

South Australia

Local Government (Implementation) Act 1999

An Act to provide for the implementation of new legislation relating to the system of local government in the State by the repeal or amendment of certain legislation and the enactment of transitional provisions; and for other purposes.

Contents

Part 1—Preliminary

- 1 Short title
- 3 Interpretation

Part 4—Transitional provisions

- 12 Constitution of councils
- 13 Structural proposals
- 14 Defaulting councils
- 15 Delegations
- 16 Registers and codes
- 17 Allowances
- 18 Staff
- 19 Elections
- 20 Investments
- 21 Auditors
- 22 Assessment book
- 23 Rates
- 24 Single council controlling authorities
- 25 Regional controlling authorities
- 26 References to controlling authorities
- 27 Water reserves
- 28 Evidence of proclamations
- 29 Evidence of appointments and elections
- 30 Evidence of resolutions etc
- 31 Evidence of making of a rate
- 32 Evidence of assessment record
- 33 Evidence of constitution of council, appointment of officers etc
- 34 Local government land
- 35 By-laws
- 36 Contracts and tenders policy
- 37 Public consultation policies
- 38 Code of conduct—members
- 39 Code of conduct—employees
- 40 Strategic management plans
- 41 Annual reports

- 42 Orders
- 43 Grievance procedures
- 44 Reviews initiated by Minister

Part 5—Other matters

- 45 General provisions
- 46 Further repeal—*Local Government Act 1934*

Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Local Government (Implementation) Act 1999*.

3—Interpretation

In this Act—

1934 Act means the *Local Government Act 1934*;

1999 Act means the *Local Government Act 1999*;

1999 Electoral Act means the *Local Government (Elections) Act 1999*;

general election means a general election within the meaning of the 1999 Act;

relevant day means a day appointed by proclamation as the relevant day for the purposes of the provision in which the term is used.

Part 4—Transitional provisions

12—Constitution of councils

- (1) All councils, council committees, areas and wards in existence immediately before the relevant day continue under the 1999 Act (and, for the purposes of that or any other Act, will be taken to have been constituted under that Act).
- (2) All persons (other than returning officers) holding office under or by virtue of the provisions of the 1934 Act immediately before the relevant day continue to hold office under the 1999 Act or the 1999 Electoral Act (as appropriate).
- (3) A person holding the office of alderman under the 1934 Act immediately before the relevant day will be taken to be a councillor appointed or elected as a representative of the area as a whole for the relevant council under the 1999 Act and may continue to use the title of "alderman" until the conclusion of the general election for the council to be held in May 2000.
- (4) Section 54(1)(e) of the 1999 Act does not apply to a member of a council holding office immediately before the relevant day until the conclusion of the general election for the Council to be held in May 2000.

- (5) A reference in another Act to an authorised person as defined in the *Local Government Act 1999* will, until the relevant day, be taken to include a reference to an authorised person as defined in the *Local Government Act 1934*.

13—Structural proposals

- (1) A proceeding or review commenced under Part 2 of the 1934 Act that has not been finally determined at the relevant day may be continued and completed under the 1934 Act as if this Act had not been enacted.
- (2) The validity of a notice published by a council pursuant to Division 11 of Part 2 of the 1934 Act on the basis of a certificate of the Electoral Commissioner under section 24(11) of that Act cannot be called into question.
- (3) A council cannot be required to undertake a review of its composition and ward structure under section 12(24) of the 1999 Act by virtue only of the fact that a variation in representation levels has occurred as a result of the enactment of the 1999 Electoral Act¹.

Note—

- 1 This provision does not affect the powers of the Electoral Commissioner under section 12(4) of the 1999 Act.

14—Defaulting councils

If immediately before the relevant day a proclamation is in force under Division 13 of Part 2 of the 1934 Act declaring a council to be a defaulting council, section 273 of the 1999 Act will apply to the council from the relevant day as if the proclamation had been made under that section.

15—Delegations

A delegation of a council in operation under the 1934 Act immediately before the relevant day will continue in operation under or for the purposes of the 1999 Act or the 1999 Electoral Act (as the case may require).

16—Registers and codes

- (1) Subject to subsection (2), any register or code of conduct or practice in force under the 1934 Act immediately before the relevant day may, to the extent that a corresponding register or code is required under the 1999 Act, be taken to have been made under the 1999 Act (but may still be used for the purposes of the 1934 Act, if required).
- (2) For the purposes of Chapter 5 Part 4 Division 2 of the 1999 Act—
- (a) any person elected as a member of a council at the general election to be held in May 2000 (including a person who was a member of the council before that election) must, within six weeks after election, submit to the chief executive officer a primary return under that Division; and
- (b) a member of the public is not entitled to inspect the Register under that Division until six weeks after the general election to be held in May 2000.

17—Allowances

- (1) A council may, at any time after the commencement of Part 5 of Chapter 5 of the 1999 Act, fix the annual allowances to be payable to council members according to the rates under that Part notwithstanding—
 - (a) that the council is acting at a meeting that does not fall within the ambit of section 76(2) of the 1999 Act; and
 - (b) that the annual allowances being paid to council members are not otherwise due to be reviewed.
- (2) However—
 - (a) an annual allowance fixed under subsection (1) for the principal member of a council cannot be less than the annual allowance payable to the member under the 1934 Act immediately before the relevant day (and if the regulations under the 1999 Act prescribe a lesser amount as the maximum allowance payable under section 76(2) of the 1999 Act, the regulations will not apply to the extent necessary to ensure compliance with this paragraph); and
 - (b) the council must still proceed to fix rates of annual allowances under section 76(2) of the 1999 Act with respect to the period commencing at the conclusion of the periodic election to be held in May 2000 (and at that time the power to fix allowances under subsection (1) will expire).
- (3) A council may, in fixing an allowance under subsection (1), determine that any increase in an allowance will be back-dated to 1 July 1999.
- (4) A regulation made for the purposes of Part 5 of Chapter 5 of the 1999 Act before the periodic election to be held in May 2000 may be brought into operation on 1 July 1999 even if that date is earlier than the date of its publication in the Gazette.
- (5) Unless or until a council fixes allowances under subsection (1), the allowances payable to members of the council under the 1934 Act immediately before the relevant day will continue as if they had been fixed under the 1999 Act (and will then be fixed or reviewed under the provisions of the 1999 Act).
- (6) Subsection (3) of section 76 of the 1999 Act, insofar as it relates to the fixing of allowances at the first ordinary meeting of a council at the conclusion of the periodic election to be held in May 2000, operates subject to the qualification that any amount fixed at that meeting for the ensuing period of 12 months must not exceed the maximum allowance prescribed by the regulations for the purposes of that section.

18—Staff

Any process or proceeding commenced under Part 6 of the 1934 Act that has not been finally determined at the relevant day may be continued and completed as if the 1999 Act and this Act had not been enacted.

19—Elections

- (1) All voters rolls for areas or wards in force under the 1934 Act immediately before the relevant day will, until revised, continue in force under the 1999 Electoral Act.

- (2) An application for enrolment made under Part 7 of the 1934 Act that has not been finally determined before the relevant day may be considered and determined under the 1999 Electoral Act.
- (3) If, immediately before the relevant day, an extraordinary vacancy exists in the membership of a council and a day has not been appointed for the nomination of persons as candidates for election to that vacancy, nominations will be made and the election held under the 1999 Electoral Act as if the vacancy occurred on the relevant day.
- (4) If, immediately before the relevant day, an extraordinary vacancy exists in the membership of a council and a day has been appointed under the 1934 Act for the nomination of persons as candidates for election to that vacancy, nominations will be made and the election held as if the 1999 Electoral Act and this Act had not been enacted.
- (5) A proclamation under the 1934 Act that refers to an election or elections to be held on the first Saturday of May in 2000 will be taken to refer to the periodic election to be held in May 2000 under the 1999 Electoral Act.

20—Investments

Any investment made by a council before the relevant day is not affected by the operation of the 1999 Act.

21—Auditors

A person holding office as the auditor of a council immediately before the relevant day but who is not qualified to be appointed as an auditor under the 1999 Act may nevertheless continue as the auditor of the council until the completion of the audit for the financial year ending on the 30 June next following the relevant day.

22—Assessment book

The assessment book under the 1934 Act will be taken on the relevant day to be the assessment record for the 1999 Act.

23—Rates

- (1) The enactment of this Act and the 1999 Act does not affect the declaration or operation of a rate under the 1934 Act before the relevant day.
- (2) Any process or proceeding for the recovery of a rate commenced under Part 10 of the 1934 Act that has not been finally completed at the relevant day may be continued and completed under the 1999 Act from the stage reached immediately before the relevant day.
- (3) A remission or postponement of rates granted by a council before the relevant day will continue as a remission or postponement of rates under the 1999 Act (until varied or revoked by the council).
- (4) A council must, in respect of each of the first three financial years for which the council has a rating policy under Division 7 of Part 1 of Chapter 10 of the 1999 Act, prepare and publish a report in accordance with the following requirements:
 - (a) the report must provide information on—

- (i) the number of applications for rebates of rates under section 166(1)(h) of the 1999 Act received from retirement villages in respect of the relevant financial year; and
 - (ii) the results of those applications; and
 - (iii) the way in which the council's policy on issues of equity arising from circumstances where ratepayers provide or maintain infrastructure that might otherwise be provided or maintained by the council has been applied in relation to each application (insofar as that policy is relevant to the application); and
 - (b) the council must ensure—
 - (i) that a copy of the report is submitted to the Presiding Members of both Houses of Parliament in conjunction with the council's annual report for the relevant financial year; and
 - (ii) that copies of the report are available for inspection (without charge) and purchase (on payment of a fee fixed by the council) by the public at the principal office of the council for at least 12 months following its publication under subparagraph (i).
- (5) An exemption from rates by proclamation made under section 168(2)(h) of the 1934 Act for the 1999/2000 financial year will continue to apply, by force of this subsection, until 30 June 2005, provided that the relevant land continues to be used (wholly or predominantly) for the purpose or purposes for which it was being used on 1 July 1999.

24—Single council controlling authorities

- (1) Subject to subsection (2), a controlling authority established by a council under section 199 of the 1934 Act and in existence immediately before the relevant day continues as a committee of the council under the 1999 Act.
- (2) A controlling authority established by a council under section 199 of the 1934 Act in existence immediately before the relevant day and specified by the Minister by notice in the Gazette as being a controlling authority to which this subsection applies will continue as a subsidiary of the council under Part 1 of Schedule 2 of the 1999 Act (and, for the purposes of that or any other Act, will be taken to have been established under that Act).
- (3) The following provisions apply to a subsidiary within the ambit of subsection (2):
 - (a) the rules of the controlling authority in existence immediately before the relevant day will be taken to be the charter of the subsidiary; and
 - (b) any non-compliance concerning the charter of the subsidiary with Schedule 2 of the 1999 Act may be disregarded until 1 January 2002; and
 - (c) the persons constituting the membership of the controlling authority immediately before the relevant day will be taken to constitute the board of management of the subsidiary.

25—Regional controlling authorities

- (1) A controlling authority established by two or more councils under section 200 of the 1934 Act and in existence immediately before the relevant day continues as a subsidiary of the councils under Part 2 of Schedule 2 of the 1999 Act (and, for the purposes of that or any other Act, will be taken to have been established under that Act).
- (2) The following provisions apply to a subsidiary within the ambit of subsection (1):
 - (a) the rules of the relevant controlling authority in existence immediately before the relevant day will be taken to be the charter of the subsidiary; and
 - (b) any non-compliance concerning the charter of the subsidiary with the requirements of Schedule 2 of the 1999 Act may be disregarded until 1 January 2002; and
 - (c) the persons constituting the membership of the relevant controlling authority immediately before the relevant day will be taken to constitute the board of management of the subsidiary; and
 - (d) the subsidiary is not required to have a business plan until six months after the relevant day.

26—References to controlling authorities

A reference in another Act to controlling authorities established under the 1934 Act will be taken to be a reference to subsidiaries established under the 1999 Act.

27—Water reserves

A grant of a water or other reserve made under section 452 of the 1934 Act will, from the relevant day, be taken to be a grant under section 5AA of the *Crown Lands Act 1929*.

28—Evidence of proclamations

- (1) A copy of the Gazette containing a proclamation made by the Governor under the 1934 Act is conclusive evidence of the fact, terms, and validity of the proclamation, and is evidence of the facts stated, recited or assumed in the proclamation.
- (2) No proclamation purporting to be made under the 1934 Act and within the powers conferred on the Governor under that Act is invalid on account of any non-compliance with a matter specified by that Act as preliminary to the proclamation.

29—Evidence of appointments and elections

A copy of the Gazette containing a notice of the election or appointment of a person under the 1934 Act, or the appointment of an officer for a specified purpose, is conclusive evidence of the election or appointment (except in proceedings to try the title of the person who has been elected or appointed).

30—Evidence of resolutions etc

A copy of the Gazette containing a notice that a resolution was passed or order made at a meeting of a council, or that a proposition was adopted or affirmed at a meeting or poll of electors, under the 1934 Act is conclusive evidence—

- (a) of the resolution being passed or order made, or proposition adopted or affirmed;
- (b) of the meeting being lawfully convened and the poll lawfully taken;
- (c) of any fact stated in the notice relating to the majority by which the resolution was passed or proposition adopted or affirmed, and the number and proportion of members or electors present.

31—Evidence of making of a rate

A copy of the Gazette containing a notice of the declaration of a rate under the 1934 Act is conclusive evidence that the rate has been duly declared (except in proceedings to quash the rate).

32—Evidence of assessment record

A copy of, or extract from, the assessment book kept under the 1934 Act certified by the chief executive officer as a true copy or extract is conclusive evidence that an assessment referred to in the copy or extract was duly made (except in proceedings to quash the assessment).

33—Evidence of constitution of council, appointment of officers etc

It is not necessary in any legal proceedings to prove the existence or constitution of a council, the appointment of an officer of a council, or the appointment of an authorised person under the 1934 Act.

34—Local government land

- (1) Any survey, process or other proceeding commenced under or for the purposes of Division 3 of Part 17 or section 871E of the 1934 Act that has not been finally determined at the relevant day may be continued and completed as if this Act had not been enacted.
- (2) All land under the care, control and management of a council by virtue of the provisions of the 1934 Act immediately before the relevant day continues under the care, control and management of the council under the 1999 Act.
- (3) Despite section 193 of the 1999 Act, if—
 - (a) a council had acquired land within five years before the relevant day; and
 - (b) the council is satisfied—
 - (i) that the land was acquired by the council for a specific commercial or operational purpose and was not intended to be retained for public or community use or for the provision of community facilities; and
 - (ii) that there was a reasonable opportunity for the community to make submissions to the council before the acquisition actually occurred; and

- (c) the council resolves within six months after the relevant day that the land is to be excluded from classification as community land under the 1999 Act,
then the land will not be taken to be classified as community land.
- (4) A council must give notice in the Gazette of a resolution under subsection (3).
- (5) A council must, on the request of a person with an interest in the matter, provide information to substantiate the requirements of subsection (3)(b)(i) and (ii).
- (6) A lease, license, permit or other authorisation granted or given by a council over land in force under the 1934 Act continues in force under the 1999 Act.
- (7) A lease granted by The Corporation of the City of Adelaide under Part 45 of the 1934 Act may continue for its full term (and be renewed for any period that may be specified in the lease) even if the term (or period) exceeds 42 years.
- (8) A register of public streets and roads under section 312 of the 1934 Act will continue as the register of public roads under Chapter 11 Part 2 Division 10 of the 1999 Act.
- (9) Any process or proceeding commenced under Division 2A of Part 22 of the 1934 Act that has not been formally determined at the relevant day may be continued and completed as if this Act had not been enacted.

35—By-laws

- (1) If—
- (a) a by-law is in force under the 1934 Act immediately before the provision under which the by-law is made is struck out by or under this Act; and
- (b) provision is made—
- (i) under the 1999 Act or another Act; or
- (ii) by regulation under this section,
for—
- (iii) the making of by-laws concerning the same or substantially the same subject-matter as the subject-matter to which the by-law relates; or
- (iv) the preservation of the by-law,
- then, despite any other Act or law, the by-law continues in force as if made under the 1999 Act or other Act (as the case requires or as the regulations may prescribe).
- (2) If—
- (a) proceedings relating to the making of a by-law have been commenced but not finally completed before the provision under which the by-law is made is struck out by or under this Act; and
- (b) provision is made—
- (i) under the 1999 Act or another Act; or
- (ii) by regulation under this section,
for—
- (iii) the making of by-laws concerning the same or substantially the same subject-matter as the subject-matter to which the by-law relates; or

(iv) the preservation of the by-law,

then, despite any other Act or law, the proceedings may be completed as if this Act had not been enacted and the by-law will, if or when it is made, have effect as if made under the 1999 Act or other Act (as the case requires or as the regulations may prescribe).

- (3) A by-law made under the 1934 Act (including by the operation of subsection (2)), and all subsequent by-laws altering that by-law, unless it has already expired or been revoked, expire on 1 January of the year following the year in which the seventh anniversary of the day on which the by-law was made falls.
- (4) For the purposes of subsection (3), a by-law will be taken to have been made on the day on which it is published in the Gazette or, in the case of a model by-law, the day on which the notice of the resolution adopting the model by-law is published in the Gazette.
- (5) A by-law of a prescribed class may take effect from a day specified in the resolution making the by-law (which must not be earlier than the day of publication of the resolution in the Gazette) despite any other Act or law.

36—Contracts and tenders policy

A council is not required to adopt a contracts and tenders policy under Chapter 4 Part 4 of the 1999 Act until six months after the relevant day.

37—Public consultation policies

A council is not required to adopt a public consultation policy under Chapter 4 Part 5 of the 1999 Act until six months after the relevant day subject to the qualification that if a council is proposing to take action in a case where it is required by the 1999 Act to follow a public consultation policy then the council must adopt a public consultation policy under Chapter 4 Part 5 in order to comply with the 1999 Act.

38—Code of conduct—members

A council is not required to adopt a code of conduct under Chapter 5 Part 4 Division 1 of the 1999 Act until six months after the conclusion of the general election for the council in May 2000.

39—Code of conduct—employees

A council is not required to adopt a code of conduct under Chapter 7 Part 4 of the 1999 Act until 1 January 2001.

40—Strategic management plans

A council is not required to have strategic management plans under Chapter 8 Part 1 of the 1999 Act until 1 July 2002.

41—Annual reports

- (1) A council is not required to have an annual report that complies with the requirements of Chapter 8 Part 4 of the 1999 Act until the annual report for the 2000/2001 financial year.

- (2) A council constituted or formed between 25 October 1994 and 1 July 1997 (inclusive) must include in its annual reports for the 1998/1999 financial year and the 1999/2000 financial year information relating to—
- (a) any savings that have been achieved during the relevant financial year on account of the constitution or formation of the council; and
 - (b) any changes to the quality or extent of services delivered or provided within the relevant area on account of the constitution or formation of the council.

42—Orders

A council may make an order under Chapter 12 Part 2 of the 1999 Act in respect of a circumstance in existence before or after the relevant day.

43—Grievance procedures

A council must establish procedures under Chapter 13 Part 2 of the 1999 Act within six months after the conclusion of the general election for the council to be held in May 2000.

44—Reviews initiated by Minister

The powers conferred on the Minister under Chapter 13 Part 3 of the 1999 Act may be exercised in relation to a circumstance occurring before or after the relevant day.

Part 5—Other matters

45—General provisions

- (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting subsection (1), the Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act, the 1999 Act or the 1999 Electoral Act.
- (3) A provision of a regulation made under subsection (2) may, if the regulation so provides, take effect from the commencement of the Act concerned or from a later day.
- (4) To the extent to which a provision takes effect under subsection (3) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
 - (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.
- (5) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Act (or regulations made under this Act), apply to any repeal or amendment effected by this Act.
- (6) For the purpose of the application of the *Acts Interpretation Act 1915*, this Act, the 1999 Act and the 1999 Electoral Act will be read together and construed as if the three Acts constituted a single Act.

46—Further repeal—*Local Government Act 1934*

The Governor may, by proclamation—

- (a) suspend the repeal of specified provisions of the *Local Government Act 1934* which would otherwise be repealed by the operation of another provision of this Act until a subsequent day fixed in the proclamation, or until a day to be fixed by subsequent proclamation;
- (b) repeal specified provisions of the *Local Government Act 1934* (in addition to the provisions repealed by this Act);
- (c) if or when satisfied that it is appropriate to do so—repeal the *Local Government Act 1934*.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation repealed by principal Act

The *Local Government (Implementation) Act 1999* repealed the following:

Klemzig Pioneer Cemetery (Vesting) Act 1983

Public Parks Act 1943

Reynella Oval (Vesting) Act 1973

Legislation amended by principal Act

The *Local Government (Implementation) Act 1999* amended the following:

City of Adelaide Act 1998

Local Government Act 1934

Pulp and Paper Mills (Hundreds of Mayurra and Hindmarsh) Act 1964

Real Property Act 1886

Roads (Opening and Closing) Act 1991

Survey Act 1992

Water Resources Act 1997

Principal Act

Year	No	Title	Assent	Commencement
1999	64	<i>Local Government (Implementation) Act 1999</i>	18.11.1999	1.1.2000 (<i>Gazette</i> 9.12.1999 p3113) except s 12(5)—18.11.1999: s 2

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
Pt 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
Pt 3	<i>omitted under Legislation Revision and Publication Act 2002</i>	