delete "service charge" and substitute:

annual service charge

(6) Section 155(8)—delete subsection (8) and substitute:

(8) An annual service charge may be based on—

(a) the nature of the service; or

(b) the level of usage of the service; or

(c) any factor that applies under subsection (3); or

(d) a combination of 2 or more factors under the preceding paragraphs.

(7) Section 155—after subsection (9) insert:

(10) A council may declare a service rate or an annual service charge in respect of a particular prescribed service despite the fact that the service is provided on behalf of the council by a third party.

22—Amendment of section 156—Basis of differential rates

(1) Section 156(7)—delete subsection (7) and substitute:

(7) A differentiating factor based on the locality of the land must comply with any requirement or principle prescribed by the regulations.

(2) Section 156(14c)—delete subsection (14c)

(3) Section 156(14e)—delete "seven day before the date of that meeting" and substitute:

21 days before the end of the period for public consultation

(4) Section 156—after subsection (14e) insert:

(14ea) Subject to complying with the requirements of this section—

(a) a report required under subsection (14a)(a) may form part of the council's draft annual business plan (and that plan as adopted), or a report prepared for the purposes of section 151(5)(d); and

(b) the public consultation required under subsection (14d) may be undertaken as part of the public consultation required with respect to the council's draft annual business plan, or the public consultation under subsection 151(7).

(5) Section 156(15)—delete subsection (15) and substitute:

(15) This section does not limit any other differentiating factor that may be applied under another section with respect to a particular rate.

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

(1) Section 158(1)(a)—delete paragraph (a) and substitute:

(a) fix a minimum amount payable by way of rates or charges under this Part (which may vary according to factors prescribed by the regulations);

(2) Section 158(2)(e)—delete "or based its general rates entirely on a fixed charge"

(3) Section 158(3)—delete "this section" and substitute:

subsection (2)

(4) Section 158—after subsection (3) insert:

(4) Subsection (2) does not apply in relation to a service rate or annual service charge.

(5) However, the ability to fix a minimum amount payable by way of a service rate or annual service charge will apply subject to any restriction, limitation or condition made by the regulations (including a provision that only allows the fixing of a minimum amount in prescribed circumstances).

24—Amendment of section 166—Discretionary rebates of rates

(1) Section 166(1)—after paragraph (l) insert:

(m) where the rebate is considered by the council to be appropriate to provide relief in order to avoid what would otherwise constitute—

(i) a liability to pay a rate or charge that is inconsistent with the liabilities that were anticipated by the council in its annual business plan; or

(ii) a liability that is unfair or unreasonable;

(n) where the rebate is to give effect to a review of a decision of the council under Chapter 13 Part 2;

(o) where the rebate is contemplated under another provision of this Act.

(2) Section 166—after subsection (3a) insert:

(3b) A council should give reasonable consideration to the granting of rebates under this section and should not adopt a policy that excludes the consideration of applications for rebates on their merits.

25—Repeal of section 171

Section 171—delete the section

26—Amendment of section 181—Payment of rates—general principles

(1) Section 181(1) to (7) (inclusive)—delete subsections (1) to (7) and substitute:

(1) Subject to this section, rates declared or payable in respect of a particular financial year will fall due in 4 equal or approximately equal instalments payable in the months of September, December, March and June of the financial year for which the rates are declared.

(2) The day on which each instalment falls due will be determined by the council.

(3) If a council declares a general rate for a particular financial year after 31 August in that financial year, the council may adjust the months in which instalments would otherwise be payable under subsection (1) (taking into account what is reasonable in the circumstances).

(4) Despite a preceding subsection—

(a) a person may elect to pay any instalment of rates in advance; and

(b) a council and a principal ratepayer may agree that rates will be payable in such instalments falling due on such days as may be specified in the agreement (and that ratepayer's rates will then be payable accordingly).

(5) A council must, in relation to each instalment of rates, send a rates notice to the principal ratepayer shown in the assessment record in respect of the land setting out—

(a) the amount of the instalment; and

(b) the date on which it falls due or, in a case where payment is to be postponed under another provision of this Act, the information prescribed by the regulations.

(6) For the purposes of subsection (5), the notice is to be sent—

(a) by post or similar form of delivery, to the address shown in the assessment record; or

(b) by agreement between the council and the principal ratepayer, by electronic communication, to an electronic address nominated by the principal ratepayer.

(7) A notice under subsection (5) must be sent at least 30 days but not more than 60 days before an instalment falls due.

(7a) A council may, as part of an agreement under subsection (4)(b), vary the period for the provision of a notice under subsection (7).

(2) Section 181(8)(c)—delete "but excluding" and substitute:

and including

(3) Section 181—after subsection (8) insert:

(8a) Subsection (8) does not apply with respect to the postponement of the payment of rates under another section of this Act (while the postponement is occurring in accordance with the relevant section).

(4) Section 181(11)—delete subsection (11) and substitute:

(11) A council may grant discounts or other incentives in order to encourage—

(a) the payment of instalments of rates in advance; or

(b) prompt payment of rates.

(5) Section 181(12)(a)—delete "subsection (2)(a) or (b)" and substitute:

subsection (1)

(6) Section 181(12)(b)—delete "subsection (5)" and substitute:

subsection (4)(b)

(7) Section 181(14)—delete subsection (14)

(8) Section 181(16)—delete subsection (16)

27—Amendment of section 182—Remission and postponement of payment

(1) Section 182(1)(a)—after "payment" insert:

in whole or in part

(2) Section 182—after subsection (7) insert:

(8) Nothing in this section applies with respect to the postponement of rates under section 182A.

28—Insertion of section 182A

After section 182 insert:

182A—Postponement of rates—Seniors

(1) A person may apply to a council for a postponement of the payment of the prescribed proportion of rates for the current or a future financial year if—

(a) the person is a prescribed ratepayer, or is the spouse of a prescribed ratepayer; and

(b) the rates are payable on land that is the principal place of residence of the prescribed ratepayer; and

(c) the land is owned by—

(i) the prescribed ratepayer; or

(ii) the prescribed ratepayer and his or her spouse,

(and no other person has an interest (as owner) in the land).

(2) An application must be made in the prescribed manner and form and be accompanied by such information as the council may reasonably require.

(3) A council may—

(a) reject an application for the postponement of rates; or

(b) impose conditions on the postponement of rates,

but only in accordance with the regulations.

(4) Any rates that are within the ambit of a postponement under this section with respect to a particular financial year will become due and payable—

(a) when title to the relevant land is transferred to another person; or

(b) in the event of a failure to comply with a condition that applies under subsection (3),

(and will not be payable before this time even if rates declared with respect to a subsequent financial year are not to be postponed due to a change in circumstances).

(5) If a postponement of the payment of rates occurs under this section, interest will accrue on the amount affected by the postponement at the prescribed rate per month (applied with respect to the amount postponed and compounded on a monthly basis) until the amount is paid.

(6) Nothing in subsection (4) prevents the payment of the relevant rates in whole or in part (together with any interest that has accrued under subsection (5)) at an earlier time.

(7) If rates that are within the ambit of a postponement under this section become due and payable under subsection (4), the following provisions will apply in connection with the liability to pay the rates (and any interest that has accrued under subsection (5)):

(a) in a case where subsection (4)(a) applies—the rates (and interest) will be taken to be a charge over the land that ranks—

(i) after—

(A) any liability to the Crown for rates, charges or taxes; and

(B) any prescribed liability to the Crown in respect of the land; and

(C) any mortgage, encumbrance or charge registered before the commencement of this section; and

(ii) before—

(A) any mortgage, encumbrance or charge registered after the commencement of this section (even if the registration occurs before the charge arises); and

(B) any mortgage, encumbrance or charge that is not registered in respect of the land (even if in existence before the commencement of this section or before the charge arises); and

(C) any other interest or liability of a prescribed kind,

(and the charge will attach to the land until it is discharged);

(b) in a case where subsection (4)(b) applies—the rates (and interest) will be taken to be rates in arrears from the date of the failure to comply with the relevant condition (and to be recoverable as such under this Act).

(8) If a person has applied for the benefit of this section and an entitlement to a postponement ceases to exist, the owner of the land must, within the period prescribed by the regulations, inform the council in writing of that fact (unless the liability to the relevant rates has been discharged).

Maximum penalty: $5 000.

(9) A person must not make a false or misleading statement or representation in an application made (or purporting to be made) under this section.

Maximum penalty: $10 000.

(10) The Governor may, by regulation, make any other provision relating to the operation or administration of this section.

(11) A regulation cannot be made for the purposes of this section except after consultation with the LGA.

(12) In this section—

prescribed rate is an amount calculated as follows:

$$P = \frac{CADR + 1\%}{12}$$

where—

P is the prescribed rate

CADR is the cash advance debenture rate for any relevant financial year;

prescribed ratepayer means a person who holds a current *State Seniors Card* issued by the State Government, or who has the qualifications to hold such a card and has applied for the card but has yet to be issued with the card.

29—Amendment of section 184—Sale of land for non-payment of rates

Section 184—after subsection (18) insert:

(19) This section does not apply where the payment of rates has been postponed under, or in accordance with, another provision of this Act (until the postponement ceases to have effect or unless the rates become rates in arrears under the terms of the relevant provision).

30—Insertion of section 187A

After section 187 insert:

187A—Administrative audits by Ombudsman

(1) The Ombudsman may, if the Ombudsman considers it to be in the public interest to do so, conduct a review of the administrative practices and procedures relating to rating (or any aspect of such practices or procedures) of 1 or more councils under this Part.

(2) The Ombudsman may, in carrying out a review under this section, 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.

(3) At the conclusion of a review under this section, the Ombudsman may prepare a report on any aspect of the review.

(4) A report may make recommendations to a council or councils.

(5) The Ombudsman must supply a copy of any report to—

(a) the Minister; and

(b) any council that was under review,

and may also publish any report, a part of any report, or a summary of any report, in such manner as the Ombudsman thinks fit.

(6) The Minister may also publish any report, a part of any report, or a summary of any report, in such manner as the Minister thinks fit.

(7) This section does not limit powers of investigation under other provisions of this or another Act.

187B—Investigation by Ombudsman

(1) The Ombudsman may, on receipt of a complaint or on his or her own initiative, carry out an investigation under this section if it appears to the Ombudsman that a council's declaration of any rate or service charge under this Part may have had an unfair or unreasonable impact on a particular ratepayer.

(2) The Ombudsman may, in carrying out an investigation under this section, exercise the powers of the Ombudsman under the *Ombudsman Act 1972* as if carrying out an investigation under that Act.

(3) If at the conclusion of an investigation under this section the Ombudsman makes an adverse finding against the council, the Ombudsman must prepare a written report on the matter.

(4) The report may make recommendations to the council.

(5) The Ombudsman must supply the council with a copy of the report, and may also publish the report, a part of the report, or a summary of the report, in such manner as the Ombudsman thinks fit.

(6) If the report makes any recommendations as to action that should be taken by the council, the council must, within 2 months after the receipt of the report, provide a written response to—

(a) the Ombudsman; and

(b) if relevant, the person who made the complaint.

(7) Without limiting the operation of any other section, a council may grant a rebate or remission of any rate or service charge, or of any charge, fine or interest under this Part, if the Ombudsman recommends that the council do so on the ground of special circumstances pertaining to a particular ratepayer.

(8) This section does not limit other powers of investigation under other provisions of this or another Act.

31—Amendment of section 270—Council to establish grievance procedures

(1) Section 270(2)—after paragraph (c) insert:

(ca) in the case of applications that relate to the impact that any declaration of rates or service charges may have had on ratepayers—the provision to be made to ensure that these applications can be dealt with promptly and, if appropriate, addressed through the provision of relief or concessions under this Act;

(2) Section 270—after subsection (7) insert:

(8) A council must, on an annual basis, initiate and consider a report that relates to—

(a) the number of applications for review made under this section; and

(b) the kinds of matters to which the applications relate; and

(c) the outcome of applications under this section; and

(d) such other matters as may be prescribed by the regulations.

(9) The right of a council to recover rates is not suspended by an application for the provision of some form of relief or concession with respect to the payment of those rates (but a council may then, if appropriate in view of the outcome of the application, refund the whole or a part of any amount that has been paid).

32—Amendment of section 303—Regulations

Section 303(9)—delete ", so far as is reasonably practicable,"

33—Amendment of Schedule 2—Provisions applicable to subsidiaries

(1) Schedule 2, clause 13(3)—delete "An" and substitute:

Subject to the regulations, an

(2) Schedule 2, clause 19(4)—delete subclause (4) and substitute:

(4) The charter may be reviewed by the constituent councils at any time but must in any event be reviewed at least once in every 4 years.

(3) Schedule 2, clause 30(3)—delete "An" and substitute:

Subject to the regulations, an

34—Amendment of Schedule 4—Material to be included in the annual report of a council

(1) Schedule 4, clause 1(d)—delete paragraph (d)

(2) Schedule 4, clause 2—after paragraph (a) insert:

(ab) the council's performance against its annual business plan for the relevant financial year;

35—Amendment of Schedule 5—Documents to be made available by councils

(1) Schedule 5—after "· Strategic management plans" insert:

· Annual business plan (after adoption by council) and the summary required under this Act

(2) Schedule 5—delete "Rating policy"

(3) Schedule 5—after "(Chapter 13 Part 2) insert:

and any report under section 270(8)

Schedule 1—Related amendments and transitional provisions

Part 1—Amendment of *City of Adelaide Act 1998*

1—Repeal of sections 32 and 33

Sections 32 and 33—delete the sections

2—Amendment of section 34—Financial reporting

(1) Section 34(2)—delete "corporate plan, rating policy" and substitute:

annual business plan

(2) Section 34(3)—delete "corporate plan, rating policy" and substitute:

annual business plan

Part 2—Amendment of *Rates and Land Tax Remission Act 1986*

3—Amendment of section 3—Interpretation

(1) Section 3, definition of ***council***—delete "*Local Government Act 1934*" and substitute:

Local Government Act 1999

(2) Section 3, definition of ***rates***, (a)—delete paragraph (a) and substitute:

(a) any rates or charges payable under the *Local Government Act 1999* for the provision or treatment of water or the removal of sewerage; and

4—Amendment of Schedule 1

Delete "*Local Government Act 1934*" and substitute:

Local Government Act 1999

5—Amendment of Schedule 4

Delete "*Local Government Act 1934*" and substitute:

Local Government Act 1999