

# LOCAL GOVERNMENT ACT, 1934

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[Subscribers to the Consolidation Service will receive complete replacement Parts incorporating amendments to this Act as they come into force.]



SOUTH AUSTRALIA

**LOCAL GOVERNMENT ACT, 1934**

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **16 April 1998**.*

*It should be noted that the Act has not been revised (for obsolete references, etc.) by the Commissioner of Statute Revision since the reprint published on 1 March 1989.*

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**LIGHTING, GASWORKS AND ELECTRIC SUPPLY WORKS**

**DIVISION I—STREET LIGHTING**

- 482. Power to light streets and public places
- 483. Power to lay pipes through streets, etc.
- 484. Power of council to remove and alter number of lamps, and nature of the light afforded

**DIVISION II—GASWORKS AND ELECTRIC SUPPLY WORKS**

- 489. Power to carry on operations for supply of electricity or gas

**PART XXV**

**SEWERAGE AND DRAINAGE**

- 528. Resolution of council for providing of bacteriolytic tanks
- 529. Installation of bacteriolytic tanks
- 530a. Provision of treatment unit instead of bacteriolytic tank
- 530b. "All purpose" bacteriolytic tank
- 530c. Septic tanks
- 531. Limitation of application of Part

**PART XXVI  
PUBLIC HEALTH**

**DIVISION I—PROVISIONS APPLICABLE GENERALLY**

- 532. Power of council to provide public conveniences
- 535. Property in nightsoil, ashes and all refuse collected
- 536. Keeping of pigs, cattle, etc.
- 540a. Penalty if smoke, dust, fumes or gas from premises other than dwelling houses amount to nuisance

**PART XXX  
CEMETERIES**

- 585. Power of council to establish cemetery, crematorium and mortuary
- 586. Establishment of cemeteries
- 587. Closing of cemeteries
- 588. Provisions as to closed cemeteries
- 589. Powers of council with respect to neglected cemeteries
- 590. Power to take over cemeteries
- 591. Power of council to accept conveyances of cemetery lands from trustees
- 591a. Power to set apart portion of cemetery for religious denomination
- 592. Power to manage cemeteries
- 593. Penalty for interring human body except at public cemetery
- 594. Power of entry
- 595. Regulations
- 596. Provisions applicable to outside areas

**PART XXXI  
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**DIVISION I—PROVISIONS APPLICABLE GENERALLY**

- 597. Application of Division
- 598. Building projecting on any public street, road or place
- 599. Power of council after notice to cause encroachment to be removed
- 600. Erection of verandahs, etc., over streets and roads

**DIVISION II—PROVISIONS APPLICABLE TO MUNICIPALITIES AND  
PROCLAIMED TOWNSHIPS WITHIN DISTRICTS**

- 601. Application of Division
- 602. Duties of persons erecting or pulling down buildings, etc.
- 603. Licences for hoardings, etc.
- 604. Hoardings to be kept in good condition, and lit up from sunset to sunrise
- 605. Power to remove and sell hoardings, etc., erected and materials deposited without or contrary to licence
- 606. Damage done to footways, drains, etc., by erection of hoardings, etc., to be made good
- 607. Covering of footway while building is in progress
- 608. Roofs of houses
- 609. Prohibition of wooden partitions between separate houses
- 610. Space between timbers in party walls, etc.
- 611. Prohibition of erection of buildings, partitions, ceilings and verandahs of flammable materials
- 612. Power of council to suspend operation of previous ten sections, or any of them
- 615. Penalty for allowing building material, etc., to remain in streets
- 616. Measures to be taken in case of ruinous or dangerous building

617. Power of council to sell materials of buildings pulled down in payment of expenses incurred

**DIVISION III—PROVISIONS APPLICABLE TO DISTRICTS ONLY**

618. Application of Division  
619. Power of council to destroy ruinous or dangerous building

**PART XXXII  
PREVENTION OF FIRES WITHIN MUNICIPALITIES AND PROCLAIMED  
TOWNSHIPS WITHIN DISTRICTS**

620. Power of council to take measures for prevention and suppression of fires  
621. Prohibition of stacking hay, straw and thatch in the open air  
622. Construction of ashpits  
624. Fires in chimneys  
625. Application to township within district

**PART XXXIII  
ALLEYS AND COURTS WITHIN MUNICIPALITIES**

626. Width and entrances of alleys and courts  
627. Penalties  
628. Entrance to alleys

**PART XXXIV  
HIDE AND SKIN MARKETS AND BAZAARS**

629. Power to licence hide and skin markets  
631. Power to licence bazaars  
632. Penalty for selling horses, etc., except at markets or bazaars

**PART XXXV  
WATERCOURSES AND FLOOD MANAGEMENT**

**DIVISION I—PROTECTION AND MAINTENANCE OF WATERCOURSES**

633. Application of Division  
634. Protection of watercourses  
635. Interference with watercourses  
636. Requirement to remove obstructions  
637. Responsibility for maintenance of watercourses  
638. Powers of entry  
639. Proceedings

**DIVISION II—FLOOD MANAGEMENT**

640. Acquisition of land  
641. Power of council to act in emergency

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642. Appeals

**PART XXXVI  
RECLAMATION OF LAND**

644. Cost of reclamation of land

**Local Government Act, 1934**

- 645. Duty of council to value and to give notice
- 646. Right of appeal

**PART XXXVIII  
MISCELLANEOUS POWERS**

- 662. Council excused from oath of office and qualification when acting as a board under any Act
- 663. Boundary marks
- 665. Drainage across footways
- 666b. Unsightly condition of land

**PART XXXIX  
BY-LAWS, MODEL BY-LAWS AND REGULATIONS**

**DIVISION I—BY-LAWS**

- 667. By-laws
  - 2. Structures
  - 3. Uses and Licences
  - 4. Nuisances and Health
  - 5. Animals
  - 6. Fires and Fire Prevention
  - 7. Streets, Roads and Footways
  - 8. Council Property
  - 9. Miscellaneous
- 668. Principles to be observed in relation to by-laws
- 669. Ability to incorporate other material
- 670. Reference of powers
- 671. Passing of by-laws
- 672. Expiry of by-laws
- 672a. Repeal of a by-law does not affect certain resolutions
- 673. Title and numbering of by-laws
- 674. By-law not to exempt from proceedings for nuisance
- 677. By-laws with minimum penalty
- 681. Adoption of by-laws on amalgamation

**DIVISION II—MODEL BY-LAWS**

- 682. Power to make model by-laws
- 683. Effect of alteration or repeal of model by-law by Governor
- 684. Power of council to adopt any model by-laws
- 685. Model by-laws prepared by the L.G.A.

**DIVISION III—REGULATIONS**

- 691. Regulations

**PART XL  
LEGAL PROCEDURE**

- 692. Recovery of amounts due to council
- 693. Service of notices, etc.
- 694. Service of notice on owners and occupiers
- 695. Service on council
- 696. Authentication of certain documents by the council
- 697. Representation of council in cases of bankruptcy
- 698. Representation of council before courts

- 699. Reimbursement of officer
- 700. Proceedings in bankruptcy
- 701. Power of lessee or occupier to execute works in default of owner, and deduct from rent
- 702. Recovery of expenses from owner
- 703. Limit of liability of occupier
- 704. Payment of expenses by instalments in certain cases
- 705. Liability of trustees, etc.
- 706. No writ of *quo warranto* allowed to try title to any office
- 707. No *mandamus* to issue from Supreme Court to compel council to admit, restore or elect councillors, etc.
- 708. *Certiorari* taken away
- 709. Jurisdiction to try title to certain office, etc.
- 710. Proceedings to try title to certain office, etc.
- 711. Claims by council to money not accounted for by officer
- 712. Punishment on non-compliance with order
- 713. Time within which the proceedings may be taken to try title to office
- 714. Time within which validity of assessment, etc., may be tried
- 717. Payment of fees, etc., to council
- 720. Proceedings by council
- 721. Differences between councils

**PART XLI  
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- 722. Evidence of proclamations and order
- 723. Evidence of appointments and elections
- 725. Evidence of resolution, etc.
- 729. Proof of taking over of ornamental grounds
- 730. Evidence of assessment book
- 731. Evidence of Government assessment
- 732. Evidence of the making of a rate
- 733. Saving of rights to bring evidence
- 734. Evidence of maps, contracts, etc., or certified copies
- 735. Certified map of roads to be evidence
- 738. Evidence of register of public streets
- 739. Evidence of by-laws
- 740. Evidence of model by-law
- 742. Evidence of costs incurred by council
- 743. Facilitation of proof
- 743a. Evidentiary presumption
- 744. Evidence of constitution of council, appointment of officers, etc.
- 745. Evidence of boundaries
- 746. Proclamations
- 747. Proof of service of notices
- 748. Saving of rules of evidence

**PART XLIA  
LITTER, WASTE MATERIAL, ETC.**

- 748a. Depositing of rubbish, etc.
- 748b. Apparently abandoned vehicles and farm implements
- 748ba. Removal of litter, waste, etc., resulting from motor vehicle accident
- 748c. Removal of vehicles left on streets and roads

**PART XLII  
PENALTIES**

- 749. Disqualified person acting as mayor, alderman, councillor or auditor

**Local Government Act, 1934**

750. Penalty on disqualified person failing to give notice of disqualification  
751. Person elected as mayor, alderman, or councillor refusing to act  
768. Obstructing meetings  
769a. Impersonating officers  
771. Persons examined on oath, etc., making false statement guilty of perjury  
772. Forgery  
773. Publishing or posting false notices, etc.  
778. Penalty for extinguishing light  
778a. Improperly interfering with council property  
779. Penalty for damaging property of council  
779a. Prohibition of traffic on unsafe bridge or road  
779b. Power to stop traffic in streets and roads during portions of year  
780. Persons removing timber, etc., without licence  
780a. Persons constructing buildings, etc., across street or road without authority  
781. Posting bills, etc., in public places without permission of council  
781a. Advertising, etc., in streets  
782. Penalty for driving on footways, etc.  
782a. Penalty for walking, driving vehicle, etc., on cycle track or way  
784. Destroying, etc., fences or gates  
785. Penalty for placing hives of bees on streets  
786. Penalty on occupier obstructing owner from carrying Act into effect  
787. Penalty for laying out street less than prescribed width  
788. Penalty for improper use of public fountains  
789. Blasting  
789a. Duty of owner to give information to identify driver  
789b. Owner of vehicle guilty of offence  
789c. Owner and driver not both liable to conviction  
789d. Owner of vehicle may name driver  
790. Non-performance of provisions of this Act  
791. Penalty for offence against this Act  
792. Power of Governor to remit fines  
793. Conviction not to bar action  
794. Liability of person causing commission of offences  
794a. Expiation fees may be fixed  
794b. Proceedings for parking offences may only be taken by authorized officers, etc., or with certain approvals

**PART XLV****PROVISIONS AFFECTING THE CORPORATION OF THE CITY OF ADELAIDE ONLY****DIVISION I—GENERAL**

848. Corporate name of the City of Adelaide  
849. Boundaries of the City of Adelaide  
851. Land known as "The Corporation Acre" to continue vested in Corporation  
852. Reserves and park lands excepted from under control of council  
853. Power of Governor to take temporary control of park lands for military purposes  
854. Power to lease racecourse  
855. Power to lease Adelaide Oval  
855a. Powers relating to west park lands  
855b. Powers relating to Memorial Drive Tennis Centre  
855c. Constructions over or under roads

**DIVISION III—RIVER TORRENS IMPROVEMENT**

865. River Torrens dam  
866. Rights of fishing  
867. Saving of rights

- 868. Penalty for placing filth, etc., in River Torrens
- 869. Saving of rights of Crown
- 870. Saving of other powers of council
- 871. Control, etc., of portion of bank of River Torrens
- 871aa. Division subject to Catchment Water Management Act 1995

**DIVISION IV—POWERS RELATING TO STREETS AND ROADS**

- 871a. Power to take land
- 871b. Power to enter land
- 871c. Dealing with land when acquired
- 871d. Colonnading of streets and roads when acquiring land for footway
- 871e. Re-alignment of streets or roads
- 871f. Wires, etc., above new or widened streets or roads
- 871g. Removal of wires, mains, etc.
- 871h. Restriction on use of streets for tramways
- 871i. Use of streets or roads for bus services
- 871s. Exercise of certain powers by council
- 871t. Application of Division to other councils

**PART XLVI  
MISCELLANEOUS MATTERS**

- 872. River, stream or watercourse forming a common boundary
- 873. Cost of advertisements
- 873a. Microfilm records
- 874. Certified copies of by-laws
- 876. Powers of entry by officers of council
- 877. Power to enter and occupy lands in connection with projects
- 877a. Power to enter land for surveys, etc.
- 878. Licences
- 879. Declarations
- 879a. Mayors and chairmen to be justices
- 880. Crown land to be deemed under management of council for certain purposes
- 880a. Cutting of trees
- 880b. Interests in companies
- 881. Duty of Registrar-General to supply particulars to councils
- 883. Special provisions relating to the District Council of Coober Pedy
- 886ba. The Glenelg amusement park
- 886c. Vesting of Beaumont Common in the Corporation of the City of Burnside
- 886d. Vesting of Levi Park in the Corporation of the Town of Walkerville
- 887. Proceedings for recovery of rates
- 888. Application to Crown
- 889. Delegation by Ministers
- 890. Incorporation of Standards, etc.

**SCHEDULES**

**APPENDIX  
LEGISLATIVE HISTORY**



# LOCAL GOVERNMENT ACT, 1934

being

Local Government Act, 1934, No. 2156 of 1934  
[Assented to 25 October 1934]<sup>1</sup>

as amended by

Health Act, 1935, No. 2238 of 1935 [Assented to 19 December 1935]  
Statute Law Revision Act, 1935, No. 2246 of 1935 [Assented to 19 December 1935]  
Criminal Law Consolidation Act, 1935, No. 2252 of 1935 [Assented to 21 December 1935]<sup>2</sup>  
Grange Recreation Reserve Act, 1936, No. 2284 of 1936 [Assented to 24 September 1936]  
Statute Law Revision Act, 1936, No. 2293 of 1936 [Assented to 8 October 1936]  
Public Library, Museum, and Art Gallery, and Institutes Act, 1936, No. 2314 of 1936 [Assented to 26 November 1936]<sup>3</sup>  
Local Government Act Amendment Act, 1936, No. 2331 of 1936 [Assented to 3 December 1936]  
Highways Act Amendment Act, 1938, No. 2388 of 1938 [Assented to 25 August 1938]<sup>4</sup>  
Local Government Act Amendment Act, 1938, No. 2424 of 1938 [Assented to 19 December 1938]  
Weights and Measures Act Amendment Act, 1939, No. 9 of 1939 [Assented to 5 October 1939]<sup>5</sup>  
Local Government Act Amendment Act, 1939, No. 43 of 1939 [Assented to 21 December 1939]  
Local Government Act Amendment Act, 1941, No. 17 of 1941 [Assented to 30 October 1941]  
Noxious Trades Act, 1943, No. 34 of 1943 [Assented to 23 December 1943]<sup>6</sup>  
Local Government Act Amendment Act, 1946, No. 16 of 1946 [Assented to 31 October 1946] (as amended by s. 3 of Local Government Act Amendment Act (No. 2), 1972)  
Local Government Act Amendment Act, 1948, No. 51 of 1948 [Assented to 22 December 1948]  
Local Government Act Amendment Act, 1949, No. 56 of 1949 [Assented to 8 December 1949]  
Local Government Act Amendment Act, 1951, No. 46 of 1951 [Assented to 13 December 1951]  
Local Government Act Amendment Act, 1952, No. 21 of 1952 [Assented to 6 November 1952]  
Local Government Act Amendment Act (No. 2), 1952, No. 48 of 1952 [Assented to 4 December 1952]  
Local Government Act Amendment Act (No. 1), 1954, No. 17 of 1954 [Assented to 28 October 1954] (as amended by s. 4 of Local Government Act Amendment Act (No. 2), 1972)  
Local Government Act Amendment Act (No. 2), 1954, No. 56 of 1954 [Assented to 23 December 1954]  
Local Government Act Amendment Act, 1956-1957, No. 1 of 1957 [Assented to 21 February 1957]  
Statute Law Revision Act, 1957, No. 42 of 1957 [Assented to 14 November 1957]  
Local Government Act Amendment Act, 1957, No. 54 of 1957 [Assented to 28 November 1957]  
Local Government Act Amendment Act, 1959, No. 34 of 1959 [Assented to 3 December 1959]  
Local Government Act Amendment Act (No. 2), 1959, No. 50 of 1959 [Assented to 17 December 1959]  
Road Traffic Board Act, 1960, No. 41 of 1960 [Assented to 7 November 1960]<sup>7</sup>  
Local Government Act Amendment Act, 1961, No. 30 of 1961 [Assented to 9 November 1961]  
Local Government Act Amendment Act, 1963, No. 39 of 1963 [Assented to 28 November 1963]<sup>8</sup>  
Local Government Act Amendment Act (No. 2), 1963, No. 60 of 1963 [Assented to 5 December 1963]  
Local Government Act Amendment Act, 1964, No. 54 of 1964 [Assented to 5 November 1964]  
Statute Law Revision Act, 1965, No. 39 of 1965 [Assented to 9 December 1965]  
Local Government Act Amendment Act, 1965-1966, No. 28 of 1966 [Assented to 24 March 1966]  
Local Government Act Amendment Act, 1966, No. 66 of 1966 [Assented to 24 November 1966]  
Harbors Act Amendment Act, 1966, No. 89 of 1966 [Royal Assent proclaimed 2 March 1967]<sup>9</sup>  
Local Government Act Amendment Act, 1967, No. 36 of 1967 [Assented to 14 September 1967]  
Local Government Act Amendment Act (No. 2), 1967, No. 51 of 1967 [Assented to 26 October 1967]<sup>10</sup>  
Local Government Act Amendment Act, 1968, No. 15 of 1969 [Assented to 6 March 1969] (as amended by s. 5 of Local Government Act Amendment Act (No. 2), 1972)  
Local Government Act Amendment Act (No. 2), 1969, No. 16 of 1969 [Assented to 6 March 1969]

**NOTE:**

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix.

Local Government Act Amendment Act (No. 3), 1969, No. 89 of 1969 [Assented to 11 December 1969]<sup>11</sup> (as amended by s. 6 of Local Government Act Amendment Act (No. 2), 1972)

Local Government Act Amendment Act (No. 4), 1969, No. 94 of 1969 [Assented to 11 December 1969]

Local Government Act Amendment Act, 1970, No. 50 of 1970 [Assented to 10 December 1970]

Building Act, 1970-1971, No. 16 of 1971 [Assented to 8 April 1971]<sup>12</sup>

Local Government Act Amendment Act, 1971, No. 107 of 1971 [Assented to 9 December 1971]

Statutes Amendment (Miscellaneous Provisions) Act, 1972, No. 58 of 1972 [Assented to 27 April 1972]<sup>13</sup>

Statutes Amendment (Valuation of Land) Act, 1972, No. 79 of 1972 [Assented to 5 October 1972]<sup>14</sup>

Local Government Act Amendment Act (No. 2), 1972, No. 113 of 1972 [Assented to 23 November 1972]

Local Government Act Amendment Act, 1972, No. 141 of 1972 [Assented to 7 December 1972]<sup>15</sup>

Rates and Taxes Remission Act, 1974, No. 16 of 1974 [Assented to 4 April 1974]<sup>16</sup>

Local Government Act Amendment Act, 1974, No. 63 of 1974 [Assented to 26 September 1974]<sup>17</sup>

Boating Act, 1974, No. 132 of 1974 [Royal Assent proclaimed 16 January 1975]<sup>18</sup>

Local Government Act Amendment Act, 1975, No. 30 of 1975 [Assented to 3 April 1975]<sup>19</sup>

Statutes Amendment (Rates and Taxes Remission) Act, 1975, No. 98 of 1975 [Assented to 20 November 1975]<sup>20</sup>

Local Government Act Amendment Act (No. 2), 1975, No. 12 of 1976 [Assented to 4 March 1976]<sup>21</sup>

Local Government Act Amendment Act, 1976, No. 77 of 1976 [Assented to 9 December 1976]<sup>22</sup>

Local Government Act Amendment Act (No. 4), 1976, No. 86 of 1976 [Assented to 9 December 1976]

Local Government Act Amendment Act, 1977, No. 1 of 1977 [Assented to 14 April 1977]<sup>22</sup>

Statutes Amendment (Rates and Taxes Remission) Act, 1977, No. 55 of 1977 [Assented to 15 December 1977]<sup>23</sup>

Local Government Act Amendment Act, 1978, No. 32 of 1978 [Assented to 6 April 1978]<sup>24</sup>

Local Government Act Amendment Act (No. 2), 1978, No. 33 of 1978 [Assented to 6 April 1978]<sup>25</sup>

Local Government Act Amendment Act (No. 3), 1978, No. 70 of 1978 [Assented to 16 November 1978]

Harbors Act Amendment Act, 1978, No. 109 of 1978 [Assented to 7 December 1978]<sup>26</sup>

Local Government Act Amendment Act, 1979, No. 50 of 1979 [Assented to 22 March 1979]<sup>27</sup>

Local Government Act Amendment Act, 1980, No. 17 of 1980 [Assented to 17 April 1980]<sup>28</sup>

Local Government Act Amendment Act (No. 2), 1980, No. 88 of 1980 [Assented to 4 December 1980]<sup>29</sup>

Local Government Act Amendment Act (No. 3), 1980, No. 89 of 1980 [Assented to 4 December 1980]<sup>30</sup>

Statutes Amendment (Valuation of Land) Act, 1981, No. 29 of 1981 [Assented to 19 March 1981]<sup>31</sup>

Statutes Amendment (Administration of Courts and Tribunals) Act, 1981, No. 34 of 1981 [Assented to 19 March 1981]<sup>32</sup>

Local Government Act Amendment Act, 1981, No. 57 of 1981 [Assented to 25 June 1981]

Local Government Act Amendment Act (No. 2), 1981, No. 61 of 1981 [Assented to 3 September 1981]

Local Government Act Amendment Act (No. 4), 1981, No. 112 of 1981 [Assented to 23 December 1981]

Local Government Act Amendment Act, 1982, No. 9 of 1982 [Assented to 4 March 1982]<sup>33</sup>

Statutes Amendment (Planning) Act, 1982, No. 62 of 1982 [Assented to 1 July 1982]<sup>34</sup>

Local Government Act Amendment Act, 1983, No. 27 of 1983 [Assented to 16 June 1983]<sup>35</sup>

Local Government Act Amendment Act (No. 2), 1983, No. 102 of 1983 [Assented to 22 December 1983]

Local Government Act Amendment Act (No. 3), 1983, No. 103 of 1983 [Assented to 22 December 1983]<sup>36</sup>

Statutes Amendment (Flood Management) Act, 1983, No. 104 of 1983 [Assented to 22 December 1983]<sup>37</sup>

Local Government Act Amendment Act, 1984, No. 7 of 1984 [Assented to 19 April 1984]

Local Government Act Amendment Act (No. 2), 1984, No. 34 of 1984 [Assented to 17 May 1984]<sup>38</sup>

Local Government Act Amendment Act (No. 3), 1984, No. 58 of 1984 [Assented to 31 May 1984]<sup>39</sup>

Valuation of Land Act Amendment Act, 1984, No. 88 of 1984 [Assented to 29 November 1984]<sup>40</sup>

Local Government Act Amendment Act, 1985, No. 13 of 1985 [Assented to 14 March 1985]<sup>41</sup>

Local Government Act Amendment Act, 1986, No. 12 of 1986 [Assented to 20 March 1986]<sup>42</sup>

Local Government Act Amendment Act (No. 2), 1986, No. 55 of 1986 [Assented to 2 October 1986]<sup>43</sup>

Rates and Land Tax Remission Act, 1986, No. 78 of 1986 [Assented to 4 December 1986]<sup>44</sup>

Local Government Act Amendment Act (No. 3), 1986, No. 80 of 1986 [Assented to 4 December 1986]

Local Government Act Amendment Act (No. 4), 1986, No. 101 of 1986 [Assented to 18 December 1986]<sup>45</sup>

Motor Vehicles Act Amendment Act, 1987, No. 12 of 1987 [Assented to 9 April 1987]

Statutes Amendment (Public and Environmental Health) Act, 1987, No. 37 of 1987 [Assented to 23 April 1987]<sup>46</sup>

Local Government Act Amendment Act, 1988, No. 33 of 1988 [Assented to 21 April 1988]<sup>47</sup>

Statutes Amendment (Local Government) Act, 1988, No. 99 of 1988 [Assented to 15 December 1988]<sup>48</sup>

Real Property Act Amendment Act, 1990, No. 9 of 1990 [Assented to 12 April 1990]<sup>49</sup>

Local Government Act Amendment Act, 1990, No. 69 of 1990 [Assented to 20 December 1990]<sup>50</sup>

Statutes Amendment (Water Resources) Act 1991 No. 7 of 1991 [Assented to 28 March 1991]<sup>51</sup>

- Local Government (Management Provisions) Amendment Act 1991 No. 26 of 1991 [Assented to 18 April 1991]<sup>52</sup>
- Local Government (Freedom of Information) Amendment Act 1991 No. 31 of 1991 [Assented to 24 April 1991]<sup>53</sup>
- Local Government (Reform) Amendment Act 1992 No. 29 of 1992 [Assented to 21 May 1992]<sup>54</sup>
- Statutes Amendment and Repeal (Public Offences) Act 1992 No. 35 of 1992 [Assented to 21 May 1992]<sup>55</sup>
- Local Government (Miscellaneous Provisions) Amendment Act 1992 No. 43 of 1992 [Assented to 10 September 1992]<sup>56</sup>
- Local Government (City of Adelaide Wards) Amendment Act 1992 No. 54 of 1992 [Assented to 29 October 1992]
- Local Government (Financial Management) Amendment Act 1992 No. 85 of 1992 [Assented to 3 December 1992]<sup>57</sup>
- Statutes Repeal and Amendment (Development) Act 1993 No. 54 of 1993 [Assented to 27 May 1993]<sup>58</sup>
- Local Government (Voting at Meetings) Amendment Act 1993 No. 66 of 1993 [Assented to 26 August 1993]<sup>59</sup>
- Local Government (Miscellaneous Provisions) Amendment Act 1994 No. 6 of 1994 [Assented to 14 April 1994]<sup>60</sup>
- State Bank (Corporatisation) Act 1994 No. 17 of 1994 [Assented to 12 May 1994]<sup>61</sup>
- Passenger Transport Act 1994 No. 30 of 1994 [Assented to 26 May 1994]<sup>62</sup>
- Irrigation Act 1994 No. 39 of 1994 [Assented to 2 June 1994]<sup>63</sup>
- Meat Hygiene Act 1994 No. 48 of 1994 [Assented to 9 June 1994]<sup>64</sup>
- Criminal Law Consolidation (Felonies and Misdemeanours) Amendment Act 1994 No. 59 of 1994 [Assented to 27 October 1994]<sup>65</sup>
- State Disaster (Major Emergencies and Recovery) Amendment Act 1994 No. 73 of 1994 [Assented to 1 December 1994]<sup>66</sup>
- Local Government (1995 Elections) Amendment Act 1994 No. 79 of 1994 [Assented to 8 December 1994]
- Dog and Cat Management Act 1995 No. 15 of 1995 [Assented to 6 April 1995]<sup>67</sup>
- Catchment Water Management Act 1995 No. 37 of 1995 [Assented to 27 April 1995]<sup>68</sup>
- Development (Review) Amendment Act 1995 No. 53 of 1995 [Assented to 3 August 1995]<sup>69</sup>
- Local Government (Boundary Reform) Amendment Act 1995 No. 108 of 1995 [Assented to 21 December 1995]<sup>70</sup>
- Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996 No. 34 of 1996 [Assented to 2 May 1996]<sup>71</sup>
- Statutes Amendment (Community Titles) Act 1996 No. 38 of 1996 [Assented to 9 May 1996]<sup>72</sup>
- Local Government (Ward Quotas) Amendment Act 1996 No. 58 of 1996 [Assented to 8 August 1996]
- Motor Vehicles (Trade Plates) Amendment Act 1996 No. 65 of 1996 [Assented to 15 August 1996]<sup>73</sup>
- Electricity Act 1996 No. 96 of 1996 [Assented to 19 December 1996]<sup>74</sup>
- Local Government (Miscellaneous Provisions) Amendment Act 1996 No. 98 of 1996 [Assented to 19 December 1996]<sup>75</sup>
- State Records Act 1997 No. 8 of 1997 [Assented to 20 March 1997]<sup>76</sup>
- Local Government (City of Adelaide Elections) Amendment Act 1997 No. 14 of 1997 [Assented to 27 March 1997]
- Local Government (Miscellaneous) Amendment Act 1997 No. 66 of 1997 [Assented to 7 August 1997]<sup>77</sup>
- Local Government (Memorial Drive Tennis Centre) Amendment Act 1998 No. 28 of 1998 [Assented to 16 April 1998]**

- <sup>1</sup> Came into operation 2 November 1934: *Gaz.* 25 October 1934, p. 845.
- <sup>2</sup> Came into operation 2 January 1936: *Gaz.* 2 January 1936, p. 1.
- <sup>3</sup> Came into operation 1 June 1937: *Gaz.* 25 March 1937, p. 645.
- <sup>4</sup> Came into operation 1 October 1938: s. 2.
- <sup>5</sup> Came into operation 1 July 1940: s. 17(2).
- <sup>6</sup> Came into operation 1 January 1949: *Gaz.* 9 December 1948, p. 1744.
- <sup>7</sup> Came into operation 1 December 1960: *Gaz.* 1 December 1960, p. 1526.
- <sup>8</sup> Came into operation 1 July 1964: *Gaz.* 5 March 1964, p. 521.
- <sup>9</sup> Came into operation 20 March 1967: *Gaz.* 2 March 1967, p. 681.
- <sup>10</sup> Came into operation 22 February 1968, being the day on which the Real Property Act Amendment (Strata Titles) Act, 1967, came into operation: *see Gaz.* 22 February 1968, p. 515.
- <sup>11</sup> Came into operation 21 May 1970: *Gaz.* 21 May 1970, p. 1841.
- <sup>12</sup> Came into operation 1 January 1974: *Gaz.* 12 April 1973, p. 1460.
- <sup>13</sup> Came into operation 18 May 1972: *Gaz.* 18 May 1972, p. 1926.
- <sup>14</sup> Came into operation 1 June 1972: s. 2.
- <sup>15</sup> Came into operation 14 December 1972: *Gaz.* 14 December 1972, p. 2630.
- <sup>16</sup> Came into operation 1 July 1973: s. 2.
- <sup>17</sup> Came into operation 24 October 1974: *Gaz.* 24 October 1974, p. 2758.
- <sup>18</sup> Came into operation 16 January 1975: *Gaz.* 16 January 1975, p. 138.
- <sup>19</sup> Came into operation 22 May 1975: *Gaz.* 22 May 1975, p. 1987
- <sup>20</sup> Came into operation 1 July 1975: s. 2.
- <sup>21</sup> Came into operation (except ss. 3(c), 4(b), (c) and (e), 9, 17-21, 25-39, 42-45, 68, 70, 71) 4 March 1976: *Gaz.* 4 March 1976, p. 940; ss. 4(b), (c) and (e), 17-21, 25-39, 42-45 came into operation 1 July 1976; s. 9 came into operation 2 August 1976: *Gaz.* 24 June 1976, p. 3169; ss. 3(c), 68, 70, 71 came into operation 1 September 1976: *Gaz.* 26 August 1976, p. 658.
- <sup>22</sup> Came into operation 21 April 1977: *Gaz.* 21 April 1977, p. 1154.
- <sup>23</sup> Came into operation 1 July 1978: s. 2.
- <sup>24</sup> Came into operation (except ss. 4, 9, 10, 15, 17, 20, 23, 24, 25, 26-28, 33-35, 59, 78, 79-81) 27 April 1978: *Gaz.* 27 April 1978, p. 1483; ss. 4, 20, 23, 24, 26-28, 79-81 came into operation 13 July 1978; ss. 9, 10, 15, 17, 25, 33-35, 59 and 78 came into operation 1 September 1978: *Gaz.* 13 July 1978, p. 120 (with reference to s. 78 *see Gaz.* 24 August 1978, p. 613).
- <sup>25</sup> Came into operation (except ss. 3-6, 8 and 9) 8 June 1978: *Gaz.* 8 June 1978, p. 1974; remainder of Act came into operation 1 July 1979: *Gaz.* 24 May 1979, p. 1498.
- <sup>26</sup> Came into operation 21 December 1978: *Gaz.* 21 December 1978, p. 2303.
- <sup>27</sup> Came into operation 1 July 1979: *Gaz.* 24 May 1979, p. 1498.
- <sup>28</sup> Came into operation 12 February 1981: *Gaz.* 12 February 1981, p. 359.
- <sup>29</sup> Came into operation 19 February 1981: *Gaz.* 19 February 1981, p. 457.
- <sup>30</sup> Came into operation 4 December 1980: *Gaz.* 4 December 1980, p. 2025.
- <sup>31</sup> Came into operation 30 June 1981: *Gaz.* 4 June 1981, p. 1640.
- <sup>32</sup> Came into operation 1 July 1981: *Gaz.* 25 June 1981, p. 1896.
- <sup>33</sup> Came into operation 8 April 1982: *Gaz.* 8 April 1982, p. 1008.
- <sup>34</sup> Came into operation 4 November 1982: *Gaz.* 4 November 1982, p. 1304.
- <sup>35</sup> Came into operation 28 July 1983: *Gaz.* 21 July 1983, p. 126.
- <sup>36</sup> Came into operation 26 January 1984: *Gaz.* 26 January 1984, p. 175.
- <sup>37</sup> Came into operation 1 February 1984: *Gaz.* 26 January 1984, p. 176.
- <sup>38</sup> Came into operation 31 May 1984: *Gaz.* 24 May 1984, p. 1261.
- <sup>39</sup> Came into operation 16 August 1984: *Gaz.* 2 August 1984, p. 412.
- <sup>40</sup> Came into operation 11 July 1985: *Gaz.* 4 July 1985, p. 6.
- <sup>41</sup> Came into operation (except ss. 5, 15 and 44) 14 March 1985: *Gaz.* 14 March 1985, p. 624; ss. 5 and 15 came into operation 4 May 1985: *Gaz.* 14 March 1985, p. 624; s. 44 came into operation 22 April 1993: *Gaz.* 22 April 1993, p. 1400.
- <sup>42</sup> Came into operation 8 May 1986: *Gaz.* 24 April 1986, p. 1002.
- <sup>43</sup> Came into operation 1 January 1987: *Gaz.* 16 October 1986, p. 1373.
- <sup>44</sup> Came into operation 1 April 1987: *Gaz.* 26 March 1987, p. 702.
- <sup>45</sup> Came into operation 8 January 1987: *Gaz.* 24 December 1986, p. 1942.
- <sup>46</sup> Ss. 36-45 came into operation 1 July 1991: *Gaz.* 6 June 1991, p. 1776; ss. 32-35 came into operation 15 May 1995: *Gaz.* 11 May 1995, p. 2135. The amendments contained in Act No. 37 of 1987, ss. 36 and 38, brought into operation on 1 July 1991, were rendered nugatory by the prior substitution or repeal of the sections of the principal Act purporting to be amended.
- <sup>47</sup> Came into operation (except s. 55 and Sched.) 1 January 1989: *Gaz.* 22 December 1988, p. 2094; remainder of Act came into operation 1 March 1989: *Gaz.* 2 February 1989, p. 252.

- <sup>48</sup> Came into operation (except s. 52) 1 January 1989: *Gaz.* 22 December 1988, p. 2094; remainder of Act came into operation 1 March 1989: *Gaz.* 2 February 1989, p. 252.
- <sup>49</sup> Came into operation 21 May 1990: *Gaz.* 17 May 1990, p. 1358.
- <sup>50</sup> Came into operation (except ss. 3-5, 19-21, 23-28) 21 March 1991: *Gaz.* 21 March 1991, p. 960; ss. 3, 19-21, 23-28 came into operation 5 August 1991: *Gaz.* 27 June 1991, p. 2060; ss. 4 and 5 came into operation 12 August 1991: *Gaz.* 8 August 1991, p. 507.
- <sup>51</sup> Came into operation (except s. 7) 15 July 1991: *Gaz.* 11 July 1991, p. 244.
- <sup>52</sup> Came into operation 8 August 1991: *Gaz.* 1 August 1991, p. 492.
- <sup>53</sup> Came into operation 1 January 1992: s. 2.
- <sup>54</sup> Ss. 1-3, 5, 8-11, 13-21, 26, 28 and para (b) of Sched. came into operation 21 May 1992; ss. 4, 6, 12, 22-25, 27 and para (a) of Sched. came into operation 1 July 1992: *Gaz.* 21 May 1992, p. 1468; s. 2; s. 7 came into operation 21 May 1994 (by virtue of the Acts Interpretation Act 1915, s. 7(5)).
- <sup>55</sup> Came into operation 6 July 1992: *Gaz.* 2 July 1992, p. 209.
- <sup>56</sup> Came into operation 8 October 1992: *Gaz.* 8 October 1992, p. 1272.
- <sup>57</sup> Came into operation 1 July 1993: s. 2.
- <sup>58</sup> Ss. 9(e) and 30 came into operation on assent: s. 2(2); s. 9(a)-(d) and (f) came into operation 15 January 1994: *Gaz.* 27 October 1993, p. 1889.
- <sup>59</sup> Came into operation 1 October 1993: *Gaz.* 30 September 1993, p. 1340.
- <sup>60</sup> Came into operation (except s. 4) 31 May 1994: *Gaz.* 26 May 1994, p. 1262; s. 4 came into operation at 4 p.m. on 30 June 1994: *Gaz.* 30 June 1994, p. 1842.
- <sup>61</sup> Came into operation 1 July 1994: *Gaz.* 23 June 1994, p. 1784.
- <sup>62</sup> Came into operation (except Sched. 4 cl. 2(a)(v)) 1 July 1994: *Gaz.* 30 June 1994, p. 1843; Sched. 4 cl. 2(a)(v) came into operation 1 August 1994: *Gaz.* 28 July 1994, p. 170.
- <sup>63</sup> Came into operation 1 July 1994: *Gaz.* 30 June 1994, p. 1842.
- <sup>64</sup> Came into operation 1 December 1994: *Gaz.* 1 December 1994, p. 1868.
- <sup>65</sup> Came into operation 1 January 1995: *Gaz.* 8 December 1994, p. 1942.
- <sup>66</sup> Came into operation 2 February 1995: *Gaz.* 2 February 1995, p. 200.
- <sup>67</sup> Came into operation 1 July 1995: *Gaz.* 15 June 1995, p. 2884.
- <sup>68</sup> Came into operation 4 May 1995: *Gaz.* 4 May 1995, p. 1704.
- <sup>69</sup> Came into operation 23 November 1995: *Gaz.* 23 November 1995, p. 1412.
- <sup>70</sup> Came into operation 31 December 1995: *Gaz.* 21 December 1995, p. 1751.
- <sup>71</sup> Came into operation 3 February 1997: *Gaz.* 19 December 1996, p. 1923.
- <sup>72</sup> Came into operation 4 November 1996: *Gaz.* 31 October 1996, p. 1460.
- <sup>73</sup> Came into operation 17 November 1997: *Gaz.* 13 November 1997, p. 1280.
- <sup>74</sup> Came into operation 1 January 1997: *Gaz.* 19 December 1996, p. 1922.
- <sup>75</sup> Came into operation (except new s. 65AAA as inserted by s. 9) 6 February 1997, new s. 65AAA (as inserted by s. 9) came into operation 1 June 1997: *Gaz.* 6 February 1997, p. 823.
- <sup>76</sup> Came into operation 31 October 1997: *Gaz.* 4 September 1997, p. 612.
- <sup>77</sup> Came into operation (except ss. 11(c), 12(b) & (c)) on assent: s. 2(1); ss. 11(c), 12(b) & (c) had not been brought into operation at the date of, and the amendments effected by those provisions have not been included in, this reprint.

N.B. The amendments effected to this Act by the *Local Government (Holdfast Shores) Amendment Act 1997*, the *Statutes Amendment (Water Resources) Act 1997* and the *Valuation of Land (Miscellaneous) Amendment Act 1998* had not been brought into operation at the date of, and have not been included in, this reprint.

**Local Government Act, 1934**

**An Act to consolidate and amend certain Acts relating to municipal and district councils, and to amend various other Acts.**

The Parliament of South Australia enacts as follows:

**PART I  
PRELIMINARY**

**Short title**

1. This Act may be cited as the *Local Government Act, 1934*.

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**Interpretation**

5. (1) In this Act, unless the contrary intention appears—

"**absolute majority**" means a majority of the whole number of the members of a council or committee, as the case may be;

"**accounting records**" includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry, and books and records which record such entries, and also includes such working papers and other documents as are necessary to explain the methods and calculations by which statements and accounts are made up;

"**alderman**" means a person appointed or elected as an alderman of a council under this Act;

"**annual value**" means annual value as defined in the *Valuation of Land Act, 1971*;

"**area**" means the area in relation to which a council is constituted;

"**authorized person**" means a person appointed by a council to be an authorized person under Division VI of Part VI;

"**Board**" means the Local Government Boundary Reform Board established under Part II;

"**business day**" means any day except Saturday, Sunday or a public holiday;

"**capital value**" means capital value as defined in the *Valuation of Land Act, 1971*;

"**chairman**" means the chairman of a council and includes a deputy chairman or other member acting in the office of chairman;

"**chief executive officer**" means the chief executive officer of a council and includes a deputy or another person acting in the office of chief executive officer;

"**company**" means a company incorporated under the *Companies (South Australia) Code* or a corresponding law in force in another State or in a Territory;

"**council**" means a council constituted under this Act;

"**council committee**" means a committee of a council established under this Act and includes a sub-committee of any such committee and an advisory committee established by a council;

"**councillor**" means a person appointed or elected as a councillor of a council under this Act;

"**district**" means the area of a district council;

"**district council**" means a district council continued by or constituted under this Act;

"**domestic premises**" means any building or structure occupied, or intended for occupation, as a place of residence and includes any appurtenant grounds;

"**driver**" includes rider;

"**elector**" means a person enrolled on the voters roll for a council and includes the nominated agent of a body corporate or group of persons enrolled on the voters roll for a council;

"**the Electoral Commissioner**" means the person for the time being holding, or acting in, the office of the Electoral Commissioner under the *Electoral Act, 1985*;

"**electoral officer**" means a person appointed as an electoral officer under this Act and includes the returning officer and deputy returning officer;

"**engineer**", in relation to a council, means a person appointed by the council as the engineer of the council and includes a deputy or another person appointed by the council to act in the absence of the engineer;

"**equal employment opportunity programme**", in relation to a council, means a programme designed to ensure that all persons have equal opportunities with others in securing employment with the council and subsequent promotion or advancement and in other respects in relation to employment with the council;

"**extraordinary vacancy**" means any vacancy in an office arising otherwise than by effluxion of time;

"**financial year**" means the period of twelve months ending on the thirtieth day of June;

"**foreshore**" means the area between the low water mark on the seashore and the nearest boundary of—

(a) a road;

(b) a section;

(c) a public reserve;

or

(d) land comprised in a land grant, Crown lease, or Crown licence;

"**general election**", of a council, means a general election of the members of the council (whether held under section 94(1) or by proclamation;

**Local Government Act, 1934**

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"**land**" includes—

- (a) all buildings and structures on land;
- (b) all other improvements to land;
- (c) a strata lot under the *Community Titles Act 1996* and a unit under the *Strata Titles Act 1988*;

"**the Land and Valuation Court**" means the Land and Valuation Court constituted under the *Supreme Court Act, 1935*;

"**mayor**" means the mayor of a council and includes a deputy mayor or other member acting in the office of mayor;

"**member**" of a council means the mayor or chairman, an alderman or a councillor of the council;

"**merit**", in relation to the selection processes for the filling of offices or positions, means—

- (a) the extent to which each of the applicants has abilities, aptitude, skills, qualifications, knowledge, experience (including community experience), characteristics and personal qualities relevant to the carrying out of the duties in question;

and

- (b) where relevant—
  - (i) the manner in which each of the applicants carried out the duties or functions of any position, employment or occupation previously held or engaged in by the applicant;

and

- (ii) the extent to which each of the applicants has potential for development;

"**municipal council**" means a municipal council continued by or constituted under this Act;

"**municipality**" means the area of a municipal council;

"**nominated agent**" means a person nominated under Part VII to act as an elector on behalf of a body corporate or group of persons;

"**nomination day**" or "**day of nomination**" means the day fixed for nominations and "**hour for nomination**" means the time fixed before which nominations must be lodged;

"**obstruction**", in relation to a watercourse, means anything (including vegetation growing in the watercourse) that impedes the free flow of water in the watercourse;

"**occupier**" means a person who, either jointly or alone, has possession of land (to the substantial exclusion of others);

"**office**" means any office of a council;



"**ornamental grounds**" means land of which the care, control and management is or has been assumed by a council under section 453 or the *Ornamental Grounds Act, 1881*;

"**owner**" of land means—

- (a) where the land has been granted in fee simple—
    - (i) the holder of an estate in fee simple, or a life estate, in the land;
    - (ii) the holder of a leasehold estate in the land who is not in occupation of the land;
    - (iii) a mortgagee in possession of the land (or a receiver appointed by such a mortgagee);
  - (b) where the land is held from the Crown under a lease, licence or agreement to purchase—the lessee, licensee or purchaser;
- or
- (c) any person who has arrogated to himself or herself (lawfully or unlawfully) the rights of an owner of the land,

and includes the executor of the will, or administrator of the estate, of any such person;

"**owner**", in relation to a motor vehicle, means—

- (a) a person registered or recorded as the owner or an owner of the vehicle under the *Motor Vehicles Act, 1959*, or a similar law of the Commonwealth or another State or a Territory of the Commonwealth;
  - (b) if the vehicle is registered in the name of a business under the *Motor Vehicles Act, 1959*, or a similar law of the Commonwealth or another State or a Territory of the Commonwealth—any person carrying on that business;
- or
- (c) a person to whom a trade plate, a permit or other authority has been issued under the *Motor Vehicles Act, 1959*, or a similar law of the Commonwealth or another State or a Territory of the Commonwealth, by virtue of which the vehicle is permitted to be driven on roads,

and includes—

- (d) if the ownership of the vehicle has been transferred but the transferee has not yet been registered or recorded as the owner of the vehicle—a person to whom ownership of the vehicle has been transferred;
- or
- (e) if a person has possession of the vehicle by virtue of the hire or bailment of the vehicle—that person;

"**park land**" means land declared or set apart as a park or set aside for the use and enjoyment of the public;

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"**periodical election**" means an election to fill an office or offices of a council held on a date fixed by section 94(1);

"**petrol pump**" means any pump, apparatus, pipes, or appliances, for supplying motor spirit, kerosene, diesel fuel or lubricating oil;

"**presiding officer**", in relation to an election or poll, means an electoral officer assigned by a returning officer to be presiding officer at a polling place and, if the returning officer or a deputy returning officer presides at a polling place, includes the returning officer or deputy returning officer while so presiding;

"**prime bank rate**", for a particular financial year, means the published indicator rate for prime corporate lending of the Commonwealth Bank of Australia at the commencement of the financial year;

"**principal office**" means the office of a council maintained as its principal office;

"**project**" includes—

- (a) any form of scheme, work or undertaking;
- (b) the provision of facilities or services;
- (c) any other activity;

"**public notice**" means notice by advertisement in the *Gazette* and in a newspaper circulating in the area;

"**public place**" includes every street, road, square, lane, footway, court, alley and thoroughfare which the public are allowed to use (whether formed on private property or not) and any foreshore but does not include any part of a community parcel divided by a plan of community division under the *Community Titles Act 1996*;

"**ratable land**" or "**ratable property**" means land that is ratable under Part X;

"**ratepayer**" means any person who appears in the assessment book as the owner or occupier of ratable property;

"**refuse**" includes rubbish and "**rubbish**" includes refuse;

"**repealed Act**" means any Act repealed by this Act and any other repealed Act which related to municipal or district councils;

"**returning officer**" means a person appointed by a council to be its returning officer and includes a deputy returning officer acting in the office of returning officer;

"**selection processes**" means the processes by which applications are sought and applicants selected for the purpose of filling offices or positions;

"**site value**" means site value as defined in the *Valuation of Land Act, 1971*;

"**spouse**" includes a *de facto* spouse;

"**township**" means—

(a) any government township and any land laid out as a township where plans of the township have been deposited in the Lands Titles Registration Office, the General Registry Office or the Surveyor-General's Office;

or

(b) any part of the area of a council that contains at least 20 residences and that is defined as a township by the council by notice published in the *Gazette*;

"**trustee investment**" means an investment in which trust money may, by Act of Parliament, be invested;

"**unalienated Crown land**" means all land of the Crown except—

(a) land held in fee simple by an agency or instrumentality (other than a Minister) of the Crown;

(b) land subject to an agreement to purchase;

(c) land subject to a lease or licence (other than a lease or licence relating to exploration for, or recovery of, minerals or petroleum);

"**valuation**" means a determination or assessment of value;

"**vehicle**" includes motor cycle and bicycle;

"**voters roll**" means a voters roll compiled under Part VII and includes a copy of such a roll;

"**watercourse**" means a watercourse as defined in the *Water Resources Act, 1976*.

(1a) Where—

(a) person is authorized or required by a provision of this Act to act in a particular office or position while the holder of the office or position is absent;

or

(b) provision of this Act provides for the appointment of a person to act in a particular office or position while the holder of the office or position is absent,

the provision authorizes or requires that person to act in the office or position while the holder of the office or position is absent from the duties of the office or position or while the office or position is temporarily vacant.

(1b) An electoral officer engaged by a council's returning officer is, for the purposes of this Act, an officer of the council.

(2) The terms "public street, road or place", "public street, road and place", "public street or road", and "public street and road", mean respectively "public street, public road or public place", "public street, public road and public place", "public street or public road", and "public street and public road".

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(3) The terms "street and road" and "street or road" extend to both public and private streets and roads.

(4) For the purposes of this Act, the terms "street" and "road" extend to any bridge, viaduct or subway which is under the care, control or management of the council (notwithstanding that it is carried over or under land not vested in the council).

(5) For the purpose of this Act, the width of a street or road, or any land proposed to be declared a public street or road, is the shortest distance from one boundary of the street, road or land to the opposite boundary.

(6) For the purposes of this Act, a reference to a chairperson, when used in relation to a council that does not have a mayor, will be taken to be a reference to the principal member of the council.

(7) For the purposes of this Act, a reference in relation to a council—

(a) to the conclusion of periodical elections is a reference—

(i) where the number of candidates nominated to contest each of the elections for the council does not exceed the number of persons required to be elected—to the first Saturday of May of the year of the elections;

or

(ii) in any other case—to the time at which the last result of the periodical elections is certified by the returning officer under Division IX of Part VII;

(ab) to the conclusion of elections held on a day appointed by proclamation is a reference—

(i) where the number of candidates nominated to contest each of the elections does not exceed the number of persons required to be elected—to the appointed day;

or

(ii) in any other case—to the time at which the last result of the elections is certified by the returning officer under Division IX of Part VII;

or

(b) to the conclusion of a supplementary election is a reference—

(i) where the number of candidates nominated to contest the election does not exceed the number of persons required to be elected—to the time at which the nominated candidate or candidates are declared elected by the returning officer under Division V of Part VII;

or

(ii) in any other case—to the time at which the result of the election is certified by the returning officer under Division IX of Part VII.

(9) Where this Act vests any right, power, liability or duty in any council identified by name, the reference to that council will, where the right, power, liability or duty is, pursuant to Part II, transferred to and vested in some other council, be read and construed as a reference to that other council.

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**Objects**

**5A.** The objects of local government include—

- (a) to provide a representative, informed and responsible decision-maker in the interests of developing the community and its resources in a socially just and environmentally sustainable manner; and
- (b) to ensure a responsive and effective provider and co-ordinator of public services and facilities at the local level; and
- (c) to provide an initiator and promoter of effort within a local community; and
- (d) to represent the interests of a local community to the wider community.

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**PART II  
THE STRUCTURE OF LOCAL GOVERNMENT**

**DIVISION I—CONSTITUTION OF COUNCILS**

**Constitution of councils**

6. (1) A council may be constituted in relation to any part of the State by proclamation.

(2) A proclamation under subsection (1) must—

(a) determine whether the council is to be a municipal council or a district council;

(b) assign a name to the area of the council;

and

(c) assign a name to the council.

(3) In addition to the matters referred to in subsection (2), the proclamation under subsection (1), or a subsequent proclamation, must—

(a) determine whether the council is to have a mayor or chairperson;

(b) determine the number of councillors who are to constitute, or to be included in, the membership of the council;

(c) determine whether the area is to be divided into wards and, if so—

(i) determine the boundaries of each ward, the name of each ward, and the number of councillors to be elected for each ward (which number may vary from ward to ward);

and

(ii) determine whether the membership of the council is to include aldermen and, if so, how many;

and

(d) appoint, or provide for the election of, the first members of the council.

(4) If a proclamation makes provision for the appointment of the first members of the council, the proclamation, or a subsequent proclamation, may also make provision for the first election of members of that council.

(5) A proclamation under this section may—

(a) determine the method or methods of assessing ratable property within the area of the council; and

(b) if some or all of the area of the council has previously been within the area of a council—provide for differential rates within the area on a specified basis for a specified period in order to allow rating relativities within the area of the council to be gradually realigned; and

- (c) make provision in relation to the by-laws that are to apply in the area of the council.

## DIVISION II—AMALGAMATION OF COUNCILS

### Amalgamation of councils

7. (1) Two or more councils may be amalgamated by proclamation.

(2) An amalgamation may, according to the terms of the proclamation, result in the formation of a single council or of two or more councils (being a lesser number than the number of councils subject to amalgamation).

- (3) A proclamation under subsection (1) must—

- (a) define the area in relation to which the council to be formed by the amalgamation or each such council is to be constituted;
- (b) determine in relation to the council to be formed by the amalgamation or each such council whether it is to be a municipal council or a district council;
- (c) assign a name to the area of the council or each of the councils to be formed by the amalgamation;

and

- (d) assign a name to the council or each of the councils to be formed by the amalgamation.

(4) In addition to the matters referred to in subsection (3), the proclamation under subsection (1), or a subsequent proclamation, must—

- (a) determine in relation to the council to be formed by the amalgamation or each such council—

- (i) whether it is to have a mayor or a chairperson;

and

- (ii) the number of councillors who are to constitute, or to be included in, its membership;

- (b) determine in relation to the council to be formed by the amalgamation or each such council whether its area is to be divided into wards and, if so—

- (i) determine the boundaries of each ward, the name of each ward, and the number of councillors to be elected for each ward (which number may vary from ward to ward);

and

- (ii) determine whether the membership of the council is to include aldermen and, if so, how many;

- (c) appoint, or make provision for the election of, the first members of the council to be formed by the amalgamation or each such council;

and

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(d) except where the councils that are to be amalgamated under this section employ the same method of assessing rateable property throughout their combined areas—determine the method or methods of assessment to apply in relation to the council to be formed by the amalgamation or each such council.

(5) If a proclamation makes provision for the appointment of the first members of a council, the proclamation, or a subsequent proclamation, may also make provision for the first election of members of that council.

(6) A proclamation under this section may—

(a) provide for differential rates on a specified basis for a specified period in order to allow rating relativities within the area of the council or councils to be gradually realigned on account of the amalgamation; and

(b) make provision in relation to the by-laws that are to apply in the area of the council or councils to be formed by the amalgamation; and

(c) make, subject to the provisions of a relevant Act, award or industrial or enterprise agreement, provision to protect the various rights and interests of the officers and employees of the councils to be amalgamated under this section.

(7) Where two or more councils are amalgamated under this section so as to form a single council, the assets, rights and liabilities of the councils subject to the amalgamation are, on the amalgamation, vested in or attached to the council formed by the amalgamation.

(8) Where three or more councils are amalgamated under this section so as to form more than one council, the assets, rights and liabilities of the councils subject to the amalgamation are, on the amalgamation, apportioned between the councils formed by the amalgamation in such manner as is specified by proclamation.

**DIVISION III—ALTERATION OF THE BOUNDARIES OF COUNCIL AREAS**

**Alteration of the boundaries of council areas**

8. (1) The boundaries of the area of a council may be altered by proclamation.

(2) Where the alteration of boundaries affects the areas of two or more councils, the proclamation under subsection (1), or a subsequent proclamation, may—

(a) make, or make provision for, an adjustment of rights and liabilities as between those councils;

(ab) provide for differential rates within the area of a council affected by the alteration of boundaries on a specified basis in order to allow rating relativities to be gradually realigned on account of the alteration of boundaries;

(b) make any special provision that may be necessary or desirable in relation to the by-laws that are to apply in parts of the areas affected by the alteration of boundaries.

**DIVISION IV—ABOLITION OF COUNCILS**

**Abolition of councils**

9. (1) A council may be abolished by proclamation.



(2) A proclamation under this section may—

- (a) declare that assets, rights and liabilities of the council, as at the date of abolition, vest in, or attach to, another council or councils named in the proclamation; and
- (b) make, subject to the provisions of a relevant Act, award or industrial or enterprise agreement, provision to protect the various rights and interests of the officers and employees of the council being abolished.

(3) If the Governor does not make a declaration under subsection (2)(a) on or before the day on which the council is abolished, the assets, rights and liabilities of the council vest in, or attach to, the Crown on the abolition of the council.

#### DIVISION V—ALTERATION OF THE COMPOSITION OF A COUNCIL

##### Alteration of the composition of a council

10. (1) The following changes may be made in relation to the composition of a council:

- (a) where a council has a chairperson—that office may be replaced by the office of mayor;
- (b) where a council has no aldermen but its area is divided into wards—provision may be made for one or more aldermen;
- (c) where a council has aldermen—the office of aldermen may be abolished or the number of aldermen increased or decreased;
- (d) the number of councillors for an area, or for each or any ward in an area, may be increased or decreased;
- (e) where a new ward or wards are formed in the area of a council—provision may be made for the numbers of councillors for the new ward or each new ward (which number may vary from ward to ward);
- (f) where the division of the area of a council into wards is abolished—provision may be made for the number of councillors for the area.

(2) A change under this section may be effected—

- (a) by proclamation;

or

- (b) by notice published by the council in the *Gazette* pursuant to Division XI.

(3) Where the Governor—

- (a) makes a proclamation under this section providing for new or additional offices in the membership of a council;

and

- (b) thinks it desirable to fill those offices by making appointments under this subsection,

the Governor may, by the same or a subsequent proclamation, appoint the first persons to fill those offices.

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**DIVISION VI—FORMATION, ALTERATION OR ABOLITION OF WARDS**

**Formation, alteration or abolition of wards**

11. (1) The following changes may be made in relation to the division of a council into wards:

- (a) the area of a council may be divided into wards;
- (b) the area of a council may be redivided into wards, or the division of an area into wards may be altered, including, where land is added to an area as a result of the alteration of its boundaries—
  - (i) the constitution of the additional land, or part of it, as an additional ward or wards;
  - (ii) the incorporation of the additional land, or part of it, within an existing ward or existing wards;
- (c) the division of an area into wards may be abolished.

(2) A change under this section may be effected—

- (a) by proclamation;

or

- (b) by notice published by the council in the *Gazette* pursuant to Division XI.

(3) A proclamation or notice under subsection (2) may assign a name to a ward created by the proclamation or notice.

(4) In addition to the other requirements of this Part, the following matters must be taken into account, as far as practicable, in the formulation of a proposal under this Part that relates to the boundaries of a ward:

- (a) the desirability of reflecting communities of interest of an economic, social, regional or other kind;
- (b) the population of the area, and of each ward affected or envisaged by the proposal;
- (c) the topography of the area, and of each ward affected or envisaged by the proposal;
- (d) the feasibility of communication between electors affected by the proposal and their elected representatives;
- (e) the nature of substantial demographic changes that may occur in the foreseeable future;
- (f) the total size and composition of the council and the need to ensure adequate and fair representation.

(5) A proposal that relates to the formation or alteration of wards of a council must also observe the principle that the number of electors represented by a councillor must not, as at the relevant date (assuming that the proposal were in operation), vary from the ward quota by more than 10 per cent and, for the purposes of this subsection—

- (a) if it is proposed that two or more councillors represent a particular ward, the number of electors represented by each councillor will be taken to be the number of electors for the ward (as at the relevant date) divided by the number of proposed councillors for the ward (ignoring any fractions that result from the division); and
- (b) the ward quota will be taken to be the number of electors for the area (as at the relevant date) divided by the number of councillors for the area (assuming that the proposal were in operation and ignoring any fractions that result from the division); and
- (c) the relevant date, in relation to a proposal that relates to the formation or alteration of wards of the council, will be taken to be the date on which the proposal is finalised for the purposes of this Part.

(6) The 10 per cent tolerance referred to in subsection (5) may be exceeded if, on the basis of demographic changes predicted by a Commonwealth or State government agency, it appears that the ward quota will not, as at the next periodical elections, be exceeded by more than 10 per cent (the relevant date in this case being the date of the next periodical elections).

(7) Subsections (5) and (6) do not apply to a proposal under Division X.

(8) However, if a proposal under Division X that relates to the formation or alteration of wards does not comply with subsections (5) and (6) and the relevant proposal proceeds (either in its original or an amended form) then, unless otherwise determined by proclamation, the relevant council (or each relevant council) must conduct (and complete) a review of its composition and wards under Division XI so as to enable appropriate changes in the composition and wards of the council to take effect on or before the date of the second general election of the council after the proposal takes effect or, if an earlier date is fixed by proclamation, on or before that date.

## DIVISION VII—STATUS OF A COUNCIL

### Status of a council

**12.** (1) A district council may be changed to a municipal council and a municipal council may be changed to a district council.

(2) A change under this section may be effected—

(a) by proclamation;

or

(b) by notice published by the council in the *Gazette* pursuant to Division XI.

## DIVISION VIII—NAMES

### Names

**13.** The name of a council, the name of the area of a council, or the name of a ward of a council, may be changed—

(a) by proclamation;

or

(b) by notice published by the council in the *Gazette* pursuant to Division XI.

**DIVISION IX—PROVISIONS AS TO THE MAKING OF PROCLAMATIONS**

**Proclamations**

**14.** (1) The Governor cannot make a proclamation under a preceding Division of this Part except—

- (a) in pursuance of an address from both Houses of Parliament; or
- (b) in pursuance of a proposal recommended by the Board under Division X; or
- (c) in pursuance of a proposal recommended by the Minister under Division X.

(2) If the Governor by proclamation under Division I or II makes provision for the appointment or election of the members of a council, the Governor may also, by proclamation, cancel (for a particular year) the holding of periodical elections for the council.

(3) Subsection (1) extends to a proclamation under subsection (2).

(4) Matters for which provision may be made by proclamations under separate provisions of this Part may, if the Governor thinks fit, be provided for by the same proclamation.

(5) The Governor may also, by proclamation under this Part—

- (a) make provision for related or ancillary matters necessary, desirable or expedient in view of the circumstances of the particular case;
- (b) provide that during a transitional period specified in the proclamation (being a period not exceeding five years from the date of operation of the proclamation), a provision of this Act applies as varied or modified in a manner set out in the proclamation to or in respect of—
  - (i) a council affected (or to be affected) by a proclamation under this Part; or
  - (ii) a council constituted or formed by a proclamation under this Part;
- (c) include other provisions of a transitional nature consequent on changes being made by proclamation under this Part (including for the construction of references in instruments or documents).

(6) The provisions of a proclamation under this Part have effect according to their terms as from the day or days fixed in the proclamation or, if no day or days are so fixed, as from the day of the publication of the proclamation.

(7) No proclamation purporting to be made under this Part, and within the powers conferred on the Governor under this Act, is invalid on account of any non-compliance with a matter specified by this Act as preliminary to the proclamation.

**DIVISION X—THE LOCAL GOVERNMENT BOUNDARY REFORM BOARD  
AND REFORM PROPOSALS**

*Subdivision 1—Interpretation*

**Interpretation**

15. (1) In this Division—

"**structural reform proposal**" means a proposal to—

- (a) constitute a council; or
- (b) amalgamate two or more councils; or
- (c) abolish a council and incorporate its area into the areas of two or more councils; or
- (d) alter the boundaries of a council area; or
- (e) establish a co-operative scheme for the integration or sharing of staff and resources within a federation of councils.

(2) If a proclamation under this Part providing for the constitution, amalgamation or abolition of a council or councils, or providing for the alteration of the boundaries of a council area or areas, has been made, a proposal that relates to any related matter that may be the subject of a separate proclamation under this Part will not be taken to be (or to form part of) a structural reform proposal for the purposes of this Division.

*Subdivision 2—Establishment of Board*

**Establishment of Board**

16. (1) The *Local Government Boundary Reform Board* is established.

(2) The Board is a body corporate.

(3) If a document appears to bear the common seal of the Board, it will be presumed, in the absence of proof to the contrary, that the common seal of the Board was duly affixed to the document.

(4) The Board cannot be brought under the operation of the *Public Corporations Act 1993*.

**Composition of Board**

16A. (1) The Board consists of eight members, of whom—

- (a) seven are to be persons appointed by the Governor—
  - (i) four being persons nominated by the Minister; and
  - (ii) two being persons selected from a panel of six persons nominated by the Local Government Association of South Australia; and
  - (iii) one being a person selected from a panel of two persons nominated by the United Trades and Labor Council; and
- (b) one is to be the Executive Director of the Board (*see* section 16G).

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(2) A person nominated under subsection (1)(a) should have such managerial, financial, local government or other qualifications, or such experience, as are, in the opinion of the Minister, necessary to assist the Board to carry out its functions.

(3) At least two members of the Board appointed under subsection (1)(a) must reside in Metropolitan Adelaide and at least two of the members appointed under subsection (1)(a) must reside outside Metropolitan Adelaide.

(4) At least one member of the Board must be a woman and at least one member a man.

(5) A member of the Board appointed under subsection (1)(a) will be appointed by the Governor to chair the Board.

(6) A suitable person may be appointed by the Governor to be the deputy of a member of the Board and to act as a member of the Board during a period of absence of the member.

(7) The deputies to the persons appointed under subsection (1)(a)(ii) must be persons selected from the panel of six nominated by the Local Government Association of South Australia under that subsection.

(8) The deputy to the person appointed under subsection (1)(a)(iii) must be a person selected from the panel of two nominated by the United Trades and Labor Council under that subsection.

**Conditions of membership**

**16B.** (1) A member of the Board (other than the Executive Director) is appointed on conditions determined by the Governor and for a term specified in the instrument of appointment (and, at the expiration of a term of office, is eligible for reappointment).

(2) The Governor may remove a member of the Board from office—

(a) for breach of, or non-compliance with, a condition of appointment; or

(b) for misconduct; or

(c) for failure or incapacity to carry out duties satisfactorily; or

(d) if the Board has in the opinion of the Governor failed to carry out its functions effectively and the Board's membership should therefore (in the Governor's opinion) be reconstituted for that reason.

(3) The office of a member of the Board becomes vacant if the member—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice to the Minister; or

(d) is convicted of an indictable offence; or

(e) is removed from office under subsection (2).

(4) A member of the Board is disqualified from acting as such, or continuing to act as such, in a matter before the Board if—

- (a) the member is, or becomes, a member, officer or employee of a council involved in the matter; or
- (b) the member holds, or accepts, other remunerated office with such a council; or
- (c) the member is, or becomes, interested (directly or indirectly) in a contract with such a council.

(5) A member will not be regarded as having an interest in a contract with a council if the interest exists only by reason of the fact that the member is a shareholder in a company with 20 or more shareholders that is a party to, or otherwise interested in, the contract.

(6) If a casual vacancy occurs in the office of a member of the Board (or a deputy), the Governor may appoint a suitable person to fill the vacancy (subject to the qualification that a person appointed under this subsection to fill the vacancy of a person nominated by the Local Government Association of South Australia or the United Trades and Labor Council will be selected from a panel of two persons nominated by the relevant body).

### **Remuneration**

**16C.** A member of the Board (other than the Executive Director) is entitled to remuneration, allowances and expenses determined by the Governor.

### **Protection of information, etc.**

**16D.** (1) A member or former member of the Board must not make use of information acquired because of his or her official position to gain, directly or indirectly, a personal advantage for himself, herself or another, or to cause detriment to the Board.

Penalty: \$10 000 or imprisonment for one year.

(2) A member of the Board must not make use of his or her official position to gain, directly or indirectly, a personal advantage for himself, herself or another, or to cause detriment to the Board.

Penalty: \$10 000 or imprisonment for one year.

(3) A member of the Board must not, without the approval of the Board, divulge information that—

- (a) the member knows to be commercially sensitive; or
- (b) the Board classifies as confidential information.

Penalty: \$10 000 or imprisonment for one year.

### **Validity of acts and immunity of members**

**16E.** (1) An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

(2) A member of the Board incurs no civil liability for an honest act or omission in the performance or exercise, or purported performance or exercise, of the member's or the Board's functions, duties or powers under this Act.

(3) A civil liability that would, but for this section, attach to a member attaches instead to the Crown.

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**Proceedings**

**16F.** (1) The member appointed to chair meetings of the Board will preside at meetings of the Board or, in the absence of that member, a member chosen by those present will preside.

(2) A quorum of the Board consists of five members (and no business may be transacted at a meeting of the Board unless a quorum is present).

(3) A decision carried by a majority of votes of the members present at a meeting of the Board is a decision of the Board.

(4) Each member present at a meeting of the Board is entitled to one vote on a matter arising for decision by the Board, and the person presiding at the meeting has, in the event of an equality of votes, a second or casting vote.

(5) A meeting of the Board should be open to the public unless the Board is considering a matter that, in the opinion of the Board, should be dealt with on a confidential basis.

(6) The Board must have accurate minutes kept of its proceedings.

(7) A person is entitled, on request, to receive a copy of any Board minutes that have been adopted by the Board.

(8) However, the Board may, before it releases a copy of any minutes under subsection (7), exclude from the minutes information about any matter considered on a confidential basis by the Board.

(9) Subject to this Act, the Board may determine its own procedures.

**Executive Director**

**16G.** (1) There will be an Executive Director of the Board.

(2) The Executive Director will be appointed by the Minister on terms and conditions determined by the Minister.

(3) The Executive Director—

(a) will be the principal executive officer of the Board; and

(b) will be responsible for managing the staff and resources of the Board, and for performing other functions determined by the Board.

**Other staff of the Board**

**16H.** (1) The Minister will, after consultation with the Board, determine the staffing arrangements for the Board.

(2) The Board may engage agents and consultants, and enter into other contracts for the provision of services.

(3) The Board may—

(a) by arrangement with the appropriate authority, make use of the services, facilities or staff of a government department, agency or instrumentality; or

(b) by arrangement with the council, make use of the services, facilities or staff of a council.



*Subdivision 3—Functions, Objectives and Principles Associated with the Board*

**Functions**

17. (1) The functions of the Board include—

- (a) to assist councils that are working towards an amalgamation or rationalisation of areas, or towards the rationalisation, integration or sharing of works and services; and
- (b) to facilitate the provision of financial incentives to councils that are participating in significant reform proposals in order to assist in the finalisation and implementation of those proposals; and
- (c) to recommend criteria, to be prescribed by regulation, against which the performance of councils as local government authorities under this Act can be assessed, and then to assess the performance of councils in the State against those prescribed criteria; and
- (d) to consider proposals for the making of proclamations under this Part submitted by councils by agreement, and to make recommendations to the Minister on the basis of those proposals; and
- (e) to conduct inquiries into the efficiencies and operations of councils which, on the basis of the Board's assessments against the prescribed performance criteria, warrant further investigation, and which have not participated in the formulation and submission of structural reform proposals; and
- (f) to make recommendations to the Minister about proposals for the making of proclamations under this Part in respect of matters that have not otherwise been dealt with by proclamations based on proposals submitted by councils; and
- (g) to assess or develop, in consultation with the proponents, three-year financial and management plans for the 1997/1998, 1998/1999 and 1999/2000 financial years for councils that are to be constituted or formed under structural reform proposals under this Part; and
- (h) to provide advice to the Minister on matters referred to the Board by the Minister; and
- (i) to conduct other inquiries and to consider various proposals relevant to the operation of this Part, and to the performance of other functions contemplated by this Part.

(2) The Board's functions do not extend to any matter under Divisions XIII or XIV.

(3) The Governor may, by regulation, prescribe criteria for the purposes of subsection (1)(c).

**Objectives**

17A. The Board should seek to achieve the following objectives through the adoption of appropriate practices and procedures under this Part in order to enhance the ability of local government to provide services in an efficient, effective, fair and responsive manner:

- (a) a significant reduction in the number of councils in the State; and
- (b) a significant reduction in the total costs of providing the services of local government authorities under this Act; and
- (c) significant benefits for ratepayers under this Act.

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**Principles**

**17B.** The Board should, in arriving at the recommendations for the purposes of this Part (but taking into account the nature of the proposal under consideration), have regard to the objects of local government under this Act and to the following principles:

- (a) the desirability of achieving significant economies in the use of resources within local government, while avoiding significant divisions within the community;
- (b) that ratepayers should be able to receive a reduction in their council rates through the implementation of structural reform proposals under this Part;
- (c) a council should have a sufficient resource base to fulfil its functions fairly, effectively and efficiently;
- (d) a council should offer its community a reasonable range of services delivered on an efficient, flexible, equitable and responsive basis;
- (e) a council should facilitate effective planning and development within an area, and be constituted with respect to an area that can be promoted on a coherent basis;
- (f) a council should be in a position to facilitate the management of environmental issues and the integration of land use schemes;
- (g) a council should reflect communities of interest of an economic, recreational, social, regional or other kind, and be consistent with community structures, values, expectations and aspirations;
- (h) a council area should incorporate or promote an accessible centre (or centres) for local administration and services;
- (i) in considering boundary reform, it is advantageous (but not essential) to amalgamate whole areas of councils (with associated boundary changes, if necessary), and to avoid significant dislocations within the community;
- (j) if the area of a council that is not divided into wards is to be amalgamated with the area of a council that is divided into wards, the new area should be divided into wards;
- (k) in certain circumstances a scheme that provides for the integration or sharing of staff and resources by two or more councils may offer a community or communities a viable and appropriate alternative to boundary reform options.

*Subdivision 4—Procedures and Powers***Procedures and powers**

**18.** (1) The Board may, in the performance of its functions under this Part—

- (a) hold hearings and inquiries;
- (b) receive and consider written submissions;
- (c) hear and consider other evidence and representations;
- (d) conduct (or engage a person to conduct) opinion surveys and polls;
- (e) otherwise inform itself as it thinks fit.

(2) A hearing or inquiry should be open to the public unless the Board is hearing, considering or determining a representation or matter that, in the opinion of the Board, should be dealt with on a confidential basis.

(3) The Board is not bound by the rules of evidence.

(4) The Board may, for the purposes of its functions under this Part—

(a) by summons issued by the Board, require a person's attendance;

(b) require a person to answer, orally or in writing, questions to the best of his or her knowledge, information and belief;

(c) require a person to verify an answer under paragraph (b) by declaration;

(d) require a council or person to produce for examination by the Board books, papers or other records;

(e) retain books papers or other records produced under paragraph (d) for reasonable periods determined by the Board and make copies of them or their contents.

(5) Subject to subsection (6), a person or council must not refuse or fail to comply with a requirement under subsection (4).

Penalty: \$10 000.

(6) A person is not obliged to comply with a requirement under subsection (4) if to do so might incriminate the person of an offence, and a person or a council is not required to provide information under subsection (4) that is privileged on the ground of legal professional privilege.

(7) A person may appear before the Board personally or by representative.

(8) The Board should seek to deal with a matter as expeditiously as possible.

#### *Subdivision 5—Committees and Delegations*

### **Committees**

**19.** (1) The Board may establish a committee or committees to assist it in the performance of its functions under this Part, or to assist in the resolution or management of issues associated with the implementation of a proposal or proposals under this Part.

(2) The Board must establish—

(a) a *Metropolitan Councils Reform Committee* to provide advice and assistance to the Board on matters relevant to councils within Metropolitan Adelaide; and

(b) a *Country Councils Reform Committee* to provide advice and assistance to the Board on matters relevant to councils outside Metropolitan Adelaide.

(3) At least one member of each committee established under subsection (2) must be a person nominated by the Local Government Association of South Australia.

(4) At least one member of each committee established under subsection (2) must be a woman, and at least one member must be a man.

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- (5) A committee may, but need not, consist of a member or members of the Board.
- (6) The Board must consult with the Local Government Association of South Australia—
  - (a) before it establishes a committee under this section (other than under subsection (2)); and
  - (b) before it appoints a person who is not a member, or a deputy member, of the Board to a committee established under this section.
- (7) Subject to direction by the Board, a committee may determine its own procedures.
- (8) However, a meeting of a committee should be open to the public unless the committee is considering a matter that, in the opinion of the committee, should be dealt with on a confidential basis.
- (9) The appointment of a committee does not limit the powers of the Board in a matter.

**Delegation**

- 19A.** (1) The Board may delegate a function or power—
- (a) to a specified person, committee or other body; or
  - (b) to a person occupying a specified office or position.
- (2) A delegation—
- (a) may be made subject to conditions and limitations specified in the instrument of delegation; and
  - (b) if the instrument of delegation so provides, may be further delegated by the delegate; and
  - (c) is revocable at will and does not prevent the Board from acting in a matter.

*Subdivision 6—Submission of Proposals by Councils*

**Submission of proposals by councils**

- 20.** (1) Councils may submit to the Board proposals for the making of proclamations under this Part.
- (2) A proposal submitted to the Board under subsection (1) must—
    - (a) set out in general terms the nature of the proposal; and
    - (b) examine the effect of the proposal to the extent required by the Board for the purposes of this section; and
    - (c) in the case of a proposal that relates to more than one council—be submitted by all councils affected by the proposal; and
    - (d) otherwise comply with requirements established and published by the Board.

(3) The Board may decline to accept a proposal unless or until it is satisfied that a council or councils submitting the proposal have carried out a reasonable amount of community consultation on the proposal.

(4) On the submission of a proposal to the Board, the Board must cause public notice to be given setting out the substance of the proposal.

(5) The Board may inquire into the proposal as it thinks fit.

(6) The Board may consult with one or more councils (including councils not included within the terms of the proposal) about the proposal and, at its discretion, about any amendment, or alternative proposal or proposals, that it thinks should be considered.

(7) The Board may, at the request of or with the consent of the council or councils that submitted the proposal, and any other council that may be affected—

(a) amend the proposal;

(b) substitute an alternative proposal.

(8) The Board must then prepare a report to the Minister on the proposal.<sup>1</sup>

<sup>1</sup> Subdivision 8 sets out what happens after this report is prepared.

*Subdivision 7—Formulation of Proposals by the Board*

**Formulation of proposals by the Board**

**21.** (1) The Board may itself formulate proposals for the making of proclamations under this Part.

(2) However—

(a) the Board may not exercise its power to formulate a structural reform proposal under this section until after 31 March 1996; and

(b) the Board may only include a council in a structural reform proposal formulated by the Board under this section if—

(i) the council consents to its inclusion; or

(ii) the Board has, after assessing the council's performance and taking into account such matters as the Board thinks fit, determined that it is appropriate to include the council in a structural reform proposal under this section.

(3) Subsection (2)(b)(ii) is subject to the qualification that the Board must consult with the relevant council—

(a) before it makes a determination under that subsection; and

(b) on the terms of any proposal.

(4) The Board must, in formulating or considering a proposal under this section, take into account any relevant proposal submitted to the Board under Subdivision 6.

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(5) If the Board formulates a structural reform proposal under this section, the Board must cause public notice to be given—

- (a) setting out the substance of the proposal; and
- (b) inviting interested persons to make submissions in writing on the proposal within six weeks after the date of the notice or within a longer period specified in the notice.

(6) If public notice has been given under subsection (5), the Board must then, after the expiration of the time allowed for submissions, hold a hearing in relation to the proposal.

(7) At a hearing held pursuant to subsection (6)—

- (a) a person who made written submissions is entitled to appear and to be heard on those submissions; and
- (b) the Board may hear and consider other evidence and submissions as it thinks fit.

(8) The Board may also, in respect of a structural reform proposal, conduct other inquiries and public consultation as it thinks fit.

(9) The Board must, in respect of a proposal other than a structural reform proposal, conduct inquiries and public consultation, but only to the extent that it thinks fit (and this requirement does not apply at all if the Board considers that the proposal relates to a matter or matters that are of a minor nature only).

(10) The Board may, at the conclusion of its inquiries and consultation on a proposal under this section, determine—

- (a) that the proposal should proceed; or
- (b) that the proposal should be amended, or that an alternative proposal should proceed; or
- (c) that the proposal should lapse.

(11) However, the Board must not make an amendment, or determine that an alternative proposal should proceed, unless—

- (a) the Board has conducted further consultation as it thinks fit; or
- (b) the Board determines—
  - (i) that there has already been adequate consultation in respect of the matter; or
  - (ii) that the amendment, or the alternative proposal, is of a minor nature only, or that the final proposal differs from the original proposal in minor respects only.

(12) The Board must ascertain whether a council affected by a proposal under subsection (10) accepts or rejects the terms of the proposal (and unless a council resolves to accept a proposal within one month after the Board presents it to the council for formal consideration under this subsection, or within a longer period requested by the council before the expiration of that month, it will be taken that the council rejects the terms of the proposal).

(13) If a council affected by a structural reform proposal recommended by the Board rejects the terms of the proposal under subsection (12), the proposal cannot proceed unless or until a poll has been conducted in relation to the matter.

(14) The following provisions apply to a poll:

(a) Part VII will apply to the poll subject to modifications, exclusions or additions prescribed by regulation;

(b) a person is entitled to vote at the poll if (and only if) the person is—

(i) an elector under Part VII in respect of property (being either the person's place of residence or property for which the person is a ratepayer); or

(ii) the nominated agent under Part VII of a body corporate which is a ratepayer, or of a group of persons who are ratepayers, in respect of property,

located in an area that, according to the terms of the proposal, is to be constituted as part of a new council (including by amalgamation), or is to be incorporated into the area of another council (as the case may be);

(c) the Board will, after consultation with the relevant councils, determine the day on which the poll will be conducted;

(d) the poll will be conducted by postal voting (in a manner that allows the Board to ascertain both the overall result of the poll and voting according to individual council areas);

(e) the councils for the relevant areas will conduct the poll (although a council may arrange for the Electoral Commissioner to conduct the poll on its behalf (and at its expense) within the council's area);

(f) the Board must prepare a summary of the issues surrounding the proposal to assist persons who may vote at the poll, subject to complying with the following requirements:

(i) the Board must consult with the relevant councils about the summary; and

(ii) the Board must not release the summary until the Electoral Commissioner has certified that he or she is satisfied that the Board has taken reasonable steps to ensure that the summary presents the arguments for and against the implementation of the proposal in a fair and comprehensive manner;

(g) a council affected by a proposal must ensure that copies of the summary prepared by the Board under paragraph (f) are made available for public inspection at the principal office of the council, and distributed to electors in accordance with directions of the Board;

(h) the Board may publish directions and guidelines relating to—

(i) the preparation, distribution and use of ballot papers; and

(ii) the procedure for voting at the poll; and

(iii) the counting of votes; and

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- (iv) the publication of results; and
- (v) other issues relevant to the conduct of the poll;
- (i) if—
  - (i) 40 per cent or more of the persons entitled to vote cast a vote at the poll; and
  - (ii) a majority of the persons so voting vote against the proposal,the result is binding and the proposal cannot proceed;
- (j) if paragraph (i) does not apply, the Board must nevertheless reconsider the proposal in view of the outcome of the poll and may, if it thinks fit, amend the proposal, or substitute an alternative proposal, or resolve that the proposal should lapse.

(15) Subsection (14)(j) is subject to the qualification that if—

- (a) the Board—
  - (i) amends the proposal so that it directly affects electors who were not directly affected by the original proposal; or
  - (ii) substitutes an alternative proposal; and
- (b) the Board does not, at that time, resolve that the amendment, or the alternative proposal, is of a minor nature only, or that the final proposal differs from the original proposal in minor respects only,

then the proposal as amended, or the substituted proposal (as the case may be) will be taken to be a new proposal under this section.

(16) The Board must, after complying with the above requirements, prepare a report to the Minister on the matter.<sup>1</sup>

(17) The Board must not exercise its power to formulate a structural reform proposal under this section after 30 September 1997.

(18) However, subsection (17) does not affect a proposal (or the powers of the Board in relation to a proposal or any process or procedure under this Act in relation to a proposal) if—

- (a) the proposal is the subject of a public notice under subsection (5) on or before 30 September 1997; or
- (b) the proposal is an alternative proposal under subsection (10) where the original proposal is the subject of a public notice under subsection (5) on or before 30 September 1997; or
- (c) the proposal is a new proposal under subsection (15) where the original proposal is the subject of a public notice under subsection (5) on or before 30 September 1997.

<sup>1</sup> Subdivision 8 sets out what happens after this report is prepared.



*Subdivision 8—Reports to the Minister;  
Submissions of Proposals to the Governor*

**Reference of proposals to Minister and Governor**

- 22.** (1) On the receipt of a report of the Board under Subdivision 6 or 7, the Minister may—
- (a) accept the report; or
  - (b) refer the report back to the Board with a request for the Board to consider various matters, and to take steps, specified by the Minister; or
  - (c) if the report relates to a proposal under Subdivision 6 and the Board has not recommended that the proposal proceed—at the request of one or more councils—consult with the relevant councils about the matter.
- (2) If a request is made under subsection (1)(b)—
- (a) the request must contain a statement of the reasons for the request; and
  - (b) the Board may, after considering the request and taking such steps as may be requested or as it thinks fit, amend or confirm its report, including any proposal recommended in the report, subject to the qualification that it cannot amend or substitute a structural reform proposal without the consent of all councils affected by the proposal, and must then send the report back to the Minister.
- (3) If the Minister consults with councils under subsection (1)(c), the Minister must also consult with the Board about the matter (and obtain any report from the Board that the Minister thinks fit).
- (4) The Minister may then—
- (a) on the basis of the report of the Board (but subject to the result of a binding poll under Subdivision 7), forward to the Governor a proposal recommended by the Board for the making of a proclamation under this Part; or
  - (b) if—
    - (i) the Minister has undertaken consultation with various councils under subsection (1)(c); and
    - (ii) on the basis of that consultation, and after taking into account a relevant three-year financial and management plan prepared under this Division, any report or comments prepared or provided by the Board in relation to the matter, and any other matter that the Minister thinks fit, the Minister decides that it is appropriate to make a recommendation to the Governor in the circumstances of the particular case; and
    - (iii) all councils affected by the proposal agree with the Minister's recommendation,forward to the Governor a proposal recommended by the Minister for the making of a proclamation under this Part; or
  - (c) determine that a particular proposal should not further proceed under this Part.

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(5) If a proclamation providing for the constitution, amalgamation or abolition of a council or councils, or providing for the alteration of the boundaries of a council area or areas, is made under subsection (4)(b), the Governor may, by subsequent proclamation made on the recommendation of the Minister, make provision for any related matter that may be the subject of a separate proclamation under this Part.

(6) A proclamation under subsection (4)(b) or (5) may be based on a proposal or recommendation that has not been submitted, formulated or considered under Subdivision 6 or 7.

*Subdivision 9—Related Matters***Financial and management plans**

**22A.** (1) A proposal under this Part—

- (a) to constitute a council; or
- (b) to form a council by amalgamation,

must include a three-year financial and management plan for the 1997/1998, 1998/1999 and 1999/2000 financial years for the council that is to be constituted or formed.

(2) A plan under subsection (1)—

- (a) must state the savings that are expected to be obtained from the constitution of the new council, or the amalgamation of the relevant councils, and ways in which those savings are proposed to be used to benefit the community, including through rate reductions; and
- (b) must state the impact that the implementation of the proposal is expected to have on the quality and extent of services delivered or provided within the relevant area.

(3) The Board must report to the Minister on the plans received or developed by the Board under this section.

**Draft proposals**

**22B.** (1) Councils may submit to the Board a draft or outline of a proposal for the making of a proclamation under this Part.

(2) If a proposal is submitted under subsection (1), the Board must undertake a preliminary assessment of the proposal and then provide advice to the relevant councils about the extent to which the proposal is consistent with the criteria and principles that apply under this Part, about action that could (in the opinion of the Board) be taken to improve the proposal (if appropriate), and about other matters determined by the Board to be relevant.

**Report if council proposal rejected**

**22C.** If a proposal submitted by councils under Subdivision 6 (or an alternative proposal agreed to by the relevant councils in consultation with the Minister) does not proceed to a proclamation under this Part after completion of all relevant procedures under this Part, the Minister must prepare a report on the matter and cause copies of that report to be laid before both Houses of Parliament.

**Report if Board proposal submitted to poll**

**22D.** If a proposal formulated by the Board under Subdivision 7 is submitted to a poll under that subdivision, the Minister must, after the completion of the poll and after receiving advice from the Board, prepare a report on—

- (a) the outcome of the poll; and
- (b) the action that the Board has taken, or proposes to take, on account of the outcome of the poll,

and cause copies of the report to be laid before both Houses of Parliament.

**Protection from proceedings**

**22E.** (1) No proceeding seeking the grant of relief or a remedy in the nature of certiorari, prohibition, mandamus or quo warranto, or the grant of a declaration of right or an injunction, or any other form of judicial review, may be brought against the Minister, the Board, a member of the Board or the staff of the Board, or any other person, in respect of—

- (a) an inquiry or report under this Part; or
- (b) proceedings relating to an inquiry or report under this Part; or
- (c) an act, matter or thing, or a failure to act, incidental or relating to an inquiry or report under this Part.

(2) However, subsection (1) does not prevent—

- (a) proceedings founded on an excess or want of jurisdiction; or
- (b) proceedings to challenge a requirement of the Board under section 18(4).

**Provision of reports to councils**

**22F.** (1) The Board must, at the time that it provides a report to the Minister under Subdivision 6 or 7, send a copy of the report to each council affected by a proposal to which the report relates.

(2) If the Board, at the request of the Minister, amends a report, the Board must immediately send a copy of the amended report to each council that received a copy of the original report under subsection (1).

**Expiry of Division**

**22G.** This Division expires on 30 September 1998.

**DIVISION XI—CHANGES WITHIN COUNCILS**

*Subdivision 1—Composition and Wards of a Council*

**Application of subdivision**

**23.** (1) This subdivision applies to a proposal that relates to—

- (a) the composition of a council (Division V);
- or
- (b) the formation, alteration or abolition of wards of a council (Division VI).

(2) A proposal to which this subdivision applies may incorporate a proposal to—

- (a) alter the status of a council;

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or

- (b) alter the name of a council, the name of the area of a council, or the name of a ward of a council,

(without the need to comply with Subdivision 2).

**Initiation of proposal—Council reviews**

**24.** (1) A proposal to which this subdivision applies may be initiated by the relevant council after the completion of a review under this section.

(2) A review may relate to a specific aspect of the composition of the council, or of the wards of the council, or may relate to those matters generally, subject to the qualification that a council must ensure that all aspects of the composition of the council, and the formation, alteration or abolition of wards of the council, are the subject of a review under this subdivision at least once in every seven years.

(3) A council must give public notice of a review and the notice must contain an invitation to interested persons to make written submissions to the council on the subject of the review within six weeks of the date of the notice or such longer period as may be allowed by the notice.

(4) A council must give any person who makes written submissions in response to an invitation under subsection (3) an opportunity to appear personally or by representative before the council or a council committee and to be heard on those submissions.

(5) On completion of the review, the council must prepare a report on the public consultation undertaken by the council and any proposal that the council considers should be carried into effect under this subdivision.

(6) The report must (insofar as is relevant to the subject-matter of the proposal) take into account the objects of local government under this Act and the matters referred to in section 11(4), (5) and (6).

(7) The council must—

- (a) make copies of its report available for public inspection at the principal office of the council;

and

(b) by public notice—

- (i) inform the public of the completion of the report and its availability;

and

- (ii) invite interested persons to make written submissions to the council on the report within three weeks of the date of the notice or such longer period as may be allowed by the notice.

(8) The council must give any person who makes written submissions in response to an invitation under subsection (7) an opportunity to appear personally or by representative before the council or a council committee and to be heard on those submissions.

(9) The council must then finalize its report (including in its report recommendations with respect to such related or ancillary matters as it thinks fit).

(10) The council must refer the report to the Electoral Commissioner.

(11) On receipt of the report, the Electoral Commissioner must determine whether, in his or her opinion, the requirements of this section have been satisfied and then—

(a) if he or she determines that the requirements have been satisfied—give an appropriate certificate;

or

(b) if he or she determines that the requirements have not been satisfied—refer the matter back to the council together with a written explanation as to why he or she cannot give a certificate under this provision.

(12) The validity of a determination of the Electoral Commissioner under subsection (11) cannot be called into question.

(13) If a certificate is given by the Electoral Commissioner under subsection (11)(a)—

(a) the Electoral Commissioner must specify in the certificate a day by which an appropriate notice (or notices) for the purposes of this Part must be published by the council in the *Gazette*;

and

(b) the council may then, by notice (or notices) in the *Gazette*, provide for the operation of any proposal under this section that it has recommended in its report.

(14) If the matter is referred back to the council under subsection (11)(b), the council—

(a) must take such action as is appropriate in the circumstances (and may, as it thinks fit, alter its report);

and

(b) may then refer the report back to the Electoral Commissioner.

(15) A proposal under this section takes effect as from the day of the first general election held after the expiration of five months from the date of the publication of the relevant notice in the *Gazette*.

(16) If a council—

(a) fails to undertake a review in accordance with this section;

(b) fails to take appropriate action if a matter is referred back to the council by the Electoral Commissioner under subsection (11)(b);

or

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- (c) fails to publish an appropriate notice in the *Gazette* by the day specified by the Electoral Commissioner in a certificate under this section,

the chief executive officer must refer the matter to the Electoral Commissioner.

Penalty: \$2 000.

(17) On the referral of a matter under subsection (16), the Electoral Commissioner may take such action as, in the circumstances of the particular case, appear appropriate to the Electoral Commissioner and may then, by notice in the *Gazette*, give effect to any proposal that could have been carried into effect by the council under this section.

(18) The Electoral Commissioner may recover from councils any costs reasonably incurred by the Electoral Commissioner in performing his or her functions under this section.

*Subdivision 2—Status of a Council or Change of Various Names*

**Application of subdivision**

**25.** This subdivision applies to a proposal that relates to—

- (a) the status of a council (Division VII);

or

- (b) the name of a council, the name of the area of a council, or the name of a ward of a council (Division VIII).

**Initiation of proposal**

**26.** (1) A proposal to which this subdivision applies may be initiated by the relevant council after compliance with the following requirements:

- (a) the council must give public notice of the proposal;
- (b) the notice must contain an invitation to interested persons to make written submissions to the council on the matter within six weeks of the date of the notice or such longer period as may be allowed by the notice;

and

- (c) the council must give any person who makes written submissions in response to an invitation under paragraph (b) an opportunity to appear personally or by representative before the council or a council committee and to be heard on those submissions.

(2) After considering any submissions received, and the outcome of any consultation undertaken, under subsection (1), the council may, by notice in the *Gazette*, according to the nature of the proposal—

(a) —

- (i) where the council is a district council—change to a municipal council;
- (ii) where the council is a municipal council—change to a district council;

(b) —

- (i) change the name of the council;
- (ii) change the name of the area of the council;
- (iii) change the name of a ward of the council.

(3) A notice published by a council under subsection (2) has effect as from the date or dates fixed in the notice or, if no date or dates are so fixed, as from the date of the publication of the notice.

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### DIVISION XII—SUPPLEMENTARY PROVISIONS

#### **Error or deficiency in an address, recommendation, notice or proclamation**

**29.** (1) Where, in the opinion of the Governor, there is an error or deficiency in an address from both Houses of Parliament or in a report of the Board, the Governor may, by proclamation, correct the error or supply the deficiency.

(2) The power conferred by subsection (1) may be exercised notwithstanding that a proclamation has been made under a preceding Division of this Part on the basis of the address or report.

(3) Where, in the opinion of the Governor, there is an error or deficiency in a proclamation under this Part, the Governor may, by subsequent proclamation, correct the error or supply the deficiency.

(4) The Governor may, by proclamation, correct an error or deficiency in a notice of a council under this Part if requested to do so by the council.

(5) A proclamation under this section will, if it so provides, be taken to have had effect as from the making of the address, report, proclamation or notice to which it relates.

### DIVISION XIII—POWERS EXERCISABLE IN RELATION TO DEFICIENCIES OR IRREGULARITIES IN LOCAL GOVERNMENT

#### **Powers of investigation**

**30.** (1) Where the Minister has reason to believe that—

- (a) a council has failed to discharge a responsibility under this Act or any other Act;
- or
- (b) an irregularity has occurred in the conduct of the affairs of a council (either in relation to matters arising under this Act or some other Act),

the Minister may appoint an investigator or investigators to carry out an investigation and to report on the council and the conduct of its affairs.

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(2) For the purposes of an investigation under this section, an investigator may—

- (a) require any member, officer or employee of the council to answer, orally or in writing, any question put by the investigator to the best of his or her knowledge, information and belief;
- (b) require any person to whom questions are put under paragraph (a) to verify the answers to those questions by declaration;
- (c) require any person to produce for examination by the investigator books, papers or other records relevant to the subject matter of the investigation;
- (d) retain books, papers or other records produced under paragraph (c) for such reasonable period as the investigator thinks fit and make copies of any of them or of any of their contents.

(3) Subject to subsection (4), a person who refuses or fails to comply with a requirement under subsection (2) is guilty of an offence.

Penalty: \$10 000.

(4) A person is not obliged to answer a question or to produce books, papers or other records (other than books, papers or other records of the council) under this section if the answer to the question or the contents of the books, papers or other records would tend to incriminate him or her of an offence.

(5) At the conclusion of an investigation under this section, the investigator or investigators must present a written report to the Minister on the results of the investigation.

(6) The Minister must supply the council with a copy of a report presented under subsection (5).

(7) No action in defamation lies in respect of the contents of a report under this section.

**Power to make recommendations**

**31.** Upon receipt by the Minister of a report under this Division, the Minister may make recommendations to the council in view of matters raised in the report.

**Power to give directions**

**32.** (1) Where a report to the Minister under this Division or a report made by the Ombudsman in relation to a council pursuant to the *Ombudsman Act, 1972*, discloses that—

- (a) the council has failed to discharge a responsibility under this Act or any other Act;
- or
- (b) an irregularity has occurred in the conduct of the affairs of the council (either in relation to matters arising under this Act or some other Act),

the Minister may give directions to the council designed to prevent the recurrence of such a failure or irregularity.

(2) A direction cannot be given under this section unless the council has been given a reasonable opportunity to make submissions to the Minister in relation to the report.



(3) A council to which directions are given under this section must comply with those directions.

**Declaration of council as a defaulting council**

**33.** (1) Where, upon receipt of a report under this Division, the Minister is satisfied that the report discloses—

(a) such serious failure on the part of the council properly to discharge responsibilities under this Act or any other Act;

or

(b) such serious irregularities in the conduct of the affairs of the council (either in relation to matters arising under this Act or some other Act),

that the council should be declared a defaulting council under this Division, the Minister may recommend to the Governor that the council be declared to be a defaulting council.

(2) A recommendation cannot be made under this section unless the council has been given a reasonable opportunity to make submissions to the Minister in relation to the report under this Division.

(3) Where the Minister makes a recommendation under subsection (1), the Governor may, by proclamation—

(a) declare the council to be a defaulting council;

and

(b) appoint a suitable person or suitable persons to be administrator or administrators of the affairs of the council.

(4) Where a proclamation is made under subsection (3), the Minister must, within the first five sitting days after the date of the proclamation, cause a report to be laid before both Houses of Parliament of the circumstances giving rise to the making of the proclamation.

(5) Where the Governor makes a proclamation under subsection (3), the Governor may by the same or a subsequent proclamation provide for any matter incidental to, or consequential upon, the declaration of the council as a defaulting council.

(6) Upon the making of a proclamation under subsection (3), all the members of the defaulting council are suspended from their respective offices until the council ceases to be a defaulting council.

(7) An administrator or administrators appointed under this section will, until the council ceases to be a defaulting council, administer the affairs of the defaulting council in the name of and on behalf of the council (and for that purpose will have all the powers, functions and duties of the council).

(8) Where two or more administrators are appointed under this section, any disagreement between them will be settled by the decision of the majority or, where they are equally divided in opinion, by determination of the Minister.

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(9) The remuneration of an administrator (which will be determined by the Governor) and any liability incurred by an administrator in the course of the administration will be paid or satisfied out of the funds of the defaulting council.

(10) The Governor may, by proclamation, declare that the provisions of this or any other Act apply, while the council is a defaulting council, subject to exclusions or modifications specified in the proclamation, and those provisions apply accordingly.

(11) The administrator or administrators appointed under this section must report to the Minister at intervals of not more than three months on the administration of the affairs of the defaulting council.

(12) The Governor may, by proclamation, vary or revoke a proclamation under this section.

(13) The Governor may, on the recommendation of the Minister made not earlier than the expiration of three months from the date on which the council was declared to be a defaulting council, by proclamation, declare the offices of all the members of the defaulting council to be vacant.

(14) A council ceases to be a defaulting council under this Division—

(a) upon the making of a proclamation revoking the proclamation by which the council was declared to be a defaulting council;

(b) where a proclamation is made declaring the offices of all members of the defaulting council to be vacant—upon the conclusion of the elections to fill the vacant offices;

or

(c) unless a proclamation referred to in paragraph (a) or (b) is sooner made—upon the expiration of 12 months from the date on which the council was declared to be a defaulting council.

**DIVISION XIV—THE LOCAL GOVERNMENT ASSOCIATION**

**The Local Government Association of South Australia**

**34.** (1) The Local Government Association of South Australia continues in existence.

(2) The Association—

(a) continues to be a body corporate with perpetual succession and a common seal;

(b) is capable in its corporate name of acquiring, holding, dealing with and disposing of real and personal property;

and

(c) is capable of acquiring or incurring any other rights or liabilities and of suing and being sued in its corporate name.

(3) The Association is constituted as a public authority for the purpose of promoting and advancing the interests of local government and has the objects prescribed by its constitution.

(4) The constitution and rules of the Association cannot be altered or revoked without the approval of the Minister.

(5) The *Subordinate Legislation Act 1978* does not apply to the constitution or rules of the Association.

**Local government indemnity schemes**

**34a.** (1) Subject to this section, the Local Government Association of South Australia—

- (a) will conduct and manage the *Local Government Association Mutual Liability Scheme*;
  - (b) will continue to conduct and manage a local government workers compensation self-insurance scheme for the benefit of—
    - (i) councils;
    - (ii) the Association;
- and
- (iii) any other prescribed body;

and

- (c) may establish, conduct and manage any other indemnity or self-insurance scheme which is in the interests of local government.

(2) The rules of a scheme under this section must be published in the *Gazette*.

(3) The rules of a scheme must comply with any requirements prescribed by the regulations.

(4) The rules of a scheme cannot be altered except after consultation with the Minister.

(5) The Association may, pursuant to a resolution of the Association passed by an absolute majority of the members of the Association at a general meeting of the Association, transfer the management of a scheme to another body.

(6) The regulations may make any provision of a transitional nature relating to the transfer of the management of a scheme under this section (including the transfer of the management of the *Local Government Association Mutual Liability Scheme* to the Association on the enactment of this section).

(7) A regulation cannot be made for the purposes of this section except at the request of, or after consultation with, the Association.

(8) The enactments and rules of law relating to perpetuities, or imposing restrictions on the accumulation of income, do not apply in relation to any scheme under this section, whether established before or after the enactment of this section.

(9) The *Subordinate Legislation Act 1978* does not apply to the rules of a scheme under this section.

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**PART III  
THE COUNCIL**

**DIVISION I—GENERAL NATURE OF COUNCIL'S RESPONSIBILITIES**

**General nature of council's responsibilities**

**35.** A council is responsible for—

(a) the management of the affairs of the area in relation to which it is constituted;

and

(b) the exercise, performance and discharge of the powers, functions and duties of local government conferred on the council by this or any other Act in, and in relation to, the area for which it is constituted.

**General management functions and objectives**

**35a.** (1) The functions of a council include the following:

(a) to determine policies (not inconsistent with this Act or any other applicable law) to be applied by the council in exercising its discretionary powers;

(b) to determine the type, range and scope of projects to be undertaken by the council;

and

(c) to develop comprehensive management plans, budgets, financial controls and performance objectives and indicators for the operations of the council.

(2) The operations and affairs of the council should be managed—

(a) in a manner which emphasises the importance of service to the community;

(b) so as to enable decisions to be made, and action taken, efficiently and effectively through clear division of administrative responsibilities, delegation of authority where appropriate, and flexible and responsive deployment of resources;

and

(c) with the goal of continued improvement in efficiency and effectiveness.

**DIVISION II—COUNCIL TO BE BODY CORPORATE**

**Nature and general powers of a council**

**36.** (1) A council consists of the members appointed or elected to the council in accordance with this Act.

(2) A council bears the name assigned to it by or under this Act.

(3) A council—

(a) is a body corporate;

(b) has the powers, functions and duties conferred on it by or under this or any other Act;

- (c) subject to this or any other Act—
- (i) may acquire, deal with and dispose of real and personal property (wherever situated), and rights in relation to real and personal property;
  - (ii) may sue and be sued;
- and
- (iii) may enter into any kind of contract or arrangement;
- and
- (d) has power to do anything else necessary or convenient for, or incidental to, the exercise, performance or discharge of its powers, functions or duties under this or any other Act.

(4) No contract with a council is void by reason of any deficiency in the council's juristic capacity but this subsection does not prevent an action to restrain a council from entering into such a contract.

#### **The common seal**

**37.** (1) The common seal of a council must not be affixed to a document except to give effect to a resolution of the council.

(2) The affixation of the common seal must be attested by the mayor or chairman of the council and the chief executive officer.

(3) An apparently genuine document purporting to bear the common seal of a council and the signatures of the mayor or chairman of the council and the chief executive officer attesting the affixation of the seal will, in the absence of proof to the contrary, be taken to have been duly executed by the council.

#### **Provision relating to contracts and transactions**

**37a.** A council contracts as follows:

- (a) a contract may be entered into under the common seal of the council;
- or
- (b) a contract may be entered into by an officer, employee or agent authorized by the council to enter into the contract on its behalf.

### **DIVISION III—COUNCIL COMMITTEES**

#### **Council committees**

**38.** (1) A council may establish committees of its members for the purpose of—

- (a) inquiring into and reporting to the council on any matters within the ambit of the council's responsibilities;
- (b) exercising, performing or discharging delegated powers, functions or duties.

(2) A member of a committee established under this section holds office as such at the pleasure of the council.

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(3) A committee may establish sub-committees for the purpose of inquiring into, and reporting on, any matters within the ambit of the committee's responsibilities.

(4) The mayor or chairman of a council is, *ex officio*, a member of any committee or sub-committee.

**Advisory committees**

**39.** (1) A council may establish advisory committees consisting of, or including, persons who are not members of the council for the purpose of inquiring into and reporting to the council on any matters within the ambit of the council's responsibilities.

(2) A member of an advisory committee established under this section holds office as such at the pleasure of the council.

(3) The mayor or chairman of a council is, *ex officio*, a member of any advisory committee established under this section.

**DIVISION IV—SAVING PROVISION**

**Saving provision**

**40.** No act or proceeding of a council or a council committee is invalid by reason of—

- (a) a vacancy or vacancies in the membership of the council or committee;
  - (b) a defect in the election or appointment of a member or members of the council or committee;
- or
- (c) the fact that the election of a member or members of the council or committee is subsequently declared void by a court of competent jurisdiction.

**DIVISION V—DELEGATION**

**Delegation of powers of council**

**41.** (1) Subject to this section, a council may delegate any power, function or duty vested, conferred or imposed in or on the council under this or any other Act.

(1a) A delegation may be made—

- (a) to a council committee;
- (b) to a committee consisting of officers or employees of the council;
- (c) to a committee the membership of which is drawn from at least two of the following classes of persons:
  - (i) members of the council;
  - (ii) officers or employees of the council;
  - (iii) persons nominated for membership of the committee by a Minister of the Crown;

or

- (d) to an officer or employee of the council.
  - (2) A council may not delegate—
    - (a) power to declare rates or to impose charges under Part X;
    - (b) power to borrow money or to obtain other forms of financial accommodation;
    - (c) power to approve expenditure of money on the works, services or operations of the council not set out in a budget approved by the council;
    - (d) power to approve the payment of expenses or allowances on account of expenses incurred or to be incurred by members of the council;
    - (e) power to make an application or recommendation or to report or to give a notice, to the Governor or the Minister, being an application, recommendation, report or notice for which provision is made by or under this or any other Act;
    - (ea) power to establish a controlling authority;
    - (eb) power to adopt, reconsider or revise any council budget;
- or
- (f) any prescribed power, function or duty.

(3) A delegation by a council is subject to such limitations and conditions as may be determined by the council or as may be prescribed.

(4) A delegation by a council is revocable by resolution of the council and does not derogate from the power of the council to act itself in any matter.

(5) The council must cause a separate record to be kept of all delegations under this section, and must at least once in every financial year review the delegations for the time being in force under this section.

(6) A council may not make a delegation under this section to an advisory committee.

(7) This section does not limit or affect any power of delegation that a council may exercise under another Act.

## DIVISION VI—OFFICE OF THE COUNCIL

### Council to maintain office

**42.** (1) A council must maintain a suitable office as its principal office.

(2) A council may maintain such other offices as it thinks fit.

(3) The principal office of the council must be open to the public for the transaction of business during such hours as may be determined by the council.

(4) The name of the council and the hours for which the principal office of the council is open for the transaction of business must be displayed at or near the main public entrance to the principal office.

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**DIVISION VII—ANNUAL REPORT**

**Annual report**

**42a.** (1) A council must, on or before the prescribed day in each year, prepare and adopt a report containing the prescribed information and documents relating to the operations of the council.

(1a) The report must state the number of council certificates issued under section 65zy in respect of restricted documents, the nature of the documents to which the certificates related and the provisions of Part VA by virtue of which the documents were restricted.

(1b) A council constituted or formed between 25 October 1995 and 1 July 1997 (inclusive) must include in its reports for the 1997/1998, 1998/1999 and 1999/2000 financial years 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.

(2) The council must, as soon as practicable after it has prepared and adopted the report, cause a copy of the report to be made available for inspection (without fee) by any member of the public at the principal office of the council during the hours for which the office is open to the public.

(3) A member of the public is entitled, on payment of a fee fixed by the council, to obtain a copy of the report or any part of the report.



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**PART IV  
MEMBERS OF COUNCIL**

**DIVISION I—THE MAYOR OR CHAIRMAN**

**The principal member of council**

**43.** (1) The mayor or chairman of a council is the principal member of the council.

(1a) The title of the office of the principal member of a council that does not have a mayor is at the discretion of the council.

(2) Where a council is constituted with a mayor, the mayor will be appointed, or elected by the electors of the area, as a representative of the area as a whole.

(3) Where a council is constituted with a chairman, the chairman will be chosen by the members of the council from amongst their number and will hold office for such term (not extending beyond the conclusion of the next general election) as may be determined by the council.

(4) Where a council has a mayor, there shall also, if the council so resolves, be a deputy mayor and where a council has a chairman, there shall also, if the council so resolves, be a deputy chairman.

(5) Where there is to be a deputy mayor or deputy chairman, he or she will be chosen by the members of the council from amongst their own number and will hold office for such term (not extending beyond the conclusion of the next general election) as may be determined by the council.

(6) Upon the expiration of a term of office, a chairman, deputy mayor or deputy chairman of a council is eligible to be chosen for a further term.

(7) In the absence of the mayor or chairman, a deputy mayor or deputy chairman may act in the office of mayor or chairman.

(8) Where the mayor or chairman is absent from official duties and there is no deputy mayor or deputy chairman, or the deputy mayor or deputy chairman is not available to act in the office of mayor or chairman, a member chosen by the council may act in the office of mayor or chairman.

(9) Where a person is to be chosen by the members of the council to fill an office under this section and the votes for two or more candidates for the office are equal, lots must be drawn to determine which of the candidates will fill the office.

**The Lord Mayor of the City of Adelaide**

**44.** The mayor of the City of Adelaide is entitled to the rank and title of Lord Mayor.

**DIVISION II—ALDERMEN**

**Aldermen**

**45.** (1) Where a council is constituted with aldermen, they will be appointed, or elected by the electors of the area, as representatives of the area as a whole.

(2) The total number of aldermen for an area cannot exceed one-half of the total number of councillors for the area.

**DIVISION III—COUNCILLORS**

**Councillors**

**46.** Councillors for an area—

(a) where the area is not divided into wards—will be appointed, or elected by the electors of the area, as representatives of the area as a whole;

or

(b) where the area is divided into wards—will be appointed, or elected by the electors of the individual wards, as representatives of the wards.

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**DIVISION IV—TERM OF OFFICE OF MEMBERS OF COUNCILS**

**Term of office**

**47.** (1) Subject to this Act, the term of office of a member of a council is a term expiring at the conclusion of the next general election held after his or her appointment or election as a member of the council.

(2) The term of office of a member of a council, as provided for by subsection (1), is not affected by a proclamation made under Division V or VI of Part II.

**Casual vacancies**

**48.** (1) Subject to this section, the office of a member of a council becomes vacant if the member—

(a) dies;

(b) resigns by notice in writing to the chief executive officer;

(c) is removed from office by the Governor on the ground of mental or physical incapacity to carry out official duties satisfactorily;

(d) is removed from office by the council on the ground that he or she has been absent, without leave of the council, from three or more consecutive meetings (the first of which must have been held three months or more before the last);

(e) becomes an officer or employee of the council;

(f) is declared bankrupt;

(g) fails to submit a return under Part VIII before the expiration of one month from the end of the period allowed under that Part for the submission of the return;

or

(h) is convicted of an indictable offence.

(2) Where a member of a council stands for election to an office in the council other than the one presently held by the member, the latter office becomes vacant at the conclusion of the election.

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(3) The resignation of a member takes effect on receipt by the chief executive officer of the notice of resignation or on such later date, not more than 14 days in advance, as may be specified in the notice of resignation (but once the notice is received by the chief executive officer the resignation cannot be withdrawn).

(4) Where a member's office becomes vacant because of the member's failure to submit a return under Part VIII—

(a) a court of summary jurisdiction may, on an application made within one month after the vacation of office, restore the member to office if satisfied that the failure arose from circumstances beyond the member's control;

(b) proceedings for a supplementary election to fill the vacancy must not be commenced until the period for making an application under paragraph (a) has expired or, if there is an application, until the application is determined;

and

(c) the member cannot be nominated as a candidate for the election to fill the vacancy unless he or she has submitted to the chief executive officer the return that was required to be submitted under Part VIII.

(5) Where a member's office becomes vacant because the member has been convicted of an indictable offence, proceedings for a supplementary election to fill the vacancy must not be commenced until the period for appealing against the conviction has expired or, if there is an appeal, until the appeal is determined.

(6) Where the office of a member of a council becomes vacant under subsection (1) the chief executive officer must notify the members of the council at the next meeting of the council and give notice of the occurrence of the vacancy in the *Gazette* (but the members of the council need not be notified where the member is removed from office by the council).

(7) A member's office does not become vacant by reason only of the fact that the member, after an election or appointment, ceases to be an elector for the area.

**DIVISION V—ALLOWANCES, ETC.**

**Allowances and expenses**

**49.** (1) Subject to this section, each member of a council will receive from the council—

(a) an annual allowance for expenses (other than expenses referred to in paragraph (b)) incurred in performing official duties;

and

(b) reimbursement of expenses of a prescribed kind incurred in performing those duties.

(2) A council must—

(a) if the council is newly constituted by proclamation under Division I or II of Part II—at its first ordinary meeting;

(b) in any other case—at the first ordinary meeting held after the conclusion of any general election,

fix (subject to prescribed limits) the rates of the annual allowances that are to be payable to its members for the ensuing year.

(3) The rates must then be reviewed on an annual basis (but a resolution fixing the rates ceases to have effect at the conclusion of a general election).

(4) The rates of the annual allowances and the prescribed limits on those rates may vary in relation to different offices.

(5) Allowances under this section will be paid as follows:

- (a) an annual allowance payable to a mayor or chairman may be paid in monthly instalments in advance of each month in respect of which the allowance accrues;
- (b) all other allowances will be paid (in accordance with the council's determination) at the end of the month, quarter, half-year, or year in respect of which the allowances accrue.

(6) A member of a council who holds an office for part only of the period in respect of which an allowance is payable is entitled to the proportion of the allowance that the period for which the member held the office bears to the total period.

#### **Register of allowances and benefits**

**49a.** (1) The Chief Executive Officer of a council must ensure that a record (the "Register of Allowances") is kept in which is entered, in accordance with principles (if any) prescribed by the regulations, in respect of each member of the council—

- (a) the annual allowance payable to the member;

and

- (b) details of any other allowance or benefit paid or payable to, or provided for the benefit of, the member by the council.

(2) The Chief Executive Officer must ensure that an appropriate record is made in the Register of Allowances within 28 days after—

- (a) a change in the allowance or a benefit payable to, or provided for the benefit of, a member;

or

- (b) the payment or provision of an allowance or benefit not previously recorded in the Register.

(3) A person is entitled to inspect the Register of Allowances at the council's principal office from one hour after the commencement of ordinary office hours to one hour before the close of ordinary office hours.

(4) A person is entitled, on payment of a fee fixed by the council, to a copy of any entry made in the Register of Allowances.

(5) A Chief Executive Officer is not required to include in a Register of Allowances under this section details of any reimbursement of expenses of a prescribed kind incurred by a member in performing official duties.

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**Insurance of members**

**50.** A council must take out a policy of insurance of a kind approved by the Minister insuring every member of the council, and a spouse or another person who may be accompanying a member of the council, against risks associated with the performance of official functions by members.

**DIVISION VI—PROTECTION OF MEMBERS**

**Protection of members**

**51.** (1) No liability attaches to a member of a council for an act or omission by the council or the member in good faith and in the exercise, performance or discharge, or purported exercise, performance or discharge, of powers, functions or duties under this or any other Act.

(2) A liability that would, but for subsection (1), lie against a member of a council lies against the council.

**DIVISION VII—DECLARATION TO BE MADE BY MEMBERS OF COUNCILS**

**Declaration to be made by council members**

**52.** A member of a council or council committee must, at or before the first meeting to be attended by the member, make an undertaking in the prescribed manner and form to discharge the member's duties conscientiously and to the best of his or her ability.

**DIVISION VIII—CONFLICT OF INTEREST**

**Conflict of interest**

**53.** (1) A member of a council has an interest in a matter before the council or a council committee if—

(a) the member or a person with whom the member is closely associated would, if the matter were decided in a particular manner, receive or have a reasonable expectation of receiving a direct or indirect pecuniary benefit or suffer or have a reasonable expectation of suffering a direct or indirect pecuniary detriment;

or

(b) the member or a person with whom the member is closely associated would, if the matter were decided in a particular manner, obtain or have a reasonable expectation of obtaining a non-pecuniary benefit or suffer or have a reasonable expectation of suffering a non-pecuniary detriment,

(not being a benefit or detriment that would be enjoyed or suffered in common with all or a substantial proportion of the ratepayers, electors or residents of the area or a ward or some other substantial class of persons).

(2) A person is closely associated with a member of a council—

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

(b) if that person is a proprietary company in which the member is a shareholder;

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

- (d) if that person is a partner of the member;
- (e) if that person is the employer or an employee of the member;
- (f) if that person is a person from whom the member 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 the spouse or a child of the member.

(3) A member of a council who is a member, officer or employee of an agency or instrumentality of the Crown, will be regarded as having an interest in a matter before the council or a council committee if the matter directly concerns that agency or instrumentality but otherwise will not be regarded as having an interest in a matter by virtue of being a member, officer or employee of the agency or instrumentality.

(4) In this section—

**"agency or instrumentality of the Crown"** includes—

- (a) a department or administrative unit of the Public Service;
- (b) a body corporate comprised of, or including or having a governing body comprised of or including, a Minister or Ministers of the Crown or a person or persons appointed by the Governor or a Minister or other agency or instrumentality of the Crown.

#### **Members to disclose interests**

**54.** (1) A member of a council who has an interest in a matter before the council or a council committee of which he or she is a member must disclose the interest to the council or committee.

Penalty: \$10 000 or imprisonment for one year.

(2) A disclosure made under subsection (1) must be recorded in the minutes of the council or council committee.

(3) Subject to subsection (4), a member of a council who has an interest in a matter before the council or a council committee must not—

- (a) take part in discussion by the council or committee relating to that matter;
- (b) while such discussion is taking place, be in, or in the close vicinity of, the room in which or other place at which that matter is being discussed;

or

- (c) vote in relation to that matter.

Penalty: \$10 000 or imprisonment for one year.

(4) Subsection (3) does not apply in relation to a matter in which the member has an interest by virtue only of the fact—

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(a) that 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;

or

(b) that he or she is a member of a body (whether corporate or unincorporate) comprised of or including, or having a governing body comprised of or including, a person or persons appointed by the council.

(5) It is a defence to a charge of an offence against subsection (1) or (3) to prove that the defendant was, at the time of the alleged offence, unaware of his or her interest in the matter.

(6) Subsections (1) and (3) do not apply—

(a) to questions relating to allowances or benefits that a council is empowered to pay to, or confer on, members, their spouses or members of their families;

(b) to matters of a class exempted by regulation from the provisions of those subsections;

or

(c) to matters in relation to which the Minister has granted an exemption from the provisions of those subsections.

(7) The fact that a member or members of a council or a council committee have failed to comply with this section in relation to a particular matter does not, of itself, invalidate a resolution or decision on that matter but, where it appears that the non-compliance may have had a decisive influence on the passing of the resolution or the making of the decision, the Supreme Court may, on the application of the council, the Minister or any person affected by the resolution or decision, annul the resolution or decision and make such ancillary or consequential orders as it thinks fit.

(8) In this section—

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

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

and

(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,

and includes the Local Government Association of South Australia.

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**Consequences of conviction of an offence against this Division**

**57.** (1) Subject to subsection (2), where a person is convicted of an offence against this Division—

(a) the convicted person is disqualified for election as a member of a council during the seven years next ensuing after the date of conviction;

and

(b) if the convicted person is, at the time of conviction, a member of a council, his or her office as such immediately becomes vacant.

(2) The court by which a person is convicted of an offence against this Division may in an appropriate case—

(a) exempt the convicted person from the operation of subsection (1);

or

(b) reduce the period of disqualification prescribed by that subsection.

(3) Where a person is convicted of an offence against this Division and it appears to the court by which that person is convicted that a council has suffered loss or damage as a result of the commission of the offence, the court may order the convicted person to pay such compensation to the council as the court considers just.

**Application of Division to members of controlling authorities**

**57a.** (1) The provisions of this Division extend to members of controlling authorities as if—

(a) a controlling authority were a council;

and

(b) a member of a controlling authority were a member of a council.

(2) Where a person is convicted of an offence against this Division as a member of a controlling authority—

(a) the person is disqualified for further appointment as a member of a controlling authority during the seven years next ensuing after the date of conviction;

and

(b) if the person is, at the time of conviction, a member of a controlling authority, his or her office as such immediately becomes vacant.



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**PART V**  
**MEETINGS OF COUNCIL, COMMITTEES AND ELECTORS**

**DIVISION I—MEETINGS OF COUNCIL**

**Meetings of council**

**58.** (1) Subject to this section, ordinary meetings of a council will be held at times and places appointed by the council, but there must be at least one ordinary meeting in each month.

(2) Where a time and a place has not been appointed for the holding of an ordinary meeting during any month, the chief executive officer must appoint, subject to this section, the time and place at which the ordinary meeting for that month is to be held.

(3) At least three clear days before the date of an ordinary meeting of the council, the chief executive officer must—

(a) give notice of the meeting, and supply a copy of the agenda for that meeting, to all members of the council;

and

(b) cause a copy of the notice and agenda to be placed on public display in the principal office of the council (and the notice and agenda must be kept on public display until the completion of the meeting).

(4) Ordinary meetings of a council—

(a) may not be held on Sundays, or on public holidays;

and

(b) in the case of a municipal council, may not be held before 5 p.m. unless the council resolves otherwise by a resolution supported unanimously by all members of the council.

(5) A resolution under subsection (4)(b) does not operate in relation to a meeting held after the conclusion of the general election next following the making of the resolution.

(5a) A person is entitled to inspect, and, on payment of a fee fixed by the council, to obtain a copy of, any notice and agenda on display pursuant to subsection (3).

(6) The chief executive officer must, at the request of the mayor or chairman, or any three members, of the council, call a special meeting of the council.

(7) Special meetings of a council may be held at any time.

(8) Notice of a special meeting of a council must be given to all members of the council at least four hours before the commencement of the meeting.

(9) Notice of a meeting of a council under this section must—

(a) be in writing;

(b) set out the date, time and place of the meeting;

(c) be signed by the chief executive officer;

and

(d) in the case of a special meeting—contain, or be accompanied by, the agenda for the meeting.

(10) Notice may be given under this section personally, or by delivery (whether by post or otherwise) to the usual place of residence of the member or to such other place as the member may authorize in writing.

(11) The chief executive officer must maintain a record of all notices of meetings given under this section to members.

(11a) The chief executive officer must, in so far as is reasonably practicable—

(a) ensure that items on an agenda given to members of the council under this section are described with reasonable particularity and accuracy; and

(b) supply to each member of the council at the time that notice of a meeting is given a copy of any documents or reports that are to be considered at the meeting.

(11b) The chief executive officer may, in consultation with the principal member of the council, indicate on a document or report provided to members of the council under subsection (11a) (or on a separate notice) any information or matter contained in or arising from the document or report that may, if the council so determines, be considered in confidence under section 62(2), provided that the chief executive officer at the same time specifies the basis on which an order could be made under that section.

(12) In this section—

"agenda", in relation to a meeting, means a list of items of business to be considered at the meeting.

### **Quorum**

**59.** (1) The prescribed number of members of a council constitutes a quorum of the council and no business can be transacted at a meeting unless a quorum is present.

(2) In this section, a reference to the prescribed number of members of a council means a number ascertained by dividing the total number of members of the council for the time being in office by two, ignoring any fraction resulting from the division, and adding one.

### **Procedure at meetings**

**60.** (1) The mayor or chairman of a council will preside at a meeting of the council.

(2) Where the mayor or chairman is absent from a meeting of a council and there is a deputy mayor or deputy chairman available to preside at the meeting, the deputy will preside but, if there is no deputy mayor or deputy chairman, or the deputy is not available to preside at the meeting, a member of the council chosen by those present at the meeting will preside.

(2a) Where—

(a) a chairman is to be chosen at a meeting of a council;

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or

- (c) a member of a council must be chosen by those present at a meeting of the council to preside at the meeting,

the chief executive officer will preside at the meeting until the choice is made.

(3) Subject to this Act, a question arising for decision at a meeting of a council will be decided by a majority of the votes cast by the members present at the meeting and entitled to vote on the question.

(4) Each member present at a meeting of a council must, subject to any provision of this Act to the contrary, vote on a question arising for decision at that meeting.

(5) The mayor of a council, or any other member presiding, in the absence of the mayor, at a meeting of the council, does not have a deliberative vote on a question arising for decision at the meeting but has, in the event of an equality of votes, a casting vote.

(6) The chairman of a council, or any other member presiding, in the absence of the chairman, at a meeting of the council, has a deliberative vote on a question arising for decision at the meeting but does not, in the event of an equality of votes, have a casting vote.

(7) Subject to this Act, the procedure to be observed at a meeting of a council will be as determined by the council.

**DIVISION II—MEETINGS OF COUNCIL COMMITTEES**

**Meetings of council committees**

**61.** (1) Subject to this Act, the procedure to be observed in relation to the conduct of meetings of a council committee will be—

- (a) as prescribed by regulation;
- (b) insofar as the procedure is not prescribed by regulation—as determined by the council;
- (c) insofar as the procedure is not prescribed by regulation or determined by the council—as determined by the council committee itself.

(1a) Subject to this section, ordinary meetings of a council committee must be held at times and places appointed by the council or, subject to any decision of the council, the council committee.

(1b) At least three clear days before the date of an ordinary meeting of a council committee, the chief executive officer must—

- (a) give notice of the meeting, and supply a copy of the agenda for that meeting, to all members of the committee;

and

- (b) cause a copy of the notice and agenda to be placed on public display in the principal office of the council (and the notice and agenda must be kept on public display until the completion of the meeting).

(2) In the case of a municipal council, ordinary meetings of a council committee may not be held before 5 p.m. unless the council committee resolves otherwise by a resolution supported unanimously by all members of the council committee.

(3) A resolution under subsection (2) does not operate in relation to a meeting held after the conclusion of the general election next following the making of the resolution.

(4) A person is entitled to inspect, and, on payment of a fee fixed by the council, to obtain a copy of, any notice and agenda on display pursuant to subsection (1b).

(5) The chief executive officer must, at the request of the chairman or two other members of a council committee, call a special meeting of the committee.

(6) Special meetings of a council committee may be held at any time.

(7) Notice of a special meeting of a council committee must be given to all members of the committee at least four hours before the commencement of the meeting.

(8) Notice of a meeting of a council committee under this section must—

(a) be in writing;

(b) set out the date, time and place of the meeting;

(c) be signed by the chief executive officer;

and

(d) in the case of a special meeting—contain, or be accompanied by, the agenda for the meeting.

(9) Notice may be given under this section personally, or by delivery (whether by post or otherwise) to the usual place of residence of the member of the council committee or to such other place as the member may authorize in writing.

(10) The chief executive officer must maintain a record of all notices of meetings given under this section to members of council committees.

(11) The chief executive officer must, in so far as is reasonably practicable—

(a) ensure that items on an agenda given to members of a council committee under this section are described with reasonable particularity and accuracy; and

(b) supply to each member of a council committee at the time that notice of a meeting is given a copy of any documents or reports that are to be considered at the meeting.

(12) The chief executive officer may, in consultation with the presiding member of the council committee, indicate on a document or report provided to members of the committee under subsection (11) (or on a separate notice) any information or matter contained in or arising from the document or report that may, if the committee so determines, be considered in confidence under section 62(2), provided that the chief executive officer at the same time specifies the basis on which an order could be made under that section.

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**DIVISION III—PROCEEDINGS OF COUNCIL AND COUNCIL COMMITTEES  
TO BE CONDUCTED IN PUBLIC**

**Meetings in public except in certain special circumstances**

**62.** (1) Subject to this section, a meeting of a council or a council committee must be conducted in a place open to the public.

(2) A council or council committee may order that the public be excluded from attendance at a meeting—

(a) in order to consider in confidence information or a matter within the ambit of subsection (2a) if the council or council committee is satisfied that it is reasonably foreseeable that the public disclosure or discussion of the information or matter at the meeting could—

(i) cause significant damage or distress to a person; or

(ii) cause significant damage to the interests of the council, or to the interests of a person; or

(iii) confer an unfair commercial or financial advantage on a person,

and that accordingly, on this basis, the principle that meetings of the council or council committee should be conducted in a place open to the public has been outweighed by the need to keep the information or discussion confidential; or

(b) in order to consider in confidence information provided to the council by a public official or authority (not being an officer or employee of the council, or a person engaged by the council) with a request or direction by that public official or authority that it be treated by the council as confidential; or

(c) in order to consider in confidence information relating to a proposed amendment to a Development Plan under the *Development Act 1993* before a Plan Amendment Report in relation to the amendment is released for public consultation under that Act; or

(d) in order to ensure that the council does not breach any law, order or direction of a court or tribunal constituted by law, or other legal obligation or duty, or in order to ensure that the council or council committee does not unreasonably expose itself to any legal process or liability.

(2a) The following information or matters are within the ambit of this subsection:

(a) legal advice, or advice from a person employed or engaged by the council to provide specialist professional advice;

(b) information relating to actual or possible litigation involving the council or an officer or employee of the council;

(c) complaints against an officer or employee of the council, or proposals for the appointment, suspension, demotion, disciplining or dismissal of an officer or employee of the council, or proposals relating to the future remuneration or conditions of service of an officer or employee of the council;

(d) tenders for the supply of goods or the provision of services (including the carrying out of works), or information relating to the acquisition or disposal of land;

- (e) information relating to the health or financial position of a person, or information relevant to the safety of a person;
- (f) information that constitutes a trade secret, that has commercial value to a person (other than the council), or that relates to the commercial or financial affairs of a person (other than the council);
- (g) information relevant to the review of a determination of the council under Division VI of Part VA.

(3) A person who, knowing that an order is in force under subsection (2), enters or remains in a room in which a meeting of the council or council committee is being held is guilty of an offence and liable to a penalty not exceeding \$500 and if such a person fails to leave the room on request it is lawful for an officer of the council or a member of the police force forcibly to remove him or her from the room.

(4) Subsection (3) does not apply to—

- (a) a member of the council or the council committee;

or

- (b) any other person permitted to be in the room by the council or the council committee.

(5) Where an order is made under subsection (2), a note must be made in the minutes of the making of the order and of the grounds on which it was made.

#### **DIVISION IV—MEETINGS OF ELECTORS**

##### **Meetings of electors**

**63.** (1) A council may convene a meeting of electors of the area or a part of the area.

(2) The chief executive officer must, by advertisement in a newspaper circulating in the area, give notice of the time and place of a meeting of electors, and of the nature of the business to be transacted at the meeting, at least 14 days and not more than 28 days before the date of the meeting.

(3) The following persons are entitled to attend and vote at a meeting convened under this section:

- (a) in the case of a meeting of electors of an area—any person who is enrolled on the voters roll for the area as an elector;

and

- (b) in the case of a meeting of electors of a part of an area—any person who is enrolled on the voters roll for the area as an elector—

- (i) in respect of a place of residence within that part of the area;

or

- (ii) in respect of ratable property within that part of the area.

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(4) A meeting of electors under this section cannot proceed unless at least one member of the council is present at the meeting.

(5) Where the mayor or chairman is present and available to preside at a meeting of electors held under this section, he or she must preside at the meeting.

(6) Where the mayor or chairman is absent from a meeting of electors held under this section or is not available to preside at the meeting, the following provisions apply:

- (a) if there is a deputy mayor or deputy chairman available to preside at the meeting—the deputy must preside;
- (b) if there is no deputy mayor or deputy chairman or he or she is not available to preside—a member of the council appointed by the council must preside;
- (c) if no member of the council is so appointed or a member so appointed is absent from the meeting—a member chosen by the electors present at the meeting must preside.

(7) A question to be decided at a meeting of electors will be decided by a majority of the votes of the electors present and voting at the meeting.

(8) Each elector present at the meeting is entitled to vote, on a question arising for decision at the meeting, in the elector's own capacity and where the elector is a nominated agent in the elector's capacity as nominated agent.

(9) The member presiding at a meeting of electors does not, in the event of an equality of votes, have a casting vote.

(10) The member presiding at a meeting of electors must transmit any resolutions passed at a meeting held under this section to the council.

(11) Subject to this Act, the procedure to be observed at a meeting of electors will be as determined by the person presiding at the meeting.

**DIVISION V—PROVISIONS OF GENERAL APPLICATION**

**Minutes**

**64.** (1) The chief executive officer must cause minutes to be kept of the proceedings at every meeting of the council, of council committees and of electors.

(1a) Where the chief executive officer is excluded from attendance at a meeting of the council or a council committee pursuant to section 62, the person presiding at the meeting must cause the minutes to be kept.

(2) Each member of the council must, within five days after a meeting of the council, of a council committee or of electors, be supplied with a copy of all minutes of the proceedings of the meeting kept under this section.

(3) Subject to subsection (6), a copy of the minutes of a meeting of the council must be placed on public display in the principal office of the council within five days after the meeting and kept on such display for a period of one month.

(4) Subject to subsection (6), a person is entitled to inspect, without payment of a fee, at the principal office of the council—

- (a) minutes kept under this section;
- (b) reports to the council or a council committee received at a meeting of the council or committee;
- (c) recommendations presented to the council in writing and adopted by resolution of the council;
- (d) budgetary or other financial statements adopted by the council.

(5) Subject to subsection (6), a person is entitled, on payment of a fee fixed by the council, to obtain a copy of any documents available for inspection under subsection (4).

(6) Subsections (3), (4) and (5) do not apply in relation to a document or part of a document if—

- (a) the document or part relates to a matter dealt with by the council on a confidential basis under section 62;

and

- (b) the council or council committee orders that the document or part be kept confidential.

(7) A council must not make an order under subsection (6)—

- (a) to prevent the disclosure of the remuneration or conditions of service of an officer or employee of the council after the remuneration or conditions have been set or determined; or
- (b) to prevent the disclosure of the identity of a successful tenderer for the supply of goods or the provision of services (including the carrying out of works), or of any reasons adopted by the council as to why a successful tenderer has been selected; or
- (c) to prevent the disclosure of the identity of land that has been acquired or disposed of by the council, or of any reasons adopted by the council as to why land has been acquired or disposed of by the council.

(7a) If an order is made under subsection (6)—

- (a) the council or council committee must specify the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed; and
- (b) the council or council committee must ensure that a note is made in the minutes recording the making of the order, the grounds on which the order was made, and the decision of the council or council committee under paragraph (a); and
- (c) the council or council committee may delegate to an officer or employee of the council the power to revoke the order (and such a delegation may be made subject to specified conditions, is revocable at will by the council or council committee, and does not derogate from the ability of the council or council committee to revoke the order itself).



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(8) A document purporting to be minutes of proceedings at a meeting of a council, of a council committee or of electors, or to be a copy of or extract from such minutes and to be signed by the chief executive officer, will be accepted as proof, in the absence of proof to the contrary, of the matters contained in the document.

**Adjournment of meetings**

**65.** A meeting of a council, of a council committee or of electors may be adjourned from time to time and from place to place.

**Access to meetings and documents—code of practice**

**65AAA.** (1) A council must, within two months after the commencement of this section, adopt and publish a code of practice relating to the principles, policies, procedures and practices that the council will apply for the purposes of the operation of sections 62 and 64(6), (7) and (7a).

(2) The council must, at least once in every financial year, review the operation of its code of practice under this section.

(3) A council may at any time alter its code of practice, or substitute a new code of practice.

(4) A code of practice must be consistent with any principle or requirement prescribed by the regulations and include any mandatory provision prescribed by the regulations.

(5) A person is entitled to inspect, without payment of a fee, at the principal office of the council, a copy of the council's code of practice.

(6) A person is entitled, on payment of a fee fixed by the council, to a copy of the council's code of practice.

**Investigation by Ombudsman**

**65AAB.** (1) The Ombudsman may, on receipt of a complaint, carry out an investigation under this section if it appears to the Ombudsman that a council may have unreasonably excluded members of the public from its meetings under section 62(2), or unreasonably prevented access to documents under section 64(6).

(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) At the conclusion of an investigation under this section, the Ombudsman must prepare a written report on the matter.

(4) The Ombudsman must supply the Minister and the council with a copy of the report.

(5) If the Minister, after taking into account the report of the Ombudsman under this section, believes that the council has unreasonably excluded members of the public from its meetings under section 62(2) or unreasonably prevented access to documents under section 64(6), the Minister may give directions to the council with respect to the future exercise of its powers under either or both of those sections, or to release information that should, in the opinion of the Minister, be available to the public.

(6) However, the Minister cannot give a direction under subsection (5) unless the council has been given a reasonable opportunity to make submissions to the Minister in relation to the matter.

(7) A council to which directions are given under this section must comply with those directions.

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

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**PART VA  
ACCESS TO COUNCILS' DOCUMENTS**

**DIVISION I—PRELIMINARY**

**Interpretation**

**65a.** (1) In this Part—

"**council**" includes a council committee or a controlling authority established under Part XIII;

"**court**" includes a justice or a coroner;

"**document**" includes anything in which information is stored or from which information may be reproduced;

"**personal affairs**" of a person includes that person's—

- (a) financial affairs;
- (b) criminal records;
- (c) marital or other personal relationships;
- (d) employment records;
- (e) personal qualities or attributes;

"**policy or administrative document**", in relation to a council, means—

- (a) a document containing interpretations, rules, guidelines, statements of policy, practices or precedents;
- (b) a document containing particulars of any administrative scheme;
- (c) a document containing a statement of the manner, or intended manner, of administration of any legislative instrument or administrative scheme;
- (d) a document describing the procedures to be followed in investigating any contravention or possible contravention of any legislative instrument or administrative scheme;

or

- (e) any other document of a similar kind,

that is used by the council in connection with the exercise of such of its functions as affects or are likely to affect rights, privileges or other benefits, or obligations, penalties or other detriments, to which members of the public are or may become entitled, eligible, liable or subject, but does not include a legislative instrument;

"**restricted document**" means a document that is an exempt document by virtue of a provision of Subdivision I of Division II;

"**State**" includes Territory;

"**State Records**" means the office of State Records established under the *State Records Act 1997*.

(2) A council is to be taken to hold a document if the council has an immediate right of access to the document.

(3) Where—

(a) a council holds information in computer storage;

and

(b) a particular document is capable of being produced by the computer on the basis of information so stored,

the council is to be taken to hold that document.

### **Documents in State Records**

**65b.** If a document held by a council is delivered into the custody of State Records, the document is, for the purposes of this Part, to be taken to continue in the possession of the council.

### **Effect of this Part**

**65c.** (1) This Part does not prevent a council from giving access to a document without formal application and without other formality and it does not derogate from other provisions of this Act under which access to documents is required or permitted.

(2) Nothing in this Part is intended to prevent or discourage the publication of information, the giving of access to documents or the amendment of records as permitted or required by or under any other Act or law.

## **DIVISION II—EXEMPT DOCUMENTS**

### **SUBDIVISION I—RESTRICTED DOCUMENTS**

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### **Exempt documents under interstate Freedom of Information legislation**

**65e.** A document is an exempt document if—

(a) it contains information communicated to a council by another council, the Government of South Australia or the Government of the Commonwealth or of another State;

and

(b) notice has been received from either a council, the Government of South Australia or the Government of the Commonwealth or of the other State that the information is exempt matter within the meaning of this Act, the *Freedom of Information Act 1991* or a corresponding law of the Commonwealth or that other State.

### **SUBDIVISION II—DOCUMENTS REQUIRING CONSULTATION**

### **Documents affecting inter-governmental or local governmental relations**

**65f.** A document is an exempt document if it contains matter—

(a) the disclosure of which—

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(i) could reasonably be expected to cause damage to relations between councils, a council and the Government of South Australia or a council and the Government of the Commonwealth;

or

(ii) would divulge information communicated in confidence by or on behalf of a council or the Government of South Australia or of the Commonwealth to a council or a person or body receiving the communication on behalf of a council;

and

(b) the disclosure of which would, on balance, be contrary to the public interest.

**Documents affecting personal affairs**

**65g.** (1) A document is an exempt document—

(a) if it contains matter the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);

or

(b) if it contains allegations or suggestions of criminal or other improper conduct on the part of a person (living or dead) and the truth of those allegations or suggestions has not been established by judicial process.

(2) A document is not an exempt document by virtue of this section merely because it contains information concerning the person by or on whose behalf an application for access to the document is made.

(3) A document that is an exempt document under this section ceases to be so exempt on the expiration of 30 years from the date that the document came into existence or, if some other period is prescribed, on the expiration of that period.

**Documents affecting business affairs**

**65h.** (1) A document is an exempt document—

(a) if it contains matter the disclosure of which would disclose trade secrets of any council or any other person;

(b) if it contains matter—

(i) consisting of information (other than trade secrets) that has a commercial value to any council or any other person;

and

(ii) the disclosure of which could reasonably be expected to destroy or diminish the commercial value of the information;

or

- (c) if it contains matter—
- (i) consisting of information (other than trade secrets or information referred to in paragraph (b)) concerning the business, professional, commercial or financial affairs of any council or any other person;
- and
- (ii) the disclosure of which could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to a council.

(2) A document is not an exempt document by virtue of this section merely because it contains matter concerning the business, professional, commercial or financial affairs of the council or other person by or on whose behalf an application for access to the document is made.

#### **Documents affecting the conduct of research**

**65i.** (1) A document is an exempt document if it contains matter—

- (a) that relates to the purpose or results of research (including research that is yet to be commenced or yet to be completed);
- and
- (b) the disclosure of which could reasonably be expected to have an adverse effect on the council or other person by or on whose behalf the research is being, or is intended to be, carried out.

(2) A document is not an exempt document by virtue of this section merely because it contains matter concerning research that is being, or is intended to be, carried out by the council or other person by or on whose behalf an application for access to the document is made.

### **SUBDIVISION III—OTHER DOCUMENTS**

#### **Internal working documents**

**65j.** (1) A document is an exempt document if it contains matter—

- (a) that relates to—
    - (i) any opinion, advice or recommendation that has been obtained, prepared or recorded;
- or
- (ii) any consultation or deliberation that has taken place,  
in the course of, or for the purpose of, the decision-making functions of the council;
- and
- (b) the disclosure of which would, on balance, be contrary to the public interest.

(2) A document is not an exempt document by virtue of this section if it merely consists of—

- (a) matter that appears in a council's policy or administrative document;

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or

(b) factual or statistical material.

**Documents subject to legal professional privilege**

**65k.** (1) A document is an exempt document if it contains matter that would be privileged from production in legal proceedings on the ground of legal professional privilege.

(2) A document is not an exempt document by virtue of this section merely because it contains matter that appears in a council's policy or administrative document.

**Documents the subject of secrecy provisions**

**65l.** (1) A document is an exempt document if it contains matter the disclosure of which would constitute an offence against an Act.

(2) A document is not an exempt document by virtue of this section unless disclosure of the matter contained in the document, to the person by or on whose behalf an application for access to the document is made, would constitute such an offence.

**Documents containing confidential material**

**65m.** A document is an exempt document—

(a) if it contains matter the disclosure of which would found an action for breach of confidence;

or

(b) if it contains matter obtained in confidence the disclosure of which—

(i) might reasonably be expected to prejudice the future supply of such information to a council;

and

(ii) would, on balance, be contrary to the public interest.

**Documents affecting financial or property interests**

**65n.** A document is an exempt document if it contains matter the disclosure of which—

(a) could reasonably be expected to have a substantial adverse effect on the financial or property interests of a council;

and

(b) would, on balance, be contrary to the public interest.

**Documents concerning operations of councils**

**65o.** (1) A document is an exempt document if it contains matter the disclosure of which—

(a) could reasonably be expected—

(i) to have a substantial adverse effect on the management or assessment by a council of the council's personnel;

(ii) to have a substantial adverse effect on the effective performance by a council of the council's functions;

or

(iii) to have a substantial adverse effect on the conduct of industrial relations by a council;

and

(b) would, on balance, be contrary to the public interest.

(2) A document is an exempt document if—

(a) it relates to commercial activities engaged in by a council;

and

(b) it contains matter the disclosure of which could prejudice the competitiveness of the council in carrying on those commercial activities.

**Documents subject to contempt, etc.**

**65p.** A document is an exempt document if it contains matter the public disclosure of which would—

(a) constitute contempt of court;

(b) contravene any order or direction of a person or body having power to receive evidence on oath;

or

(c) infringe the privilege of Parliament.

**Private documents in public library or archival collections**

**65q.** A document is an exempt document—

(a) if it has been created otherwise than by a council;

and

(b) if it is held in a public library or archival collection subject to a condition imposed by the person or body (not being a council) by whom it has been placed in the possession of the library—

(i) prohibiting its disclosure to members of the public generally or to certain members of the public;

or

(ii) restricting its disclosure to certain members of the public.



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**DIVISION III—PUBLICATION OF CERTAIN INFORMATION**

**Publication of information concerning councils**

**65r.** (1) A council—

(a) must (within 12 months after the commencement of this section and at intervals of not more than 12 months thereafter) cause to be prepared an up-to-date information statement;

and

(b) must (within 12 months after the commencement of this section and at intervals of not more than 12 months thereafter) cause to be published, in a newspaper circulating in the area of the council, an up-to-date information summary.

(2) An information statement must contain—

(a) a description of the structure and functions of the council (including of any board, committee or other body constituted by two or more persons that is part of the council or has been established for the purpose of advising the council and whose meetings are open to the public or the minutes of whose meetings are available for public inspection);

(b) a description of the ways in which the functions (including, in particular, the decision-making functions) of the council affect members of the public;

(c) a description of any arrangements that exist to enable members of the public to participate in the formulation of the council's policy and the exercise of the council's functions;

(d) a description of the various kinds of documents that are usually held by the council, including—

(i) a description of the various kinds of documents that are available for inspection at the council (whether as part of a public register or otherwise) in accordance with the provisions of a legislative instrument other than this Act, whether or not inspection of any such document is subject to a fee or charge;

(ii) a description of the various kinds of documents that are available for purchase from the council;

and

(iii) a description of the various kinds of documents that are available from the council free of charge;

(e) a description of the arrangements that exist to enable a member of the public to obtain access to the council's documents and to seek amendment of the council's records concerning his or her personal affairs;

and

(f) a description of the procedures of the council in relation to the giving of access to the council's documents and to the amendment of the council's records concerning the personal affairs of a member of the public, including—

(i) the designation of the officer or officers to whom the inquiries should be made;

and

(ii) the address or addresses at which applications under this Part should be lodged.

(3) An information summary—

(a) must identify each of the council's policy or administrative documents;

(b) must identify the most recent information statement published under this section;

(c) must specify the designation of the officer or officers to whom inquiries concerning the procedures for inspecting and purchasing the council's policy or administrative documents and information statements should be made;

and

(d) must specify the address or addresses at which, and the times during which, the council's policy or administrative documents and information statements may be inspected and purchased.

(4) Nothing in this section requires the publication of information if its inclusion in a document would result in the document being an exempt document.

#### **Availability of certain documents**

**65s.** (1) A council must cause copies of—

(a) its most recent information statement;

(b) its most recent information summary;

and

(c) each of its policy or administrative documents,

to be made available for inspection and purchase by members of the public.

(2) Subsection (1) does not apply in relation to a policy or administrative document that an agency is required by the *Freedom of Information Act 1991* to make available for inspection and purchase by members of the public.

(3) Nothing in this section prevents a council from deleting information from the copies of a policy or administrative document if its inclusion in the document would result in the document being an exempt document otherwise than by virtue of section 65j or 65k.

(4) A council should not enforce a particular policy to the detriment of a person—

(a) if the relevant policy or administrative document should have been, but was not, made available for inspection and purchase in accordance with this section at the time the person became liable to the detriment;

and

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(b) the person could, by knowledge of the policy have avoided liability to the detriment.

(5) During the period of 12 months following the commencement of this section—

(a) a council is required to comply with subsection (1) only to such extent as is reasonably practicable;

and

(b) subsection (4) does not have effect.

**DIVISION IV—ACCESS TO DOCUMENTS**

**SUBDIVISION I—GENERAL**

**Right of access to councils' documents**

**65t.** (1) A person has a legally enforceable right to be given access to a council's documents in accordance with this Part.

(2) This right prevails over the operation of any order under section 64(6).

**Applications for access to councils' documents**

**65u.** An application for access to a council's document—

(a) must be in writing;

(b) must specify that it is made under this Part;

(c) must be accompanied by such application fee as may be prescribed;

(d) must contain such information as is reasonably necessary to enable the document to be identified;

(e) must specify an address in Australia to which notices under this Part should be sent;

and

(f) must be lodged at an address specified in the council's information statement for the purpose of lodgment of applications under this Part, and may request that access to the document be given in a particular way.

**Time within which applications to be dealt with**

**65v.** An application must be dealt with as soon as practicable (and, in any case, within 45 days) after it is received.

**Incomplete and wrongly directed applications**

**65w.** A council must not refuse to accept an application merely because it does not contain sufficient information to enable the document to which it relates to be identified without first taking such steps as are reasonably practicable to assist the applicant to provide such information.

**Transfer of applications**

**65x.** (1) A council to which an application has been made may transfer the application to another council if the document to which it relates—

(a) is not held by the council but is, to the knowledge of the council, held by the other council;

or

(b) is held by the council but is more closely related to the functions of the other council.

(2) A council that transfers an application to another council must, if it holds the document to which the application relates, forward a copy of the document to the other council together with the application.

(3) A council that transfers an application to another council must forthwith cause notice of that fact to be given to the applicant.

(4) Such a notice must specify the day on which, and the council to which, the application was transferred.

(5) A council is not required to include in a notice any matter if its inclusion in the notice would result in the notice being an exempt document.

(6) An application that is transferred from one council to another is to be taken to have been received by the other council—

(a) on the day on which it is transferred;

or

(b) 14 days after the day on which it was received by the council to which it was originally made,

whichever is the earlier.

**Councils may require advance deposits**

**65y.** (1) If, in the opinion of a council, the cost of dealing with an application is likely to exceed the application fee, the council may request the applicant to pay to it such reasonable amount, by way of advance deposit, as the council may determine.

(2) If, in the opinion of a council, the cost of dealing with an application is likely to exceed the sum of the application fee and of any advance deposits paid in respect of the application, the council may request the applicant to pay to it such reasonable amount, by way of further advance deposit, as the council may determine.

(3) The aggregate of the application fee and the advance deposit or deposits requested under this section must not exceed the council's estimate of the cost of dealing with the application.

(4) A request for an advance deposit must be accompanied by a notice that sets out the basis on which the amount of the deposit has been calculated.

(5) The amount of an advance deposit requested by a council in respect of an application must be paid to the council within such period as the council specifies in the request.

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(6) The period between the making of a request under this section and the payment of an advance deposit in accordance with the request is not to be taken into account in calculating the period of 45 days within which the relevant application is to be dealt with.

**Councils may refuse to deal with certain applications**

**65z.** (1) A council may refuse to deal with an application if it appears to the council that the nature of the application is such that the work involved in dealing with it would, if carried out, substantially and unreasonably divert the council's resources from their use by the council in the exercise of its functions.

(2) A council must not refuse to deal with such an application without first endeavouring to assist the applicant to amend the application so that the work involved in dealing with it would, if carried out, no longer substantially and unreasonably divert the council's resources from their use by the council in the exercise of its functions.

(3) A council may refuse to continue dealing with an application if—

(a) it has requested payment of an advance deposit in relation to the application;

and

(b) payment of the deposit has not been made within the period specified in the request.

(4) If a council refuses to continue dealing with an application under subsection (3)—

(a) it must refund to the applicant such part of the advance deposits paid in respect of the application as exceeds the costs incurred by the council in dealing with the application;

and

(b) it may retain the remainder of those deposits.

(5) A council that refuses to deal with an application under this section must forthwith cause written notice of that fact to be given to the applicant.

(6) Such a notice must specify—

(a) the reasons for the refusal;

and

(b) the findings on any material questions of fact underlying those reasons, together with a reference to the sources of information on which those findings are based.

(7) A council is not required to include in a notice any matter if its inclusion in the notice would result in the notice being an exempt document.

(8) A refusal to deal with, or to continue to deal with, an application under this section is a determination for the purposes of this Part.

**Determination of applications**

**65za.** (1) After considering an application for access to a document, a council must determine—

(a) whether access to the document is to be given (either immediately or subject to deferral) or refused;

(b) if access to the document is to be given—any charge payable in respect of the giving of access;

and

(c) any charge payable for dealing with the application.

(2) A council that fails to determine an application within 45 days after the application is received by the council is, for the purposes of this Part, to be taken to have determined the application by refusing access to the document to which it relates.

(3) This section does not require a council to determine an application if the council has, in accordance with this Part, refused to deal with, or to continue to deal with, the application.

**Refusal of access**

**65zb.** (1) A council may refuse access to a document—

(a) if it is an exempt document;

(b) if it is a document that is available for inspection at that or some other council (whether as part of a public register or otherwise) in accordance with Division III, or in accordance with a legislative instrument other than this Part, whether or not inspection of the document is subject to a fee or charge;

(c) if it is a document that is usually and currently available for purchase;

(d) if it is a document that—

(i) was not created or collated by the council itself;

and

(ii) genuinely forms part of library material held by the council;

or

(e) if it is a document that came into existence before 1 January 1987.

(2) Subsection (1)(e) does not permit a council to refuse access to—

(a) a document that contains information concerning the personal affairs of the applicant;

(b) a document that is reasonably necessary to enable some other document (being a document to which the council has given access under this Part) to be understood;

or

(c) a document in the custody of State Records.

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**Deferral of access**

**65zc.** (1) A council may defer access to a document—

(a) if it is a document that is required by law to be published but is yet to be published;

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- (b) if it is a document that has been prepared for presentation to the council, or that has been designated by the council as appropriate for presentation to the council, but is yet to be presented;

or

- (c) if it is a document that has been prepared for submission to a particular person or body, or that has been designated by the council as appropriate for submission to a particular person or body, but is yet to be submitted.

(2) Access to a document to which subsection (1)(a) applies may not be deferred beyond the time the document is required by law to be published.

(3) Access to a document to which subsection (1)(b) or (c) applies may not be deferred for more than a reasonable time after the date of its preparation.

**Forms of access**

**65zd.** (1) Access to a document may be given to a person—

- (a) by giving the person a reasonable opportunity to inspect the document;
- (b) by giving the person a copy of the document;
- (c) in the case of a document from which sounds or visual images are capable of being reproduced, whether or not with the aid of some other device—by making arrangements for the person to hear or view those sounds or visual images;
- (d) in the case of a document in which words are recorded in a manner in which they are capable of being reproduced in the form of sound—by giving the person a written transcript of the words recorded in the document;
- (e) in the case of a document in which words are contained in the form of shorthand writing or in encoded form—by giving the person a written transcript of the words contained in the document;

or

- (f) in the case of a document in which words are recorded in a manner in which they are capable of being reproduced in the form of a written document—by giving the person a written document so reproduced.

(2) If an applicant has requested that access to a document be given in a particular way, access to the document must be given in that way unless giving access as requested—

- (a) would unreasonably divert the resources of the council (or, if the document is in the custody of State Records, the resources of State Records) from their use for other official purposes;
- (b) would be detrimental to the preservation of the document or (having regard to the physical nature of the document) would otherwise not be appropriate;

or

(c) would involve an infringement of copyright in matter contained in the document, in which case access may be given in some other way.

(2a) If a document is in the custody of State Records, the determination as to the way in which access is given to the document must be made by or jointly with the Manager of State Records.

(3) If an applicant has requested that access to a document be given in a particular way and access is given in some other way, the applicant is not required to pay a charge in respect of the giving of access that is greater than the charge that the applicant would have been required to pay had access been given as requested.

(4) Subject to subsection (2a), this section does not prevent a council from giving access to a document in any way agreed on between the council and the person to whom access is to be given.

(5) A council may refuse to give access to a document if a charge payable in respect of the application, or giving access to the document, has not been paid.

**Notices of determination**

**65ze.** (1) A council must notify an applicant in writing—

(a) of its determination of his or her application;

or

(b) if the application relates to a document that is not held by the council—of the fact that the council does not hold such a document.

(2) Such a notice must specify—

(a) the day on which the determination was made;

(b) —

(i) the name and designation of the officer by whom the determination was made;

(ii) the rights of review and appeal conferred by this Part;

and

(iii) the procedures to be followed for the purpose of exercising those rights;

(c) if the determination is to the effect that access to a document is to be given (either immediately or subject to deferral)—the amount of any charge payable in respect of the giving of access;

(d) if the determination is to the effect that the document is an exempt document and that access is to be given to a copy of the document from which exempt matter has been deleted—the fact that the document is such a copy and the provision of this Part by virtue of which the document is an exempt document;

(e) if the determination is to the effect that access to a document is to be given subject to deferral—



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- (i) the reason for the deferral;
  - and
  - (ii) if applicable—the likely period of deferral;
- (f) if the determination is to the effect that access to a document is refused—
- (i) the reasons for the refusal;
  - and
  - (ii) the findings on any material questions of fact underlying those reasons, together with a reference to the sources of information on which those findings are based;
- and
- (g) the amount of any charge for dealing with the application, together with—
- (i) a statement of any amount payable by the applicant;
  - or
  - (ii) a statement of any amount refundable to the applicant,
- in relation to the charge, having regard to the sum of any advance deposits paid in respect of the application.

(3) A council is not required to include in a notice any matter if its inclusion in the notice would result in the notice being an exempt document.

**Subdivision to be read subject to Subdivision II**

**65zf.** This Subdivision has effect subject to the provisions of Subdivision II.

**SUBDIVISION II—CONSULTATION**

**Access to documents requiring consultation**

**65zg.** (1) This section applies to—

- (a) a document that contains matter concerning the affairs of—
  - (i) the Government of the Commonwealth or a State;
  - or
  - (ii) another council;
- (b) a document that contains information concerning the personal affairs of any person (whether living or dead);
- (c) a document that contains—
  - (i) information concerning the trade secrets of any person;

(ii) information (other than trade secrets) that has a commercial value to any person;

or

(iii) any other information concerning the business, professional, commercial or financial affairs of any person;

and

(d) a document that contains information concerning research that is being, or is intended to be, carried out by or on behalf of any person.

(2) A council must not give access under this Act to a document to which this section applies (except to in the case of a document referred to in subsection (1)(a), the Government or council concerned, or, in any other case, the person concerned) unless the council has taken such steps as are reasonably practicable to obtain the views of the Government, council or person concerned as to whether or not the document is an exempt document by virtue of a provision of Subdivision II of Division II.

(3) If—

(a) in the case of an application for access to a document referred to in subsection (1)(b)—

(i) the council determines, after having sought the views of the person concerned, that access to the document is to be given and the views of the person concerned are that the document is an exempt document by virtue of section 65g;

or

(ii) after having taken reasonable steps to obtain the views of the person concerned, the council is unable to obtain the views of the person and the council determines that access to the document should be given;

or

(b) in any other case—the council determines, after seeking the views of the Government, council or person concerned, that access to a document to which this section applies is to be given and the views of the Government, council or person concerned are that the document is an exempt document by virtue of a specified provision of Subdivision II of Division II,

the council must—

(c) forthwith give written notice to the Government, council or person concerned—

(i) that the council has determined that access to the document is to be given;

(ii) of the rights of review and appeal conferred by this Part in relation to the determination;

and

(iii) of the procedures to be followed for the purpose of exercising those rights;

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and

- (d) defer giving access to the document until after the expiration of the period within which an application for a review or appeal under this Part may be made or, if such an application is made, until after the application has been finally disposed of.

(4) If—

- (a) an application is made to a council for access to a document referred to in subsection (1)(b);
- (b) the document contains information of a medical or psychiatric nature concerning the applicant;
- (c) the council is of the opinion that disclosure of the information to the applicant may have an adverse effect on the physical or mental health, or the emotional state, of the applicant;

and

- (d) the council decides that access to the document is to be given,

it is sufficient compliance with this section if access to the document is given to a registered medical practitioner nominated by the applicant.

(5) A reference in this section to the person concerned is, in the case of a deceased person, a reference to the personal representative of that person or, if there is no personal representative, the closest relative of that person of or above the age of 18 years.

**DIVISION V—AMENDMENT OF RECORDS**

**Right to apply for amendment of councils' records**

**65zh.** A person to whom access to a council's documents has been given may apply for the amendment of the council's records if—

- (a) the document contains information concerning the person's personal affairs;
- (b) the information is available for use by the council in connection with its administrative functions;

and

- (c) the information is, in the person's opinion, incomplete, incorrect, out-of-date or misleading.

**Applications for amendment of councils' records**

**65zi.** An application for the amendment of a council's records—

- (a) must be in writing;
- (b) must specify that it is made under this Part;
- (c) must contain such information as is reasonably necessary to enable the council's document to which the applicant has been given access to be identified;

- (d) must specify the respects in which the applicant claims the information contained in the document to be incomplete, incorrect, out-of-date or misleading;
  - (e) if the applicant claims that the information contained in the document is incomplete or out-of-date—must be accompanied by such information as is necessary to complete the council's records or to bring them up-to-date;
  - (f) must specify an address in Australia to which notices under this Part should be sent;
- and
- (g) must be lodged at an address specified in the council's information statement for the purpose of lodgment of applications under this Part.

**Time within which applications to be dealt with**

**65zj.** An application must be dealt with as soon as practicable (and, in any case, within 45 days) after it is received.

**Incomplete applications**

**65zk.** A council must not refuse to accept an application merely because the application does not contain sufficient information to enable the council's document to which the applicant has been given access to be identified without first taking such steps as are reasonably practicable to assist the applicant to provide such information.

**Determination of applications**

**65zl.** (1) A council must determine an application—

- (a) by amending its records in accordance with the application;
- or
- (b) by refusing to amend its records.

(2) A council that fails to determine an application within 45 days after the application is received by the council is, for the purposes of this Part, to be taken to have determined the application by refusing to amend its records in accordance with the application.

**Refusal to amend records**

**65zm.** A council may refuse to amend its records in accordance with an application—

- (a) if it is satisfied that its records are not incomplete, incorrect, out-of-date or misleading in a material respect;
  - (b) if it is satisfied that the application contains matter that is incorrect or misleading in a material respect;
- or
- (c) if the procedures for amending its records are prescribed by or under the provisions of a legislative instrument other than this Part, whether or not amendment of those records is subject to a fee or charge.

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**Notices of determination**

**65zn.** (1) A council must give written notice to the applicant—

(a) of its determination of his or her application;

or

(b) if the application relates to records that are not held by the council—of the fact that the council does not hold such records.

(2) Such a notice must specify—

(a) the day on which the determination was made;

and

(b) if the determination is to the effect that amendment of the council's records is refused—

(i) the name and designation of the officer by whom the determination was made;

(ii) the reasons for the refusal;

(iii) the findings on any material questions of fact underlying those reasons, together with a reference to the sources of information on which those findings are based;

(iv) the rights of review and appeal conferred by this Part in relation to the determination;

and

(v) the procedures to be followed for the purpose of exercising those rights.

(3) A council is not required to include in a notice any matter if its inclusion in the notice would result in the notice being an exempt document.

**Notations to be added to records**

**65zo.** (1) If a council has refused to amend its records, the applicant may, by notice in writing lodged at an office of the council, require the council to add to those records a notation—

(a) specifying the respects in which the applicant claims the records to be incomplete, incorrect, out-of-date or misleading;

and

(b) if the applicant claims the records to be incomplete or out-of-date—setting out such information as the applicant claims is necessary to complete the records or to bring them up-to-date.

(2) A council must comply with the requirements of a notice lodged under this section and must cause written notice of the nature of the notation to be given to the applicant.

(3) If a council discloses to any person (including any other council) any information, contained in the part of its records to which a notice under this section relates, the council—

(a) must ensure that, when the information is disclosed, a statement is given to that person—

(i) stating that the person to whom the information relates claims that the information is incomplete, incorrect, out-of-date or misleading;

and

(ii) setting out particulars of the notation added to its records under this section;

and

(b) may include in the statement the reason for the council's refusal to amend its records in accordance with the notation.

(4) Nothing in this section is intended to prevent or discourage councils from giving particulars of a notation added to its records under this section to a person (including any other council and any chief executive officer of a council) to whom information contained in those records was given before the commencement of this section.

## DIVISION VI—REVIEW

### SUBDIVISION I—INTERNAL REVIEW

#### Interpretation

**65zp.** In this Division—

"**local court**" means a local court of limited jurisdiction within, or nearest to, the area of the council whose determination is the subject of appeal under this Division.

#### Internal review

**65zq.** (1) Subject to subsection (6), a person who is aggrieved by a determination made by a council on an application under Division IV or V is entitled to a review of the determination.

(2) An application for review of a determination—

(a) must be in writing;

(b) must be accompanied by such application fee as may be prescribed;

(c) must be addressed to the chief executive officer of the council;

(d) must specify an address in Australia to which notices under this Part should be sent;

and

(e) must be lodged, at an address specified in the council's information statement for the purpose of lodgment of applications under this Part, within 28 days after the day on which notice of the determination was given to the applicant or within such further time as the chief executive officer of the council may allow.

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(3) On an application for review under this section, the council may confirm, vary or reverse the determination under review.

(4) If on a review the council varies or reverses a determination so that access to a document is to be given (either immediately or subject to deferral), the council must refund any application fee paid in respect of the review.

(5) A council that fails to determine an application made under this section within 45 days after it is received by the council is, for the purposes of this Part, to be taken to have confirmed the determination in respect of which review is sought.

(6) Where a determination is made by resolution of a council, it is not subject to review under this section.

**SUBDIVISION II—REVIEW BY THE OMBUDSMAN**

**Review by the Ombudsman**

**65zr.** (1) A person—

(a) who is dissatisfied with a determination of a council that is liable to internal review and remains dissatisfied following an internal review;

or

(b) who is dissatisfied with a determination that is not subject to internal review,

may apply for a review of the determination to the Ombudsman.

(2) Where such an application is made—

(a) the Ombudsman may carry out an investigation into the subject-matter of the application (and for the purposes of such an investigation the Ombudsman may exercise the same investigative powers as are conferred on the Ombudsman by the *Ombudsman Act 1972* in relation to an investigation duly initiated under that Act);

and

(b) if satisfied that the determination was not properly made, direct the council to make a determination in specified terms.

(3) The propriety of a council certificate under section 65zy cannot be questioned in proceedings under this section.

**SUBDIVISION III—REVIEW BY THE DISTRICT COURT**

**Right of appeal**

**65zs.** (1) A person—

(a) who is dissatisfied with a determination of a council that is liable to internal review and remains dissatisfied following an internal review;

or

(b) who is dissatisfied with a determination that is not subject to internal review, may appeal against the determination to a local court.

(2) On such an appeal the Court may—

- (a) confirm, vary or reverse the determination to which the appeal relates or remit the subject-matter of the appeal to the council for further consideration;
- (b) make such further or other orders (including orders for costs) as the justice of the case may require.

#### **Time within which appeals to be commenced**

**65zt.** (1) An appeal must be commenced—

- (a) where there has been a review of the determination by the council or the Ombudsman—within 60 days after notice of the decision on review of the determination is given to the applicant;

or

- (b) in any other case—within 60 days after the date of the determination.

(2) Where an application for review is made to the Ombudsman, an appeal cannot be commenced until the application is decided and the commencement of an appeal to a local court bars any right to apply to the Ombudsman for a review.

#### **Procedure for hearing appeals**

**65zu.** (1) Subject to subsection (2), an appeal will be by way of a re-hearing and evidence may be taken on the appeal.

(2) Where it appears that the determination subject to appeal has been made on grounds of public interest, and the Minister administering the *Freedom of Information Act 1991* makes known to the Court his or her assessment of what the public interest requires in the circumstances of the case subject to the appeal, the Court must uphold that assessment unless satisfied that there are cogent reasons for not doing so.

(3) Neither the Ombudsman nor any officer of the Ombudsman can be called to give evidence on an appeal.

#### **Consideration of restricted documents**

**65zv.** (1) A local court may, on the application of the appellant, consider the grounds on which it is claimed that a document is a restricted document, notwithstanding that the document is the subject of a council certificate under section 65zy.

(2) In any proceedings under this section, the Court must, on the application of the council concerned, receive evidence and hear argument in the absence of the public, the appellant and, where in the opinion of the Court it is necessary to do so in order to prevent the disclosure of any exempt matter, the appellant's representative.

(3) If the Court is not satisfied, by evidence on affidavit or otherwise, that there are reasonable grounds for the claim, it may require the document to be produced in evidence before it.



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(4) After considering any document produced before it, the Court may make a declaration—

- (a) if satisfied that there are reasonable grounds for the claim—that the document is a restricted document by virtue of a specified provision of Subdivision I of Division II;
- (b) if not satisfied that there are reasonable grounds for the claim—that the document is not a restricted document.

(5) The Court must not make such a declaration unless the Court—

- (a) has given the council a reasonable opportunity to appear and be heard in relation to the matter;

and

- (b) has given due weight to any submissions made by or on behalf of the council.

(6) For the purposes of any proceedings under this section, the council is a party to the proceedings.

(7) A council certificate under section 65zy the subject of a declaration under this section ceases to have effect at the end of 45 days after the declaration is made unless, before the end of that period, the council confirms the certificate by resolution of the council.

(8) If the council confirms the certificate, the council must give notice of the confirmation of the certificate to the Minister administering the *Freedom of Information Act 1991* and the appellant.

(9) Such a notice must specify—

- (a) the reasons for the council's decision to confirm the certificate;

and

- (b) the findings on any material questions of fact, together with a reference to the sources of information on which those findings are based.

(10) Nothing in this section requires any matter to be included in a notice if its inclusion in the notice would result in the notice being an exempt document.

(11) If a council certificate under section 65zy ceases to have effect by virtue of this section, the document to which it relates is not to be regarded as a restricted document by virtue of Subdivision I of Division II.

(12) If the council withdraws a certificate the subject of an order under this section before the end of the period of 45 days referred to in subsection (7), the council must, as soon as practicable, serve notice on the appellant that the certificate is no longer in force.

**Disciplinary action**

**65zw.** Where a local court, at the completion of an appeal under this Part, is of the opinion that there is evidence that a person, being an officer of a council, has been guilty of a breach of duty or of misconduct in the administration of this Part and that the evidence is, in all the circumstances, of sufficient force to justify it in doing so, the Court may bring the evidence to the notice of—

- (a) if the person is the chief executive officer of a council—that council;

or

- (b) if the person is an officer of a council but not the chief executive officer of the council—the chief executive officer of that council.

### Appeals to Supreme Court

**65zx.** (1) Subject to the rules of the Supreme Court, an appeal lies against a decision of a local court under this Division.

- (2) Such an appeal is limited to questions of law.

## DIVISION VII—MISCELLANEOUS

### Council certificates

**65zy.** (1) A certificate signed by the chairman or mayor of a council that states that a specified document is a restricted document by virtue of a provision of Subdivision I of Division II is, except for the purposes of section 65zv, conclusive evidence that the document is a restricted document by virtue of that provision.

(2) A certificate under this section ceases to have effect at the end of two years after it is signed unless it is sooner withdrawn by resolution of the council.

(3) Nothing in subsection (2) prevents the council from approving, by resolution, the issue of a further certificate in respect of the same document.

### Burden of proof

**65zz.** In any proceedings concerning a determination made under this Part by a council, the burden of establishing that the determination is justified lies on the council.

### Protection in respect of actions for defamation or breach of confidence

**65zza.** (1) If access to a document is given pursuant to a determination under this Part, and if the person by whom the determination is made honestly believes, when making the determination, that this Part permits or requires the determination to be made—

- (a) no action for defamation or breach of confidence lies against a council or an officer of a council, by reason of the making of the determination or the giving of access;

and

- (b) no action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the giving of access lies against the author of the document or any other person by reason of the author or other person having supplied the document to a council or the chief executive officer of a council.

(2) Neither the giving of access to a document pursuant to a determination under this Part nor the making of such a determination constitutes, for the purposes of the law relating to defamation or breach of confidence, an authorization or approval of the publication of the document or its contents by the person to whom access is given.

### Protection in respect of certain criminal actions

**65zzb.** If access to a document is given pursuant to a determination under this Part, and if the person by whom the determination is made honestly believes, when making the determination, that this Part permits or requires the determination to be made, neither the person by whom the determination is made nor any other person concerned in giving access to the document is guilty of an offence merely because of the making of the determination or the giving of access.

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**Fees and charges**

**65zzc.** (1) The fees and charges payable under this Part must be fixed by the regulations or in accordance with a scale fixed in the regulations.

(2) The regulations—

- (a) must provide for such waiver or remission of fees as may be necessary to ensure that disadvantaged persons are not prevented from exercising rights under this Part by reason of financial hardship;
- (b) must provide for access to documents by Members of Parliament without charge unless the work generated by the application exceeds a threshold stated in the regulations,

and (except as provided above) the fees or charges must reflect the cost incurred by councils in exercising their functions under this Part.

(3) Where a council determines a fee or charge it must, at the request of the person required to pay, review the fee or charge and, if it thinks fit, reduce it.

(4) A person dissatisfied with the decision of a council on an application for review of a fee or charge may apply to the Ombudsman for a further review, and the Ombudsman may, according to his or her determination of what is fair and reasonable in the circumstances of the particular case—

- (a) waive, confirm or vary the fee or charge;
- (b) give directions as to the time for payment of the fee or charge.

(5) A fee or charge may be recovered by a council as a debt.

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**PART VI  
OFFICERS AND EMPLOYEES OF COUNCIL**

**DIVISION I—CHIEF EXECUTIVE OFFICER**

**Appointment of chief executive officer**

66. (1) There will be an officer for every area (in this Act referred to as the "chief executive officer") who—

- (a) is responsible to the council—
  - (i) for the execution of its decisions;
  - (ii) for the efficient and effective management of the operations and affairs of the council;
- and
- (iii) for giving effect to the general management objectives and principles of personnel management prescribed by this Act;

and

- (b) has such other powers, functions and duties as may be conferred on the chief executive officer by or under this or any other Act.

(2) There will, if the council so determines, be a deputy to the chief executive officer.

(3) The title of the office provided for by subsection (1) or (2) is at the discretion of the council.

(4) In the absence of the chief executive officer, the following provisions apply:

- (a) if there is a deputy to the chief executive officer—the deputy must act in the office of the chief executive officer;
- (b) if there is no deputy or the deputy is absent—a suitable person must be appointed by the council to act in the office;
- (c) if a person is not appointed under paragraph (b)—a suitable person must be appointed by the mayor or chairman to act in the office;
- (d) if a person is not appointed under paragraph (c)—a suitable person must be appointed by any three or more members of the council to act in the office.

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(7) A council must from time to time, as occasion requires, make appointments to the office of chief executive officer and, if there is to be a deputy to the chief executive officer, to that office.

(8) Notice of the appointment of a chief executive officer of a council must be published in the *Gazette*.

(9) A chief executive officer may resign by notice in writing delivered to the mayor or chairman at least two months before the resignation is to take effect.

**Management plans, etc.**

**67.** The functions of the chief executive officer of a council include the implementation of the management plans and budgets determined by the council and the development and implementation of other management and financial plans and controls including programmes for staff development and training.

**Delegation**

**68.** (1) The chief executive officer of a council may, by instrument in writing, delegate to any other officer or employee, or a committee of officers or employees, of the council any power, function or duty of his or her office.

(2) The power of delegation conferred by subsection (1) extends to the delegation of any power, function or duty delegated to the chief executive officer by resolution of the council provided that the terms or conditions of the council resolution do not prohibit subdelegation.

(3) A delegation by the chief executive officer—

(a) may be absolute or conditional;

(b) does not derogate from the power of the chief executive officer to act personally in any matter;

and

(c) is revocable at will by the chief executive officer.

**DIVISION II—OTHER OFFICERS AND EMPLOYEES**

**Other officers and employees**

**69.** (1) A council may appoint such other officers and employees as are necessary for the efficient and effective management of the operations and affairs of the council.

(2) Except as otherwise provided by this Act or any other Act, the same person may be appointed to two or more offices in the administration of a council.

**DIVISION IIA—GENERAL PRINCIPLES OF PERSONNEL MANAGEMENT**

**General principles of personnel management**

**69a.** The following principles of personnel management must be observed in relation to employment in the administration of a council:

(a) all selection processes must be directed towards and based on a proper assessment of merit;

(b) there must be no unlawful discrimination against officers or employees or persons seeking employment in the administration of a council on the ground of sex, sexuality, marital status, pregnancy, race, physical impairment, intellectual impairment, age or any other ground nor may any form of unjustifiable discrimination be exercised against officers or employees or persons seeking such employment;

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- (c) officers and employees must be afforded equal opportunities to secure promotion and advancement in their employment and proper access to training and development;
  - (d) officers and employees must be afforded reasonable avenues of redress against improper or unreasonable administrative acts or decisions;
- and
- (e) fair and equitable practices must be followed with regard to recruitment and all other aspects of personnel management.

**DIVISION IIB—EQUAL EMPLOYMENT OPPORTUNITY**

**The Local Government Equal Employment Opportunity Advisory Committee**

**69b.** (1) The *Local Government Equal Employment Opportunity Advisory Committee* is established.

(2) The Committee consists of five members of whom—

- (a) one (who will chair the Committee) will be the person for the time being holding or acting in the office of the Commissioner for Equal Opportunity;

and

(b) four will be persons appointed by the Governor—

- (i) two being persons nominated by the Local Government Association of South Australia;
- (ii) one being a person nominated by the Municipal Officers Association of Australia (South Australia Branch);

and

- (iii) one being a person nominated by the Australian Workers Union (S.A. Branch).

(3) At least one member of the Committee must be a woman and at least one a man.

(4) The appointed members of the Committee hold office on terms and conditions determined by the Governor.

(5) Subject to the regulations, the Committee may conduct its business as it thinks fit.

(6) This section will expire on 30 June, 1997.

**Functions of the Advisory Committee**

**69c.** (1) The functions of the Committee are—

- (a) to assist councils at their request in developing and implementing equal employment opportunity programmes and, for that purpose, provide councils with advice, guidelines and statements of objectives;

- (b) to collate information as to the measures taken by councils to implement their equal employment opportunity programmes and any other related initiatives taken by councils;
- (c) to promote the purposes and principles of equal employment opportunity within local government administration.

(2) This section will expire on 30 June, 1997.

**Responsibilities of chief executive officer and councils in relation to equal employment opportunity**

**69d.** (1) The chief executive officer of a council is responsible to the council—

- (a) for developing and implementing an equal employment opportunity programme relating to employment with the council;

and

- (b) for developing and implementing other initiatives to ensure that officers and employees of the council have equal opportunities in relation to their employment.

(2) A council must comply with such requirements relating to equal employment opportunity as are prescribed in relation to all councils or a class of councils to which the council belongs.

**Draft programme and annual reports to be submitted to Advisory Committee**

**69e.** (1) A council must—

- (a) submit to the Local Government Equal Employment Opportunity Advisory Committee for its advice and comment a draft equal employment opportunity programme for the council;

and

- (b) present to the Committee an annual report containing prescribed information relating to the council's equal employment opportunity programme and any other measures taken by the council in relation to equal employment opportunity.

(2) The draft programme referred to in subsection (1) must be submitted to the Committee before expiration of one year from the commencement of this section and the annual report referred to in that subsection must be presented to the Committee on or before the prescribed day in each succeeding calendar year.

(3) This section will expire on 30 June, 1997.

**DIVISION III—CONDITIONS OF SERVICE (OTHER THAN SUPERANNUATION)**

**Salary, etc.**

**70.** Subject to the provisions of any relevant Act, award or industrial agreement, the salary or wages and other conditions of service of an officer or employee of a council will be as determined by the council.

**Register of salary and benefits**

**70a.** (1) The Chief Executive Officer of a council must ensure that a record (the "Register of Salaries") is kept in which is entered, in accordance with principles (if any) prescribed by the regulations—

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- (a) the title of each position held by an officer or employee of the council;
- (b) in relation to those positions held by officers or employees who are paid according to salary scales set out in an award or industrial agreement under the *Industrial Conciliation and Arbitration Act, 1972*, or the *Industrial Relations Act 1988* of the Commonwealth—
  - (i) the classifications of the officers or employees who hold those positions;
  - (ii) the salary scales applicable to each classification (indicating in relation to each scale the number of officers or employees who are paid according to that scale);and
  - (iii) details of any other allowance or benefit paid or payable to, or provided for the benefit of, any of those officers or employees as part of a salary package;
- (c) in relation to each position held by an officer or employee who is not paid according to a salary scale set out in an award or industrial agreement referred to above—
  - (i) the salary or wage payable to the officer or employee who holds that position;and
  - (ii) details of any other allowance or benefit paid or payable to, or provided for the benefit of, that officer or employee as part of a salary package.

(2) The Chief Executive Officer must ensure that a record is made in the Register of Salaries within 28 days after—

- (a) a change in the salary or wage, or an allowance or benefit, payable to, or provided for the benefit of, an officer or employee;

or

- (b) the payment or provision of an allowance or benefit not previously recorded in the Register,

(insofar as may be necessary or appropriate in the circumstances of the particular case).

(3) A person is entitled to inspect the Register of Salaries at the council's principal office from one hour after the commencement of ordinary office hours to one hour before the close of ordinary office hours.

(4) A person is entitled, on payment of a fee fixed by the council, to a copy of any entry made in the Register of Salaries.

(5) A Chief Executive Officer is not required to include in a Register of Salaries under this section details of any reimbursement of expenses incurred by an officer or employee in performing official duties unless that reimbursement occurs by way of the periodical payment of a lump sum that is not calculated so as to provide exact reimbursement of expenses incurred by an officer or employee in performing official duties.



**Register of interests**

**70b.** (1) Each council must establish a Register of Interests relating to prescribed classes of officers and employees of the council.

(2) The Register must be maintained in accordance with the regulations.

(3) The regulations may make any provision in relation to—

(a) the provision of information for the purposes of the Register;

(b) the disclosure of information contained on the Register;

(c) such other matters as may be necessary or expedient for the purposes of this provision.

**Power to suspend or dismiss**

**71.** (1) A council may, subject to the provisions of any relevant Act, award or industrial agreement, suspend or dismiss an officer or employee of the council.

(2) Suspension of an officer or employee under subsection (1) does not affect a right to remuneration in respect of the period of suspension.

**Certain periods of service to be regarded continuous**

**72.** (1) Where an officer or employee has left the service of one council and, within 13 weeks of having done so, enters the service of another council without having commenced any other remunerated employment within that intervening period, the periods of service will, for the purpose of calculating present and accruing rights to long service leave and sick leave, be taken to constitute a single continuous period of service.

(2) Where an officer or employee engaged by a council is entitled to the benefit of subsection (1), that council is entitled to receive from the council with which the officer or employee formerly served a contribution of an amount calculated in accordance with the regulations.

(3) Payment of a contribution under this section must be made within one month after receipt of a written notice requiring that payment.

(4) Upon default of payment, the amount of a contribution payable under this section may be recovered as a debt.

(5) A council must at the request of another council supply that other council with details of the service of any officer or employee or former officer or employee of the council.

(6) The amount of any contribution received by a council pursuant to this section must be held and applied in accordance with the regulations.

(7) In this section—

"**council**" includes a controlling authority constituted under this Act or an authority or body declared by regulation to be an authority or body to which this section applies.

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**DIVISION IV—SUPERANNUATION**

**Local Government Superannuation Scheme**

73. (1) The scheme known as the *Local Government Superannuation Scheme* (in existence under this section immediately before the commencement of this subsection) continues in existence.

(2) The Local Government Superannuation Board may, by regulation, amend the scheme.

(3) Subject to subsection (4), a regulation under subsection (2) comes into operation four months after the day on which it is made or from such later date as is specified in the regulation.

(4) A regulation may come into operation from an earlier day specified in the regulation if—

- (a) it revokes a regulation without making provision in substitution for that regulation; or
- (b) it corrects an error or inaccuracy in a regulation; or
- (c) it is required to ensure that the scheme is consistent with an Act that comes into operation on assent or less than four months after assent; or
- (d) it is required to ensure that the scheme complies with any provision of the *Superannuation Industry (Supervision) Act 1993* (Cwlth); or
- (da) it confers a benefit or right on a person (other than the Local Government Superannuation Board); or
- (e) the Minister certifies that the Minister is satisfied that it is necessary or appropriate that the regulation come into operation on the specified day.

(4a) A regulation may not operate so as—

- (a) to reduce the amount of a benefit presently or prospectively payable from the scheme to the extent that the benefit has accrued in respect of the period up to the date of commencement of the regulation; or
- (b) to impose a liability on a person (other than the Local Government Superannuation Board) in respect of anything done or omitted to be done before the date of commencement of the regulation.

(4b) Section 10AA of the *Subordinate Legislation Act 1978* does not apply to a regulation under this section.

(5) Every council is bound to comply with the provisions of the superannuation scheme as from time to time in force pursuant to this section.

(6) In this section—

"**council**" includes a controlling authority constituted under this Act or an authority or body declared by the superannuation scheme to be an authority or body to which the scheme applies.

\* \* \* \* \*

### **Local Government Superannuation Board**

**74.** (1) The *Local Government Superannuation Board* is established to administer the superannuation scheme.

(2) The Board—

- (a) is a body corporate with perpetual succession and a common seal;
- (b) is capable in its corporate name of acquiring, holding, dealing with and disposing of real and personal property;
- (c) is capable of acquiring or incurring any other rights or liabilities and of suing or being sued in its corporate name.

(3) The Board consists of six members appointed by the Governor as follows:

- (a) two will be persons nominated by the Minister (one being a person with extensive experience in financial matters);
- (b) two will be persons nominated by the Local Government Association of South Australia;
- (c) one will be a person nominated by the Australian Services Union (South Australian and Northern Territory Branch);

and

- (d) one will be a person nominated by the Australian Workers Union (South Australian Branch).

(3a) The Minister may, after consultation with the Local Government Association of South Australia and both of the employee associations referred to in subsection (3), appoint one of the Minister's nominees as the presiding member of the Board.

(4) Subject to this Act, the constitution, powers, functions and duties of the Board are as set out in the superannuation scheme.

### **Investment of funds**

**75.** The investment of funds generated under the superannuation scheme must be carried out on behalf of the Local Government Superannuation Board by investment managers appointed by the Board.

### **Auditing of accounts of Superannuation Board**

**76.** (1) The Auditor-General may at any time, and must at least once in every year, audit the accounts of the Local Government Superannuation Board.

(2) For the purposes of an audit under subsection (1), the Auditor-General may exercise in relation to the accounts of the Board and the members and employees of the Board the powers that are vested in the Auditor-General by the *Public Finance and Audit Act, 1987*, in respect of public accounts and accounting officers.

### **Annual report by Superannuation Board**

**77.** (1) The Local Government Superannuation Board must, on or before the thirtieth day of September in each year, deliver to the Minister a report on the operations of the Board during the preceding financial year.

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(2) The report must incorporate the audited statement of accounts of the Board for the financial year to which the report relates.

(3) The Minister must, as soon as practicable after receipt of the report, cause a copy of the report to be laid before each House of Parliament.

**Actuarial review of scheme**

**78.** (1) Within four years after the commencement of the superannuation scheme and at least once in every three years thereafter, the Local Government Superannuation Board must obtain a report from an actuary on the state and sufficiency of the funds generated under the superannuation scheme.

(2) The Board must, within two months after its receipt of the report, forward a copy to the Minister together with any recommendations it thinks fit to make as a result of the report.

(3) The Minister must, as soon as practicable after receipt of the report and any recommendations of the Board, cause a copy of the report and recommendations (if any) to be laid before each House of Parliament.

(4) In this section—

"**actuary**" means a person who is a Fellow of the Institute of Actuaries of Australia.

**DIVISION V—CONDUCT OF OFFICERS AND EMPLOYEES**

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**Disclosure of private interests**

**80.** (1) An officer or employee of a council who has an interest in a matter in relation to which he or she is required or authorized to act in the course of official duties—

(a) must disclose the interest to the council;

and

(b) must not, unless the council otherwise determines, act in relation to that matter.

Penalty: \$5 000 or imprisonment for one year.

(2) It is a defence to a charge of an offence against subsection (1) to prove that the defendant was, at the time of the alleged offence, unaware of his or her interest in the matter.

(3) An officer or employee has an interest in a matter if the officer or employee, or a person with whom the officer or employee is closely associated, would, if the officer or employee acted in a particular manner in relation to the matter, 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 pecuniary detriment or a non-pecuniary detriment.

(4) A person is closely associated with an officer or employee of a council—

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

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

- (c) if that person is a beneficiary under a trust or an object of a discretionary trust of which the officer or employee is a trustee;
- (d) if that person is a partner of the officer or employee;
- (e) if that person is the employer or an employee of the officer or employee;
- (f) if that person is a person from whom the officer or employee 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 the spouse or a child of the officer or employee.

(5) Subsection (1) does not apply to matters in relation to which the council has, by a resolution supported at a meeting of the council where at least two-thirds of the members of the council are present, granted an exemption from that subsection.

(6) An exemption under subsection (5)—

- (a) cannot be kept confidential under Part V;
- (ab) cannot be given or have effect in relation to any matter that arises by virtue of the conferral of a power or function under the *Development Act 1993*;

and

- (b) unless sooner revoked by the council, expires at the first meeting of the council held after the conclusion of the general election next following the granting of the exemption (although the council may, at that or a subsequent meeting, renew the exemption).

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### **General principles relating to conduct of officers and employees**

**81a.** The following principles of conduct must be observed by the officers and employees of a council:

- (a) officers and employees must be conscientious in the performance of official duties and scrupulous in the use of official information, equipment and facilities;
- (b) officers and employees must, in their dealings with the public, members of the council and their fellow officers and employees, exercise proper courtesy, consideration and sensitivity.

### **DIVISION VI—AUTHORIZED PERSONS**

#### **Authorized persons**

**82.** (1) A council may, by instrument in writing, appoint a person (other than a member of the council) to be an authorized person under this Act.

(2) The council may, in the instrument of appointment, limit the powers of the authorized person to the enforcement of specified provisions of this Act and any such limitation has effect according to its terms.

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(3) The council must issue to an authorized person an identity card in the prescribed form identifying the person and stating that he or she is an authorized person under this Act.

(4) Where the powers of an authorized person have been limited pursuant to subsection (2), the identity card issued to the authorized person must contain a statement of the limitations.

(5) An authorized person must, on demand by a person in relation to whom the authorized person is exercising or proposing to exercise powers under this Act, produce his or her identity card for inspection by that person.

**Powers of authorized persons**

**83.** (1) Subject to this Act, an authorized person may—

- (a) require a person whom the authorized person reasonably suspects to have committed, or to be committing or about to commit, a breach of this Act to state the person's full name and address and to produce evidence of the person's identity;
- (b) after giving such notice as may be reasonable to the owner or occupier of premises, enter the premises for purposes related to the enforcement of this Act;
- (c) if so authorized by warrant of a justice, break into premises for purposes related to the enforcement of this Act.

(2) A person who—

- (a) obstructs an authorized person in the exercise of powers conferred by this section;
- or
- (b) refuses or fails to comply with a requirement of an authorized person under this section,

is guilty of an offence.

Penalty: \$1 000.

**DIVISION VII—IMMUNITY FROM PERSONAL LIABILITY**

**Immunity from personal liability**

**84.** (1) No liability attaches to an officer or employee of a council or an authorized person for any act or omission in good faith and in the exercise, performance or discharge, or purported exercise, performance or discharge, of powers, functions or duties under this Act or any other Act.

(2) A liability that would, but for subsection (1), lie against an officer, employee or authorized person lies against the council by which the officer, employee or authorized person was appointed.

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**PART VII  
ELECTIONS AND POLLS**

**DIVISION I—PRELIMINARY**

**Preliminary**

85. (1) In this Part—

"**the Court**" means the Court of Disputed Returns constituted under Division XI;

"**declaration vote**" means a declaration vote made under section 107 or 111; and "**declaration voting papers**" has a corresponding meaning;

"**electoral material**" means any advertisement, notice, statement or representation calculated to affect the result of an election or poll;

"**illegal practice**" means the commission of an offence against Division X;

"**polling booth**" means a building, structure, vehicle or enclosure, or part of a building, structure, vehicle or enclosure, for taking votes at an election or poll;

"**polling day**", in relation to an election or poll, means the day appointed for the election or poll;

"**polling place**" means a place appointed as a polling place under this Part;

"**voting compartment**" means a place set apart for voting;

"**voting material**" means—

(a) ballot papers;

(b) applications for declaration voting papers;

(ba) records relating to the issue of declaration voting papers;

(c) declarations made by persons voting or claiming to vote;

and

(d) voters rolls.

(2) For the purposes of this Part, the close of voting in an election or poll is—

(a) in the case of an election or poll carried out entirely by the use of advance voting papers—6 p.m. on the day immediately preceding polling day;

(b) in all other cases—6 p.m. on polling day.

**DIVISION II—ADMINISTRATIVE PROVISIONS**

**The returning officer and deputy returning officer**

86. (1) There will be a returning officer and one or more deputy returning officers for each area.

(2) If the council appoints only one deputy returning officer, he or she will act in the office of returning officer in the absence of the returning officer, and if the council appoints more than one deputy returning officer, the deputy returning officer to act in the office of returning officer in the absence of the returning officer will be determined according to an order determined by the council.

(3) The council must from time to time, as occasion requires, make such appointments as are necessary to fill any vacancy in the office of returning officer or deputy returning officer of the council.

(4) No member of a council is eligible for appointment as returning officer or deputy returning officer for that council and no returning officer or deputy returning officer for a council is eligible to stand for election as a member of that council.

#### **Appointment of other electoral officers**

**87.** (1) The returning officer may engage electoral officers on a temporary basis to assist in the conduct of an election or poll.

(2) No member of a council, or candidate for election as a member of a council, may be engaged as an electoral officer by the returning officer for that council.

#### **Delegation by returning officer**

**88.** (1) The returning officer may, by instrument in writing, delegate to an electoral officer any of the returning officer's powers, functions or duties.

(2) A delegation by the returning officer is revocable by instrument in writing, and does not derogate from the power of the returning officer to act personally in any matter.

(3) In any legal proceedings, an apparently genuine document purporting to be a certificate signed by the returning officer containing particulars of a delegation under this section will, in the absence of proof to the contrary, be accepted as proof of those particulars.

#### **Polling places and booths, and places for counting votes**

**89.** (1) A council must appoint such polling places (if necessary) and such place or places for the counting of votes as may be necessary for the purposes of an election or poll.

(2) The council may determine that voting at a polling place—

(a) will be conducted in a polling booth established for that place;

or

(b) will be conducted in a mobile polling booth.

(3) The council will decide the times at which a polling booth will be open for voting on polling day (although no polling booth can be open after 6 p.m. on polling day).

(4) Subject to this Act, the council must ensure that at least one polling booth is continually open in the area between 8 a.m. and 6 p.m. on polling day.

(5) The returning officer must ensure that each polling booth—

(a) is properly divided so that voters may mark their votes without the vote being observed;



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(b) is properly equipped with ballot boxes and other necessary equipment;

and

(c) is properly staffed during the time at which voting may occur.

(6) The returning officer must assign a suitable electoral officer to preside at a polling place while the polling booth is open for voting.

(7) The returning officer must, at least seven days before polling day, give public notice of—

(a) the location of each polling place and the times at which voting may occur;

and

(b) the place or places for the counting of votes.

(8) In cases of emergency, the returning officer may, without giving public notice under subsection (7), appoint a polling place or a place for the counting of votes for the purposes of an election or poll in substitution for, or in addition to, any place or places previously appointed by the council.

(9) In addition to subsection (8), the times and places for voting at a mobile polling booth may be altered on any reasonable ground—

(a) by the returning officer publishing in a newspaper circulating in the area no later than the day before polling day another notice advising electors of the alteration of voting times at that place, or of the alteration of the place for voting;

(b) if there is no such newspaper or circumstances render compliance with paragraph (a) impracticable—by the returning officer or the presiding officer taking such steps as are reasonably practicable to notify electors in the particular locality of the alteration.

(10) Where the times and places for voting at a mobile polling booth in an election are altered under subsection (9), the returning officer or presiding officer must take reasonable steps to inform candidates at that election of the alteration.

(11) A council may make arrangements for the personal delivery of advance voting papers to persons who reside at, or who attend, a specified institution, a specified part of an institution, or a specified place, and who are entitled to advance voting papers under this Part, and for the taking of advance votes before electoral officers.

(12) The returning officer must take reasonable steps to inform candidates and electors of any arrangements made under subsection (11).

**Costs and expenses**

**90.** All costs and expenses incurred by a returning officer in carrying out official duties must be defrayed from the funds of the council.

**DIVISION III—ENROLMENT**

**Qualifications for enrolment**

**91.** (1) Subject to this Act—

- (a) a natural person of or above the age of majority is entitled to be enrolled on the voters roll for an area or ward if that person—
  - (i) is enrolled as an elector for the House of Assembly in respect of a place of residence within the area or ward;
  - (ii) is resident at a place of residence within the area or ward and has lodged the prescribed declaration with the council;or
  - (iii) is a ratepayer in respect of ratable property within the area or ward and is the sole owner or sole occupier of that ratable property;
- (b) a body corporate is entitled to be enrolled on the voters roll for an area or ward if it is a ratepayer in respect of ratable property within the area or ward and is the sole owner or sole occupier of the ratable property;

and

- (c) a group of persons (consisting of natural persons, bodies corporate or partly of natural persons and partly of bodies corporate) is entitled to be enrolled as a group on the voters roll for an area or ward if—
  - (i) the members of the group are all ratepayers in respect of ratable property within the area or ward;
  - (ii) the members of the group are joint owners, owners in common or joint occupiers of the ratable property;and
  - (iii) at least one member of the group (being a natural person of or above the age of majority or a body corporate) is not enrolled on the relevant voters roll under paragraph (a) or (b).

(2) A body corporate or a group that is entitled to be enrolled on a voters roll in pursuance of subsection (1) may, by notice in writing (in the prescribed form and containing the prescribed declarations) lodged with the council—

- (a) nominate a natural person to act as an elector on its behalf;

or

- (b) cancel any such nomination previously made and make a fresh nomination in its place.

(3) A person may not be nominated as the nominated agent of a body corporate or a group under subsection (2) unless that person—

- (a) is of or above the age of majority;

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and

- (b) (i) in the case of a nomination made by a body corporate—is an officer of the body corporate;
- (ii) in the case of a nomination by a group—is a member of the group or an officer of a body corporate that is a member of the group.

(4) A nomination in force under this section must be recorded in the voters roll alongside the name of the body corporate or group by which the nomination was made.

(5) A person whose name is recorded in the voters roll as a nominated agent will be regarded as having been enrolled as an elector.

(6) Where—

- (a) a person has been enrolled as an elector under subsection (1)(a)(ii) on the basis of residence at a particular place of residence;
- (b) the chief executive officer sends a notice to the relevant address asking the elector to indicate whether he or she is still resident at that address;
- (c) the chief executive officer receives no reply within 28 days of the date of the notice or receives a reply indicating that the elector is no longer resident at that address,

it may be presumed, for the purposes of the revision of the electoral roll, that the elector is not still resident in the area or ward.

(7) In this section—

"**officer**" of a body corporate means a director, manager, secretary or public officer of the body corporate and includes any other person who takes part in the management of the affairs of the body corporate.

(8) For the purposes of resolving any doubt as to the validity of the nomination of a person to act as an elector on behalf of a body corporate or group made before the commencement of this section—

- (a) if the person, at the commencement of this section, satisfied the criteria in subsection (3) for nomination as an agent of the body corporate or group—the nomination was not affected by the enactment of this section;
- (b) if the person, at the commencement of this section, failed to satisfy the criteria in subsection (3) for nomination as an agent of the body corporate or group—the nomination was rendered invalid by the enactment of this section.

**The voters roll**

**92.** (1) The chief executive officer is responsible for the maintenance of a voters roll for the area.

(2) Subject to this section, the voters roll must set out in relation to each person enrolled—

- (a) the full name of the person;
- (b) in the case of a natural person—the address of the person's place of residence;

- (c) the address of the place of residence or ratable property (as the case may be) by virtue of which the person is entitled to be enrolled;

and

- (d) any prescribed particulars.

(2a) Where the chief executive officer is satisfied that the inclusion on the voters roll of the address of the place of residence of a person entitled to be enrolled to vote or the address of a place of residence or ratable property (as the case may be) by virtue of which a person is entitled to be enrolled would place at risk the personal safety of that person, a member of that person's family or any other person, the chief executive officer may suppress the address from the voters roll.

(2b) Where the chief executive officer is satisfied that the address of the place of residence of a person entitled to be enrolled to vote is suppressed from a roll under the *Electoral Act, 1985*, the chief executive officer must also suppress that address from the voters roll.

(3) Where an area is divided into wards, the voters roll must differentiate the electors enrolled on the roll according to the wards in respect of which they are entitled to vote.

(4) The voters roll must be revised twice in each year, the first revision being made so that the roll reflects entitlements to enrolment as they existed on the second Thursday of February and the second revision being made so that the roll reflects entitlements as they existed on the second Thursday of August ("the closing dates").

(5) A revision under subsection (4) must be completed before the second Thursday of the calendar month following the month in which the closing date occurs and the roll, as revised, must be used for the purposes of—

- (a) any general election held after the completion of the revision and before the completion of the next revision (except where the election is being held pursuant to a proclamation under Division I or II of Part II);
- (b) any supplementary election for a casual vacancy in the membership of the council where the casual vacancy occurs after the completion of the revision and before the completion of the next revision;

and

- (c) any poll held after the completion of the revision and before the completion of the next revision.

(6) The Electoral Commissioner must, within 14 days of each closing date, supply the chief executive officer of each council with a list of the persons who are, as at the closing date, enrolled as electors for the House of Assembly in respect of a place of residence within the area.

(7) Where the area of a council is divided into wards, the list supplied under subsection (6) must differentiate the electors according to the wards in relation to which they are enrolled.

(8) The Electoral Commissioner is entitled to recover as a debt from a council a fee of an amount determined by the Commissioner for the supply of a list under this section.

(9) A council must make copies of its voters roll available at its principal office for public inspection or for purchase at a fee determined by the council.

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(10) The chief executive officer must supply the returning officer with sufficient copies of the voters roll, certified by the chief executive officer, for use at an election or poll.

(11) The chief executive officer is not responsible to check the accuracy of a list supplied by the Electoral Commissioner under this section and is entitled to assume that such a list is accurate.

(12) The validity of a voters roll is not affected by any misdescription or other error in the roll.

(13) A voters roll is conclusive evidence of the entitlement of any person whose name appears in the roll as an elector to vote at an election or poll at which the roll is used.

**DIVISION IV—ENTITLEMENT TO VOTE**

**Entitlement to vote**

**93.** (1) A natural person whose name appears in the voters roll used for an election or poll as an elector in his or her own right or as a nominated agent is entitled to vote at that election or poll.

(2) Where an elector’s name appears in the voters roll used for an election or poll both as an elector in his or her own right and as a nominated agent, the elector is entitled to vote at the election or poll both in his or her own right and as a nominated agent.

(3) Where an elector’s name appears in the voters roll used for an election or poll as a nominated agent under a number of separate nominations, the elector is entitled to vote at the election or poll in respect of each of those nominations.

(4) Where a person is entitled to vote at an election or poll in more than one capacity, the provisions of this Part will be construed so that they may apply to the person distinctively in relation to each such capacity.

(5) A person whose name has been omitted in error from a voters roll used for an election or poll is, subject to this Part, entitled to vote at the election or poll as if the error had not occurred.

**DIVISION V—SPECIAL PROVISIONS RELATING TO ELECTIONS**

**Date of elections**

**94.** (1) Subject to this Act, elections must be held to determine the membership of each council on the first Saturday of May in 1997, on the first Saturday of May in 2000, and so on at intervals of three years.

(1a) The Governor may, by proclamation, determine that a general election will be held for the City of Adelaide on a Saturday falling on or after 2 May 1998 but not later than 5 September 1998.

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\* \* \* \* \*

(2) Subject to subsection (2a), if—

(a) an election (other than a supplementary election) wholly or partially fails or is declared void;

or

(b) a casual vacancy occurs in the office of a member of a council,

a supplementary election will be held to fill the office or offices not filled by the election, or the office that has become vacant.

(2a) If a casual vacancy occurs within five months before the date of a general election (the date of the election being known at the time of the occurrence of the vacancy), the vacancy will be filled at the general election.

(3) Subject to this Act, a supplementary election must be held as soon as practicable after the occasion for the election arises.

(4) The returning officer must appoint a day as polling day for the supplementary election (and unless voting at the election is to be carried out entirely by the use of advance voting papers, polling day for a supplementary election must be a Saturday).

\* \* \* \* \*

**Eligibility to stand for election**

**95.** (1) Subject to this Act, a person is eligible to be a candidate for election as a member of a council if—

(a) the person is an elector for the area;

or

(b) the person's name has been omitted in error from the voters roll for the area.

(2) A person is not eligible to be a candidate for election as a member of a council if the person—

(a) is an undischarged bankrupt;

(b) has been sentenced to imprisonment and is, or could on the happening of some contingency become, liable to serve the sentence or the remainder of the sentence;

(c) is disqualified from election by virtue of section 57;

or

(d) is an officer or employee of the council.

(3) A person is not eligible to be a candidate for election as a member of a council if the person—

(a) in the case of a supplementary election—is a member of some other council;

or

(b) in the case of any election—is a candidate for election as a member of some other council.

(4) A person is not eligible to be a candidate for election to the office of mayor or alderman unless he or she has held office as a member of a council for not less than 12 months.

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**Nominations**

**96.** (1) A person who is eligible to be a candidate for election to an office of a council may be nominated in the prescribed manner and form as a candidate for election to the office—

(a) in the case of an office other than that of councillor for a ward—by any two or more electors for the area;

or

(b) in the case of an office of councillor for a ward—by any two or more electors for the ward.

(2) The nomination must be accompanied by a declaration of eligibility made in the prescribed form by the nominated candidate.

(3) A nomination must be lodged with the returning officer not earlier than 21 days before the day on which nominations close.

(4) The returning officer must cause a note to be made of the date and time of the receipt of a nomination form under this section.

(5) Nominations close—

(a) in the case of a periodical election—at 12 noon on the last Thursday of March in the year in which the periodical election is to be held;

or

(b) in any other case—at 12 noon on a day appointed by the returning officer as nomination day, being a day that falls not less than 21 days before polling day.

(6) The returning officer must—

(a) in the case of a periodical election—not later than the first Thursday of March in the year in which the periodical election is to be held;

or

(b) in any other case—not later than 21 days before the day on which nominations close,

give public notice stating the vacancies to be filled at the election and inviting nomination of candidates for election to the vacancies.

(7) Upon receipt of a form of nomination, the returning officer must, if of the opinion that there is any deficiency that might render the nomination invalid, take all such steps to notify the nominated candidate of the deficiency as are reasonable in order to enable the candidate to cure the deficiency before the close of nominations.

(8) Any dispute as to the validity of a nomination must be determined summarily by the returning officer.

(9) The returning officer must, as soon as is practicable after their receipt, cause copies of all valid nominations to be displayed in the principal office of the council.

(10) A nominated candidate may at any time before the close of nominations, by notice in writing given to the returning officer, withdraw the nomination.

(11) Where, at the close of nominations, it appears that the same person has been nominated for election to two or more vacancies, both or all the nominations are void.

(12) Where, after nominations have closed, it appears that the number of candidates nominated to contest the election does not exceed the number of persons required to be elected, the returning officer must declare the nominated candidate or candidates elected.

(13) Where a candidate is declared elected under subsection (12)—

(a) in the case of a supplementary election—the election of the candidate takes effect forthwith;

(b) in any other case—the election of the candidate takes effect at the conclusion of the relevant elections.

(14) The returning officer must within 14 days of the close of nominations give public notice and notice in writing to the candidates setting forth—

(a) the names of the candidates nominated and the offices for which they were nominated;

(b) the names of any candidates declared elected in pursuance of this section;

and

(c) if an election is to be held—the day appointed as polling day for the election.

(15) Where an election is to be held, a notice given to a candidate under subsection (14) should be accompanied by a copy of Division X.

#### **Failure of election in certain cases**

**97.** (1) If between the close of nominations and the conclusion of an election a nominated candidate—

(a) dies;

(b) by notice in writing to the returning officer, withdraws his or her nomination on the ground of serious illness;

or

(c) ceases to be qualified for election,

the election will be taken to have wholly failed.

(2) The returning officer cannot recognize the withdrawal of a nomination under subsection (1)(b) unless the notice of withdrawal is supported by the certificate of a legally qualified medical practitioner certifying that the candidate is too ill to be able to carry out satisfactorily the duties of a council member.



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**Failure or avoidance of supplementary election**

**98.** (1) Where a supplementary election wholly or partially fails or is declared void, the council must appoint a person or persons (being an elector or electors for the area) to the office or offices not filled by the supplementary election.

(2) A council must not appoint a person to an office in pursuance of subsection (1) unless the person—

(a) would, if an election were held to fill the office, be eligible to stand as a candidate for election to the office;

and

(b) has made a declaration of eligibility in the prescribed form.

**Ballot papers for elections**

**99.** (1) Where an election is to be held for the office of mayor, a separate ballot paper showing the names of all candidates for election to that office must be prepared.

(2) Where an election is to be held for the office of alderman, a separate ballot paper showing the names of all candidates seeking election as aldermen in that election must be prepared.

(3) Where an election is to be held for the office of councillor, a separate ballot paper showing the names of all candidates seeking election as councillors in that election must be prepared—

(a) if the area is not divided into wards—in relation to the whole area;

or

(b) if the area is divided into wards—in relation to each ward.

(4) The names of the candidates must be arranged on the ballot paper, one under the other, in an order determined by lot.

(5) The drawing of lots for the purposes of subsection (4) must be conducted by the returning officer forthwith upon the close of nominations in the presence of two electors and such other persons as may wish to be present.

(6) A square must be placed to the left of each name appearing on the ballot paper.

(7) A ballot paper must conform with any other requirements imposed by regulation.

**Method of voting at elections**

**100.** (1) A person voting at an election (whether the election is held to fill one vacancy or more than one vacancy) must make a vote on the ballot paper—

(a) where the method of counting votes applying at the election is the method set out in section 121(3)—by placing the number 1 in the square opposite the name of the candidate of the voter's first preference and, if the voter so desires, by placing the number 2 and consecutive numbers in the squares opposite the names of other candidates in the order of the voter's preference for them;

(b) where the method of counting votes applying at the election is the method set out in section 121(4)—by placing consecutive numbers beginning with the number 1 in the squares opposite the names of candidates in the order of the voter's preference for them until the voter has indicated a vote for a number of candidates not less than the number of candidates required to be elected.

(2) A tick or cross appearing on a ballot paper is equivalent to the number 1.

(3) If—

(a) a series of numbers (starting from the number 1) appearing on a ballot paper is non-consecutive by reason only of the omission of one or more numbers from the series or the repetition of a number (not being the number 1);

and

(b) where the method of counting votes applying at the election is the method set out in section 121(4)—the numbers are at least consecutive up to the number of candidates required to be elected,

the ballot paper is not informal and the votes are valid up to the point at which the omission or repetition occurs.

(4) A ballot paper is not informal by reason of non-compliance with this section if the voter's intention is clearly indicated on the ballot paper.

### **Scrutineers**

**101.** (1) Each candidate may appoint one or more scrutineers.

(1a) A candidate in any election for the council on polling day (including a candidate who has already been declared elected) is not eligible for appointment as a scrutineer.

(2) Where a candidate appoints more than one scrutineer—

(a) not more than one of them may be present in any one polling booth at the same time during the time that it is open for voting;

and

(b) not more than two of them may be present in the place for the counting of votes at the same time during the counting of votes.

(3) An appointment under this section is ineffective unless the candidate has given notice in writing, or by telegram, to the returning officer or a presiding officer of the appointment.

## **DIVISION VI—SPECIAL PROVISIONS RELATING TO POLLS**

### **Subject matter of polls**

**102.** The returning officer of a council must, at the direction of the council, conduct a poll on any matter within the ambit of the council's responsibilities.

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**Ballot papers for polls**

**103.** A ballot paper for a poll must contain—

(a) a statement (determined by resolution of the council) of the proposition to be submitted to the electors;

and

(b) two squares, one being clearly differentiated as the square to be marked by voters desiring to vote in favour of the proposition and the other being clearly differentiated as the square to be marked by voters who are not in favour of the proposition.

**Method of voting at polls**

**104.** (1) A person voting at a poll must vote by placing an X on the ballot paper in a square indicating either that the voter is in favour or not in favour of the proposition submitted to the electors at the poll.

(2) A ballot paper is not informal by reason of non-compliance with this section if the voter's intention is clearly indicated on the ballot paper.

**Scrutineers for polls**

**105.** The council may appoint suitable persons to act as scrutineers at a poll.

**DIVISION VII—CONDUCT OF ELECTIONS AND POLLS**

*Voting otherwise than at Polling Places*

**Issue of advance voting papers**

**106.** (1) Where a person desires to vote at an election or poll (other than an election or poll held under section 106a) otherwise than by attending at a polling place during voting hours, the person may apply to the returning officer for advance voting papers under this section.

(2) The application must be made by the applicant—

(a) personally to the returning officer not later than 5 p.m. on the day before polling day;

or

(b) by writing addressed to the returning officer and delivered to the principal office of the council not later than 5 p.m. on the day before polling day.

(3) Advance voting papers under this section consist of—

(a) a ballot paper;

and

(b) an opaque envelope bearing—

(i) two declarations—

(A) one being a declaration in the prescribed form to be subscribed by the voter to the effect—

— that the voter is of or above the age of majority;

— that the ballot paper contained in the envelope contains his or her vote;

and

— that he or she has not already voted at the election or poll;

and

(B) the other being a declaration in the prescribed form to be subscribed by a witness of or above the age of majority to the effect that the witness has no reason to believe that the vote has been influenced by fraud or undue influence;

or

(ii) three declarations—

(A) one being a declaration in the prescribed form to be subscribed by the voter in which the voter sets out the grounds on which he or she claims to be entitled to vote;

and

(B) the other two being declarations referred to in subparagraph (i).

(3a) An envelope under subsection (3) must comply with any prescribed requirement.

(3b) The declarations under subsection (3) must appear on a tear-off extension to the envelope flap.

(4) Where application for advance voting papers under this section is made to the returning officer not later than 5 p.m. on the day before polling day, advance voting papers must be initialled by the returning officer and—

(a) where the applicant made personal application, must be delivered to the applicant personally by the returning officer;

or

(b) in any other case, must be sent by post to the applicant at the address shown on the application or, if no address is shown, to the address shown on the voters roll (if any).

(5) Advance voting papers issued pursuant to subsection (4) must—

(a) in the case of an applicant whose name appears in the voters roll—include an envelope of the kind referred to in subsection (3)(b)(i);

or

(b) in the case of an applicant whose name does not appear in the voters roll—include an envelope of the kind referred to in subsection (3)(b)(ii).

(6) The returning officer must keep a record of the persons to whom advance voting papers are issued under this section.

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(9) Advance voting papers must be available for use under this section at least 21 days before polling day.

(10) The returning officer must, at least 21 days before polling day, by notice in the prescribed form published in a newspaper circulating in the area, inform electors that advance voting papers are available from the returning officer in accordance with this section.

**Voting entirely by use of advance voting papers**

**106a.** (1) Subject to this section, a council may determine that an election or elections, or a poll or polls, within the council area will be conducted entirely by the use of advance voting papers.

(1a) The following provisions apply in relation to a determination concerning an election or elections under subsection (1):

- (a) the determination cannot apply to an election unless made at least 21 days before the day on which nominations close for the election (but if a determination relates to elections generally then that determination will continue to operate for all subsequent elections until revoked by the council); and
- (b) the determination cannot apply so that one or more elections in the area of the council on a particular day will be conducted entirely by the use of advance voting papers and one or more other elections in the area of the council on the same day will not be conducted entirely by the use of advance voting papers.

(2) No polling place need be appointed (and no polling booth need be opened) for voting at an election or poll to which a declaration under this section applies.

(3) Where an election or poll to which a determination under this section applies is to be held, the returning officer must, as soon as practicable after the twenty-first day before polling day, and in any event not later than 14 days before polling day, issue to every natural person whose name appears on the voters roll used for the election or poll advance voting papers (initialled by the returning officer) consisting of—

- (a) a ballot paper;
- and
- (b) an opaque envelope bearing two declarations—
    - (i) one being a declaration in the prescribed form to be subscribed by the voter to the effect—
      - that the voter is of or above the age of majority;
      - that the ballot paper contained in the envelope contains his or her vote;
- and
- that he or she has not already voted at the election or poll;

and

- (ii) the other being a declaration in the prescribed form to be subscribed by a witness of or above the age of majority to the effect that the witness has no reason to believe that the vote has been influenced by fraud or undue influence.

(3a) The declarations under subsection (3) must appear on a tear-off extension to the envelope flap.

(3b) The envelopes used under subsection (3) must be pre-paid post envelopes addressed to the returning officer and must comply with any prescribed requirement.

(4) Advance voting papers (initialled by the returning officer) must also be issued to any person whose name does not appear on the voters roll but who claims to be entitled to vote at the election or poll and applies to the returning officer for advance voting papers not later than 5 p.m. on the day before polling day.

(5) Advance voting papers issued under subsection (4) must have included on the envelope referred to in subsection (3) an additional declaration in the prescribed form for the voter to set out the grounds on which an entitlement to vote is claimed.

(6) Advance voting papers issued under this section must be accompanied by an explanatory notice in the prescribed form.

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(8) Advance voting papers may be issued under this section—

- (a) by giving them to the prospective voter personally;

or

- (b) by sending them by post to the prospective voter at the address on the voters roll or if the name and address of the prospective voter do not appear on the voters roll, at some other address of which the returning officer has received notice.

(9) The returning officer must keep a record of the persons to whom advance voting papers are issued under this section.

\* \* \* \* \*

(9b) The returning officer must, at least 21 days before polling day, by notice in the prescribed form published in a newspaper circulating in the area, inform electors that voting in the election or poll will be conducted by the use of advance voting papers issued in accordance with this section.

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**Procedures to be followed for advance voting**

**107.** (1) Where a person to whom advance voting papers have been issued desires to vote by use of those papers, the following procedure must be followed:

- (a) the voter must mark his or her vote in the manner prescribed by this Act on the ballot paper supplied;

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(b) the voter must then fold the ballot paper so as to conceal the vote and, in the presence of a witness of or above the age of majority, place the folded ballot paper in the envelope and seal the envelope;

(c) the voter and the witness must then sign the respective declarations on the envelope flap;

and

(d) the sealed envelope must then be delivered to an electoral officer not later than the close of voting.

(2) Where an electoral officer receives before the close of voting an envelope bearing declarations apparently completed in accordance with this section, the electoral officer must immediately deposit the envelope unopened in a sealed ballot box.

**Voter may be assisted in certain circumstances**

**108.** Where a person who desires to vote by use of advance voting papers is illiterate or physically unable to carry out a procedure under this Division, a person of the voter's choice (being a person of or above the age of majority but not being the witness who subscribes a declaration) may render such assistance as may be necessary in the circumstances or may vote on behalf of the voter in accordance with his or her directions.

**Issue of fresh advance voting papers**

**109.** (1) If the returning officer is satisfied that advance voting papers issued to an elector—

(a) have not been received by the elector;

(b) have been lost;

or

(c) have been inadvertently spoiled,

the returning officer may issue fresh advance voting papers to the elector.

(2) The returning officer must keep a record of the issue of advance voting papers under this section.

**Person to whom advance voting papers have been issued not to vote at polling place except on certain conditions**

**110.** A person to whom advance voting papers have been issued is not entitled to vote at a polling place unless that person has delivered to the presiding officer the advance voting papers for cancellation.

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*Voting at Polling Places*

**Voting procedure at polling booths**

**111.** (1) Subject to this Part, when a person who is present at a polling booth open for voting claims that he or she is entitled to vote at the election or poll, an electoral officer will ask the person—

(a) to state—

(i) his or her full name;

(ii) unless the person's address is suppressed from the roll—the address of his or her place of residence;

and

(iii) where applicable—the address of the ratable property within the area by virtue of which the person is entitled to be enrolled on the voters roll;

and

(b) whether he or she has already voted at the election or poll,

and may then ask the person such further questions as the electoral officer considers necessary to establish whether the person is entitled to vote.

(2) If the person—

(a) refuses to answer fully any question asked under subsection (1);

or

(b) so answers any such question as to indicate that he or she is not entitled to vote,

the person's claim to vote will be rejected.

(3) A person is not precluded by subsection (1) from voting at an election or poll in different capacities at different times.

(4) If a person's claim to vote is accepted and his or her name and address are on the voters roll, the electoral officer will rule a line through the person's name on the roll and issue to the person a ballot paper.

(5) If—

(a) a person claims that his or her name has been omitted in error from the voters roll;

or

(b) a person's address has been suppressed from the roll,

the electoral officer will issue to the person a ballot paper and an opaque envelope bearing a declaration in the prescribed form to be subscribed by the voter to the effect—

(c) that he or she is entitled to vote at the election or poll;

and

(d) that he or she has not already voted at the election or poll.

(5a) The declaration under subsection (5) must appear on a tear-off extension to the envelope flap.



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(6) If the person is issued a ballot paper only, the person must immediately retire to a voting compartment, mark the ballot paper with his or her vote, fold it so as to conceal the vote, and deposit it in a ballot box provided for the purpose of the election or poll.

(7) If the person is issued a ballot paper and an envelope bearing a declaration—

- (a) the person must complete and sign the declaration in the presence of the electoral officer (who will sign the envelope as witness);
- (b) the person must then immediately retire to a voting compartment, mark the ballot paper with his or her vote, and fold it so as to conceal the vote;
- (c) the person must then immediately return to the electoral officer and, in the presence of the electoral officer, place the folded ballot paper in the envelope, seal the envelope, and deposit it in a ballot box provided for the purposes of the election or poll.

(8) A ballot paper issued under this section must be authenticated by the initials of the officer by whom it is issued.

(8a) An envelope used under this section must comply with any prescribed requirement.

(9) The presiding officer at a polling place must keep a record of the persons to whom declaration voting papers are issued under this section distinguishing between those persons who are issued with envelopes under subsection (5)(a) and those persons who have been issued with envelopes under subsection (5)(b).

(10) A person who enters a polling booth while it is open but who has not voted before it closes must be allowed a reasonable opportunity to vote.

**Issue of fresh ballot paper**

**112.** Where a ballot paper issued at a polling booth has been inadvertently spoiled and is returned to the presiding officer by the person to whom it was issued, the presiding officer may issue a fresh ballot paper to the person and, on doing so, must immediately cancel the spoiled ballot paper.

**Voter may be assisted in certain circumstances**

**113.** A person who desires to vote at a polling booth but is illiterate or physically unable to vote without assistance will, on request being made to the presiding officer, be permitted to be accompanied by an assistant of the voter's choice (being a person of or above the age of majority) who may render such assistance as may be necessary in the circumstances or may vote on behalf of the voter in accordance with his or her directions.

**How-to-vote cards**

**114.** (1) A candidate may submit how-to-vote cards to the returning officer for display in voting compartments at polling booths.

(2) The how-to-vote cards—

- (a) must be in the prescribed form;
- (b) must be submitted in a size and quantity determined by the returning officer;

and

- (c) must be received by the returning officer not less than 14 days before polling day.

(3) The returning officer will have the how-to-vote cards made into posters for display in voting compartments at each polling booth where voting for the election to which the cards relate may occur and must ensure that the posters are displayed during the hours for voting.

(4) If two or more candidates submit how-to-vote cards in respect of the same election, the cards must appear on the poster in the same order as the names of the candidates appear on the ballot papers.

(5) If two or more elections are held simultaneously, how-to-vote cards in respect of those elections may be included on the same poster but, in that event, the cards relating to the various elections should be differentiated in an appropriate manner.

(6) Subject to this section, the size and form of posters for display under this section will be as determined by the returning officer.

*Miscellaneous*

**Signature to electoral material**

**114a.** Where a person who is unable to sign his or her name in writing makes a mark as his or her signature on any voting material, the mark will be taken to be the person's personal signature if it is identifiable as such and is made in the presence of a witness of or above the age of majority.

**Use of ballot boxes**

**115.** (1) Subject to subsection (2), a ballot box to be used in an election or poll must be kept securely closed and sealed so as to prevent the introduction or removal of any paper or object except—

(a) when the ballot box is immediately required for the purpose of receiving voting papers;

or

(b) when the voting papers are required for the purposes of scrutiny.

(2) An electoral officer must, before voting papers are first deposited in a ballot box for the purposes of an election or poll, publicly open the ballot box and exhibit it empty.

**Adjournment of election or poll**

**116.** (1) If for any reason it becomes impracticable to proceed with the conduct of an election or poll on the appointed day, the returning officer may adjourn the election or poll for a period not exceeding 21 days.

(2) Any votes cast prior to the adjournment will be disregarded and the taking of votes recommenced.

**DIVISION IX—COUNTING OF VOTES**

**Scrutiny of declaration voting papers**

**120.** (1) The scrutiny of declaration voting papers used at an election or poll must be completed as soon as practicable after the close of voting.

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(2) For the purposes of an election or poll that has been carried out entirely by the use of advance voting papers, the returning officer will, after the close of voting, with the assistance of any other electoral officers who may be present, and in the presence of any scrutineers who may be present, open all ballot boxes used in the election or poll, remove the contents and exhibit the ballot boxes empty.

(3) For the purposes of the scrutiny of declaration voting papers, the returning officer will, with the assistance of any other electoral officers who may be present, and in the presence of any scrutineers who may be present—

- (a) examine the declarations on all envelopes used for declaration voting (and validly returned) and determine which votes are to be accepted for further scrutiny and which rejected from further scrutiny, rejecting unopened—
  - (i) any two or more envelopes apparently from the same voter (unless the voter has validly voted in two or more capacities);
  - (ii) any envelope apparently from a voter who has voted both by declaration vote and by attending at a polling booth on polling day and voting otherwise than by declaration vote (unless the voter has validly done so in two or more capacities);
  - (iii) any envelope where the voter's name does not appear on the voters roll in the capacity in which the voter in his or her declaration claims to be entitled to vote (unless the voter's name has been omitted from the roll in error);
  - (iv) any envelope where the signature does not, to the satisfaction of the returning officer, correspond with the signature on the application (if any) of the voter for the relevant voting papers;
- (b) tear off the extensions to the envelope flaps on the envelopes accepted under paragraph (a);
  - (ba) shuffle the envelopes that no longer bear their tear-off extensions;
  - (bb) remove the ballot papers from those envelopes;
- (c) if an envelope contains more than one ballot paper and a scrutineer challenges the number of ballot papers contained in the envelope—satisfy himself or herself that the envelope does not contain more ballot papers than the number to which the voter is entitled and, if the returning officer is not so satisfied, return all of those ballot papers to the envelope and reject them from the count;
- (d) examine the remaining ballot papers and reject any informal ballot papers;
- (e)
  - (i) in the case of an election—arrange all unrejected ballot papers under the names of the respective candidates by placing in a separate parcel all those on which a first preference is indicated for the same candidate;
  - (ii) in the case of a poll—arrange all unrejected ballot papers into two parcels for counting.

(4) The returning officer may subsequently, on his or her own initiative or on the application of a scrutineer, admit to the count (or any recount) any declaration vote that is initially rejected but later found to be valid.

(5) The returning officer is not required to consider an application under subsection (4) in respect of an election if it is apparent that the admission of the declaration votes to which the application relates (if valid) could not affect the outcome of the election.

**Procedure to be followed at the close of voting at elections**

**121.** (1) Each presiding officer will, immediately after the polling booth at which he or she has been presiding closes for voting at an election (or, in the case of a mobile polling booth, immediately after the polling booth finally closes for voting at an election), in the presence of any other electoral officers and any scrutineers who may be present—

- (a) mark and certify a return to the returning officer showing—
  - (i) the number of ballot papers entrusted to the presiding officer;
  - (ii) the number of declaration votes made at the polling booth;
  - (iii) the number of ballot papers issued but returned unused;
  - (iv) the number of ballot papers issued but returned spoiled;
  - (v) the number of ballot papers not issued;
- (b) if the returning officer has determined that the presiding officer should have the powers conferred by this paragraph—
  - (i) open the ballot boxes and remove the ballot papers;
  - (ii) arrange all ballot papers that appear to the presiding officer to be informal in a separate parcel;
  - (iii) arrange the remaining ballot papers under the names of the respective candidates, including in each parcel all ballot papers on which a first preference for the relevant candidate is indicated;
  - (iv) count the number of ballot papers in each parcel;
  - (v) make out a return of the number of ballot papers in each parcel;
  - (vi) return the parcels of ballot papers to the ballot boxes and seal the boxes,

(but no decision taken by a presiding officer under this paragraph as to the validity of a ballot paper or in relation to the counting of ballot papers is binding on the returning officer);

and

- (c) transmit to the returning officer—
  - (i) all ballot boxes used at the polling booth;
  - (ii) all ballot papers that were not deposited in the ballot boxes;
  - (iii) the return referred to in paragraph (a) and, if the presiding officer exercised the powers conferred by paragraph (b), the return referred to in that paragraph.

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(2) The returning officer will, with the assistance of any other electoral officers who may be present, and in the presence of any scrutineers who may be present—

- (a) open all ballot boxes used in the election, remove the contents and exhibit the ballot boxes empty;
- (b) separate the envelopes used for declaration votes from the ballot papers not contained in such envelopes;
- (c) proceed to the scrutiny of the declaration votes in accordance with section 120;

and

- (d) at an appropriate time—
  - (i) examine all the ballot papers not contained in envelopes and reject any informal ballot papers;

and

- (ii) arrange the unrejected ballot papers into appropriate parcels for counting.

\* \* \* \* \*

(3) Where the council has so determined under section 122, the returning officer must, with the assistance of any other electoral officers who may be present, and in the presence of any scrutineers who may be present, conduct the counting of the votes according to the following method:

- (a) the returning officer must exclude from the count the candidate who has the fewest ballot papers in his or her parcel and place each ballot paper that was in his or her parcel in the parcel of the candidate next in order of the voter's preference, or, if the voter has not indicated a preference for another candidate, set the ballot paper aside as finally dealt with;
- (b) if the number of candidates not excluded from the count equals the number of candidates required to be elected at the election, the returning officer must make a provisional declaration that the continuing candidate or candidates have been elected;
- (c) if the number of continuing candidates does not equal the number of candidates required to be elected at the election, the candidate who then has the fewest ballot papers in his or her parcel must be excluded from the count and each ballot paper that was in his or her parcel must be placed in the parcel of the continuing candidate next in order of the voter's preference or, if the voter has not indicated a preference for a continuing candidate, the ballot paper must be set aside as finally dealt with;
- (d) if the number of continuing candidates then equals the number of candidates required to be elected at the election, the returning officer must make a provisional declaration that the continuing candidate or candidates have been elected but, in any other case, the process referred to in paragraph (c) must be repeated until the number of continuing candidates equals the number of candidates required to be elected at the election and, in that event, the returning officer must make the provisional declaration that the continuing candidate or candidates have been elected;

- (e) if during the process of counting two or more candidates have an equal number of ballot papers in their parcels and one of them has to be excluded from the count, the returning officer must, in the presence of any scrutineers who may be present, draw lots to determine which of the candidates is to be excluded.

(4) Where the council has so determined under section 122, the returning officer must, with the assistance of any other electoral officers who may be present, and in the presence of any scrutineers who may be present, conduct the counting of the votes according to the following method:

- (a) the number of first preference votes given for each candidate and the total number of all such votes must be ascertained and a quota determined by dividing the total number of first preference votes by one more than the number of candidates required to be elected and by increasing the quotient so obtained (disregarding any remainder) by one and, where any candidate has received a number of first preference votes equal to or greater than the quota, the returning officer must make a provisional declaration that the candidate has been elected;

- (b) notwithstanding paragraph (a) or any other paragraph of this subsection, where the total number of all first preference votes does not exceed—

- (i) one hundred and fifty;

or

- (ii) where a different number is prescribed for the purposes of this paragraph—that number,

the number of votes of any kind contained in the ballot papers will, for the purposes of any counting or calculation under paragraph (a) or any other paragraph of this subsection, be taken to be the number obtained by multiplying the number of votes of that kind contained in the ballot papers by 100;

- (c) unless all the vacancies have been filled, the surplus votes of each elected candidate must be transferred to the continuing candidates as follows:

- (i) the number of surplus votes of the elected candidate must be divided by the number of first preference votes received by that candidate and the resulting fraction will be the transfer value;

- (ii) the total number of the first preference votes for the elected candidate that are contained in ballot papers that express the next available preference for a particular continuing candidate must be multiplied by the transfer value, the number so obtained (disregarding any fraction) must be added to the number of first preference votes of the continuing candidate and all those ballot papers must be transferred to the continuing candidate,

and, where any continuing candidate has received a number of votes equal to or greater than the quota on the completion of any such transfer, the returning officer must make a provisional declaration that the candidate has been elected;

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- (d) unless all the vacancies have been filled, the surplus votes (if any) of any candidate elected under paragraph (c), or elected subsequently under this paragraph, must be transferred to the continuing candidates in accordance with paragraph (c)(i) and (ii) and, where any continuing candidate has received a number of votes equal to or greater than the quota on the completion of any such transfer, the returning officer must make a provisional declaration that the candidate has been elected;
- (e) where a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer under paragraph (c) or (d) of the surplus votes of a particular elected candidate, no votes of any other candidate may be transferred to the continuing candidate;
- (f) for the purposes of the application of paragraph (c)(i) and (ii) in relation to a transfer under paragraph (d) or (h) of the surplus votes of an elected candidate, each ballot paper of the elected candidate that was obtained on a transfer under this subsection must be dealt with as if any vote it expressed for the elected candidate were a first preference vote, as if the name of any other candidate previously elected or excluded had not been on the ballot paper and as if the numbers indicating subsequent preferences had been altered accordingly;
- (g) where, after the counting of first preference votes or the election of a candidate and the transfer of the surplus votes (if any) of the elected candidate that are capable of being transferred, no candidate has, or less than the number of candidates required to be elected have, received a number of votes equal to the quota, the candidate who has the fewest votes must be excluded and all the excluded candidate's votes must be transferred to the continuing candidates as follows:
  - (i) the total number of the first preference votes for the excluded candidate that are contained in ballot papers that express the next available preference for a particular continuing candidate must be transferred, each first preference vote at a transfer value of one, to the continuing candidate and added to the number of votes of the continuing candidate and all those ballot papers must be transferred to the continuing candidate;
  - (ii) the total number (if any) of other votes obtained by the excluded candidate on transfers under this subsection must be transferred from the excluded candidate in the order of the transfers on which they were obtained, the votes obtained on the earliest transfer being transferred first, as follows:
    - (A) the total number of votes transferred to the excluded candidate from a particular candidate that are contained in ballot papers that express the next available preference for a particular continuing candidate must be multiplied by the transfer value at which the votes were so transferred to the excluded candidate;
    - (B) the number so obtained (disregarding any fraction) must be added to the number of votes of the continuing candidate;
    - (C) all those ballot papers must be transferred to the continuing candidate;

- (h) where any continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer under paragraph (g) or (i) of votes of an excluded candidate, the returning officer must make a provisional declaration that the candidate has been elected and, unless all the vacancies have been filled, the surplus votes (if any) of the candidate so elected must be transferred in accordance with paragraph (c)(i) and (ii), except that, where the candidate so elected is elected before all the votes of the excluded candidate have been transferred, the surplus votes (if any) of the candidate so elected must not be transferred until the remaining votes of the excluded candidate have been transferred in accordance with paragraph (g)(i) and (ii) to continuing candidates;
- (i) subject to paragraph (k), where, after the exclusion of a candidate and the transfer of the votes (if any) of the excluded candidate that are capable of being transferred, no continuing candidate has received a number of votes greater than the quota, the continuing candidate who has the fewest votes must be excluded and his or her votes transferred in accordance with paragraph (g)(i) and (ii);
- (j) where a candidate is elected as a result of a transfer of the first preference votes of an excluded candidate or a transfer of all the votes of an excluded candidate that were transferred to the excluded candidate from a particular candidate, no other votes of the excluded candidate may be transferred to the candidate so elected;
- (k) in respect of the last vacancy for which two continuing candidates remain, the returning officer must make a provisional declaration that the continuing candidate who has the larger number of votes has been elected notwithstanding that that number is below the quota and, if those candidates have an equal number of votes, the returning officer must, in the presence of any scrutineers who may be present, draw lots to determine which of the candidates is to be elected;
- (l) notwithstanding any other provision of this subsection, where, on the completion of a transfer of votes under this subsection, the number of continuing candidates is equal to the number of remaining unfilled vacancies, the returning officer must make a provisional declaration that those candidates have been elected;
- (m) for the purposes of this subsection—
  - (i) the order of election of candidates will be taken to be in accordance with the order of the count or transfer as a result of which they were elected, the candidates (if any) elected on the count of first preference votes being taken to be the earliest elected;

and



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- (ii) where two or more candidates are elected as a result of the same count or transfer, the order in which they will be taken to have been elected will be in accordance with the relative numbers of their votes, the candidate with the largest number of votes being taken to be the earliest elected but, if any two or more of those candidates each have the same number of votes, the order in which they will be taken to have been elected will be taken to be in accordance with the relative numbers of their votes at the last count or transfer before their election at which each of them had a different number of votes, the candidate with the largest number of votes at that count or transfer being taken to be the earliest elected and, if there has been no such count or transfer, the returning officer must, in the presence of any scrutineers who may be present, draw lots to determine the order in which they will be taken to have been elected;
- (n) subject to paragraphs (o) and (p), where, after any count or transfer under this subsection, two or more candidates have surplus votes, the order of any transfers of the surplus votes of those candidates will be in accordance with the relative sizes of the surpluses, the largest surplus being transferred first;
- (o) subject to paragraph (p), where, after any count or transfer under this subsection, two or more candidates have equal surpluses, the order of any transfers of the surplus votes of those candidates will be in accordance with the relative numbers of votes of those candidates at the last count or transfer at which each of those candidates had a different number of votes, the surplus of the candidate with the largest number of votes at that count or transfer being transferred first but, if there has been no such count or transfer, the returning officer must, in the presence of any scrutineers who may be present, draw lots to determine the order in which the surpluses will be dealt with;
- (p) where, after any count or transfer under this subsection, a candidate obtains surplus votes, those surplus votes will not be transferred before the transfer of any surplus votes obtained by any other candidate on an earlier count or transfer;
- (q) where the candidate who has the fewest votes is required to be excluded and two or more candidates each have the fewest votes, whichever of those candidates had the fewest votes at the last count or transfer at which each of those candidates had a different number of votes will be excluded but, if there has been no such count or transfer, the returning officer must, in the presence of any scrutineers who may be present, draw lots to determine which candidate will be excluded;
- (r) where a candidate is elected by reason that the number of first preference votes received, or the aggregate of first preference votes received and all other votes obtained on transfers under this subsection, is equal to the quota, all the ballot papers expressing those votes must be set aside as finally dealt with;
- (s) a ballot paper must be set aside as exhausted where on a transfer it is found that the paper expresses no preference for any continuing candidate;
- (t) for the purposes of this subsection, a transfer under paragraph (c), (d) or (h) of the surplus votes of any elected candidate, a transfer in accordance with paragraph (g)(i) of all first preference votes of an excluded candidate or a transfer in accordance with paragraph (g)(ii) of all the votes of an excluded candidate that were transferred from a particular candidate will each be regarded as constituting a separate transfer.

(5) In subsection (3) or (4)—

"**continuing candidate**" means a candidate not already elected or excluded from the count;

"**election**" of a candidate means the making by the returning officer of a provisional declaration that the candidate has been elected, and "**elected**" has a corresponding meaning;

"**surplus votes**" of an elected candidate means the excess (if any) over the quota of the elected candidate's votes.

(6) In subsection (4), a reference to votes of or obtained or received by a candidate includes votes obtained or received by the candidate on any transfer under that subsection.

(7) At any time within 48 hours after the returning officer has made a provisional declaration under subsection (3) or (4), a candidate (not being a candidate in whose favour the provisional declaration was made) may, by notice in writing lodged with the returning officer, request a recount of the votes cast in relation to the relevant vacancy or vacancies and, in the event of such a request being made, the returning officer must cause a recount of votes to be made in accordance with the request.

(8) The returning officer may, on his or her own initiative, during the period of 48 hours referred to in subsection (7), decide to conduct a recount of any votes cast in the election.

(8a) The following provisions apply to a recount:

(a) the returning officer should give the candidates reasonable notice of the time and place at which it is to be conducted;

(b) the returning officer may reverse any decision taken at the count;

and

(c) if the votes of two or more candidates are equal and one of them was excluded by lot at the count, the same candidate must be excluded at the recount.

(9) If the period for requesting a recount expires without such a request having been made and the returning officer has not decided to initiate a recount pursuant to subsection (8), the returning officer must confirm the provisional declaration, and forthwith make out a return to the chief executive officer certifying the election of specified candidates to specified vacancies.

(10) Where a recount is made, the returning officer must, according to the result of the recount—

(a) confirm the provisional declaration;

or

(b) revoke the provisional declaration and make a final declaration in accordance with the result of the recount,

and then forthwith make out a return to the chief executive officer certifying the result of the election accordingly.

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(11) The returning officer—

(a) must notify all candidates, in writing, of the result of the election;

and

(b) must within one month after the conclusion of the election cause public notice to be given of the result of the election.

(12) Where the returning officer certifies the result of an election under subsection (9) or (10)—

(a) in the case of a supplementary election—the election of the candidate or candidates takes effect forthwith;

(b) in any other case—the election of the candidate or candidates will take effect at the conclusion of all of the elections for the council held on polling day.

**Collation of certain information**

**121a.** (1) The returning officer must, within 10 days after the conclusion of an election, make and certify a return showing—

(a) the number of ballot papers printed for the election;

(b) the number of ballot papers not issued;

(c) the number of ballot papers issued but returned unused;

(d) the number of ballot papers issued but returned spoiled;

(e) the number of fresh ballot papers issued to voters under section 109 without the return of the original ballot papers;

(f) the number of ballot papers issued to persons claiming that their names had been omitted in error from the voters roll (not including ballot papers included in a previous category) and the number of those contained in envelopes that were not rejected;

(g) the number of ballot papers issued with declaration voting papers (not including ballot papers included in a previous category) and the number of those contained in envelopes that were not rejected;

(h) the number of ballot papers issued at polling booths on polling day (not including ballot papers included in a previous category) and the number of those contained in ballot boxes;

(i) the number of ballot papers rejected as informal;

and

(j) the number of ballot papers included in the count.

(2) A candidate is entitled, on application to the returning officer within three months after the conclusion of the election, to a copy of the return referred to in subsection (1).

**Determination of method of counting at elections**

**122.** (1) Subject to this section, a council may determine that the method of counting votes to apply at elections for the council will be—

- (a) the method set out in section 121(3) rather than the method set out in section 121(4);
- or
- (b) the method set out in section 121(4) rather than the method set out in section 121(3).

\* \* \* \* \*

(3) The following provisions apply in relation to a determination under subsection (1):

(a) subject to paragraph (b), the determination will determine the method of counting to apply—

(i) at the next general election;

and

(ii) at all following elections until any subsequent determination comes into effect in accordance with this section;

(b) the determination will not affect a general election held within three months of the making of the determination;

(c) the method of counting votes at elections applying at the time of the making of the determination will continue to apply until the determination comes into effect;

and

(d) the council must, as soon as practicable after the making of the determination, cause notice in the prescribed form to be published in the *Gazette*.

(4) Where no determination by a council has come into effect under this section, the method of counting votes at elections for the council is the method set out in section 121(3).

**Procedure to be followed at the close of voting at polls**

**123.** (1) Each presiding officer will, immediately after the polling booth at which he or she has been presiding closes for voting at a poll (or, in the case of a mobile polling booth, immediately after the polling booth finally closes for voting at a poll), with the assistance of any other electoral officers who may be present, and in the presence of any scrutineers who may be present—

(a) open all the ballot boxes used at the polling booth, remove the contents and exhibit the ballot boxes empty;

(b) separate the envelopes used for declaration votes from the ballot papers not contained in such envelopes;

(c) parcel up all the envelopes used for declaration votes and transmit the parcel to the returning officer;

(d) examine all the ballot papers not contained in such envelopes and reject any informal ballot papers;

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- (e) count the votes recorded on the ballot papers (other than those rejected as informal);
- (f) mark and certify a return to the returning officer showing—
  - (i) the number of votes counted for, and the number of votes counted against, the proposition submitted to the electors at the poll;
  - (ii) the number of ballot papers entrusted to the presiding officer;
  - (iii) the number of ballot papers deposited in ballot boxes (excluding those related to declaration votes);
  - (iv) the number of ballot papers rejected as informal;
  - (v) the number of declaration votes made at the polling booth;
  - (vi) the number of ballot papers issued but returned unused;
  - (vii) the number of ballot papers issued but returned spoiled;
  - (viii) the number of ballot papers not issued;
  - (ix) the number of ballot papers not accounted for;

and

- (g) transmit to the returning officer all ballot papers in the possession of the presiding officer and the return referred to in paragraph (f).

(2) The presiding officer must comply with any directions of the returning officer as to procedures to be observed when acting under subsection (1).

(3) The returning officer will, with the assistance of any other electoral officers who may be present, and in the presence of any scrutineers who may be present—

- (a) open all ballot boxes and parcels containing declaration votes, remove the contents and, in the case of the ballot boxes, exhibit them empty;
- (b) proceed to the scrutiny of the declaration votes in accordance with section 120;

and

- (c) at an appropriate time—
  - (i) examine all ballot papers not contained in envelopes and reject any informal ballot papers;

and

- (ii) arrange the unrejected ballot papers into two parcels for counting.

\* \* \* \* \*

(5) When the result of the poll becomes apparent, the returning officer must make a provisional declaration of whether or not the proposition submitted to the electors has been carried at the poll.

(6) At any time within 48 hours after the returning officer has made a provisional declaration under subsection (5), a scrutineer may, by notice in writing lodged with the returning officer, request a recount of the votes cast at the poll and, in the event of such a request being made, the returning officer must cause a recount of votes to be made in accordance with the request.

(7) The returning officer may, on his or her own initiative, during the period of 48 hours referred to in subsection (6), decide to conduct a recount of any votes cast at the poll.

(8) If the period for requesting a recount expires without such a request having been made and the returning officer has not decided to initiate a recount pursuant to subsection (7), the returning officer must confirm the provisional declaration, and make out a return to the council certifying the result of the poll.

(9) Where a recount is made, the returning officer must, according to the result of the recount—

(a) confirm the provisional declaration;

or

(b) revoke the provisional declaration and make a final declaration in accordance with the result of the recount,

and make out a return to the council certifying the result of the poll accordingly.

(10) The returning officer must within one month after the conclusion of the poll cause public notice to be given of the result of the poll.

#### **Use of electronic equipment to count votes**

**123a.** (1) Subject to the regulations, electronic equipment may be used for the purpose of recording and counting votes.

(2) The regulations may—

(a) provide that the electronic equipment must be of a kind prescribed by the regulations;

and

(b) prescribe procedures that must be observed if electronic equipment is used for the purpose of recording and counting votes.

(3) A provision of a regulation under subsection (2) will, to the extent of any inconsistency, prevail over the provisions of this Part.

#### **Uninitialled ballot papers**

**123b.** A ballot paper is not informal by reason of the fact that it is not initialled by an electoral officer if the officer responsible for considering whether the ballot paper should be admitted is satisfied that it is an authentic ballot paper on which a voter has marked his or her vote.

#### **Retention and availability of voting material**

**124.** (1) A returning officer must retain all voting material relating to an election or poll for not less than six months after the date of an election or poll.

(2) Except as provided by other provisions of this Act, voting material will not be available for public inspection.

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**DIVISION X—ILLEGAL PRACTICES**

**Interpretation**

**124a.** A reference in this Division to a polling booth extends to any other place where voting papers are issued.

**Violence, intimidation, bribery, etc.**

**125.** (1) A person who exercises violence or intimidation, or offers or gives a bribe, with a view to—

- (a) inducing a person to submit or withdraw candidature for election;
- (b) influencing the vote of any person at an election or poll;
- (c) otherwise interfering with the due course of an election or poll,

is guilty of an indictable offence.

Penalty: \$10 000 or imprisonment for five years.

(2) A person who receives a bribe offered in contravention of subsection (1) is guilty of an indictable offence.

Penalty: \$10 000 or imprisonment for five years.

(3) In this section—

"**bribe**" includes any pecuniary sum or material advantage including food, drink or entertainment.

**Dishonest artifices**

**126.** (1) A person who dishonestly exercises, or attempts to exercise, a vote at an election or poll to which that person is not entitled is guilty of an indictable offence.

Penalty: \$5 000 or imprisonment for two years.

(2) A person who dishonestly influences or attempts to influence the result of an election or poll is guilty of an indictable offence.

Penalty: \$5 000 or imprisonment for two years.

**Interference with statutory rights**

**127.** A person must not hinder or interfere with the free exercise or performance, by any other person, of a right under this Part.

Penalty: \$2 000 or imprisonment for six months.

**Exception**

**128.** No declaration of public policy or promise of public action constitutes bribery or dishonest influence.

### **Transportation**

**128a.** (1) Subject to subsection (2), a person who is a candidate for election or acting on behalf of such a candidate (whether with or without the candidate's authority) must not offer to provide transportation to or from a polling booth to any person who desires to vote at the election.

Penalty: \$500.

(2) In proceedings for an offence against subsection (1), it is a defence if the defendant proves that the person to whom the transportation was offered was, at the time of the alleged offence—

- (a) a member of the defendant's family, or a person residing with the defendant;
  - (b) a person who generally relied on the defendant for transportation;
  - (c) a person who was assisting the defendant for the purposes of the election;
- or
- (d) a candidate for election on the same day, or a person acting on behalf of such a candidate.

### **Prohibition of certain activities near polling booths**

**129.** While voting is in progress at a polling booth, a person must not, within six metres of the entrance to the polling booth, or such lesser distance as may be fixed in a particular case by the presiding officer, solicit the vote of any person or distribute or display electoral material.

Penalty: \$500.

### **Voting information**

**130.** While voting is in progress at a polling booth—

- (a) a person other than an electoral officer must not have possession of a voters roll at the polling booth or make a record of persons voting at the polling booth;
- and
- (b) an electoral officer must not disclose to any other person not being an electoral officer any information as to the persons who have or have not voted at the polling booth.

Penalty: \$1 000.

### **Persons present at polling**

**131.** (1) No person may be present at a polling booth while the booth is open for voting unless the person is—

- (a) an electoral officer who is required to be there;
  - (b) a scrutineer appointed under this Part;
  - (c) a person engaged in voting or about to vote;
  - (d) a person chosen by another person to assist that other person in voting;
- or



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(e) a person permitted by the presiding officer to be present at the polling booth.

Penalty: \$500.

(2) A person who is present at a polling booth in contravention of subsection (1) may be removed by a member of the police force, or by another person authorized by the presiding officer.

**Conduct of scrutineers**

**131a.** (1) A scrutineer must not, without reasonable excuse, communicate with a person who is in a polling booth for the purpose of voting.

Penalty: \$500.

(2) A scrutineer must not interfere with or (while in a polling booth) attempt to influence any person voting or proposing to vote at an election or poll.

Penalty: \$1 000 or imprisonment for three months.

**Removal of offenders**

**131b.** (1) Where a person misconducts himself or herself in a polling booth, or fails to obey the lawful directions of the presiding officer—

(a) the person may be removed from the polling booth by a member of the police force, or by another person authorized by the presiding officer;

and

(b) the person is guilty of an offence.

Penalty: \$500.

(2) A person who has been removed from a polling booth under subsection (1) and who re-enters the polling booth without the permission of the presiding officer is guilty of a further offence.

Penalty: \$1 000 or imprisonment for three months, or both.

**Persons acting on behalf of candidates not to act as witnesses, etc.**

**132.** (1) A person who is a candidate for election or acting on behalf of such a candidate (whether with or without the candidate's authority) must not act as a witness for the purposes of making a declaration vote or as an assistant to a person voting at the election.

Penalty: \$1 000 or imprisonment for three months.

(2) Without limiting the generality of subsection (1), a person acts as an assistant by assisting another to obtain, complete or return advance voting papers.

**Persons acting on behalf of candidates not to collect postal voting papers**

**132a.** No person who is a candidate for election or acting on behalf of such a candidate (whether with or without the candidate's authority) may have in his or her possession, or attempt to gain possession of, advance voting papers for that election (except any such papers issued to the person as an elector in his or her own right).

Penalty: \$1 000 or imprisonment for three months.

**Secrecy of vote**

**132b.** (1) A person must not, by clandestine or dishonest means, attempt to discover how another person has voted.

Penalty: \$1 000 or imprisonment for three months.

(2) No person may open an envelope containing a declaration vote except the returning officer, or an electoral officer acting with the authority of the returning officer.

Penalty: \$500.

(3) A person who acquires knowledge of the vote of another person through assisting the other person to vote, or otherwise in the exercise of powers or functions under this Part, must not divulge that knowledge.

Penalty: \$2 000 or imprisonment for six months.

**Unlawful marking of ballot papers, etc.**

**132c.** (1) Except as authorized by this Part, a person (not being a person to whom the ballot paper has been lawfully issued) must not mark a vote, or make any other mark or writing on a ballot paper.

Penalty: \$2 000 or imprisonment for six months, or both.

(2) A person must not make a statement in any claim, application, return or declaration, or in answer to a question, under this Part that is, to the person's knowledge, false or misleading in a material respect.

Penalty: \$2 000 or imprisonment for six months, or both.

**Publication of electoral material**

**133.** (1) A person must not publish electoral material or cause electoral material to be published unless the material contains—

(a) the name and address of the person who authorizes publication of the material;

and

(b) in the case of printed electoral material—the name and address of the printer.

Penalty: \$2 000.

(2) Where electoral material is published in a newspaper that has been published at intervals of one month or less over a period of at least six months immediately preceding the publication of the electoral material, the name and address of the printer need not be contained in the electoral material.

(3) Where electoral material is published in a newspaper as a letter to the editor, it is an offence to publish the material without the name and address (not being a post box) of the writer of the letter.

Penalty: \$2 000.

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**Publication of misleading material**

**133a.** (1) Where—

(a) electoral material contains a statement purporting to be a statement of fact;

and

(b) the statement is inaccurate and misleading to a material extent,

a person who authorized, caused or permitted the publication of the material is guilty of an offence.

Penalty: \$2 000.

(2) It is a defence to a charge of an offence against subsection (1) for the defendant to prove—

(a) that he or she took no part in determining the contents of the material;

and

(b) that he or she could not reasonably be expected to have known that the statement to which the charge relates was inaccurate and misleading.

(3) This section applies to material published by any means (including radio or television).

**Conduct of officers**

**133b.** An electoral officer must not fail, without proper excuse, to carry out his or her official duties in connection with the conduct of an election or poll.

Penalty: \$2 000 or imprisonment for six months.

**DIVISION XI—DISPUTED RETURNS**

**Constitution of the Court**

**134.** (1) There will be, for the purposes of this Act, a Court of Disputed Returns.

(2) The Court is constituted of a District Court Judge.

(3) The Court, separately constituted under this section, may sit contemporaneously to hear separate proceedings.

(4) The Court is a court of record.

(5) Subject to this Part, the procedure and powers of the Court are the same as those of a District Court when exercising its civil jurisdiction.

**The clerk of the Court**

**135.** (1) There will be a clerk of the Court.

(2) The clerk will be appointed, and will hold office, subject to and in accordance with Part III of the *Government Management and Employment Act, 1985*.

(3) The office of clerk of the Court may be held in conjunction with any other office in the Public Service of the State.

**Jurisdiction of the Court**

**136.** (1) The Court has jurisdiction to hear and determine any petition addressed to it disputing the validity of an election under this Part.

(2) The Court will not call into question the eligibility of any person whose name appears on the voters roll as an elector to be a candidate for election under section 95(1)(a).

**Procedure upon petition**

**137.** (1) A petition to the Court must—

- (a) set out the facts relied on to invalidate the election;
- (b) set out the relief to which the petitioner claims to be entitled;
- (c) be signed by a candidate at the election in dispute or by an elector for that election;
- (d) be attested by two witnesses whose occupations and addresses are stated;
- (e) be lodged with the clerk of the Court within 28 days after the conclusion of the election;
- (f) be accompanied by the prescribed amount as security for costs.

(2) A copy of the petition must be served on—

- (a) any person declared elected in the disputed election;
- and
- (b) if it is alleged that the election is invalid on account of an act or omission of an electoral officer—the council.

(3) Where a person or council served under subsection (2) proposes to contest the petition, the person or council must, within seven days after service, or such further time as may be allowed by the Court (on application made either before or after the expiration of the period of seven days), lodge with the clerk of the Court, and serve on the petitioner, a reply.

(4) A reply must—

- (a) set out the facts on which the replicant proposes to rely;
- (b) ask for any relief to which the replicant claims to be entitled;
- (c) be signed—
  - (i) where the replicant is a natural person—by the replicant;
  - (ii) where the replicant is the council—by the Chief Executive Officer or returning officer of the council;

and

- (d) be attested by two witnesses whose occupations and addresses are stated.

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**Powers of the Court**

**138.** (1) The Court must sit as an open court, and its powers include the following:

- (a) to adjourn;
- (b) to compel the attendance of witnesses and the production of documents;
- (c) to examine witnesses on oath, affirmation or declaration;
- (d) with the consent of the parties to the proceedings, to receive evidence on affidavit or by statutory declaration;
- (e) subject to this Part and the rules, to determine its procedure in each case;
- (f) to declare—
  - (i) that a person who was returned as elected was not duly elected;and
  - (ii) that a candidate who was not returned as elected was duly elected;
- (g) to declare an election void;
- (h) to dismiss or uphold a petition, in whole or in part;
- (i) to amend or allow the amendment of a petition or reply;
- (j) to punish contempt of its authority by fine or imprisonment.

(2) The Court may exercise all or any of its powers under this section on such grounds as the Court in its discretion thinks just and sufficient.

(3) The Court is not bound by the rules of evidence.

(4) The Court must act according to good conscience and the substantial merits of the case without regard to legal technicalities.

(5) A decision of the Court is final and without appeal.

**Certain matters not to be called in question**

**139.** The entitlement to vote of any person whose name appears on the voters roll as an elector cannot be called in question by the Court.

**Illegal practices**

**140.** (1) The Court cannot declare an election void, or that a candidate returned as elected was not duly elected, on the ground of an illegal practice found by the Court to have been committed unless the Court is satisfied, on the balance of probabilities, that the result of the election was affected by the illegal practice.

(2) Where an illegal practice under section 125, 126 or 127 is found by the Court to have been committed, the illegal practice will be taken to have affected the result of the election unless the contrary is proved on the balance of probabilities.

(3) No finding by the Court as to whether an illegal practice was committed constitutes a bar to criminal proceedings in relation to the illegal practice or may be admitted as evidence in any such proceedings.

(4) Where the Court finds that an illegal practice occurred in relation to an election or poll, the clerk of the Court must report the finding to the Minister.

#### **Effect of decision**

**141.** (1) Where pursuant to this Division a person returned as elected is declared not to have been duly elected, that person ceases to be a member of the council, and the person declared to have been duly elected will take his or her place accordingly.

(2) Where pursuant to this Division an election is declared void, a person returned as elected at the election ceases to be a member of the council.

#### **Participation of council in proceedings**

**141a.** (1) The Court may—

(a) on the application of a party to the proceedings—order that the council be joined as a party to the proceedings;

or

(b) on the application of the council—allow the council to intervene in the proceedings.

(2) A council may only be joined as a party to the proceedings or allowed to intervene if the Court is satisfied that it is fair and reasonable that the council participate in the proceedings.

(3) If a council is allowed to intervene in the proceedings, it may intervene in the manner and to the extent directed by the Court, and on such other conditions as the Court may direct.

#### **Right of appearance**

**142.** A party to proceedings before the Court may appear personally or be represented by counsel.

#### **Case stated**

**143.** The Court may, of its own motion or on the application of a party to proceedings, state a question of law for the opinion of the Full Court of the Supreme Court.

#### **Costs**

**144.** (1) The Court may make such orders for costs as it thinks just (including an order for costs in favour of or against a council that has been joined as a party to the proceedings or that has intervened in the proceedings).

(1a) Where an election is declared void, or a candidate returned as elected is declared not to have been duly elected, on account of an act or omission of an electoral officer, any costs in favour of the petitioner must, to the extent to which they are attributable to that act or omission, be awarded against the council.

(2) An order under this section may be enforced as an order of the District Court.

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**Rules of the Court**

**145.** The Senior District Court Judge may make rules—

- (a) regulating the practices and procedures of the Court;
- (b) fixing fees to be paid in respect of proceedings before the Court;

and

- (c) making any other provision necessary or expedient for the purposes of this Division.

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**PART VIII  
REGISTER OF INTERESTS**

**Interpretation**

**146.** In this Part, unless the contrary intention appears—

"**family**", in relation to a member of a council, means—

(a) a spouse of the member;

and

(b) a child of the member who is under the age of 18 years and normally resides with the member;

"**financial benefit**", in relation to a member of a council, means—

(a) any remuneration, fee or other pecuniary sum exceeding \$500 received by the member in respect of a contract of service entered into, or paid office held, by the member;

and

(b) the total of all remuneration, fees or other pecuniary sums received by the member in respect of a trade, profession, business or vocation engaged in by the member where that total exceeds \$500,

but does not include an annual allowance or expenses payable to the member under Part IV;

"**income source**", in relation to a member of a council, means—

(a) any person or body of persons with whom the member entered into a contract of service or held any paid office;

and

(b) any trade, profession, business or vocation engaged in by the member;

"**Register**" means the Register of Interests kept by the chief executive officer for the purposes of this Part;

"**return period**", in relation to an ordinary return of a member of a council, means—

(a) in the case of a member whose last return was a primary return—the period between the date of the primary return and the thirtieth day of June next following;

and

(b) in the case of any other member—the period of 12 months expiring on the thirtieth day of June on or within 60 days after which the ordinary return is required to be submitted.



**Lodging of primary returns**

\* \* \* \* \*

147. Every person who is elected as a member of a council (other than a person who was a member of that council immediately before the conclusion of that election) or is appointed as a member of a council must, within 30 days after election or appointment, submit to the chief executive officer a primary return.

**Lodging of ordinary returns**

148. Every member of a council must, on or within 60 days after the thirtieth day of June in each year, submit to the chief executive officer an ordinary return.

**Content of returns**

149. (1) For the purposes of this Part, a primary return must be in the prescribed form and contain the following information:

- (a) a statement of any income source that the member required to submit the return or a member of his or her family has or expects to have in the period of 12 months after the date of the primary return;
- (b) the name of any company or other body, corporate or unincorporate, in which the member or a member of his or her family holds any office whether as director or otherwise;

and

- (c) the information required by subsection (3).

(2) For the purposes of this Part, an ordinary return must be in the prescribed form and contain the following information:

- (a) where the member required to submit the return or a member of his or her family received, or was entitled to receive, a financial benefit during any part of the return period—the income source of the financial benefit;
- (b) where the member or a member of his or her family held an office whether as director or otherwise in any company or other body, corporate or unincorporate, during the return period—the name of the company or other body;
- (c) particulars (including the name of the donor) of any gift of or above the amount or value of \$500 received by the member or a member of his or her family during the return period from a person other than a person related by blood or marriage;
- (d) where the member or a member of his or her family has had the use of any real property during the whole or a substantial part of the return period otherwise than by virtue of an interest disclosed under subsection (3)(c) and the person conferring the right to use the property is not related by blood or marriage—the name and address of that person;

and

- (e) the information required by subsection (3).

(3) For the purposes of this Part, a return (whether primary or ordinary) must contain the following information:

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- (a) the name or description of any company, partnership, association or other body in which the member required to submit the return or a member of his or her family holds a beneficial interest;
- (b) a concise description of any trust in which the member or a member of his or her family holds a beneficial interest and a concise description of any discretionary trust of which the member or a member of his or her family is a trustee or object;
- (c) the address or description of any land in which the member or a member of his or her family has any beneficial interest other than by way of security for any debt;
- (d) where the member or a member of his or her family is indebted to another person (not being related by blood or marriage) in an amount of or exceeding \$5 000—the name and address of that other person;

and

- (e) any other substantial interest whether of a pecuniary nature or not of the member or of a member of his or her family of which the member is aware and which the member considers might appear to raise a material conflict between his or her private interest and the duties that the member has or may subsequently have as a member of a council.

(4) Nothing in this section requires a member of a council to include in an ordinary return any information which has been disclosed in a previous return made by the member under this Part.

(5) A member of a council who has submitted a return under this Part may at any time notify the chief executive officer of any change or variation in the information appearing on the Register in respect of the member or a member of his or her family.

(6) A member of a council may include in a return such additional information as the member thinks fit.

(7) Nothing in this section prevents a member of a council from disclosing the information required by this section in such a way that no distinction is made between information relating to the member personally or a member of his or her family.

(8) Nothing in this section requires disclosure of the actual amount or extent of any financial benefit, gift, contribution or interest.

**Register of Interests**

**150.** (1) Each chief executive officer must maintain a Register of Interests and must cause to be entered in the Register all information furnished pursuant to this Part.

(2) A chief executive officer must, at the request of any member of the council, permit the member to inspect the Register.

(3) Where a member of a council fails to submit a return to the chief executive officer within the time allowed under this Part, the chief executive officer must as soon as practicable notify the member of that fact.

(4) A notification to be given to a member of the council pursuant to subsection (3) must be given by letter sent to the member by registered mail.

**Offences**

**151.** (1) A person must not disclose to any other person any information furnished by a member of a council pursuant to this Part unless the disclosure—

(a) is necessary for the purposes of the preparation of the Register under section 150;

or

(b) is made at a meeting of the council or a council committee (not being an advisory committee).

Penalty: \$10 000 or imprisonment for three months.

(2) A member of a council who submits a return under this Part that is to the knowledge of the member false or misleading in a material particular (whether by reason of information included in or omitted from the return) is guilty of an offence.

Penalty: \$5 000.

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**PART IX  
FINANCIAL MANAGEMENT**

**DIVISION I—COUNCIL REVENUES**

**Sources of council revenue**

**152.** A council may raise revenue in any of the following ways:

- (a) by imposing rates and charges in accordance with this Act;
- (b) by borrowing money and obtaining other forms of financial accommodation;
- (c) by selling property;
- (d) by leasing or hiring out property;
- (e) by obtaining grants and other allocations of money;
- (f) by carrying out commercial activities;
- (g) by recovering fees, charges, penalties or other money payable to the council.

**Borrowing**

**153.** (1) A council may, for the purpose of raising a loan or obtaining any other form of financial accommodation, provide any of the following forms of security:

- (a) debentures charged on the general revenue of the council;
- (b) bills of sale, mortgages or other charges;
- (c) guarantees.

(2) Whenever a council proposes to issue debentures for the purpose of raising money—

- (a) it must assign a distinguishing classification to the debentures to be included in the issue so as to distinguish them from those included or to be included in previous or subsequent issues;

and

- (b) where the debentures are being offered generally to members of the public, it must appoint a trustee for the debenture holders.

(3) The holders of debentures of a particular classification rank equally and have priority over the holders of debentures included in a subsequent issue.

(4) If a council defaults in carrying out its obligations under a loan secured by debenture charged on the general revenue of the council, the Supreme Court may, on the application of a creditor or trustee for debenture holders—

- (a) (i) direct the council to appropriate a specified portion of its revenue to the satisfaction of its obligations under the loan;

or

- (ii) require the council to raise a specified amount by way of rates and direct that the amount raised be applied towards satisfaction of the council's obligations under the loan;

and

- (b) give such incidental or ancillary directions as may be necessary or desirable.

(5) The rights of a creditor or trustee under subsection (4) are in addition to any other right that exists independently of that subsection.

- (6) In this section—

"debenture" includes any form of charge on the general revenue of a council.

## DIVISION II—EXPENDITURE OF REVENUE

### Expenditure of revenue

**154.** Subject to this Act, a council may expend its revenue as the council thinks fit in the council's various activities.

### Revenue raised by a separate rate

**155.** If a separate rate is declared to raise revenue for a particular purpose and—

- (a) the council resolves not to carry the purpose into effect;

or

- (b) there is an excess of funds over the amount required for that purpose,

the revenue raised by the rate or the excess (as the case may be) must, according to the determination of the council, be—

- (c) credited against future liabilities for rates in respect of the land on which the separate rate was imposed;

or

- (d) refunded to the persons who paid the rate,

in proportion to the amounts paid by each person.

### Council not obliged to expend rate revenue in the financial year in which it is raised

**156.** The revenue raised from rates in respect of a particular financial year need not be completely expended in that financial year.

## DIVISION III—INVESTMENT

### Investment

**157.** (1) Subject to subsection (2), a council may invest money in trustee investments.

- (2) Where a council proposes—

- (a) to invest money in stocks, shares or debentures issued by a company;

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or

(b) to invest money on deposit with a company,

in circumstances where, if the council were a trustee, it would be required to obtain the advice of an independent expert, the council must first obtain written advice from an independent expert on the soundness of the investment and must then obtain the consent of the Minister.

(3) A council may invest money in any other form of investment approved by the Minister.

(4) An approval of the Minister under this section may be given on such conditions as the Minister thinks fit.

(5) In this section—

"**independent expert**" means a person who carries on business as an investment adviser and who is licensed as such under the *Securities Industry Act, 1979*, or a person who is a member of a Stock Exchange that is a member of the Australian Associated Stock Exchanges.

**DIVISION IV—ACCOUNTS**

**Accounts**

**158.** (1) Subject to this section, a council must hold its money in a general operating account.

(2) A council may establish special purpose accounts for such purposes as it thinks fit.

(3) Any money affected by a specific trust must be held in a special purpose account established for the purposes of the trust.

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**DIVISION V—BUDGETS AND FINANCIAL REPORTING**

**Objects of Division**

**158a.** The objects of this Division are—

(a) to ensure that councils establish adequate budgeting, accounting and internal control systems and procedures;

(b) to promote financial reporting which fully reflects the operations and financial status of a council and which is in accordance with recognized accounting standards;

(c) to promote suitable asset management and valuation systems within local government;

(d) to ensure that appropriate financial information is available to the members, and officers and employees, of a council, and to the public generally;

and

(e) to provide mechanisms to increase the financial accountability of local government.

**Budgets**

**159.** (1) A council must prepare a budget relating to the council's revenues and expenses for each financial year.

(2) The budget will be in a form determined by the council.

(3) A budget must be adopted by the council on or before the thirty-first day of August of the financial year to which it relates.

(4) A budget for a financial year must not be adopted more than one month before the commencement of that year.

(5) A copy of the council budget must be submitted by the council to any person or body prescribed by the regulations on or before a day prescribed by the regulations.

(6) The council must, as required by the regulations, reconsider its budget during the course of a financial year and, if necessary, revise it.

### **Accounting records to be kept**

**160.** (1) A council must—

(a) keep such accounting records as correctly and adequately record and explain the revenues, expenses, assets and liabilities of the council;

and

(b) keep its accounting records in such manner as will enable—

(i) the preparation and provision of statements that present fairly financial and other information;

and

(ii) the financial statements of the council to be conveniently and properly audited.

(2) The accounting records may be kept in such form or forms, and in such place or places (within the State), as the council thinks fit.

(3) A member of a council is entitled, at any reasonable time, to inspect any accounting records kept by the council for the purposes of this section.

### **Financial statements**

**161.** (1) A council must prepare for each financial year—

(a) an operating statement;

(b) a statement showing the council's financial position as at the end of the financial year;

(c) a statement relating to changes in the council's financial position during the financial year;

(d) a statement of cash flows;

(e) appropriate notes and other explanatory documentation to be read in conjunction with the statements referred to above;

and

(f) such other statements or documentation relating to the financial affairs of the council as may be prescribed.

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(2) The material required under subsection (1)—

(a) must be prepared as soon as is reasonably practicable after the end of the relevant financial year and in any event before the prescribed day;

(b) must comply with accounting standards and principles prescribed by the regulations;

and

(c) must include such information as the regulations may require.

(3) The statements prepared for each financial year must be audited by the council's auditor.

(4) A copy of the audited statements must be submitted by the council to any person or body prescribed by the regulations on or before a day prescribed by the regulations.

(5) A member of the council is entitled, at any reasonable time, to inspect any statement or document prepared by the council for the purposes of this section.

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**DIVISION VII—AUDIT**

**The auditor**

**162.** (1) A council must have an auditor.

(2) The auditor will, subject to this section, be appointed by the council.

(3) No person is eligible for appointment as a council's auditor except—

(a) the Auditor-General;

(b) a person who holds a practising certificate issued by a prescribed professional body;

(ba) a person who is a registered company auditor;

or

(c) a person who was eligible for such appointment immediately prior to the commencement of this subsection.

(3a) Subsection (3)(c) will expire on 1 July 1996.

(4) A person who has an interest (directly or indirectly) in a contract with the council (other than a contract to act as the council's auditor) is not eligible for appointment as the council's auditor.

(5) A member of the council is not eligible for appointment as the auditor and the auditor is not eligible to stand for election as a member of the council.

(6) If a council, having been requested by the Minister to appoint an auditor, fails to make such an appointment within the time allowed in the request, the Auditor-General will be the auditor until the Minister otherwise determines.



(7) The office of auditor becomes vacant if—

- (a) the auditor dies;
- (b) the auditor resigns by notice in writing to the chief executive officer;
- (c) the auditor is not or ceases to be eligible for appointment as a council's auditor;
- (d) the auditor accepts any other remunerated office or employment from the council;
- (e) the auditor becomes interested (directly or indirectly) in a contract with the council (other than the auditor's contract to act as such);

or

- (f) the auditor is removed from office by resolution of the council.

(8) The resignation of an auditor takes effect on receipt by the chief executive officer of the notice of resignation or on such later date, not more than 28 days from the date of the notice, as may be specified in the notice (but once the notice is received by the chief executive officer the resignation cannot be withdrawn).

(9) An auditor will not be regarded as having an interest in a contract with the council if the interest exists by reason only of the fact that the auditor is a director or shareholder in a company with 20 or more shareholders that is a party to, or otherwise interested in, the contract.

(10) If an auditor is removed from office by a council—

- (a) the council must inform the Minister in writing of the reasons for the removal;

and

- (b) the auditor must, if the Minister so determines, complete an audit commenced before the date of the removal (and in respect of that work will be entitled to remuneration from the council at a rate determined by the Minister on the advice of the Auditor-General).

#### **Officers to assist auditor**

**163.** (1) The chief executive officer of a council must, at the request of the auditor, produce any accounts, accounting records or other documentation of a financial nature of the council for the auditor's inspection.

(2) The chief executive officer of a council must, at the request of the auditor, provide the auditor with any explanations or information that the auditor requires for the purposes of an audit.

(3) A chief executive officer who, without reasonable excuse, fails to comply with subsection (1) or (2) is guilty of an offence.

Penalty: \$10 000.

#### **Reporting of certain irregularities**

**164.** (1) The auditor must refer to the chief executive officer and, if the auditor thinks fit, the council, any irregularity in the council's accounting practices or the management of the council's financial affairs identified by the auditor in the course of the audit of the council's financial statements.

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- (2) Subject to subsection (3), an auditor must report to the Minister—
- (a) any irregularity referred to the chief executive officer or council under subsection (1) that is not promptly rectified;
  - (b) any breach of this Act that comes to the auditor's attention in the course of an audit;
  - (c) any case in which the council's current liabilities exceed the council's current assets (as determined in accordance with the accounting standards and principles prescribed by the regulations) by an amount equal to or greater than three per cent of the council's net general rates for that financial year.

Penalty: \$5 000.

(3) A report need not be made under subsection (2) in respect of a minor irregularity or breach.

(4) The Minister may, on the basis of an auditor's report under subsection (2), appoint an investigator to carry out an investigation, and make a report, to the Minister under Division XIII of Part II.

**DIVISION VIII—MISCELLANEOUS**

**Writing off bad debts**

**165.** (1) A council may, by resolution, write off any debts owed to the council—

- (a) if the council has no reasonable prospect of recovering the debts;
- or
- (b) if the costs of recovery are likely to equal or exceed the amount to be recovered.

(2) A council must not write off a debt under subsection (1) unless the chief executive officer has certified—

- (a) that reasonable attempts have been made to recover the debt;
- or
- (b) that the costs of recovery are likely to equal or exceed the amount to be recovered.

**Gifts to a council**

**166.** (1) A council may accept any gift made to the council.

(2) If a gift is affected by a trust, the council is empowered to carry out the terms of the trust.

(3) A council may apply to the Supreme Court for an order varying the terms of a trust in relation to which the council has been constituted a trustee.

(4) Notice of an application under subsection (3) describing the nature of the variation sought in the terms of the trust must be given—

- (a) in the *Gazette*;
- (b) in a newspaper circulating generally in the State;

and

(c) in such other manner as may be directed by the Supreme Court.

(5) The Supreme Court may vary the terms of a trust if it is satisfied that it is impracticable for the council to give effect to the trust in its existing form.

(6) The council must, within 28 days after an order is made under subsection (5), publish a copy of the order in the *Gazette*.

**Duty to insure against liability**

**166a.** (1) A council must take out and maintain insurance to cover its civil liabilities to the extent prescribed by the regulations.

(2) A regulation cannot be made for the purposes of this section except after consultation with the Local Government Association of South Australia.

(3) Membership of the *Local Government Association Mutual Liability Scheme* constitutes insurance for the purposes of this section.

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**PART X  
RATES AND CHARGES ON LAND**

**DIVISION I—PRELIMINARY**

**Rates and charges that a council may impose**

**167.** A council may under this Part impose rates and charges of the following kinds on land within its area:

- (a) general rates;
- (b) separate rates;
- (c) service rates;
- (d) service charges.

**Ratability of land**

**168.** (1) Subject to subsection (2), all land within an area is ratable.

(2) The following is not ratable:

- (a) unalienated Crown land;
  - (b) land used or held by the Crown or an instrumentality of the Crown for a public purpose (including an educational purpose), except any such land—
    - (i) that is held or occupied by the Crown or instrumentality under a lease or licence;or
    - (ii) that constitutes domestic premises;
  - (c) (i) a church or chapel and its grounds;
- or
- (ii) land used solely for religious purposes;
- (d) a public cemetery;
- (e) land (not including domestic premises) occupied by—
  - (i) a university, college of advanced education or other tertiary educational institution established by special Act of Parliament;or
  - (ii) a college of technical and further education established under the *Technical and Further Education Act, 1976*;
- (f) land used exclusively for educational purposes (not being land of a school or other educational institution at which fees are charged);

- (g) land occupied by an institute that is a member of the Institutes Association of South Australia under the *Libraries Act, 1982*;
- (h) land, owned or used by a proclaimed body, that is exempted from rates by proclamation on the ground—
  - (i) that it constitutes, or is used for the purposes of, a hospital;
  - (ii) that it is used for the purpose of providing assistance or relief to disadvantaged persons;or
  - (iii) that it is used for the rehabilitation of persons addicted to alcohol or drugs;
- (i) land (not including domestic premises) owned by, or under the care, control and management of, the Royal Zoological Society of South Australia Incorporated;
- (j) land that is exempt from rates or taxes by virtue of the *Recreation Grounds Rates and Taxes Exemption Act, 1981*;
- (k) land that is exempt from council rates under or by virtue of any other Act;
- (l) land occupied by the council;
- (m) land occupied by a controlling authority where such land is situated in the area of—
  - (i) the council that established the controlling authority (*see* section 199);or
  - (ii) a constituent council (*see* section 200).

(3) A proclamation cannot be made for the purposes of subsection (2)(h) unless the council for the area in which the land is situated has been notified of the terms of the proposed proclamation and allowed a reasonable opportunity to comment on the proposal.

(4) Where land is divided by a strata plan under the *Strata Titles Act 1988*—

- (a) rates will be assessed against the units and not against the common property;
- but
- (b) the equitable interest in the common property that attaches to each unit will be regarded, for the purpose of valuation, as part of the unit.

(4a) Where land is divided by a primary, secondary or tertiary plan of community division under the *Community Titles Act 1996*—

- (a) in the case of the division of land by a primary plan—rates will be assessed against the primary lots that are not divided by a secondary plan and against a development lot or lots (if any);

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- (b) in the case of the division of land by a secondary plan—rates will be assessed against the secondary lots that are not divided by a tertiary plan and against the development lot or lots (if any);
- (c) in the case of the division of land by a tertiary plan—rates will be assessed against the tertiary lots and a development lot or lots (if any).

(4b) Where land is divided by a primary, secondary or tertiary plan of community division under the *Community Titles Act 1996*—

- (a) in the case of the division of land by a primary plan—where the use of the common property or part of it is, in the opinion of the Valuer-General, reasonably incidental to the use of one or more of the primary lots, rates will not be assessed against the common property, or that part of it, but the interest in the common property, or that part of it, that attaches to each primary lot will be regarded for the purposes of valuation as part of the lot;
- (b) in the case of the division of land by a secondary plan—where the use of the common property or part of it is, in the opinion of the Valuer-General, reasonably incidental to the use of one or more of the secondary lots, rates will not be assessed against the common property, or that part of it, but the interest in the common property, or that part of it, (and in the common property of the primary scheme referred to in paragraph (a) (if any)) that attaches to each secondary lot will be regarded for the purposes of valuation as part of the lot;
- (c) in the case of the division of land by a tertiary plan—where the use of the common property or part of it is, in the opinion of the Valuer-General reasonably incidental to the use of one or more of the tertiary lots, rates will not be assessed against the common property, or that part of it, but the interest in the common property, or that part of it, (and in the common property of the primary and secondary schemes referred to in paragraphs (a) and (b) (if any)) that attaches to each tertiary lot will be regarded for the purposes of valuation as part of the lot.

(4c) Where land is divided by a primary, secondary or tertiary plan of community division under the *Community Titles Act 1996* and the use of common property or any part of it is not, in the opinion of the Valuer-General reasonably incidental to the use of any of the community lots, rates will be assessed against the common property or that part of it and the relevant community corporation is liable for those rates as though it were the owner of the common property.

(4d) Despite paragraph (b) of subsection (4) and subsection (4b) the interest in that part of the common property of a strata scheme under the *Strata Titles Act 1988* or the *Community Titles Act 1996* that comprises the building divided into units or lots by the scheme will not be taken into account if rates are based on site value.

(5) Rates may be assessed against—

- (a) any piece or section of land subject to separate ownership or occupation;
- or
- (b) any aggregation of contiguous land subject to the same ownership or occupation.

**DIVISION II—BASIS OF RATING**

**Basis of rating**

- 169.** (1) Subject to this section, a rate must be based on the value of the land subject to the rate.
- (2) A general rate may consist of two separate components—
- (a) one being based on the value of the land subject to the rate;
- and
- (b) the other being a fixed charge.
- (3) A fixed charge can only be imposed as follows:
- (a) (i) the fixed charge cannot be imposed against land that constitutes less than the whole of a single allotment;
- and
- (ii) if two or more pieces of contiguous ratable land are owned by the same owner and occupied by the same occupier, only one fixed charge may be imposed against the whole of that land;
- (b) except as provided by paragraph (a), the fixed charge must apply equally to each separately valued piece of ratable land in the area;
- and
- (c) the charge must be calculated so as to ensure that the revenue raised from the charge does not exceed the council's total administration expenses (as described in the model financial statements prescribed by the regulations) for the previous financial year.
- (4) A separate rate or a service rate may be declared on some basis other than the value of the land subject to the rate but, in that event, the basis of the rate must be approved by the Minister.
- (5) For the purposes of this section, an allotment is—
- (a) the whole of the land comprised in a certificate of title;
- or
- (b) the whole of the land subject to a separate lease or a separate licence coupled with an interest in land.

**Value of land for rating purposes**

- 170.** (1) Subject to subsection (2), the value of land for the purpose of rating is its capital value.
- (2) A council may declare rates on the basis of the annual value or site value of land if—
- (a) the council declared rates in respect of that land on that basis for the previous financial year;
- or

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- (b) the council declared rates in respect of that land on the basis of capital value for the previous three financial years.

**DIVISION III—VALUATION OF LAND FOR THE PURPOSE OF RATING**

**Valuation of land for the purposes of rating**

**171.** (1) A council must not declare a rate for a particular financial year without first adopting the valuations that are to apply to land within its area for rating purposes for that year.

(2) A council must, for the purposes of subsection (1), adopt—

(a) valuations made by the Valuer-General;

or

(b) valuations made by a valuer employed or engaged by the council.

(3) For the purposes of subsection (2)—

(a) where a council adopts valuations of the Valuer-General, the most recent valuations available to the council at the time that the council adopts its budget under Part IX will govern the assessment of rates for the financial year;

(b) where a council adopts valuations of a valuer employed or engaged by the council, the valuations may be up to five years old.

(4) A notice of the adoption of valuations must be published in the *Gazette* within 21 days after the date of the adoption.

(5) A valuer employed or engaged by a council for the purposes of this section must be a person who is able to act as a land valuer under the *Land Valuers Act 1994*.

**Valuation of land**

**172.** (1) The Valuer-General must, at the request of a council, value any land within the council's area (being land that is capable of being separately rated) specified in the request.

(2) A council may, instead of using the Valuer-General's services, employ or engage a valuer who is able to act as a land valuer under the *Land Valuers Act 1994* to value land for the purpose of rating.

(3) Where a valuer is employed or engaged by a council to value land for the purpose of rating—

(a) the valuer may, for the purposes of the valuation—

(i) enter land and make inspections, measurements or surveys;

(ii) require a person to answer questions or to furnish returns of information relevant to the valuation;

(b) the council must, as soon as practicable after the valuation is made, enter the valuation in the assessment book;

and



(c) notice of the valuation must be given by the council to the owner of the land in accordance with the regulations (although a valuation is not invalidated by failure to give the notice).

(4) A person who, without reasonable excuse—

(a) hinders or obstructs a valuer acting under this section;

(b) having been asked a question by a valuer under this section, does not answer the question to the best of his or her knowledge, information and belief;

or

(c) fails to make a return of information as required under this section, or furnishes a return that is false or misleading in a material particular,

is guilty of an offence.

Penalty: \$500.

#### **Objections to valuations made by council**

**173.** (1) A person who is dissatisfied with a valuation made by a valuer employed or engaged by a council may—

(a) object to the valuation;

or

(b) appeal against the valuation to the Land and Valuation Court.

(2) An objection cannot be taken under subsection (1)(a) if it involves a question of law.

(3) An objection to a valuation—

(a) must be made to the council in writing (setting out a full and detailed statement of the grounds on which the objection is based);

and

(b) must be made within 21 days after the objector receives notice of the valuation to which the objection relates (unless the council, in its discretion, allows an extension of time for making the objection).

(4) The council must refer the objection to the valuer who made the valuation and request the valuer to reconsider the valuation.

(5) If, on reconsideration, the valuer thinks that the valuation should be altered, the valuation will be altered in accordance with the valuer's opinion.

(6) The council must give the objector written notice of the outcome of his or her objection.

(7) If the objector remains dissatisfied with the valuation, the objector may request the council to refer the valuation to the Valuer-General for further review.

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(8) A request under subsection (7)—

- (a) must be made in writing;
- (b) must be made within 21 days after the objector receives notice of the outcome of his or her initial objection (unless the council, in its discretion, allows an extension of time for making the request);

and

- (c) must be accompanied by the prescribed fee.

(9) The council must refer the request to the Valuer-General, who will refer the matter to a valuer from a panel of valuers constituted under Part IV of the *Valuation of Land Act, 1971*.

(10) The valuer to whom the matter is referred under subsection (9) will carry out the review in the same manner as a review under the *Valuation of Land Act, 1971* (and both the objector and the council may make representations to the valuer on the subject matter of the review).

(11) If the valuer considers that the valuation should be altered, the valuation will, subject to subsection (12), be altered in accordance with the valuer's opinion.

(12) A valuation will not be altered on the review if the alteration would have the effect of increasing or decreasing the valuation by a proportion of one-tenth or less.

(13) If a valuation is reduced on the review, the fee paid by the objector under subsection (8) must be refunded.

(14) If an objector, or the council, is dissatisfied with the valuation after the further review, the objector or the council may, in accordance with the appropriate rules of the Supreme Court, appeal against the valuation to the Land and Valuation Court.

(15) A prescribed fee is payable by the council to the Valuer-General in relation to a review conducted on the Valuer-General's reference under this section.

(16) No objection to a valuation may be made under this section if—

- (a) the valuation is yet to be adopted by the council;
- or
- (b) the valuation was adopted by the council in relation to a previous financial year.

**DIVISION IV—DECLARATION OF RATES AND IMPOSITION OF CHARGES**

**Declaration of general rates**

**174.** (1) A council may, after considering and adopting its budget for a particular financial year—

- (a) declare a general rate on ratable land within its area for that financial year;
- or
- (b) declare differential general rates on ratable land within its area for that financial year.

(2) A rate may not be declared under subsection (1) more than one month before the commencement of the financial year to which it relates.

(3) A council may not, without the approval of the Minister, declare a rate under subsection (1) after the thirty-first day of August of the financial year to which it relates.

**Limitation on general rates—1997/1998 and 1998/1999 financial years**

**174A.** (1) Subject to this section, a council must, in each of the 1997/1998 and 1998/1999 financial years, aim to recover from general rates charged on land within the area of the council (in total) an amount that does not exceed the total revenue raised from general rates charged on the same land under this Division for the 1995/1996 financial year, adjusted to reflect changes in the Consumer Price Index between the March quarter 1995 and the March quarter 1997.

(2) However—

(aa) for the purposes of subsection (1), the following may be disregarded:

(i) an amount that represents additional revenue to a council due to growth in value that has occurred in relation to land in the area of the council in the 1995/1996 financial year, or a subsequent year, other than—

(A) growth attributable to the improvement of domestic premises existing at the beginning of the relevant financial year; and

(B) growth attributable to changes in the market for land in the area; and

(ii) an amount that represents additional revenue to a council due to general rates being charged on land in the area of the council that was not rateable in the 1995/1996 financial year (and that became rateable in the 1996/1997 financial year, or a subsequent financial year);

(a) a council is not required to comply with this section if—

(i) a poll of electors for the relevant area is conducted on the matter; and

(ii) the majority of persons voting at the poll vote in favour of the proposition that the council is not required to comply with this section;

(b) the Governor may, by proclamation, grant a council an exemption from the requirements of this section on the basis that the Governor is satisfied that extenuating circumstances exist that justify the exemption.

(2a) For the purposes of subsection (2)(aa)(i)—

(a) growth attributable to the completion of previously uncompleted domestic premises is excluded from the operation of subsection (2)(aa)(i)(A); and

(b) information provided to a council under this subsection by—

(i) the Valuer-General; or

(ii) in the case of a council that does not propose to adopt valuations made by the Valuer-General for the relevant financial year—a valuer employed or engaged by the council,

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after consultation with the council will be taken to represent an acceptable basis for determining—

- (iii) growth in value that has occurred in relation to land in the area of the council in a particular financial year; and
  - (iv) growth attributable to the improvement of domestic premises in a particular financial year; and
  - (v) growth attributable to changes in the market for land in the area of the council in a particular financial year; and
- (c) the Governor may, by regulation, prescribe other principles and assumptions that must be applied by councils in connection with the operation of that subsection.

(2b) A regulation cannot be made under subsection (2a)(c) except after consultation by the Minister with the Local Government Association of South Australia.

(3) Part VII will apply to a poll under subsection (2)(a) subject to modifications, exclusions or additions prescribed by regulation.

(4) A person cannot challenge a general rate (or a requirement to pay rates under this Act) on the ground that the declaration of the rate may result in the council raising more than an amount fixed under subsection (1), but a council may be subject to investigation and action under Division XIII of Part II if the Minister considers that the council has failed to comply with the requirements of this section.

(5) In this section—

"**Consumer Price Index**" means the Consumer Price Index (All groups index for Adelaide) published by the Australian Bureau of Statistics.

**Declaration of separate rates**

**175.** (1) A council may declare a separate rate or differential separate rates on ratable land within a part of its area for the purpose of planning, carrying out, making available, maintaining or improving a project that is, or is intended to be, of particular benefit to the land, or the occupiers of the land, within that part of the area, or to persons who resort to that part of the area.

(2) A separate rate must not be declared more than one month before the commencement of the financial year to which it relates.

**Basis of differential rates**

**176.** (1) Differential rates may vary—

- (a) according to the use of the land;
  - (b) according to the locality of the land;
  - (c) according to the locality of the land and its use;
- or
- (d) on some other basis determined by the council.

(2) A determination under subsection (1)(d)—

(a) may only be made if—

- (i) the council is a new council with an area that includes land previously within the area of a different council; or
- (ii) the council has been formed by the amalgamation of two or more councils; or
- (iii) the boundaries of the area of the council have been altered,

and the council has resolved that in the circumstances differential rating is appropriate in order to allow rating relativities within the area of the council to be gradually realigned; and

- (b) may not be inconsistent with a proclamation under Part II (insofar as a proclamation under that Part provides for the realignment of rating relativities during a specified period);
- (c) may not apply for more than five financial years or, if a proclamation under Part II so provides, a longer period specified by proclamation.

(3) Where land has more than one use, the use of the land will, for the purpose of rating, be taken to be its predominant use.

(4) A particular land use must not be used as a differentiating factor affecting the incidence of differential rates unless the land use is declared by the regulations to be a permissible differentiating factor.

(5) If land is vacant, the non-use of the land is capable of constituting a land use for the purpose of the declaration of differential rates.

(6) The locality of land may only be used as a differentiating factor as follows:

- (a) there may be differentiation according to the zone in which the land is situated;
- (b) there may be differentiation according to whether the land is situated within or outside a township (with, at the discretion of the council, a separate differentiation according to zones);
- (c) where there are two or more townships in the area—there may be differentiation according to the township in which the land is situated (with, at the discretion of the council, a separate differentiation in relation to land outside the townships and, at the discretion of the council, a separate differentiation according to zones).

(7) Where a council declares differential rates, the council must, in each account for rates, specify the differentiating factor or combination of factors that governs the calculation of rates on the land to which the account relates.

(8) A change in the use of land after differential rates are declared does not affect the incidence of the rates.

(9) A ratepayer, if of the opinion that a particular land use has been wrongly attributed to the ratepayer's land by the council for the purpose of levying differential rates, may object to the attribution of that land use to the land.

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(10) An objection under subsection (9)—

(a) must be in writing;

(b) must set out—

(i) the grounds of the objection;

and

(ii) the land use (being a land use being used by the council as a differentiating factor) that should, in the objector's opinion, have been attributed to the land;

and

(c) must be made within 21 days after the objector receives notice of the attribution of the particular land use to which the objection relates (unless the council, in its discretion, allows an extension of time for making the objection).

(11) The council may decide any such objection as it thinks fit and must notify the objector in writing of its decision.

(12) The objector, if dissatisfied with the council's decision on the objection may, subject to the relevant rules of the Supreme Court, appeal against the decision to the Land and Valuation Court.

(13) Except as provided by this section, the attribution of a particular land use to land for the purpose of levying differential rates cannot be challenged.

(14) A regulation cannot be made for the purposes of this section except after consultation with the Local Government Association of South Australia.

(15) In this section—

"**zone**" means an area defined as a zone, precinct or locality by a Development Plan under the *Development Act 1993*.

**Service rates and service charges**

**177.** (1) In this section—

"**prescribed service**" means any of the following services provided in relation to land:

(a) water supply;

(b) septic tank effluent disposal;

(c) any other service approved by the Minister for the purposes of this section.

(2) A council may, by notice in the *Gazette*, impose—

(a) a service rate, an annual service charge, or a combination of a service rate and an annual service charge, on ratable land within its area to which it provides, or makes available, a prescribed service;

(b) an annual service charge on non-ratable land to which it provides, or makes available, a prescribed service.

(3) A service rate, or annual service charge, may vary according to whether the land to which it applies is vacant or occupied.

(4) Where a council provides more than one prescribed service of a particular kind in its area, a different service rate or service charge may be imposed in respect of each service.

(5) A council must not seek to recover in relation to a prescribed service an amount by way of service rate, service charge, or a combination of both exceeding the cost to the council of establishing, operating, maintaining, replacing and improving the service in its area.

(6) The Minister may, by notice in the *Gazette*—

(a) prescribe a method or various methods for the calculation of service charges under this section;

and

(b) fix the maximum amount that a council may impose as a charge for any prescribed service in a particular financial year.

(7) A service charge imposed by a council under this section is recoverable as if it were a rate (even as against non-ratable land).

#### DIVISION V—THE ASSESSMENT BOOK

##### Chief executive officer to keep assessment book

**178.** (1) The chief executive officer of a council must ensure that a record (the "assessment book") is kept in which is entered—

(a) (i) a brief description of each separate piece of ratable land in the area;

(ii) the ratable value of the land;

(b) if a service charge is imposed by the council on non-ratable land in the area—a brief description of that land;

(c) the name and address of the owner of the land;

(d) if the owner is not the principal ratepayer in respect of the land—the name and address of the principal ratepayer;

(e) so far as is known to the chief executive officer, the name of any occupier of the land (not being an owner or principal ratepayer in respect of the land);

(f) if the land is rated on the basis of a particular land use—that land use;

and

(g) such other information as may be prescribed.

(2) An occupier of land may, with the consent of the owner, apply to the chief executive officer of a council in a manner and form approved by the chief executive officer, to have the occupier's name entered in the assessment book as the principal ratepayer in respect of the land.

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(3) Where an application is duly made under subsection (2), the chief executive officer must enter the occupier's name in the assessment book as the principal ratepayer.

(4) Notwithstanding subsection (1), where the chief executive officer is satisfied that the inclusion in the assessment book of the name or address of any person would place at risk the personal safety of that person, a member of that person's family or any other person, the chief executive officer may suppress the name or address from the assessment book.

(4a) Where the chief executive officer is satisfied that a person's address is suppressed from the roll under the *Electoral Act, 1985*, the chief executive officer must—

- (a) where the person's residential address is included in respect of ratable property that the person owns but does not occupy—suppress the person's residential address from the assessment book;
- (b) where the person's residential address is ratable land described in the assessment book—suppress the person's name from the assessment book in relation to that land.

(5) The chief executive officer may, as he or she thinks fit—

- (a) keep the assessment book in any form that allows for the accurate recording of information and easy access to that information;

and

- (b) make any alteration to the assessment book that may be necessary to keep the book in a correct and up-to-date form.

**Alterations to assessment book**

**179.** (1) Application may be made to the chief executive officer of a council for an alteration of the assessment book—

- (a) by an owner or occupier of land, on the ground that particular information entered in the assessment book is incorrect or has not been recorded in accordance with this Act;

or

- (b) by an occupier of land who is also the principal ratepayer in respect of the land, on the ground that the person no longer wishes to be the principal ratepayer.

(2) An application under subsection (1) must be made in a manner and form approved by the chief executive officer.

(3) If a person is dissatisfied with the outcome of his or her application, the person may request the council to review the matter.

(4) A request under subsection (3) must be made to the council in writing (setting out a full and detailed statement of the grounds on which the request is made).

(5) The procedure before the council on a review under this section will be as determined by the council and the council may, in its absolute discretion, decide whether to permit the person who requested the review to appear personally or by representative before it.

- (6) The council must give the person written notice of its decision on a review.



(7) A person who is dissatisfied with the decision of the council on a review may apply to the Supreme Court for an order for rectification of the assessment book.

**Inspection of assessment book**

**180.** (1) A person is entitled to inspect the assessment book at the council's principal office from one hour after the commencement of ordinary office hours to one hour before the close of ordinary office hours.

(2) A person is entitled, on payment of a fee fixed by the council, to a copy of any entry made in the assessment book.

**DIVISION VI—IMPOSITION AND RECOVERY OF RATES AND CHARGES**

**Preliminary**

**181.** In this Division—

"rates" includes any service charge imposed under Division IV.

**Rates are charges against land**

**182.** (1) Subject to subsection (2), rates imposed on land are a charge on the land.

(2) Where rates are assessed against the common property, or part of the common property, of a community scheme under the *Community Titles Act 1996*, the rates are not a charge on the common property but are, instead, a charge on each of the community lots of the community scheme.

**Liability for rates**

**183.** (1) Subject to subsection (2), the owner of land is the principal ratepayer in respect of the land.

(2) If—

(a) the name of an occupier is entered in the assessment book as the principal ratepayer in respect of land;

or

(b) the land is held from the council under a lease or licence,

the occupier of the land (rather than the owner) will be regarded as the principal ratepayer.

(3) Subject to subsection (6), rates may be recovered as a debt from—

(a) the principal ratepayer;

(b) any other person (not being a principal ratepayer) who is an owner or occupier of the land;

or

(c) any other person who was at the time of the declaration of the rates an owner or occupier of the land.

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(4) The council may, by written notice to a lessee or licensee of land in respect of which rates have fallen due, require him or her to pay to the council any rent or other consideration payable under the lease or licence in satisfaction of the liability for rates.

(4a) Where the council gives a notice under subsection (4), an additional charge of five per cent of the amount in arrears is payable and recoverable as part of those rates.

(4b) A council may remit the charge payable under subsection (4a) in whole or in part.

(4c) If—

(a) the council gives a notice to a lessee or licensee under subsection (4);

(b) the council, by written notice to the owner of the land, informs the owner of the imposition of the requirement under subsection (4);

and

(c) the lessee or licensee, contrary to the terms of the notice under subsection (4), makes a payment to the owner instead of to the council,

the owner, must within one clear business day after receipt of the payment, pay the amount received to the council in satisfaction of the liability for rates.

Penalty: \$200.

(5) If rates are paid by, or recovered from, a person who is not the principal ratepayer, that person may, subject to any agreement to the contrary—

(a) recover the amount as a debt from the principal ratepayer;

or

(b) if the person is a lessee or licensee—set off the amount paid to the council against a liability under the lease or licence (and a lessor or tenant against whom such an amount is set off may in turn set off the amount against a prior lessor or tenant from whom his or her interest in or in relation to the land is derived).

(6) Where an occupier of land derives his or her right of occupancy from a residential tenancy agreement under the *Residential Tenancies Act, 1978*, no amount by way of rates may be recovered from the occupier unless that amount has fallen due by virtue of a requirement imposed under subsection (4).

**Payment of rates**

**184.** (1) Subject to this section, rates imposed in respect of a particular financial year will fall due (according to the council's decision)—

(a) in four equal or approximately equal instalments;

(b) in two equal or approximately equal instalments;

or

(c) in a single instalment.

(2) For the purposes of subsection (1)—

(a) where a council decides that rates of a particular kind will be payable in four instalments—

(i) the instalments will be payable in the months of September, December, March and June of the financial year for which the rates are declared;

(ii) the day on which each instalment falls due will (subject to subparagraph (i)) be determined by the council;

and

(iii) the council cannot decide that rates of the same kind for a subsequent financial year will be payable in a lesser number of instalments unless:

— the council has obtained the Minister's approval;

or

— rates of that kind for the previous three financial years have been payable in four instalments and the proposed change is that rates of that kind are to be payable in two instalments;

(b) where a council decides that rates of a particular kind will be payable in two instalments—

(i) the instalments will be payable in the months of September and March of the financial year for which the rates are declared;

(ii) the day on which each instalment falls due will (subject to subparagraph (i)) be determined by the council;

and

(iii) the council cannot decide that rates of the same kind for a subsequent financial year will be payable in a single instalment unless:

— the council has obtained the Minister's approval;

or

— rates of that kind for the previous three financial years have been payable in two instalments;

and

(c) where a council decides that rates will be payable in a single instalment, the instalment will fall due on a day determined by the council, being a day that does not fall before the first day of September of the financial year for which the rates are declared.

(3) The Minister should only give an approval under subsection (2) if satisfied that the approval is necessary to alleviate extraordinary administrative difficulties that the council would experience if the approval were not given.

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(4) An approval under subsection (2) may be limited to a specified period or given on such conditions as the Minister thinks fit.

(5) Where a council decides to allow payment of general rates in four instalments under subsection (1)(a), the first instalment payable in the first financial year in which rates are so payable need not approximate the other three instalments, but may not be more than twice the amount of each of those other three instalments.

(6) A council may agree with a principal ratepayer that rates will be payable in such instalments falling due on such days as the council thinks fit and in that event, that ratepayer's rates will be payable accordingly.

(7) A council must, in relation to each instalment of rates, send an account to the principal ratepayer shown in the assessment book in respect of the land at the address shown in the assessment book showing the amount of the instalment and the date on which it falls due and the account must be sent—

(a) where rates are payable in two or more instalments—at least 30 days but not more than 60 days before an instalment falls due;

or

(b) where rates are payable in a single instalment—at least 60 days before the instalment falls due.

(7a) If the council has entered into an agreement with a principal ratepayer under subsection (6), the council may, as part of the agreement, vary the periods for the provision of accounts under subsection (7)(a) or (b).

(8) If an instalment of rates is not paid on or before the date on which it falls due—

(a) the instalment will be regarded as being in arrears;

(b) a fine of five per cent of the amount of the instalment is payable;

and

(c) on the expiration of each month from that date, interest of the prescribed percentage of the amount in arrears (including the amount of any previous unpaid fine and interest) is payable.

(9) A council may remit any amount payable under subsection (8) in whole or in part.

(10) Any amount payable under subsection (8) in respect of outstanding rates is recoverable as a part of those rates.

(11) A council may grant discounts or other incentives in order to encourage early or prompt payment of rates.

(12) A council may, in relation to the payment of separate rates or service rates, by written notice incorporated in an account for the payment of those rates sent to the principal ratepayer shown in the assessment book in respect of the land at the address shown in the assessment book at least 30 days before any amount is payable in respect of the rates for a particular financial year, impose a requirement that differs from the requirements of this section.

(13) In this section—

"the prescribed percentage" is to be calculated as follows:

$$p = \frac{\text{PBR} + 3\%}{12}$$

where—

p is the prescribed percentage

PBR is the prime bank rate for that financial year.

### Remission and postponement of payment

**185.** (1) If a council is satisfied on the application of a ratepayer that payment of rates in accordance with this Act would cause hardship, the council may—

(a) remit the rates in whole or in part;

or

(b) postpone payment for such period as the council thinks fit.

(2) A postponement under subsection (1)—

(a) may, if the council thinks fit, be granted on condition that the ratepayer pay interest on the amount affected by the postponement at a rate fixed by the council (but not exceeding the prime bank rate);

(b) may be granted on such other conditions as the council thinks fit;

and

(c) ceases to operate if—

(i) the council in its discretion revokes the postponement (in which case the council must give the ratepayer at least 30 days written notice of the revocation before taking action to recover rates affected by the postponement);

or

(ii) the ratepayer ceases to own or occupy the land in respect of which the rates are imposed (in which case the rates are immediately payable).

(3) A council may grant other or additional remissions of rates—

(a) on the same basis as applies under the *Rates and Land Tax Remission Act, 1986* (and such remissions will be in addition to the remissions that are available under that Act);

or

(b) on any other basis determined by the council.

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(4) A council may require a ratepayer who claims to be entitled to a remission of rates by virtue of a determination under subsection (3) to provide evidence verifying his or her entitlement.

(5) A council may revoke a determination under subsection (3) at any time (but the revocation will not affect any entitlement to remission in relation to rates declared before the revocation takes effect).

**Application of money in respect of rates**

**186.** Where a council receives or recovers an amount in respect of rates, the amount will be applied as follows:

- (a) firstly—in payment of any costs awarded to, or recoverable by, the council in any court proceedings undertaken by the council for the recovery of the rates;
  - (b) secondly—in satisfaction of any liability for interest;
  - (c) thirdly—in payment of any fine;
- and
- (d) fourthly—in satisfaction of liabilities for rates in the order in which those liabilities arose.

**Sale of land for non-payment of rates**

**187.** (1) Where any amount payable by way of rates in respect of land has been in arrears for three years or more, the council may sell the land.

(2) Before a council sells land in pursuance of this section, it must send a notice to the principal ratepayer at the address appearing in the assessment book—

- (a) stating the period for which the rates have been in arrears;
  - (b) stating the amount of the total liability for rates presently outstanding in relation to the land;
- and
- (c) stating that if that amount is not paid in full within one month of service of the notice (or such longer time as the council may allow), the council intends to sell the land for non-payment of rates.

(3) A copy of a notice sent to a principal ratepayer under subsection (2) must be sent—

- (a) to any owner of the land who is not the principal ratepayer;
  - (b) to any registered mortgagee of the land;
- and
- (c) if the land is held from the Crown under a lease, licence or agreement to purchase—to the Minister of Lands.

(4) If—

(a) a council cannot, after making reasonable inquiries, ascertain the name and address of a person to whom a notice is to be sent under subsection (2) or (3);

or

(b) a council considers that it is unlikely that a notice sent under subsection (2) or (3) would come to the attention of the person to whom it is to be sent,

the council may effect service of the notice by—

(c) placing a copy of the notice in a newspaper circulating generally in the State;

and

(d) leaving a copy of the notice in a conspicuous place on the land.

(5) If the outstanding amount is not paid in full within the time allowed under subsection (2), the council may proceed to have the land sold.

(6) The sale will, except in the case of land held from the Crown under a lease, licence or agreement to purchase, be by public auction (and the council may set a reserve price for the purposes of the auction).

(7) An auction under this section must be advertised on at least two separate occasions in a newspaper circulating generally throughout the State.

(8) If, before the date of such an auction, the outstanding amount and the costs incurred by the council in proceeding under this section are paid to the council, the council must call off the auction.

(9) If—

(a) an auction fails;

or

(b) the land is held from the Crown under a lease, licence or agreement to purchase,

the council may sell the land by private contract for the best price that it can reasonably obtain.

(10) Any money received by the council in respect of the sale of land under this section will be applied as follows:

(a) firstly—in paying the costs of the sale and any other costs incurred in proceeding under this section;

(b) secondly—in discharging any liabilities to the council in respect of the land;

(c) thirdly—in discharging any liability to the Crown for rates, charges or taxes, or any prescribed liability to the Crown in respect of the land;

(d) fourthly—in discharging any liabilities secured by registered mortgages, encumbrances or charges;

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(e) fifthly—in discharging any other mortgages, encumbrances and charges of which the council has notice;

and

(f) sixthly—in payment to the owner of the land.

(11) If the owner cannot be found after making reasonable inquiries as to his or her whereabouts, an amount payable to the owner must be dealt with as unclaimed money under the *Unclaimed Moneys Act, 1891*.

(12) Where land is sold in pursuance of this section, an instrument of transfer under the council's common seal will operate to vest title to the land in the purchaser.

(13) The title vested in a purchaser under subsection (12) will be free of—

(a) all mortgages and charges;

and

(b) except in the case of land held from the Crown under lease, licence or agreement to purchase—all leases and licences.

(14) An instrument of transfer passing title to land in pursuance of a sale under this section must, when lodged with the Registrar-General for registration or enrolment, be accompanied by a statutory declaration made by the chief executive officer of the council stating that the requirements of this section in relation to the sale of the land have been observed.

(15) Where it is not reasonably practicable to obtain the duplicate certificate of title to land that is sold in pursuance of this section, the Registrar-General may register the transfer notwithstanding the non-production of the duplicate, but in that event will cancel the existing certificate of title for the land and issue a new certificate in the name of the transferee.

(16) A reference in this section to land or title to land is, in relation to land held from the Crown under lease, licence or agreement for purchase, a reference to the interest of the lessee, licensee or purchaser in the land.

(17) This section does not authorize the sale of non-ratable land on account of the non-payment of a service charge.

**Procedure where council cannot sell land**

**188.** (1) If after a council has made reasonable attempts to sell land on account of arrears of rates it appears that the council has no reasonable prospect of selling the land within a reasonable time, the council may apply to the Minister of Lands for an order under this section.

(2) On the receipt of an application by a council under subsection (1), the Minister of Lands may, after consultation with the council and being satisfied that it is appropriate to do so, order—

(a) in the case of land held from the Crown under a lease, licence or agreement for purchase—that the land be forfeited to the Crown;

(b) in any other case—that the land be transferred to the Crown or to the council.



(3) An order under subsection (2)—

(a) must be in writing and signed by the Minister of Lands;

and

(b) (i) in the case of land held from the Crown under a lease, licence or agreement for purchase—operates to cancel the lease, licence or agreement;

(ii) in any other case—operates as an instrument of transfer passing title to the land to which it relates.

(4) No stamp duty is payable on an order under subsection (2).

(5) Where it is not reasonably practicable to obtain the duplicate certificate of title to land that is subject to an order under subsection (2), the Registrar-General may, on application, register the order notwithstanding the non-production of the duplicate, but in that event will cancel the existing certificate of title for the land and issue a new certificate.

(6) If an order is made under this section—

(a) the land to which the order relates is freed of any charge against the land that exists in favour of the council;

and

(b) any outstanding liability to the council in respect of the land is discharged.

## DIVISION VII—MISCELLANEOUS

### Notice of declaration of rates

**189.** Notice of the declaration of a rate or service charge must be published in the *Gazette* and in a newspaper circulating in the area within 21 days after the date of the declaration.

### Minimum amount payable by way of rates

**190.** (1) Subject to this Act, a council may fix a minimum amount payable by way of rates in respect of ratable land within its area (or a part of its area).

(2) A minimum amount can only be imposed as follows:

(a) the minimum amount cannot be imposed against land that constitutes less than the whole of a single allotment;

and

(b) if two or more pieces of contiguous ratable land are owned by the same owner and occupied by the same occupier, the minimum amount may only be imposed against the whole of the land and not against individual pieces of it.

(3) After the 1995/1996 financial year, the number of properties in an area subjected to an increase in the amount payable by way of rates because of the fixing of a minimum amount under this section may not exceed 35 per cent of the total number of properties in the area subject to the separate assessment of rates.

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(3a) If for the 1994/1995 financial year the number of properties in an area subjected to an increase in the amount payable by way of rates because of the fixing of a minimum amount under this section exceeds 35 per cent of the total number of properties in the area subject to the separate assessment of rates, the council for the area must, within 21 days after the declaration of a rate under section 174(1) for that financial year—

- (a) prepare a plan outlining the steps that it proposes to take in order to comply with subsection (3) by the 1996/1997 financial year;
- (b) make copies of the plan available for public inspection at the principal office of the council;

and

- (c) by notice published in a newspaper circulating in the area, inform the public of the preparation of the plan and its availability.

(3b) A council to which subsection (3a) applies must keep the plan referred to in that subsection available for public inspection at its principal office for at least three months.

(4) If a council has included a fixed charge as a component of a general rate, it cannot fix a minimum amount under this section.

(5) For the purposes of this section, an allotment is—

- (a) the whole of the land comprised in a certificate of title;

or

- (b) the whole of the land subject to a separate lease or a separate licence coupled with an interest in land.

**Recovery of rates not affected by an objection, review or appeal**

**191.** (1) The right of a council to recover rates is not suspended by—

- (a) an objection, review or appeal in respect of a valuation (whether under this Act or the *Valuation of Land Act, 1971*);

or

- (b) an objection or appeal in respect of the attribution of a particular land use to land.

(2) If an objection, review or appeal results in the alteration of a valuation or of a decision to attribute a particular land use to land, a due adjustment must be made and—

- (a) any amount overpaid must be refunded or, if the council so determines, credited against future liabilities for rates on the land subject to the rates;

or

- (b) any additional amount payable on account of an alteration of the valuation or decision may be recovered as arrears (but action to recover any such amount must not be taken until at least 30 days have expired from the date on which notification of the alteration is given to the person who initiated the objection, review or appeal).

(3) Interest is payable on any amount that is refunded or is for the time being credited under subsection (2)(a).

(4) The interest—

(a) accrues on the expiration of each month from the day that the amount was paid to the council;

(b) will be payable at the prescribed rate;

and

(c) until the amount is refunded or ceases to be in credit, will be compounded on a monthly basis.

(5) The council must, on being satisfied by a person in whose favour an amount has been credited under subsection (2)(a) that he or she has ceased to be a ratepayer in respect of the land, refund the amount (including interest) then standing to the person's credit.

(6) In this section—

"the prescribed rate" is to be calculated as follows:

$$p = \frac{\text{PBR}}{12}$$

where—

p is the prescribed rate

PBR is the prime bank rate for that financial year.

#### **Liability for rates where land is not ratable for the whole of the financial year**

**192.** (1) If land (other than land that becomes ratable after the rate is declared) is ratable for portion, but not for the whole, of a financial year, the land will be subject to rates imposed for the financial year but there will be a proportionate reduction in the amount of rates.

(2) If during the course of a financial year land is excised from the area of one council (council A) and added to the area of another council (council B)—

(a) the land remains subject to rates imposed by council A for the financial year;

and

(b) the land does not become subject to rates imposed by council B until the following financial year.

(3) If land ceases to be ratable land by reason of transfer or surrender to the Crown during the course of a financial year, the land remains subject to rates imposed for the financial year.

#### **Rebates of rates**

**193.** (1) The rates on land predominantly used for educational purposes will be rebated by 75 per cent or such greater percentage as is fixed by the council.

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(2) Land is only eligible for a rebate under subsection (1) if the land is being used by—

- (a) a non-government school registered under Part V of the *Education Act, 1972*;
- (b) a school or institution licensed under Part V of the *Technical and Further Education Act, 1976*;

or

- (c) some other body approved by the Minister for the purposes of this section by notice in the *Gazette*.

(3) Subject to the regulations, the rates on land (not being domestic premises) predominantly used for agricultural, horticultural or floricultural exhibitions will be rebated by 50 per cent or such greater percentage as is fixed by the council.

(4) A council may grant a rebate of rates or service charges in any of the following cases:

- (a) where the rebate is desirable for the purpose of securing the proper development of the area (or a part of the area);
- (b) where the rebate will conduce to the preservation of buildings or places of historic significance;
- (c) where the land is used to provide facilities or services for children or young persons;
- (d) where the land is used for providing accommodation for the aged or disabled;

or

- (e) where the land is used for a purpose prescribed by the regulations.

(5) A rebate of rates or charges under subsection (4) may be granted on such conditions as the council thinks fit.

(6) A rebate of rates or charges under subsection (4)(a) may be granted for a period exceeding one year, but not exceeding 10 years.

(7) A council may grant a rebate under this section that is up to (and including) 100 per cent of the relevant rates or service charge.

**Certificate of liabilities**

**194.** (1) A council must, on application by or on behalf of a person who has an interest in land within the area, issue to that person a certificate stating—

- (a) the amount of any liability for rates or charges on the land imposed under this Part (including rates and charges under this Part that have not yet fallen due for payment, and outstanding interest or fines payable in respect of rates and charges under this Part);
- (b) any amount received on account of rates or charges on the land imposed under this Part that is held in credit against future liabilities for rates or charges in relation to the land.

(2) A person has an interest in land for the purposes of this section if and only if that person is—

- (a) the owner of a registered estate or interest in the land;
- (b) an occupier of the land;
- (c) a person who has entered or proposes to enter into a contract to purchase the land;
- (d) a mortgagee or prospective mortgagee of the land.

(3) An application for a certificate under this section—

- (a) must be in writing;
- (b) must identify the land to which the application relates;
- (c) must state the nature of the applicant's interest in the land;
- (d) should be directed to the chief executive officer of the council;

and

- (e) must be accompanied by the fee fixed under this Act.

(4) Where a certificate is issued under this section, the council is, as against the person to whom it is issued, estopped from asserting that any liabilities to the council for rates or charges on the land under this Part existed, as at the date of the certificate, in respect of the land to which the certificate relates beyond the liabilities disclosed in the certificate.

(5) Except as provided by subsection (4), a council incurs no liability in respect of a certificate issued under this section.

### **Contiguous land**

**194a.** For the purposes of this Part, land will be regarded as being contiguous to other land if the land—

- (a) abuts on the other land;

or

- (b) is separated from the other land only by—

- (i) a road, street, lane, footway, court, alley, railway or thoroughfare;

- (ii) a watercourse;

or

- (iii) a reserve or other similar open space.

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**PART XI  
FEES AND CHARGES**

**Fees and charges**

**195.** (1) A council may impose fees and charges—

- (a) for the use of any property or facility owned, controlled, managed or maintained by the council;
- (b) for services supplied to a person at his or her request;
- (c) for carrying out work at a person's request;
- (d) for providing information or materials, or copies of, or extracts from, council records;
- (e) in respect of any application to the council;
- (f) in respect of any licence, permit or authorization granted by the council;
- (fa) in respect of any matter for which some other Act provides that a fee fixed under this Act is to be payable;
- (g) in relation to any other prescribed matter.

(2) Fees or charges under subsection (1)(a), (b) or (c) need not be fixed by reference to the cost to the council.

(3) A council may provide for—

- (a) specific fees and charges;
- (b) maximum fees and charges and minimum fees and charges;
- (c) annual fees and charges;
- (d) the imposition of fees or charges according to specified conditions or circumstances;
- (e) the variation of fees or charges according to specified factors;
- (f) the reduction, waiver or refund, in whole or in part, of fees or charges.

(4) Where—

- (a) a fee or charge is fixed or prescribed by or under this Act or by or under any other Act in respect of a particular matter;

or

- (b) this or any other Act provides that no fee or charge is payable in respect of a particular matter,

a council may not fix or impose a fee or charge in respect of that matter.

(5) Fees and charges may be fixed, varied or revoked—

(a) by by-law;

or

(b) by resolution of the council.

(6) The council must keep a list of fees and charges imposed under this section on public display (during ordinary office hours) at the principal office of the council.

(7) Where a council—

(a) fixes a fee or charge under this section;

or

(b) varies a fee or charge under this section,

the council must up-date the list referred to in subsection (6) and take reasonable steps to bring the fee or charge, or the variation of the fee or charge, to the notice of persons who may be affected.

(8) The Local Government Association of South Australia may prepare guidelines relating to the fixing of fees and charges by councils under this section.

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**PART XII  
PROJECTS**

**Various projects that may be carried on by a council**

**196.** (1) The functions of a council include the following:

- (a) to provide for the development of its area;
- (b) to provide services and facilities that benefit the area, its ratepayers and residents and those who resort to it;
- (c) to protect health and treat illness;
- (d) to provide for the welfare, well-being and interests of individuals and groups within the community;
- (e) to represent and promote the interests of its ratepayers and residents;
- (f) to establish or support organizations and programmes that benefit people in its area or local government generally;
- (g) to protect the environment and improve amenity;
- (h) to provide the infrastructure for industry;
- (i) to attract commerce, industry and tourism;
- (j) to act to benefit, improve and develop its area in other ways;
- (k) to manage, improve and develop resources available to the council;
- (l) any other function approved by the Minister.

(2) A council may, in the performance of its functions, undertake such projects as it thinks fit.

(3) A council may—

- (a) undertake a project in conjunction with any other council, authority or person;
- (b)
  - (i) participate in the formation of a trust, partnership or other body (not being a company);
  - (ii) acquire and dispose of units in a trust;
  - (iii) acquire and dispose of interests in a partnership or other body (not being a company);
  - (iv) enter into arrangements for profit sharing;
- (c) enter into various forms of commercial activity or enterprise;
- (d) undertake a project for the purpose of raising revenue.

(4) Where a reason for proposing a project (other than an incidental reason) is to raise revenue, the council must, before determining whether to undertake the project, consider—



- (a) the impact that the project might have on other services or facilities, or businesses, provided or carried on in the proximity;

and

- (b) the objectives of any Development Plan that applies in relation to its area.

(5) Subject to subsection (6), a council must not undertake outside the area of the council a project which constitutes a form of development within the meaning of the *Development Act 1993* if the primary reason for proposing the project is to raise revenue for the council.

(6) Subsection (5) does not apply to any development on land where—

- (a) the land was owned or occupied by the council immediately before the commencement of that subsection;

or

- (b) the council had, before the commencement of that subsection, entered into an agreement—

- (i) to purchase the land;

or

- (ii) to enter into a lease or licence over the land, the term of which exceeds six years or such longer term as may be prescribed, or in respect of which a right or option of renewal or extension exists so that the agreement, or the lease or licence, may operate by virtue of renewal or extension for a total period exceeding six years or such longer period as may be prescribed.

(7) If land owned or occupied by a council immediately before the commencement of subsection (5) is compulsorily acquired from the council after that commencement, the amount of compensation to which the council is entitled must be assessed as if subsection (5) did not affect the council's ability to reinstate the use of the land in another place.

#### **Procedures to be observed in relation to certain activities**

**197.** (1) Subject to subsection (2), the following require Ministerial approval:

- (a) a project—

- (i) that will involve expenditure by a council in excess of 20 per cent of the council's operating expenses as shown in the council's operating statement in accordance with the regulations for the previous financial year;

- (ii) in relation to which the council proposes to borrow or obtain some other form of financial accommodation, or to give a guarantee, where—

- the council is already expending an amount equal to or exceeding 30 per cent of its annual rate revenue in interest (including credit charges) and capital repayments;

and

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— the effect of the proposal would be (assuming no increases in net general rate revenue and no decreases in rates of interest or credit charges) to commit a further amount equal to or exceeding 10 per cent of its annual rate revenue to such expenditure;

or

(iii) that is of a kind prescribed by the regulations;

(b) a proposal of a council—

(i) to participate in the formation of a trust, partnership or other body;

or

(ii) to acquire an interest in a trust, partnership or other body.

(2) The following do not require Ministerial approval:

(a) road construction or maintenance;

(b) drainage works;

(c) the construction of car parking facilities;

(d) the construction of civic buildings and work depots;

or

(e) a proposal to form a partnership or other body with another council or with an agency or instrumentality of the Crown.

(3) An application for Ministerial approval under this section must be accompanied by such information as the Minister may require, which may include—

(a) a detailed statement setting out the purpose of the project or proposal;

(b) details of any alternative project or proposal that was considered by the council;

(c) details of any cost-sharing or profit-sharing arrangements, and other organizational and business arrangements, that the council intends to enter into;

(d) a report on the feasibility of the project or proposal;

(e) written advice from an independent expert or consultant relating to the feasibility of the project or proposal;

(f) financial information in relation to the project or proposal including—

(i) the manner in which it is to be financed;

(ii) a report on any financial risks to which the council would be exposed;

(iii) a report on the financial position of any other parties;

- (iv) a statement of any security to be given by the council;
- (g) a report on the economic, social or environmental impact of the project or proposal, including a statement of its impact on services, facilities and businesses in the proximity;
- (h) information as to the project or proposal's possible effects on employment and any other industrial ramifications;

\* \* \* \* \*

- (j) copies of any intended contract relating to the project or proposal;
- (k) written valuations of properties proposed to be affected by the project or proposal.

(3a) The council must, before submitting an application to the Minister under this section, cause notice of the project or proposal to be published in a newspaper circulating in its area.

(3b) A notice published under subsection (3a)—

- (a) must describe the project or proposal with reasonable particularity;
- (b) in relation to a project—
  - (i) must state the estimated cost to the council of carrying out the project and the means by which the project is to be financed;and
  - (ii) must identify any land that would be directly affected by the project;and
- (c) must invite interested persons to make written submissions to the council in relation to the project or proposal on or before a date stated in the notice (which must be a date falling at least one month after the date of publication of the notice).

(3c) The council must consider any representations made in response to the notice and, as part of its application, report to the Minister on—

- (a) those representations;
- and
- (b) any other consultation that the council has undertaken with members of the public in relation to the project or proposal.

(4) The Minister may—

- (a) approve a project or proposal unconditionally;
- (b) approve a project or proposal with such modifications or subject to such conditions as the Minister thinks fit;

or

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(c) direct that a project or proposal should not be carried out.

(5) Before making a decision under subsection (4), the Minister may direct the council—

(a) to obtain other approvals specified by the Minister;

(b) to consult with other authorities or bodies specified by the Minister;

\* \* \* \* \*

\* \* \* \* \*

(9) The Minister must not—

(a) impose modifications or conditions in relation to a project or proposal;

or

(b) direct that a project or proposal should not be carried out,

without first consulting with the council.

(10) If the Minister directs that a project or proposal should not be carried out, the Minister must furnish the council with written reasons for the decision.

(11) The Minister may at any time, on the application of a council, approve (on such conditions as the Minister thinks fit) the modification of a project or proposal that has been previously approved by the Minister.

(12) The Minister may—

(a) exempt (on such conditions as the Minister thinks fit)—

(i) a council, or councils of a specified class, from a requirement of this section;

(ii) a project or proposal, or projects or proposals of a specified class, from a requirement of this section;

or

(iii) on approving a project or proposal, a council from any other requirement of this Act;

and

(b) impose any other requirement in substitution.

(13) A regulation cannot be made for the purposes of this section except after consultation by the Minister with the Local Government Association of South Australia.

**Acquisition of land**

**198.** (1) A council may, with the approval of the Minister, acquire land under the *Land Acquisition Act, 1969*, for the purposes of carrying out a project.

(2) An application for Ministerial approval under this section must be accompanied by such information as the Minister may require.

(3) The Minister may—

(a) grant an approval unconditionally;

(b) grant an approval subject to such conditions as the Minister thinks fit;

or

(c) refuse to grant an approval.

(4) Ministerial approval to acquire land under the *Land Acquisition Act, 1969*, is not required under this section where the council is authorized to acquire the land under another provision of this or any other Act.

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**PART XIII  
CONTROLLING AUTHORITIES**

**Controlling authorities established by one council**

**199.** (1) A council may establish a controlling authority—

- (a) to carry out a project on behalf of the council;
- (b) to manage or administer any property or facilities on behalf of the council;

or

- (c) to carry out any other work on the council's behalf.

(2) The council may make provision for—

- (a) the membership of the controlling authority (which may, but need not consist of, or include, members of the council);
- (b) the term of office of members of the controlling authority;
- (c) the proceedings of the controlling authority;
- (d) the powers, functions and duties of the controlling authority;

and

- (e) rules for the conduct of the business of the controlling authority.

(3) A person may be removed from membership of the controlling authority by resolution of the council.

(4) The council may, subject to conditions determined by the council, delegate to the controlling authority—

- (a) the power to receive and expend revenue;
- (b) any other of the council's powers that are reasonably required to enable it to carry out the functions for which it is established,

but the power to make by-laws may not be delegated.

(5) A liability incurred by a controlling authority may be enforced against the controlling authority or the council by which it was established.

(6) No liability attaches to a member of the controlling authority for an honest act or omission by that member or the controlling authority in the performance or discharge, or purported performance or discharge, of the member's or the controlling authority's functions or duties.

(7) A liability that would, but for subsection (6), lie against a member of the controlling authority lies against the council.

(8) The council may at any time abolish the controlling authority and, in that event, the rights and liabilities of the controlling authority vest in the council.

(9) The establishment of a controlling authority under this section does not derogate from the powers of the council to act in any matter itself.

(10) A controlling authority must, on or before the prescribed day in each year, prepare a report containing the prescribed information and documents relating to the operations of the controlling authority.

(11) The report must be incorporated into the annual report of the council.

**Controlling authorities established by two or more councils**

**200.** (1) Two or more councils ("the constituent councils") may, with the approval of the Minister, establish a controlling authority—

(a) to carry out any project on behalf of the councils;

or

(b) to perform any function or duty of the councils under this or any other Act.

(2) An application for the approval of the Minister under subsection (1)—

(a) must be in a form approved by the Minister;

(b) must be accompanied by such information as the Minister may require;

and

(c) must be accompanied by a copy of the proposed rules of the controlling authority.

(3) Before approving an application the Minister may investigate whether it would be appropriate to include any other council as a constituent council and may, if he or she thinks fit, approve a controlling authority that includes another council or other councils as constituent councils.

(4) The Minister must not include a council as a constituent council under subsection (3) unless—

(a) the council has been given a reasonable opportunity to make written submissions to the Minister in relation to the matter;

and

(b) if the council so requests at the time that it makes such written submissions—the Minister has discussed the matter with a delegation representing the council.

(5) The Minister may only include a council in a controlling authority under subsection (3) if the Minister considers—

(a) that an object of the controlling authority cannot be properly fulfilled without the inclusion of the council as a constituent council;

(b) that it is in the interests of local government in a part of the State that the council be included as a constituent council;

and

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- (c) that, after giving proper consideration to any representation made under subsection (4), it is fair and reasonable in all the circumstances of the case that the council be included as a constituted council.

(6) Where a constituent council of a controlling authority is to be a council included under subsection (3), the Minister may, after consultation with all of the constituent councils, make such consequential amendments to the rules of the controlling authority as the Minister thinks fit.

(7) If a controlling authority is approved under this section, the Minister will, by notice in the *Gazette*, specify—

- (a) the name of the controlling authority;

and

- (b) the purpose for which the controlling authority is established.

(8) On publication of a notice under subsection (7), a controlling authority is established under the name specified in the notice.

(9) A controlling authority established under this section—

- (a) is a body corporate;

- (b) has the powers, functions and duties specified in its rules;

and

- (c) holds its property on behalf of the constituent councils.

(10) The rules of a controlling authority—

- (a) must make provision for—

- (i) the membership of the controlling authority (which may, but need not consist of, or include, members of the constituent councils);

- (ii) the term of office of members of the controlling authority;

- (iii) the proceedings of the controlling authority;

- (iv) financial contributions to the controlling authority by the constituent councils;

- (v) the manner in which property of the controlling authority is to be distributed in the event of it being wound up;

- (vi) the proportions in which the constituent councils are to be responsible for the liabilities of the controlling authority in the event of its insolvency;

and

- (vii) any other prescribed matter;

and



(b) may empower the controlling authority to make by-laws as if it were a council (but the power of the controlling authority to make by-laws cannot exceed the powers of the constituent councils).

(11) The rules of the controlling authority may, with the approval of the Minister, be amended by the constituent councils acting jointly.

(12) A council may, with the approval of the Minister, cease to be a constituent council of a controlling authority.

(13) A controlling authority may, with the approval of the Minister, be wound up by the constituent councils.

(14) The approval of the Minister under subsection (12) or (13) may be given subject to such conditions as the Minister thinks fit.

(15) The constituent councils must, at the direction of the Minister, wind up the controlling authority in the event of its insolvency.

(16) The constituent councils are, in the event of the insolvency of the controlling authority, responsible for the outstanding liabilities of the controlling authority in the proportions specified in the rules.

(16a) No liability attaches to a member of the controlling authority for an honest act or omission by that member or the controlling authority in the performance or discharge, or purported performance or discharge, of the member's or the controlling authority's functions or duties.

(16b) A liability that would, but for subsection (16a), lie against a member of the controlling authority lies against the controlling authority.

(17) The establishment of a controlling authority under this section does not derogate from the powers of a constituent council to act in any matter itself unless the council seeks to limit its powers and the limitation is specified in the notice approving the establishment of the controlling authority.

(18) A controlling authority must, on or before the prescribed day in each year, prepare a report containing the prescribed information and documents relating to the operations of the controlling authority.

(19) The report must be incorporated into the annual reports of each constituent council.

**Application of Subordinate Legislation Act to rules**

**201.** (1) Subject to subsection (2), Part 2 of the *Subordinate Legislation Act 1978*, other than section 10AA, applies to the rules of a controlling authority under this Part.

(2) The *Subordinate Legislation Act 1978* does not apply to the rules of—

(a) a controlling authority prescribed by the regulations; or

(b) a controlling authority of a class prescribed by the regulations.

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**PART XVI  
GOVERNMENT GRANTS**

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**Grant to council of City of Adelaide**

**300a.** (1) The Governor may, on the recommendation of the Commissioner of Highways, direct that a grant of an amount not exceeding \$40 000 be paid out of the Highways Fund established under the *Highways Act, 1926*, to the council of the City of Adelaide.

(2) Any amount received by the council pursuant to subsection (1) must be expended by the council in defraying the cost of operations in connection with roads which abut the park lands within the City of Adelaide but do not abut ratable property within the City and work appertaining to such roads, and any such amount must not be expended by the council for any other purpose.

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(4) This section applies only during such time as the *Highways Act, 1926* (other than the proviso to section 2 of that Act) does not apply to the City of Adelaide.

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**PART XVII  
STREETS, ROADS AND PUBLIC PLACES**

**DIVISION I—PUBLIC STREETS AND ROADS**

**Public streets**

**301.** (1) All streets and roads and land used as streets or roads in an area which come under or are included in any of the following definitions or descriptions are public streets or roads:

- (a) all streets and roads delineated and shown, whether before or after the commencement of this Act, on the public maps or plans of the State as laid out for public purposes by the Crown;
- (b) all streets and roads opened, whether before or after the commencement of this Act, by the council under this Act or any other Act relating to the opening of streets or roads;
- (c) all streets and roads or land conveyed or transferred to the council by the owners of the fee simple, and accepted as public streets or roads by resolution of the council;
- (d) all streets and roads vested in the council pursuant to statute;
- (e) any land shown as a street or road on any plan of subdivision deposited in the Lands Titles Registration Office or the General Registry Office which by resolution of the council is declared to be a public street or road;
- (f) all streets and roads and land declared by the council or a Court under section 303 or 304 to be public streets or roads;
- (g) all streets and roads declared or dedicated by any other Act to be public streets or roads;
- (h) all streets and roads which at the commencement of this Act were public streets or roads within the meaning of any repealed Act;
- (i) any land transferred or surrendered to the Crown for use as a public street or road that was, immediately before the transfer, held by a person in fee simple or under a lease granted by the Crown.

(2) All other streets and roads are, for the purpose of this Act, private streets and roads.

(3) Notice of a resolution passed pursuant to subsection (1)(c) or (e) must be published in the *Gazette*, and until publication the street or road or land is, notwithstanding those paragraphs, not a public street or road (but nothing in this subsection applies to proceedings under section 303 or 304 and any street or road or land may in any such proceedings be declared a public street or road notwithstanding this subsection).

**Limitation of width of streets or roads**

**302.** A street or road which is less than 12.2 metres in width cannot be declared to be a public street or road unless the council by resolution accepts or declares it to be a public street or road.

**Power to declare certain streets, roads or land public streets and roads**

**303.** (1) The council may, whether an application to the council is made pursuant to subsection (2) or not, subject to sections 304 and 305, by resolution declare any land in its area which comes under or is included in any of the following definitions or descriptions to be a public street or road:

- (a) any street or road of which there has been uninterrupted user by the public for at least ten years;
- (b) any land used as a street or road which has been wholly or partly formed, levelled, paved, or drained as a street or road by the council at the cost of the council or at the cost of the owners of ratable property abutting on the land, or partly at the cost of the council or the owners, and of which there has been uninterrupted user by the public as a street or road for five years consecutively either before or after the land was formed, levelled, paved, or drained;
- (c) any land used as a street or road, of which the owner in fee simple is unknown to the council and in respect of which all the owners of ratable property abutting on the land join in a request in writing to the council that the land be declared a public street or road;
- (d) any land laid out as a pathway or walkway for use by the public generally.

(2) Any owner of any freehold interest in any such street or road or land as is described in subsection (1)(a) or (b), or the owner of any ratable property abutting on any such street or road or land may, by writing, request the council to declare the street or road or land to be a public street or road, and the council must consider the request.

(3) If a request is made to the council pursuant to subsection (2) and after the expiration of 6 weeks after the receipt of the request the council has not passed a resolution declaring the street or road or land to be a public street or road, the person making the request may, within 14 days after the expiration of the period of 6 weeks, appeal to the Land and Valuation Court.

There is no right of appeal pursuant to this subsection if the street or road or land is less than 12.2 metres in width.

(4) Before passing a resolution pursuant to this section, the council must, if the owner of any freehold interest in the street or road or land is known to the council, give notice in writing to every such owner at least 14 days before the passing of the resolution.

Any such owner may make any representations in writing to the council and these must be considered by the council.

(5) After the passing of a resolution pursuant to this section, the council must, if the owner of any freehold interest in the street or road or land is known to the council, give to every such owner notice in writing of the passing of the resolution.

Any such owner may within 14 days after the giving of notice appeal to the Land and Valuation Court from the resolution of the council.

### **Procedure**

**304.** (1) A person who appeals to the Land and Valuation Court must give to the chief executive officer, and to every owner of any freehold interest in the street, road or land known to the appellant, notice in the appropriate form prescribed by the rules of the Supreme Court.

(2) The appeal will be by way of rehearing and the Court may declare whether or not the street, road or land is a public street or road and may make such orders as it thinks just.

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**Notice of resolution or order**

**305.** (1) If the council passes a resolution pursuant to section 303(1) declaring any street or road or land to be a public street or road and within the time provided for appeal no notice of appeal from the resolution of the council is given, the council must publish notice of the resolution in the *Gazette* and upon publication the street or road or land comprised in the notice will become a public street or road, and if not vested in the council at the time of the publication will thereupon vest in the council in fee simple.

(2) If on an appeal, the Land and Valuation Court makes an order declaring any street or road or land to be a public street or road, the street or road or land will upon the making of the order become a public street or road, and if not vested in the council at the time of the making of the order will thereupon vest in the council in fee simple.

(2a) Upon the vesting under this section of any street, road or land in fee simple in the council, all rights, easements, privileges, trusts, encumbrances, limitations or restrictions existing or claimed over the land are discharged.

(3) If any street or road or land declared pursuant to this Division to be a public street or road is land under the *Real Property Act, 1886*, the council must, within one month of the publication or making of the order, as the case may be, serve on the Registrar-General a copy of the notice of the resolution published pursuant to this section or of the order of the Land and Valuation Court, as the case may be, and the Registrar-General must enter in the register book the date of the publication or order and the name of the council in which the land is vested, and must, if required by the council, issue a certificate of title to and in the name of the council in respect of the land as a street or road.

(4) If any street or road or land declared pursuant to this Division to be a public street or road is not land under the *Real Property Act, 1886*, the council must, within one month of the publication or making of the order, as the case may be, register a memorial of the resolution in the General Registry Office.

With every such memorial the council must, in addition to supplying any other particulars required by the Registrar-General, supply the name of the person appearing in the last memorial in the General Registry Office as the owner in fee simple of the land.

(5) Where the Registrar-General has made an entry in a register book or issued a certificate of title in purported compliance with subsection (3), or a memorial has been registered in the General Registry Office in purported compliance with subsection (4), the land will be conclusively presumed to be a public street or road vested in the council.

(6) Any person who had a freehold interest in the land, and to whom notice should have been, but was not, given prior to the declaration of the land as a public street or road may, subject to appropriate rules of Court, apply to the Land and Valuation Court for compensation for loss of that interest in consequence of the operation of subsection (5).

(7) Any such compensation will be assessed in accordance with the appropriate provisions of the *Land Acquisition Act, 1969*.

**Public roads vested in council**

**306.** (1) The fee simple of every public street and road within an area is vested in the council, and the timber growing on it, its bridges, all public works connected with it, and all lamps, direction-boards, mile-stones, mile-posts, posts, rails, walls, chains, fences and other things erected on it, or affixed to it (not being the property of any other person), are vested in and under the care, control and management of the council of the area (but nothing in this section affects the powers and duties conferred and imposed on the South-Eastern Drainage Board by the *South-Eastern Drainage Act, 1931*, with respect to any drainage works within the meaning of that Act, or on the Commissioner of Highways by the *Highways Act, 1926*, with respect to main roads within the meaning of that Act, and anything erected on or affixed to any street or road pursuant to either of those Acts).

(2) Notwithstanding any law to the contrary, possession by any person of any public street or road (whether before or after the passing of the *Local Government Act Amendment Act, 1938*) does not give any rights of ownership to that person.

**DIVISION II—WIDTH OF STREETS AND ROADS**

**Limitation of width of streets**

**307.** Subject to the provisions of any other Act, and except within the City of Adelaide, a street or road laid out in any area must not be of less width in any place than 12.2 metres but—

- (a) existing streets and roads may be continued if the continuation is at least of the same width as the street so continued;
- (b) any private ways, not being less than 3.7 metres in width, may be laid out for the purpose of giving access to the back of premises;

and

- (c) nothing in this section limits or affects the powers of the council under sections 301 and 303.

**DIVISION III—ALIGNMENT OF PUBLIC STREETS AND ROADS**

**Alignment of public streets and roads, etc.**

**308.** (1) For the purpose of determining the alignment of any public streets, roads or places or squares in an area, the Registrar-General, the Surveyor-General, the Commissioner of Highways, or the council, may from time to time cause the area or any part of it to be surveyed and a plan prepared.

(2) If in the course of the survey or the preparation of the plan it is found—

- (a) that any land has been erroneously described in any of the records of the Registrar-General or the Surveyor-General as regards position, dimensions or area;
- (b) that any land has been previously erroneously surveyed as regards position, dimensions or area;
- (c) that the survey discloses that in respect of any instruments or documents of title to land an excess or deficiency of measurements exists;

or

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- (d) that the occupation of any land does not accord with the boundaries of any public street, road or place or square as defined in any of the records of the Registrar-General or the Surveyor-General,

and if it is considered by the Registrar-General and the Surveyor-General that it is necessary and expedient for the recognition or issue of certificates of titles or other documents of title in respect of any such land so to do, the plan may be prepared determining and adjusting, in such manner as is equitable, the boundaries of any such public street, road or place or square, or of any or all or of any part of any allotments or sections and the like, or of any private road or other easement within the area or part surveyed, as the case may be.

(3) If any survey is made and plan prepared pursuant to this section by the council, the survey must be made and plan prepared by a licensed surveyor and must be verified by the Surveyor-General who may direct that any alterations the Surveyor-General considers necessary be made to the plan.

(4) In making any survey or preparing any plan pursuant to this section such one of the Registrar-General, Surveyor-General, Commissioner of Highways or council as causes the survey to be made and plan prepared must consult with the others and regard must be had to—

- (a) any plans which are in the office of the Surveyor-General or in the Lands Titles Registration Office or General Registry Office;
- (b) existing physical boundaries erected;
- (c) any other matters which are considered necessary or proper to be considered.

(5) Any plan prepared pursuant to this section must be considered by the Registrar-General and the Surveyor-General and, if the plan shows any alteration to the existing boundaries of any public street, road or place or square, must so far as it relates to any such alteration, be considered by the council and, if considered to be in accord with the intent of this Division, must be approved by the Registrar-General and the Surveyor-General and, if the plan shows any such alteration, by the council. After the plan has been approved, copies must be prepared and be open for inspection at the offices of the Registrar-General, the Surveyor-General and the council.

**Notice of plan**

**309.** (1) After a plan has been approved as required by section 308, the Surveyor-General must give notice in the *Gazette* and one newspaper published in Adelaide, and to every person who has any registered interest in land in any way affected, that the plan is open for inspection at the offices referred to above and that any person who so desires may make representations to the Surveyor-General that the plan does not give effect to the provisions of this Division.

(2) The notice must fix a time (being not less than one month) within which any person may make representations to the Surveyor-General. If any such representations are made, the Surveyor-General must consider the representations and, if he or she thinks fit, may, with the consent of the Registrar-General and if the alteration affects the boundaries of any public street, road or place or square, with the consent of the council, alter the plan accordingly.

(3) After any representations have been made and considered, or if the plan is altered, then after the alteration, the Surveyor-General must give notice to the person making the representations, and to any person whose registered interest in land appears to the Surveyor-General to be affected by any such alteration, informing that person of any action which has been taken. Any such person may, within one month of the posting of the notice, lodge a caveat with the Surveyor-General, signed personally or by an agent, stating the grounds and particulars of his or her objections.

(4) The Land and Valuation Court may, on the application of the Surveyor-General, call on the caveator to attend before the court to show cause why the caveat should not be discharged; and the court may make such order on the application and as to the costs of the proceedings as it considers just.

(5) Any caveator may at any time by notice in writing withdraw the caveat; but the court may, notwithstanding any such withdrawal, order payment by the caveator to the Surveyor-General of any costs incurred prior to the receipt of the notice of withdrawal.

(6) Any notice required to be given by the Surveyor-General to any person under this section is sufficient if it is sent by post by prepaid letter addressed to any address appearing in the office of the council as being the address of that person or, if there is no such address, to any address appearing in the office of the Registrar-General. If in respect of any person there is no such address appearing either in the office of the council or of the Registrar-General, notice may be given to that person by publishing the notice once in a newspaper published in Adelaide.

(7) The Governor may make regulations for the conduct of any proceedings in relation to caveats under this section.

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### Effect of plan

**310.** (1) After the expiration of the time mentioned in section 309(2), or if representations are made, after one month from the time of the posting of the notice mentioned in section 309(3), or if a caveat is lodged, then after its withdrawal, or, if any order is made by the court relating to the caveat, then after compliance with that order, the Surveyor-General must cause the plan to be prepared in triplicate and each copy must be signed by the Registrar-General and the Surveyor-General and must, if the plan shows any alteration to the existing boundaries of any public street, road or place or square, be sealed by the council. The Surveyor-General must deposit one copy in the office of the Surveyor-General, one copy in the General Registry Office, and one copy with the council.

(2) Upon deposit of the plan—

- (a) the alignments of any public street, road, place or square, shown on the plan, will be the alignments of that street, road, place or square, and any permanent marks fixed to give effect to the plan will be the permanent marks of that street, road, place or square;
- (b) the boundaries shown in the plan as boundaries of (or the whole or portions of) any allotments, sections or the like, or any private road or other easement, will be the boundaries of those allotments, sections or the like, or private road or other easement, notwithstanding any certificate of title or other document.

(3) This section applies notwithstanding the provisions of the *Real Property Act, 1886*, or any other Act or law to the contrary.

(4) The Registrar-General must cause any correction to be made in any register book or plan or any certificate of title or other document which is necessary to give effect to the provisions of this section, and for the purpose of securing the production of any certificate of title or other document may exercise any of the powers conferred by section 220 or any other provisions of the *Real Property Act, 1886*.

(5) If any certificate of title or other document is required to be produced, then, notwithstanding any agreement to the contrary, any person having the possession of it is not entitled to demand or receive any fee or charge from any person for its production.



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(6) No fee is payable to the Registrar-General in respect of the correction of any register book or any certificate of title, plan or document pursuant to this section.

(7) Every correction made pursuant to this section will be taken to have been made prior to the registration of any instruments registered on any certificate of title so corrected.

**Costs of survey and plan**

**310a.** (1) The council must pay the cost of any survey or plan made by the council pursuant to this Division.

(2) If any survey or plan is made by the Registrar-General, Surveyor-General, or Commissioner of Highways, the Minister of Lands may by notice in writing given to the council require the council to pay one-half of the cost. The certificate of the Minister of Lands as to the cost of any such survey or plan is final.

**Permanent marks**

**310b.** The Registrar-General, Surveyor-General, Commissioner of Highways, or the council causing any survey to be made under this Division must, as soon as possible after the survey is made, cause to be fixed permanent marks for the purpose of defining permanently any alignments or boundaries determined pursuant to this Division.

**DIVISION IV—PLANS AND REGISTERS OF PUBLIC STREETS AND ROADS  
WITHIN MUNICIPALITIES**

**Deposit of plans of streets showing breadth of carriage and footway**

**311.** (1) Any municipal council may cause to be prepared a plan of every public street, road or place which is set out within the municipality showing the building line and the breadths of the roadways and footways. Every such plan, under the hand of the mayor and the surveyor, must be deposited and kept at the office.

(2) The chief executive officer must, on every such deposit, cause public notice to be given stating the defined breadth of the roadways and footways in every street, road or place.

**Register of public streets**

**312.** (1) In every municipality a register of public streets and roads must be made up and kept in the office.

(2) The register must show the names, situation, approximate extent, and approximate width of the public streets and roads, and the approximate width of roadways and watertables, and of every footway with the additions or alterations made from time to time.

(3) The register must at all reasonable times be accessible to any person who desires to inspect the register.

**Entries in register**

**313.** (1) The chief executive officer must from time to time at the direction of the council enter in the register of public streets any street or road which is a public street or road, and every other particular that the chief executive officer is directed by the council to enter or describe in the register.

(2) An extract of any such entry or description certified by the chief executive officer must, on demand, be given by the chief executive officer to any person on payment of a fee set by the council.

**DIVISION V—FORMING, PAVING, REPAIRING, WIDENING, ETC.,  
OF STREETS AND ROADS**

*(a) Provisions Applicable Generally*

**Power of council to make, repair, drain, light, and fence streets and roads**

**314.** The council may from time to time—

- (a) form, level, pave, drain, improve, repair, and alter the levels of any streets and roads, courts, alleys, lanes and thoroughfares within the area, and their footways;
- (b) cause all necessary sewers, gutters, drains and watercourses to be made along or under any such streets or roads, courts, alleys, lanes and thoroughfares;
- (c) fence any such streets and roads;
- (d) do all such things as pertain to the proper management of streets and roads.

**Powers of council, with reference to streets**

**315.** (1) The council may from time to time—

- (a) widen any of the streets or roads or any parts of the streets or roads within the area in all cases where it thinks it expedient;
- (b) increase or decrease the width of any footway or roadway in any street or road (but the width of any such footway must not exceed the width of the roadway of the street or road);
- (c) subject to subsection (2), plant trees, shrubs, lawns or gardens in any street or road within the area, and may erect tree-guards, stakes and other supports for them, and may wholly or partly enclose with a fence any such trees, shrubs, lawns or gardens, but in no case so as to obstruct unduly the public traffic.

(2) The consent of the Minister of Public Works must be obtained before trees are planted in any street or road in which water or sewer pipes have been laid by the Government.

(3) The council is not liable for any damage to any property which results from the planting of any trees in any street or road, or from the existence of any tree growing in any street or road whether planted by the council or not.

**Power of council to drain water off public streets, etc., into adjacent lands**

**316.** The council may drain water off public streets or roads into or through adjacent land, paying such compensation as is agreed between the council and the owner or occupier of the land or is awarded in default of agreement by a court of competent jurisdiction (but in the case of land within a district no compensation is payable when the drainage follows the natural fall of the water).

**Maintenance of road, bridge, or other public work forming boundary of area and outlying district**

**317.** (1) Whenever a public street or road, or any bridge or other work on it, or connected with it, forms the common boundary of any parts of two areas and ought, in the opinion of either council, to have any repairs or work done, the council requiring the repairs or work may give to the other council notice in writing specifying the repairs or work and requiring the other council to join with it in carrying out the repairs or work.

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(2) If the two councils do not within three months after service of the notice enter into an agreement for carrying out the work, the council giving the notice may carry it out and may recover by action in any court of competent jurisdiction, as a debt from the council to which the notice has been given, one-half of the costs and charges actually and reasonably expended on the street, road, bridge or work.

(3) In determining the reasonableness of any such expenditure, regard must be had not only to the state of the street, road, bridge or work but also to the comparative necessity for the work and the manner in which it has been carried out.

(4) If any public street or road, or any bridge or other work on it, or connected with it, is wholly within one area but abuts on any portion of another area, and the portion is not park lands or a reserve, then, for the purposes of this section, the public street or road, bridge or work will, to the extent that it so abuts, be deemed to form the common boundary of parts of those areas.

**Maintenance of boundary, road, bridges or other public works**

**318.** Whenever a public street or road, or bridge or other work, or part of it, forms the common boundary of an area and an outlying district, the council of the area, or the Commissioner of Highways, may exercise the powers and authorities in respect of the street, road, bridge or work, and are liable and subject to the actions and proceedings authorized by section 317.

**Cost of constructing public street**

**319.** (1) In this section—

"**owner**" means any person appearing in the assessment book as the owner of any property;

"**street**" or "**road**" includes part of a street or road;

"**township**" means—

- (a) any township as defined in section 5;
- (b) any land within a district in relation to which a map or plan dividing or subdividing the land, whether previously so divided or not, into allotments or sites for buildings or otherwise, or showing any public street or road, or intended public street or road, over the land or any part of it, has been deposited in the Lands Titles Registration Office or in the General Registry Office;
- (c) any part of a township as defined above.

(2) If any one or more of the following works, namely:

- (a) forming, levelling or paving any roadway in any public street or road within a municipality or within or adjoining a township within a district;
- (b) draining any such public street or road;
- (c) forming or constructing watertables in any such public street or road;
- (d) constructing kerbs in any such public street or road,

have not been previously carried out, and if the council carries out, either separately or together, all or any of those works not previously carried out, the council may recover from the owners at the time of the completion of the work of ratable property abutting on the public street or road the cost of that work, or such part of the cost as the council thinks fit, ratably according to the frontages of the ratable property abutting on the street or road; but where land that abuts on a public street or road is common property comprised within a community plan deposited under the *Community Titles Act 1996* or a strata plan deposited under the *Strata Titles Act 1988*—

- (e) the lots or units defined on that plan will, for the purposes of this section, be taken to be ratable property abutting on that street or road;

and

- (f) the council may recover from the owners of the lots or units at the time of the completion of the work the cost of the work, or of such part of the cost as the council thinks fit, ratably according to the frontage of the common property so abutting on the street or road and in accordance with the lot entitlements or unit entitlements for the time being of the lots or units as set out in the schedule to the plan.

The cost or any part of the cost of work may be recovered as provided by this section notwithstanding that money is borrowed for the purpose of carrying out that work, and notwithstanding that other money of the council is used for that purpose.

(3) Any costs payable to the council by the owner under this section will be in arrears if not paid in full within 60 days after the notice requiring their payment is given to the owner.

(3a) The council may, on application by the owner made within 30 days after notice is given to the owner requiring payment of costs under this section, by resolution, permit the owner to pay the costs by instalments determined by the council over a period determined by the council not exceeding 12 months from the making of the resolution.

(3b) Any instalment of costs permitted to be paid by instalment under this section will be in arrears if not paid in full on or before the day on which the council by the resolution required that it be paid.

(3c) Where any costs or instalment of costs are in arrears, the following fine or fines will be added to the amount in arrears:

- (a) on the day on which the amount is first in arrears, a fine of five per cent of the amount in arrears;

and

- (b) on the expiration of each month from that day, a further fine of one per cent of the total amount in arrears (including the amount of any previous unpaid fine).

(3d) A fine added to costs payable by an owner under this section is recoverable from the owner as if it were part of the outstanding costs.

(3e) In any case in which the council is of the opinion that the addition of any such fine would inflict hardship, the council may, by resolution, reduce the amount of, or altogether remit, the fine.

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(3f) In any case in which the council is of the opinion that there is a reasonable excuse for any amount having become in arrears under this section, the council may, by resolution, remit the fine altogether or on the condition that the amount in arrears be paid before a date specified in the resolution.

(4) Except in a case for which provision is made by subsection (5), any amounts due by an owner under this section are, until fully paid or recovered, a charge on the land in respect of which they became payable.

(5) In any case where land outside the area abuts on a public street or road within the area and would be ratable property if it were within the area, the land will, for the purposes of this section, be taken to be within the area and, notwithstanding that the land may be within another area, the council may recover in any court of competent jurisdiction a proportion of the cost of carrying out any work referred to in subsection (2) from the owner of the land and subsections (3) to (3f) apply accordingly. For the purposes of this subsection, the meaning of "owner" is not restricted by the definition of "owner" contained in subsection (1).

(6) A document appearing to be a certificate signed by the mayor or chairman and the chief executive officer is *prima facie* evidence in all courts—

- (a) that any work carried out under this section, or any portion of such work, has not previously been carried out;
- (b) that the work has been carried out;
- (c) of the cost of any such work;
- (d) of the time or times of its completion.

(7) If any work of a kind described in this section is carried out and the council is satisfied that the work is not of a permanent nature and should not be regarded as work for which a contribution should be required under this section, the council may (unless payment for the work has been previously required by the council under this section) by resolution declare that the work is of that nature. If any such resolution is passed, the council is not entitled to require payment from an owner in respect of work to which the resolution applies and, for the purpose of ascertaining the obligations of an owner under subsection (2), the work to which the resolution applies will be taken not to have been previously carried out.

(8) If any roadway is paved with any material other than concrete, bitumen, tar or asphalt and the roadway is subsequently paved with any one of those materials, the paving of the roadway, to the extent that it was not carried out in that material, will be taken not to have been previously carried out and the cost of paving with concrete, bitumen, tar or asphalt (as the case may be) may be recovered in the manner provided by this section.

(9) If any roadway is formed, levelled or paved to a part of its width and is subsequently formed, levelled or paved to a greater width, then, if the subsequent forming, levelling or paving (as the case may be) has not been previously carried out, the cost of so doing or such part of the cost as the council thinks fit may be recovered in the manner provided by this section.

(10) The council must within six months of the completion of work of which the cost or any part of the cost is sought to be recovered under this section from any owner of any ratable property, give notice in writing to the owner of the ratable property specifying the amount required to be paid to the council and requiring payment. If before the notice is given to the owner of any ratable property any other amount or amounts have been payable under this section towards the cost of any work by the owner of the ratable property or any predecessor in title of the owner, the notice must specify the amount or amounts, as the case may be, which have been so payable in respect of the ratable property and the time or times when the amount or amounts became so payable and, if no such amount has been payable, the notice must specify accordingly.

(10a) The notice referred to in subsection (10) must contain a statement in bold type advising that within 30 days after the notice is given the owner may make application to pay the costs by instalments.

(11) The total of all amounts payable in relation to work described in this section in respect of any ratable property (other than any amount payable as a fine) cannot, irrespective of the purpose for which they are paid, exceed five dollars per metre of the frontage to the public street or road in which the work is carried out.

\* \* \* \* \*

**Power of council to use machinery for construction, etc., of streets**

**320.** The council may use in the construction, maintenance or repair of any street or road within the area, any plant or machinery necessary for the purpose, and may cause any machinery to be drawn or propelled along the streets or roads to and from the place of operations.

**Power of council to travel machinery through streets**

**321.** If a council agrees to do any street construction or repairing for another council, the council may, subject to any law regulating traffic on any such street or road, take its machinery (however propelled) through the streets or roads of its own and any other area at any times for the purpose of carrying out the construction or repairs.

*(b) Provisions Applicable to Municipalities only*

**Power of engineer to put up barriers, etc.**

**322.** (1) The engineer or any officer of the council authorized by the council for the purpose may, during such time as any street, road or public place in the municipality is under construction, alteration or repair, or during the making or repairing of any sewers or drains in the municipality, prevent the passing of vehicles, horses and cattle while the works and repairs are in progress by causing such fences or barriers to be placed on or across any such street, road or public place as the engineer or authorized officer thinks fit.

(2) During the time that any such fences or barriers are in position, the engineer or authorized officer must cause such lights to be affixed on them as are sufficient to give effective warning during the night of the fences or barriers.

**Power of council and mayor to partially barricade streets**

**323.** (1) The fences and barriers referred to in section 322 may be placed across a portion only of the street, road or public place in question and the council or the mayor may by notice published in the *Gazette*—

- (a) regulate and fix the direction in which vehicles, horses, cattle, cycles and motor cycles may proceed along the portion of the street, road or public place which is not fenced or barricaded under that section;

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- (b) prohibit either wholly or except under any specified conditions the standing of vehicles of any kind, horses, cattle, cycles and motor cycles on any portion of a street, road or public place which is not fenced or barricaded under that section, and may for that purpose suspend the operation of any by-law.

(2) If in contravention of any such notice any person drives, draws or propels any vehicle, or drives, rides or leads any horse or cattle, or rides any cycle or motor cycle along any portion of a street, road or public place, or causes or allows any vehicle, horse, cattle, cycle or motor cycle to stand on any portion of a street, road or public place, that person is guilty of an offence.

Penalty: \$4.

**Penalty for damaging barrier, etc.**

**324.** Any person who, except with the authority of the council or of the engineer or of an officer of the council authorized by the council for the purpose—

- (a) damages, injures, removes or interferes with any fence or barrier placed over or across any street, road or public place pursuant to section 322;

or

- (b) drives, draws or propels any vehicle, or drives, rides or leads any horse or other animal, or rides any motor cycle or cycle, over any portion of any street, road or public place which has been closed to traffic by the placing of a fence or barrier under that section,

is guilty of an offence.

Penalty: \$200.

*(c) Provisions Applicable to Districts only*

**Power to place barriers across roads, etc., during alteration and repair**

**325.** (1) The council of any district may, during such time as any street, road or public place is under repair or alteration, or during the making or repairing of any bridges or drainage works on a street, road or public place, prevent the passing of vehicles, horses and cattle by causing such fences or barriers to be placed on or across the street, road or public place as the council or the officer in charge thinks fit.

(2) The council must cause such lights as are sufficient to give effective warning of the fences or barriers to be fixed and kept alight throughout the night on fences and barriers placed on or across a street, road or public place under subsection (1), or if there are no such fences and barriers available for the purpose, then must cause such lights to be provided as are sufficient to give effective warning of the carrying out of the work.

The Governor may make regulations prescribing any form of reflector (including the angles at which reflectors must be placed) which may, during such time as any such regulation is in force, be used in substitution for the lights required to be used by this subsection.

(3) Subsection (2) does not apply where the repair or alteration consists only in the re-sheeting of a street, road or public place with road metal broken down to a gauge of not more than 63.5 millimetres, provided that the terminals of the re-sheeting do not exceed 100 millimetres in height and that no heaps or stacks of road metal (other than such as are permitted by section 326 to be so left) are left on the street, road or public place during the night.

- (4) Any person who, without the authority of the council or of the officer in charge—
- (a) damages, injures, removes or interferes with any fence or barrier placed on or across any street, road or public place under subsection (1);
- or
- (b) drives, draws or propels any vehicle, or drives, rides or leads any horse or cattle, or rides any motor cycle or cycle, over any portion of any street, road or public place that has been closed to traffic by the placing of a fence or barrier under subsection (1),

is guilty of an offence.

Penalty: \$200.

**Power of council to stack road metal on street**

**326.** (1) A district council may, for the purpose of constructing or repairing a street or road, cause road metal to be placed or stacked on the roadway of the street or road, at a distance of not less than four metres from the centre of the roadway, unless the roadway is too narrow to permit of that distance, in which case the distance must be not less than three metres from the centre of the roadway.

(2) No such metal may be so placed or stacked as to obstruct any street or road intersecting the street or road on which the road metal is placed or stacked, or any watertable of any street or road, or the entrance or approach to any private land.

**Power of council to take road material from roads**

**327.** (1) For the purpose of the construction or maintenance of a public street or road, a district council may dig and take from a public street or road vested in the council any clay, stone, gravel or sand, but in every such case the council must fence or otherwise properly enclose any excavation, pit or hole from which any such clay, stone, gravel or sand is taken, or take any other steps reasonably necessary to ensure that the excavation, pit or hole does not endanger persons using the street or road.

(2) The *Mining Act, 1971*, does not apply to any such digging or taking of clay, stone, gravel or sand.

**DIVISION VI—FOOTWAYS**

**Power to pave footways**

**328.** (1) The council may within any municipality or township within any district cause any footway or part of a footway in any public street or road to be formed or paved, and may for that purpose remove or reduce any flagging, steps, unevenness of surface, or anything that obstructs, renders uneven or contracts the width of the footway.

(2) Where the work carried out pursuant to this section has not been previously carried out, the council may recover the whole or such part of the expenses incurred by the council as the council thinks fit from the owners of the property abutting on the footway, or the portion of a footway so formed or paved, ratably according to the lineal frontage of the premises abutting on the footway or portion but the total amount (other than an amount payable as a fine under this section) payable in respect of any premises cannot exceed \$1.50 per metre of frontage; but where land that abuts on the footway or the portion of the footway so formed or paved is common property comprised within a community plan deposited under the *Community Titles Act 1996* or a strata plan deposited under the *Strata Titles Act 1988*—



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- (a) the lots or units defined on that plan will, for the purposes of this section, be taken to be ratable property abutting on the footway or portion of the footway (as the case may be);

and

- (b) the council may recover from the owners of the lots or units at the time of the completion of the work the whole or such part of the expenses incurred by the council as the council thinks fit ratably according to the lineal frontage of the common property abutting on the footway or portion and in accordance with the lot entitlements or unit entitlements for the time being of the lots or units as set out in the schedule to the plan.

The cost or any part of the cost of any work may be recovered as provided by this section notwithstanding that money is borrowed for the purpose of carrying out that work, and notwithstanding that other money of the council is used for that purpose.

(3) Any costs payable to the council by the owner under this section will be in arrears if not paid in full within 60 days after the notice requiring their payment is given to the owner.

(3a) The council may, on application by the owner made within 30 days after notice is given to the owner requiring payment of costs under this section, by resolution, permit the owner to pay the costs by instalments determined by the council over a period determined by the council not exceeding 12 months from the making of the resolution.

(3b) Any instalment of costs permitted to be paid by instalment under this section will be in arrears if not paid in full on or before the day on which the council by the resolution required that it be paid.

(3c) Where any costs or instalment of costs are in arrears, the following fine or fines will be added to the amount in arrears:

- (a) on the day on which the amount is first in arrears, a fine of five per cent of the amount in arrears;

and

- (b) on the expiration of each month from that day, a further fine of one per cent of the total amount in arrears (including the amount of any previous unpaid fine).

(3d) A fine added to costs payable by an owner under this section is recoverable from the owner as if it were part of the outstanding costs.

(3e) In any case in which the council is of the opinion that the addition of any such fine would inflict hardship, the council may, by resolution, reduce the amount of, or altogether remit, the fine.

(3f) In any case in which the council is of the opinion that there is a reasonable excuse for any amount having become in arrears under this section, the council may, by resolution, remit the fine altogether or on the condition that the amount in arrears be paid before a date specified in the resolution.

(3g) Except in a case for which provision is made by subsection (4), any amounts due by an owner under this section are, until fully paid or recovered, a charge on the land in respect of which they became payable.

(4) In any case where land outside the area abuts on a footway within the area, the land will, for the purposes of this section, be taken to be within the area and, notwithstanding that the land may be within another area, the council may recover from the owner of the land, in any court of competent jurisdiction, a proportion of the expenses incurred by the council pursuant to subsection (1), ascertained as provided in subsection (2), and subsections (3) to (3f) apply accordingly. For the purposes of this subsection, the meaning of "owner" is not restricted by the definition referred to in subsection (6).

(5) A document appearing to be a certificate signed by the mayor or chairman and the chief executive officer is *prima facie* evidence in all courts—

- (a) that the work carried out under this section, or any portion of such work, has not previously been carried out;
- (b) that the work has been carried out;
- (c) of the cost of any such work;
- (d) of the time or times of its completion.

(6) In this section—

"**pave**" means to lay down on any footway any layer or layers of any one or more of the following materials, namely, concrete, flags, or any bituminous or tar asphalt;

"**owner**" and "**township**" have the meanings assigned by section 319.

(7) If any work of a kind described in this section is carried out and the council is satisfied that the work is not of a permanent nature and should not be regarded as work for which a contribution should be required under this section, the council may (unless payment for the work has been previously required by the council under this section) by resolution declare that the work is not of a permanent nature. If any such resolution is passed, the council is not entitled to require payment from any owner in respect of any work to which the resolution applies and, for the purpose of ascertaining the obligations of an owner under subsection (2), the work to which the resolution applies will be taken not to have been previously carried out.

(8) The council must within six months of the completion of any work the cost or any part of the cost of which is sought to be recovered under this section from the owner of any ratable property, give notice in writing to the owner of the ratable property specifying the amount required to be paid to the council and requiring payment.

(9) The notice referred to in subsection (8) must contain a statement in bold type advising that within 30 days after the notice is given the owner may make application to pay the costs by instalments.

#### **Power of council to fence footways for safety of persons**

**329.** The council may within any municipality or township within any district erect such permanent or temporary fences as the council thinks necessary for preventing the access of cattle, horses or vehicles to any of the footways, and for the general safety of pedestrians, and the prevention of accidents, and from time to time paint, repair, remove and replace the fences.

#### **Power to pave footways at request of owner or occupier**

**330.** (1) Any owner or owners of land who desire to have a footway within a municipality or a township within a district abutting on the land formed, paved or kerbed may apply to the council, in writing, expressing that desire.

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(2) The council may then form or pave the footway, or put a kerb to the footway, with such materials as the council thinks best.

(3) The council may charge and recover such portion of the cost of the work as the council thinks fair and just from the applicant or applicants desiring the work to be done.

(4) The council must give to each of the applicants a notice requiring payment of the share of the costs determined by the council to be payable by that applicant.

(5) Any costs payable to the council by an owner under this section will be in arrears if not paid in full within 60 days after the notice requiring payment is given to the owner.

(6) Where any costs are in arrears, the following fine or fines will be added to the amount in arrears:

(a) on the day on which the amount is first in arrears, a fine of five per cent of that amount in arrears;

and

(b) on the expiration of each month from that day, a further fine of one per cent of the total amount in arrears (including the amount of any previous unpaid fine).

(7) A fine added to costs payable by an owner under this section is recoverable from the owner as if it were part of the outstanding costs.

(8) Any amounts due by an owner under this section is, until fully paid or recovered, a charge on the land in respect of which the amounts became payable.

**Penalty for paving without notice**

**331.** A person who—

(a) commences to form, pave or put a kerbstone to any footway in a public street or road within any municipality or any township within a district without leaving a previous notice in writing at the office;

or

(b) refuses or neglects to conform to the directions of the engineer or any officer authorized for the purpose by the council in regard to any such work,

is guilty of an offence.

Penalty: \$200.

**DIVISION VII—PETROL PUMPS ON FOOTWAYS**

**Powers of council to issue permits for petrol pumps**

**332.** (1) The council may grant to any person carrying on the business of selling or supplying motor spirit a permit in respect of any petrol pump placed or to be placed in, on, or under any footway in any public street or road within the area, and used or to be used by that person for the purposes of such sale or supply.

(2) A permit must not be granted to a person in respect of a petrol pump which in the opinion of the council unduly obstructs or will unduly obstruct the thoroughfare, or in respect of a petrol pump placed or to be placed in, on, or under any footway in any public street or road the width of which (exclusive of its footways) is less than 12.2 metres.

(3) Before a permit is granted with respect to a petrol pump placed or to be placed on any footway in any main road within the meaning of the *Highways Act, 1926*, so that the petrol pump is or will be distant 15.2 metres or less from the junction of that main road with any other street or road, the council must forward by post to the Commissioner of Highways a statement in writing giving full particulars of the site, or proposed site, of the petrol pump. The Commissioner of Highways may at any time within one month after the forwarding of the statement give notice in writing by post to the council forbidding the granting of the permit in respect of the site, and if any such notice is given, the council must not grant the permit (but where the site, or the proposed site, of the petrol pump is distant less than 40 kilometres from the General Post Office at Adelaide, the notice must be given within 14 days of the forwarding of the statement).

(4) In this section—

"**junction**" has the same meaning as in the *Road Traffic Act, 1961*.

#### **Power to remove certain petrol pumps**

**333.** (1) When in the opinion of the council any petrol pump in or on any footway within the area causes, or is likely to cause, undue obstruction to traffic, or becomes or is likely to become dangerous, the council by notice in writing to the holder of the permit in respect of the petrol pump—

(a) may require the holder at his or her own expense and within the time specified in the notice—

(i) to remove the petrol pump or any part of it, or any apparatus, pipes, or appliances in, on, or under the footway and used in connection with it;

or

(ii) to remove or abate the cause of obstruction or possible obstruction to traffic or the cause of danger or possible danger,

and in either case, to make good to the satisfaction of the council any portion of the footway taken up for the purpose;

(b) may, if the council thinks fit, cancel the permit granted in respect of the petrol pump.

(2) If the holder of a permit fails, neglects or refuses to comply with any such notice—

(a) the council may carry out the requirements of the notice and may recover the cost of so doing from the permit holder in any court of competent jurisdiction;

and

(b) the permit holder is (without affecting any other liability) guilty of an offence and liable to a penalty not exceeding \$200.

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**Penalty on placing unauthorized petrol pumps on footway**

**334.** Any person who places or retains or uses or causes or permits to be used (whether personally or by an agent or servant) for the purpose of selling or supplying motor spirit—

(a) any petrol pump in or on any footway unless the person is the holder of a permit in respect of that petrol pump;

or

(b) any petrol pump in or on any portion of a street or road except a footway,

is (without affecting any other liability) guilty of an offence.

Penalty: \$200.

**DIVISION VIII—CROSSING PLACES**

**Crossing places from public streets over footways**

**335.** (1) The council may within a municipality or any township within a district fix crossing places at which vehicles and animals may cross between any street or road and land abutting on the street or road over a footway or watertable.

(2) Any owner of any such land may make written representations to the council as to the place in which any such crossing place for the land is to be fixed and the council must consider any such representations.

**Owners of land requiring communication with a street**

**336.** On the application of any person who requires a communication with any such street or road by means of such a crossing place, the council may permit it to be constructed under the superintendence and to the satisfaction of the engineer, or any officer authorized for the purpose, in conformity with the provisions of this Act, or the council may construct it, and recover the cost from that person.

**Power of council to require owners or occupiers of premises to make and repair crossing places from a street**

**337.** (1) A council may, by notice in writing, require the owners or occupiers of any land abutting on any such street or road to make, remove or repair (as the council thinks necessary) any crossing place over the footway or watertable leading to and from the land into the street or road in conformity with the above provisions, or may, in any case in which the council thinks fit, give notice in writing to any such owner or occupier that the council proposes to make, remove or repair any such crossing.

(2) Any owner or occupier to whom such notice is given may, by notice in writing given within seven days of the service of the requisition, show cause to the satisfaction of the council why the crossing should not be constructed, removed or repaired. Unless such cause is shown the council may (subject to the following provisions), after the expiration of the period of seven days, construct, remove or repair the crossing and recover from the owners or occupiers their proportionate part of the expense incurred. In any case where the requisition requires the construction, removal or repair to be carried out by the owners or occupiers, the owners or occupiers, unless cause is shown as above, must construct, remove or repair the crossing within 14 days of the service of the requisition. If in any such case the crossing is not constructed, removed or repaired within the period of 14 days, the council may construct, remove or repair it and recover from the owners or occupiers their proportionate parts of the expense incurred.

(3) The council must determine what properties will be, are, or have been served by any such crossing, and the proportionate part of the expenses payable by any of the owners or occupiers. Every such determination is final and conclusive.

(4) In any case where in the opinion of the engineer it is necessary and urgent in the interests of public safety to repair any such crossing place, the council may repair the crossing place without giving any notice under this section and may recover from the owners or occupiers, in accordance with this section, the expense incurred.

**Saving provision**

**337a.** Notwithstanding the preceding provisions of this Division, the council may make, remove or repair any crossing place either wholly or partly at the cost of the council.

**DIVISION IX—REINSTATEMENT OF STREETS AND ROADS**

**Works on roads under statutory powers to be carried out continuously until completed**

**338.** (1) When—

(a) any portion of a street or road within an area, or under the care, control or management of a council, is opened or broken up, or any work is done on or to any such street or road by any person under the authority of any Act;

and

(b) the street or road is not restored, or the work is not completed and the street or road restored within 24 hours from the time of commencing the opening or breaking up or the work,

the person, if so required by the council by notice in writing, must continuously, by means of shifts of workers, working at least 16 hours in every 24 hours (Sundays and public holidays excepted), carry on the opening or breaking up and the work for which the opening or breaking up is done, or carry on the work to be done on or to the road, as the case may be, and, in either case, also carry on the work of restoring the street or road, until the work and the restoration of the street or road are completed.

(2) Any person who fails to comply with this section is guilty of an offence.

Penalty: \$200 plus \$80 for every day after the first on which the default exists.

(3) It is a sufficient defence to any proceedings under this section to show that the failure to comply with this section was occasioned by shortage of suitable labour, provided that it is also shown that the defendant adopted all reasonable means to procure sufficient suitable labour.

(4) This section does not apply to the opening, or breaking up of any street or road, or any other work undertaken by—

(a) an electricity entity in pursuance of powers conferred by the *Electricity Act 1996*;

or

(b) the Passenger Transport Board.

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**Local Government Act, 1934**

**Final reinstatement of streets opened under statutory authority**

**339.** (1) In all cases in which any portion of any street or road within an area, or under the care, control or management of a council, is opened or broken up by a person under the authority of an Act, the final reinstatement of the portion of the street or road so opened or broken up may be effected by the council at the cost of that person (notwithstanding any contrary statutory provision) but the council must not commence any such final reinstatement unless—

(a) the council has given the person notice in writing stating in what respects the restoration of the portion of the street or road is, in the opinion of the council, defective;

and

(b) the person has not, within the time (not being less than seven days) stated in the notice, remedied the stated defects to the satisfaction of the council.

(2) Not later than 24 hours after any portion of a street or road that has been opened or broken up as mentioned in subsection (1) has been restored, the person who opened it or broke it up must give notice in writing of the restoration to the council, and in default of such notice is guilty of an offence.

Penalty: \$200.

(3) The cost of the final reinstatement of any portion of a road opened or broken up as mentioned in subsection (1) is recoverable by the council from the person who opened or broke up the road by action in any court of competent jurisdiction.

(4) In this section—

**"final reinstatement"** means the making good of any faulty or insufficient work done by any person in the restoration of the portion of the street or road opened or broken up, and in making good any adjoining portions of the street or road damaged by or in consequence of the opening or breaking up, and the filling up or making good of any depression or subsidence in the portion or any such adjoining portion which may be discovered or happen at any time within 12 months from the restoration.

(5) This section does not apply to the opening or breaking up of any street or road, or any other work undertaken by—

(a) an electricity entity in pursuance of powers conferred by the *Electricity Act 1996*;

or

(b) the Passenger Transport Board.

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**Damages caused by works constructed under statutory authority**

**340.** In all cases where a water main or pipe, gas main or pipe, electric cable, or other work or thing is laid under, on, or above the surface of any street or road under any power or duty conferred or imposed by an Act, and by or in consequence of the bursting, explosion, or fusion of the main, pipe, cable, work, or thing, or any other occurrence connected with it, any damage is caused to the street or road or any property of the council in or on the street or road, the council may make good the whole of the damage, and recover the cost from the person having control of or owning the main, pipe, cable, work, or thing by action in any court of competent jurisdiction.

**DIVISION X—FORMATION, REPAIR, ETC., OF PRIVATE STREETS AND ROADS**

**General application of Act to private streets**

**341.** A private street or road is, as to the prevention and suppression of nuisances in it, its cleansing, and the prevention of fire, subject to the provisions of this Act for the general regulation of public streets and roads from when the private street or road is set out and aligned.

**Construction and repair of private streets in the City of Adelaide**

**342.** (1) If the roadway or footway of a private street or road within the area is not formed, levelled, paved, kerbed, or drained to the satisfaction of the council, or if in the opinion of the council any such roadway or footway requires repairing, the council may from time to time by resolution resolve to carry out the necessary work at the cost of the owners of property abutting on the private street or road. Any such resolution may include one or more private streets or roads or may be limited to any part or parts of a private street or road.

(2) The council must cause to be prepared—

- (a) plans and specifications of the work referred to in the resolution;
- (b) an estimate of the probable cost of the work;
- (c) a provisional apportionment of the estimated cost between the owners of property abutting on the private street or road (taking account of such matters regarding the use of the private street or road as the council thinks proper).

(3) Notice of the resolution, estimate, and provisional apportionment must be served on the owners of property abutting on the private street or road to which any part of the cost is proposed to be charged under the provisional apportionment. If the owner of any property is unknown to the council, the notice must be served on the occupier.

(4) During the period between service of the first notice under subsection (3) and one month after the service of the last notice under that subsection, the plans, specifications, estimates, and provisional apportionments, or a copy of them, must be kept in the office and may be inspected by any interested person.

(5) An owner of any property on which by the provisional apportionment any part of the cost of the work is charged or, if the owner of the property is unknown, the occupier, may within one month after service of notice pursuant to subsection (3) give notice in writing to the council objecting to the proposed work on any of the following grounds:

- (a) that the alleged private street or road is a public street or road;
- (b) that there is some material informality, defect, error, or omission in respect of the resolution, plans, specifications, estimates, provisional apportionments or notices;
- (c) that the proposed work is insufficient or unreasonable, or the estimated expenses are excessive;
- (d) that any property should be included in or excluded from the provisional apportionment;
- (e) that any person described in the provisional apportionment or any notice given under subsection (3) is not the owner of property included in the provisional apportionment.



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(6) Upon receipt of the notice of objection the council or a committee of the council must consider the objections so submitted. The council or the committee, as the case may be, may in its discretion dismiss or uphold the objections in whole or in part. If it appears to the council or the committee that any property has been for any reason omitted from the list of properties between the owners of which the expenses of the work have been divided, the council or committee may add the property so omitted to the list of properties and alter the respective apportionments accordingly without in any way invalidating the resolution to carry out the work and the rights of the council under it.

(7) If any such property is added to the list, the council must give notice in accordance with subsection (3) (but showing the altered apportionment) to the owner or occupier of the property so added, but in any such case objections by any such owner or occupier must be made within 14 days of the service of notice. If any such objection is made, subsection (6) applies, *mutatis mutandis*, to the objection.

(8) The chief executive officer may report to the objector the finding of the council's or committee's inquiry. No appeal lies against any such finding.

(9) The council may thereupon carry out the work, and when the work has been completed and the expenses ascertained the council must make a final apportionment (taking into consideration any alterations which may have been made by the council or the committee in dealing with any objections to the provisional apportionment) by dividing the expenses in the same proportions in which the estimated expenses were divided in the provisional apportionment, and the final apportionment will be conclusive as to the liability of each of the persons named in it for the amount apportioned to that person, and for all other purposes. Notice of the final apportionment must be served on the owners of the properties affected in accordance with subsection (3).

(10) Where notice of the final apportionment has been given—

(a) the amount apportioned to an owner will, subject to paragraph (b)—

(i) be in arrears;

and

(ii) be recoverable by the council,

on the expiration of 60 days from the day on which the notice was given;

but

(b) the council may, on the application of an owner to whom a portion of the expenses has been apportioned, permit payment of the liability by monthly, quarterly or other instalments over a period not exceeding 12 months, and in that event an instalment will be in arrears and recoverable by the council if not paid by the day fixed by the council for the payment of that instalment.

(10a) Where any expenses or instalment of expenses is in arrears, the following fine or fines will be added to the amount in arrears:

(a) on the day on which the amount is first in arrears, a fine of five per cent of the amount in arrears;

and

(b) upon the expiration of each month from that day, a further fine of one per cent of the total amount in arrears (including the amount of any previous unpaid fine).

(10b) A fine added to any expenses payable by an owner under this section is recoverable from the owner as if it were part of the outstanding expenses.

(10ba) The council may, for proper cause, remit or reduce a fine under this section.

(10c) Any amounts due by any owner under this section are, until fully paid or recovered, a charge on the land in respect of which they became payable.

(11) In making any provisional or final apportionment the council must in any case where the owner of any property is not liable to contribute under this section apportion to itself any part of the estimated cost or the cost which would be apportioned to the owner if he or she were so liable.

(11a) The council may carry out the work of repairing any private street or road to the extent described in this subsection without preparing plans and specifications, estimates and a provisional apportionment, and without serving notice on owners of property, and may apportion and recover the cost as provided in this section.

The provisions of this subsection apply only where the cost to be apportioned and recovered does not exceed the following amounts:

(a) in private streets and roads in which the total length of the frontages of the abutting property does not exceed 61 metres—\$6;

(b) in private streets and roads in which the total lengths of the frontages of the abutting property exceeds 61 metres—\$10;

(c) in private streets and roads which are situated within the portion of the City of Adelaide bounded by North Terrace, Pulteney Street, Flinders Street and Franklin Street, and Morphett Street, and in which the length of the frontages of the abutting properties exceeds 61 metres—\$16;

(d) in any case where it is necessary to carry out the work of repairing any private street or road in order to remedy any condition which is or is likely to be dangerous or seriously inconvenient to users of the street or road—\$100.

(12) For the purposes of this section—

"**expenses**" includes the cost, if any, of supervision incurred by the council in the carrying out of the work, but not exceeding five per cent of the total expenses, and includes any other costs of or incidental to the carrying out of the work;

"**owners**" with respect to ratable property means the person whose name appears as such in the assessment book on the day any notice is given, or, as the case may be, at the time of completion of the work, and with respect to other property means the owner of the legal estate in fee simple at the time any notice is given, or, as the case may be, at the time of the completion of the work;

"**private street or road**" includes court, alley, lane or thoroughfare.

(12a) For the purposes of this section, where the land that abuts on a private street or road is common property comprised within a community plan deposited under the *Community Titles Act 1996* or a strata plan deposited under the *Strata Titles Act 1988*—

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- (a) the lots or units defined on that plan will be taken to be property abutting on the private street or road;
- (b) the owners and occupiers of those lots or units will be taken to be owners and occupiers of the property abutting on the private street or road;

and

- (c) any apportionment of the estimated cost that would, but for this subsection, be attributable to the common property or the part of it that abuts on the private street or road is payable by, and recoverable by the council from, the owners of those lots or units in proportion to the respective lot entitlements or unit entitlements for the time being of their units as set out in the schedule to the deposited plan.

(13) This section applies only within the City of Adelaide.

**Powers of other councils to make private streets and road**

**343.** (1) The council may give public notice of its intention—

- (a) to remove any erection or obstruction which reduces the proper width of the whole or any part of any private street or road, court, alley, lane or thoroughfare within the area;
- (b) (if the forming, levelling, paving, kerbing or draining of or the forming or constructing watertables in the roadway or footway of any private street or road, court, alley, lane or thoroughfare, or any part of it, within the area has not been previously carried out) to carry out in or on any such private street or road, court, alley, lane or thoroughfare, or any part of it, all or any of such works as have not been previously carried out;
- (c) to carry out the work mentioned in paragraph (a) in conjunction with any of the work mentioned in paragraph (b),

at the expense of the abutting owners.

(2) After the expiration of one month from the giving of the notice and after consideration by the council of any representations in writing which may be made to the council by any person interested within 14 days from the publication of the notice, the council may carry out the work referred to in the notice.

(3) After the completion of the work referred to in the notice, the council may recover from the owners of ratable properties abutting on the private street or road, court, alley, lane or thoroughfare, or the relevant part of it, the whole of the expenses incurred by the council in carrying out the work (including the cost, if any, of supervision incurred by the council but not exceeding five per cent of the total expenses) ratably according to the frontages of the ratable properties abutting on the private street or road, court, alley, lane or thoroughfare, or the relevant part of it.

(4) In any case where property abutting on any such private street or road, court, alley, lane or thoroughfare, or the relevant part of it, is not ratable property, the property will for the purposes of this section be taken to be ratable property and the proportion of the expenses payable in respect of the property must be paid by the council out of money of the council.

(5) The council must give notice to owners of abutting ratable properties of the apportionment of the expenses incurred by the council and thereafter—

(a) the amount apportioned to an owner will, subject to paragraph (b)—

(i) be in arrears;

and

(ii) be recoverable by the council,

on the expiration of 60 days from the day on which the notice was given;

but

(b) the council may, on the application of an owner to which a portion of the expenses has been apportioned, permit the owner to pay off the liability by monthly, quarterly or other instalments over a period not exceeding 12 months and in that event an instalment will be in arrears and recoverable by the council if not paid by the day fixed by the council for the payment of that instalment.

(5a) Where any expenses or instalment of expenses is in arrears, the following fine or fines will be added to the amount in arrears:

(a) on the day on which the amount is first in arrears, a fine of five per cent of the amount in arrears;

and

(b) upon the expiration of each month from that day, a further fine of one per cent of the total amount in arrears (including the amount of any previous unpaid fine).

(5b) A fine added to any expenses payable by an owner under this section is recoverable from the owner as if it were part of the outstanding expenses.

(5ba) The council may, for proper cause, remit or reduce a fine under this section.

(5c) Any amounts due by any owner under this section are, until fully paid or recovered, a charge on the land in respect of which they became payable.

(6) A document appearing to be a certificate signed by the mayor or chairman and the chief executive officer is *prima facie* evidence in all courts—

(a) that any work carried out under this section or any portion of it has not been previously carried out;

(b) that the work has been carried out;

(c) of the expenses incurred by the council in carrying out such work;

(d) of the proportion payable by each owner;

(e) of the date of the completion of the work;

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(f) that the land on which the work was carried on was a private street or road, court, alley, lane or thoroughfare, or part of a private street or road, court, alley, lane or thoroughfare, as the case may be.

(7) For the purposes of this section—

"owner" means the person whose name appears as such in the assessment book on the date of the completion of the work.

(7a) For the purposes of this section, where land that abuts on a private street or road, court, alley, lane or thoroughfare is common property comprised within a community plan deposited under the *Community Titles Act 1996* or a strata plan deposited under the *Strata Titles Act 1988*—

(a) the lots or units defined on that plan will be taken to be ratable property abutting on that private street or road, court, alley, lane or thoroughfare;

(b) the owners of those lots or units will be taken to be the owners of the ratable property;

and

(c) any proportion of the expenses incurred by the council that would, but for this subsection, be attributable to the common property or the part of it that abuts on the private street or road, court, alley, lane or thoroughfare is payable by, and recoverable by the council from, the owners of those lots or units in proportion to the respective lot entitlements or unit entitlements for the time being of their lots or units as set out in the schedule to the deposited plan.

(8) This section does not apply within the City of Adelaide.

**Drainage through private lands**

**344.** (1) For the purpose of enabling the council to execute and complete any drainage work under section 342, 343 or 344a, the council doing as little damage as possible may construct or lay a pipe, drain or channel for draining the street, road, court, alley or right-of-way—

(a) at and along the natural outfall of the water as shaped by the intervention of any houses, buildings, or other similar structures;

or

(b) with the consent of the owner or owners, through any land between the street, road, court, alley or right-of-way to be drained and the nearest convenient public sewer, drain or channel used for the discharge of surface or storm waters.

(2) The pipe, drain or channel must not pass through any building or other similar structure.

(3) The pipe, drain or channel must, if the owner of any land through which it passes so requests, descend and fall into any pipe, drain or channel already on the land and available for the reception of surface or storm waters and lying along the natural outfall of the water.

(4) The council must not construct or lay any pipe, drain or channel through or under any private land except in accordance with Part XII unless the owner consents.

(5) The cost of and incidental to the construction of any such pipe, drain or channel, any compensation payable, or any consideration paid by the council to any person or persons in consequence of the laying or construction of any pipe, drain or channel through or under private land or for the purpose of acquiring any easement for the purposes of this section in respect of any such land, will be taken to be portion of the expenses incurred by the council within the meaning of section 342, 343 or 344a.

(6) Nothing in this section prevents the owner of property abutting on a private street or road from constructing or laying, by agreement with the council and at the owner's expense, any pipe, drain or channel which is required for the purposes of drainage work under section 342, 343 or 344a through or under the property.

### **Construction and repair of private roads**

**344a.** (1) If a request in writing is presented to the council signed by not less than three-quarters of the owners of ratable property abutting on a private street or road, or any part of a private street or road, requesting the council to form, level, pave, kerb, drain or repair the private street or road, or part of it, the council may carry out the work and recover from all the persons who, at the time of the completion of the work, are owners of ratable property abutting on the private street or road, or the relevant part of it, the whole of the expenses incurred by the council in carrying out the work (including the cost, if any, of supervision incurred by the council but not exceeding five per cent of the total expenses) ratably according to the frontages of the ratable property abutting on the private street or road or the relevant part of it.

(2) In any case where property abutting on any such private street or road, or the relevant part of it, is not ratable property, the proportion of the expenses payable in respect of the property must be paid by the council out of money of the council.

(3) The council must give notice to owners of abutting ratable property of the apportionment of the expenses incurred by the council and thereafter—

(a) the amount apportioned to an owner will, subject to paragraph (b)—

(i) be in arrears;

and

(ii) be recoverable by the council,

on the expiration of 60 days from the day on which the notice was given;

but

(b) the council may, on the application of an owner to which a portion of the expenses has been apportioned, permit the owner to pay off the liability by monthly, quarterly or other instalments over a period not exceeding 12 months and in that event an instalment will be in arrears and recoverable by the council if not paid by the day fixed by the council for the payment of that instalment.

(3a) Where any expenses or instalment of expenses is in arrears, the following fine or fines will be added to the amount in arrears:

(a) on the day on which the amount is first in arrears, a fine of five per cent of the amount in arrears;

and

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(b) upon the expiration of each month from that day, a further fine of one per cent of the total amount in arrears (including the amount of any previous unpaid fine).

(3b) A fine added to any expenses payable by an owner under this section will be recoverable from the owner as if it were part of the outstanding expenses.

(3ba) The council may, for proper cause, remit or reduce a fine under this section.

(3c) Any amounts due by an owner under this section are, until fully paid or recovered, a charge on the land in respect of which they became payable.

(4) A document appearing to be a certificate signed by the mayor or chairman and the chief executive officer is *prima facie* evidence in all courts—

(a) that the work has been carried out;

(b) of the expenses incurred by the council in carrying out the work;

(c) of the proportion payable by each owner;

(d) of the date of the completion of the work;

(e) that the land on which the work was carried out was a private street or road, or part of a private street or road, as the case may be.

(5) In this section—

"**private street or road**" includes court, alley, lane and thoroughfare but does not include any street, road, court, alley, lane or thoroughfare that is more than six metres in width.

(5a) For the purposes of this section, where land that abuts on a private street or road is common property comprised within a community plan deposited under the *Community Titles Act 1996* or a strata plan deposited under the *Strata Titles Act 1988*—

(a) the lots or units defined on that plan will be taken to be ratable property abutting on that private street or road;

(b) the owners of those lots or units will be taken to be the owners of the ratable property;

and

(c) any proportion of the expenses incurred by the council that would, but for this subsection, be attributable to the common property or any part of it that abuts on the private street or road is payable by, and recoverable by the council from, the owners of those lots or units at the time of the completion of the work in proportion to the respective lot entitlements or unit entitlements at that time of their lots or units as set out in the schedule to the deposited plan.

(6) This section does not apply within the City of Adelaide.

**Councils may bear part of cost of constructing or repairing private streets and roads**

**344b.** Notwithstanding sections 342, 343 or 344a, the council may by resolution resolve to bear a proportion of the expenses that will be incurred by the council in carrying out any work under any of those sections and, where the council so resolves, the provisions of that section apply in relation to the part of the expenses that is not to be borne by the council as if it were the full amount of the expenses.

**DIVISION XI—UNFENCED LAND, EXCAVATIONS, ETC., ADJOINING STREETS AND ROADS**

**Power of council to order land adjoining street to be fenced**

**345.** (1) When any land adjoining or abutting on any street or road within a municipality or township within any district is not fenced in or enclosed to the satisfaction of the council, the council may by notice in writing given to the owner of the land require that the land, so far as it adjoins or abuts on the street or road—

(a) be enclosed with a substantial fence of posts and rails or posts and wires, as the council determines;

or

(b) in order to prevent drift sand, soil or other material from being carried on to any street or road, be enclosed by a close and sufficient fence of not less than 1.5 metres in height.

(2) If the owner of the land neglects or fails to enclose the land in the manner prescribed by the order, within the time fixed by the notice after the service of the notice on the owner, the council may fence in and enclose the land, or such parts of it as have not been enclosed with a fence of the kind mentioned in the notice.

(3) The amount of the expenses incurred must be paid by the owner to the council and, until fully paid or recovered, is a charge on the land.

(4) For the purposes of this section, where the land that adjoins or abuts on the street or road is common property comprised within a community plan deposited under the *Community Titles Act 1996* or a strata plan deposited under the *Strata Titles Act 1988*—

(a) the lots or units defined on that plan will be taken to be the land adjoining or abutting upon that street or road;

(b) the owners of those lots or units will be taken to be the owners of the land;

and

(c) the amount of the expenses referred to in subsection (3) is payable by, and recoverable by the council from, the owners of those lots or units in proportion to the respective lot entitlements or unit entitlements for the time being of their lots or units as set out in the schedule to the deposited plan and the amount of the expenses so attributable to each lot or unit is, until fully paid by, or recovered by the council from, the owner of that lot or unit, a charge on that lot or unit.



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**Powers with respect to dangerous well, hole, or excavation near any public street, etc.**

**346.** (1) If any well, cistern, hole, excavation, or any other place, for want of a sufficient fence or enclosure, is, in the opinion of the council, dangerous to persons passing along any public street, road or place, or place of resort, or on any unenclosed land, the council may, by notice in writing, require the owner to cause it to be forthwith enclosed, covered, filled in or otherwise secured.

(2) If such well, cistern, hole, excavation or other place is not, within 24 hours after service of the notice on the owner, sufficiently enclosed, covered, filled in or otherwise secured, so as to be no longer dangerous, the council may enclose, cover, fill in or otherwise secure it.

(3) If the exigency of the case so requires, the council may, without notice, forthwith enclose, cover, fill in or otherwise secure any such dangerous well, hole, excavation or other place.

(4) In any case in which the council encloses, covers, fills in or otherwise secures any such well, cistern, hole, excavation or other place under this section, the expense of so doing must be paid by the owner to the council and until fully paid or recovered is a charge on the land.

**Fencing, etc., of swimming pools**

**346a.** (1) If a swimming pool, for want of a sufficient fence or enclosure, is, in the opinion of the council, dangerous to persons, the council may, by notice in writing, require the owner to cause it to be forthwith fenced or enclosed.

(2) If a swimming pool referred to in subsection (1) is not, within one month after service of the notice on the owner, sufficiently fenced or enclosed so as to be no longer dangerous, the council may fence or enclose that swimming pool.

(3) If the exigency of the case so requires, the council may, without notice, forthwith fence or enclose any swimming pool referred to in subsection (1).

(4) In any case in which the council fences or encloses any swimming pool referred to in subsection (1) pursuant to subsection (2) or (3), the expense of so doing must be paid by the owner to the council and until fully paid or recovered is a charge on the land on which the swimming pool is situated.

(5) In this section—

"**swimming pool**" includes any excavation or structure capable of being filled with water and used for the purpose of swimming and includes an excavation or structure capable of being used as a paddling pool.

(6) This section does not apply to a swimming pool to which the *Swimming Pools (Safety) Act, 1972*, applies.

**Excavations near footways**

**347.** (1) A person must not within any municipality or township within any district dig or excavate any hole or pit for the sole purpose of using or removing to any other place the soil, clay, stone, sand, gravel or other similar material, unless the person leaves intact a bank of solid earth not being less than the prescribed width from the nearest edge of the hole or pit to the building line or lines of any street or road or streets or roads, the bank of solid earth to have a batter of at least one to five, so as to support the bank and to prevent its breaking away or falling for the want of such batter or support.

(1a) For the purposes of subsection (1), the prescribed width is—

- (a) if the hole or pit is in a municipality and the street or road is a main road within the meaning of the *Highways Act, 1926*—30 metres (or such lesser width (which must however be at least 1.5 metres) as the council may approve);
- (b) in any other case—6 metres (or such lesser width (which must however be at least 1.5 metres) as the council may approve).

(2) Subsection (1) does not prevent any owner of land from removing the soil of any cellar up to and abutting on the building line of any footway if the footway is forthwith supported by a wall of sufficient strength to prevent the falling or subsiding of the footway into the cellar.

**Duty to construct retaining walls in certain cases**

**348.** (1) Where any land abutting on any public street or road within any municipality or township within any district has been raised or lowered by the owner above or below the level of the street or road, the owner must construct retaining walls of such material and dimensions as are approved by the council.

(2) If after the council gives notice to the owner requiring construction of retaining walls under this section, the owner fails to do so, the council may construct the necessary retaining walls.

(3) The council may recover the cost of construction from the owner, and until fully paid or recovered the cost is a charge on the land.

(3a) For the purposes of this section, where the land that abuts on the public street or road is common property comprised within a community plan deposited under the *Community Titles Act 1996* or a strata plan deposited under the *Strata Titles Act 1988*—

- (a) the lots or units defined on that plan will be taken to be the land abutting on that public street or road;
- (b) the owners of those lots or units will be taken to be the owners of that land;

and

- (c) the amount of the cost of the construction referred to in subsection (3) is payable by, and recoverable by the council from, the owners of those lots or units in proportion to the respective lot entitlements or unit entitlements for the time being of their lots or units as set out in the schedule to the deposited plan and the amount of the cost of construction so attributable to each lot or unit is, until fully paid by, or recovered by the council from, the owner of that lot or unit, a charge on that lot or unit.

(4) Where any public street or road is raised or lowered by the council above or below the level of land abutting on the street or road, the council must construct sufficient retaining walls and must provide sufficient means of ingress and egress between the street or road and the abutting land.

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**DIVISION XIV—VARIOUS MATTERS**

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**Names of streets**

**353.** (1) The council may, by a resolution carried by at least two-thirds of the whole number of the members constituting the council, give a name to, or alter the name of, any street, road or place, or any portion of a street, road or place, within the area.

(2) Notice of every such resolution must be given by the council to the Surveyor-General and the Registrar-General.

**Power of council to paint or affix names of streets on any house**

**354.** The council may—

- (a) affix on any building within the area any board, or plate, legibly showing the name of any street or road or place, or such notice as may be conducive to the public convenience;
  - (b) cause any such name or notice to be painted or coloured on any such building;
- or
- (c) fix on any such building any letters in wood, iron or other material by which any such name or notice is expressed so as to be clearly legible.

**Power of council to construct guard fences, etc.**

**355.** The council may construct, erect or maintain on any public street or road or (with the consent of the owner) on any land adjoining any such street or road all or any of the following things, namely:

- (a) guard fences;
- (b) walls, posts, rails;
- (c) direction signs;
- (d) traffic signs;
- (e) notice boards of any kind;
- (f) bicycle racks.

**Erection of ramps**

**355a.** The council may erect and maintain a ramp in any fence which is erected on any public street or road.

**Protection of ramps**

**355b.** (1) If any ramp is erected on any public street or road pursuant to section 355a or 375 and if the council is of opinion that in order to prevent damage to the ramp it is proper so to do, the council may cause to be erected in the vicinity of the ramp notices stating that vehicles exceeding a specified weight, or that vehicles of any specified kind, must not be driven across the ramp.

(2) One such notice must be placed so that it is clearly visible to traffic approaching the ramp from each direction. Every such notice must consist of letters not less than 25 millimetres in height clearly and legibly painted or printed on a white background.

(3) Any person who drives a vehicle across a ramp in contravention of any such notice is guilty of an offence.

Penalty: \$200.

(4) The council is not liable for any damage occasioned by the driving of a vehicle across a ramp in contravention of any such notice.

**Power to place notices on verandahs over footways**

**356.** The council may affix on any part of a verandah or balcony erected over a footway a board or plate for the purpose of displaying any notice with respect to traffic.

**Power of council to construct public fountains, etc.**

**357.** The council may—

- (a) construct, or permit to be constructed, in or on any public street, road or place within the area such drinking and other fountains and water troughs as the council thinks necessary for the public convenience and health;
- (b) accept and take the care and management of any such fountain or water trough surrendered to the council for public use;
- (c) cause any such fountain or water trough to be altered, enlarged, repaired, and cleansed, as the council thinks proper;
- (d) construct or erect, or permit to be constructed or erected, in or on any public street, road or place within the area any seats or similar erections;
- (e) construct or erect, or permit to be constructed or erected, in or on any public street, road or place within the area any statue or monument.

**Erection of safety islands, etc.**

**358.** (1) Subject to the provisions of this or any other Act, the council may, in any public street, road or place within the municipality or any township within the district, erect and maintain any traffic indicators, safety islands, safety zones, traffic islands, roundabouts, median strips or stalls for the sale of fruit, newspapers, magazines and other periodicals, or structures of a similar nature.

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(2) Subject to subsection (3), any person who parks, stands, drives, draws or propels any vehicle, or drives, rides, stands, or leads any horse or other animal, or rides or stands any cycle or motor cycle over or on any such safety island, safety zone, traffic island, roundabout or median strip, is guilty of an offence.

Penalty: \$500.

(3) Subsection (2) does not apply to a person who rides or wheels a pedal cycle or rides or leads any horse or other animal over a safety island, safety zone, traffic island, roundabout or median strip that forms part of a crossing-place across a public street or road.

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**Prohibition of traffic or closure of streets or roads**

**359.** (1) The council may by resolution, supported by a majority of all members of the council, exclude vehicles generally or vehicles of a particular class from a particular street, road or public place or part of a particular street, road or public place.

(2) The council may by resolution revoke or vary any such resolution.

(3) Subject to the *Road Traffic Act, 1961*, the council may erect such barricades or other traffic control devices as are necessary to give effect to a resolution passed under this section.

(4) A resolution passed under this section cannot take effect before it has been published in the *Gazette* and in a newspaper circulating in the area.

**Destruction of bushes on half width of adjoining roads**

**360.** (1) The occupier or the owner of land adjacent to any street or road within the area must, within 30 days after the council has given him or her notice so to do, destroy and burn or remove all shrubs, plants, or bushes of the kinds known as the *acacia armata* (or kangaroo thorn), briar, furze, and blackberry growing or being on that portion of the street or road, which is adjacent to and lies between the boundary of the land and the middle of the street or road.

(2) In default the council may—

(a) remove the shrubs, plants, or bushes;

and

(b) recover from the person in default the expenses incurred in the removal.

**Duty of occupier or owner to remove layers, branches, etc., encroaching on street**

**361.** (1) If the layers, roots, branches, suckers, or seedlings of any tree, hedge, or plant encroach or grow on any street or road within the area, the occupier or the owner of the land on which the tree, hedge, or plant is growing or was growing must, within seven days after the council has given him or her notice so to do, remove the layers, roots, branches, suckers, or seedlings.

(2) In default the council may—

(a) remove the layers, roots, branches, suckers, or seedlings;

and

(b) recover from the person in default the expenses incurred in doing so.

**Cycle tracks**

**362.** The council may lay down on any public street or road or across any park lands, square, reserve or other land under the care, control or management of the council a track or way for the use of cycles.

**Erection of weighbridge upon street or road**

**362a.** (1) Subject to subsection (2), the council may erect any weighbridge on any public street or road but no such weighbridge may be erected in any place where it will or is likely to cause danger or to impede traffic unreasonably.

(2) At least six weeks before commencing to erect a weighbridge in any public street or road, the council must give to the Commissioner of Highways notice in writing of its intention, including particulars of the principal dimensions of the weighbridge and of the site at which it is proposed to erect the weighbridge. If satisfied that it is undesirable to erect the weighbridge at the site so specified, the Commissioner of Highways may by notice in writing given to the council within four weeks after the giving of the notice by the council, prohibit the erection of the weighbridge and if such a notice is given to the council, the council may not proceed with the erection of the weighbridge.

**Power to authorize erection of private weighbridge upon street or road**

**362b.** (1) Subject to subsection (2), the council may by notice in writing authorize any person to erect any weighbridge on any public street or road and to do such things as are necessary to use and operate the weighbridge (whether as a public weighbridge or otherwise) but no such weighbridge may be erected in any place where it will or is likely to cause damage or to impede traffic unnecessarily.

(2) Before granting any such authority, the council must give to the Commissioner of Highways notice including particulars of the principal dimensions of the weighbridge and of the site at which it is proposed to erect the weighbridge, and the council may not authorize the erection of the weighbridge unless its erection is approved by notice in writing given to the council by the Commissioner of Highways.

(3) Any authority granted by the council under this section may be granted subject to such conditions and the payment of such annual or other fees as the council may, from time to time, determine and, without limiting the generality of any of the foregoing provisions of this subsection, the authority may be granted on the condition that the property in the weighbridge remains in the person to whom the authority is granted. Any authority granted by the council under this section may be subsequently revoked by the council.

**Power of council to permit erection of highway lighthouses or traffic beacons**

**363.** Subject to the *Planning Act, 1982*, and the *Highways Act, 1926*, and any regulations made thereunder, the council may on such terms and conditions as the council thinks fit license any person to erect on any public street or road within the area highway lighthouses, traffic beacons, traffic signs, or direction signs which may be used for advertising purposes (but no such lighthouse, beacon or sign may be erected so as to obstruct the reasonable use of the street or road).

**Obligation of electricity entities to remove poles, etc.**

**363a.** (1) Notwithstanding any other provisions of this or any other Act, an electricity entity under the *Electricity Act 1996* must, on being requested so to do by a council, remove any pole or post supporting any cable or wire or any cable or wire supported by any pole or post the property of the electricity entity in, on or over any street or road within the area of the council (other than a street or road for the maintenance of which the Commissioner of Highways is responsible), and may after submitting plans to, and consulting with, the council erect the same or any other pole, post, cable or wire in, on or over the same or any other street or road in place of or in consequence of the removal (but the electricity entity is under no obligation to effect any such removal unless the Commissioner of Highways certifies that in the Commissioner's opinion a sufficient reason exists for the removal of the pole, post, cable or wire).

(2) Notwithstanding subsection (1) or section 871g, a council and an electricity entity may enter into any agreement relating to the removal and erection of any pole, post, cable or wire of the electricity entity.

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**Power of council to construct certain works**

**364.** (1) The council may construct, maintain, manage or operate any building, structure or works on, across, under or over any public street or road within the area.

\* \* \* \* \*

(3) A council is not liable in any action or proceedings (whether for nuisance or otherwise) by reason only of anything done by a council in pursuance of this section.

**Power of council to authorize certain works**

**365.** (1) A council may grant to any person a permit to construct, maintain, manage or operate any building, structure or works on, across, under or over any public street or road within its area.

(2) Such a permit cannot be granted for a period exceeding 42 years; but may be renewed from time to time for a further period not exceeding 42 years from the time of renewal.

(2a) Such a permit may provide for the payment by the holder of the permit of an annual fee, and where a permit contains such a provision, and the fee is not paid as required by the permit, the council may cancel the permit.

(3) If a council, for six months after an application for such a permit or renewal of such a permit is made to it, refuses or neglects to grant the permit or renewal, the applicant for the permit or renewal may appeal to the Minister by notice setting out the facts, and the grounds of the appeal.

(4) The Minister will hear and determine any such appeal in such manner as the Minister thinks just, and may for that purpose appoint an officer to hold an inquiry into, and make a report on, the matter, and may act on any such report. The council is entitled to be heard on the appeal.

(5) If the appeal is allowed, the Minister will give such directions as he or she thinks fit for carrying the decision into effect, and the directions must be complied with by the council and all parties concerned.

(6) A permit granted under subsection (1) will be granted subject to such conditions, reservations, restrictions and stipulations as the council thinks proper.

(7) A person is not liable in any action or proceedings (whether for nuisance or otherwise) by reason only of anything done without negligence in pursuance of a permit under this section.

**Power to authorize owners of land to plant trees on roadsides**

**365a.** (1) The council may by notice in writing authorize the owner or occupier of any land abutting on any public street or road to plant trees or shrubs in the street or road.

(2) The council may by notice in writing authorize any such owner or occupier to enclose any such trees or shrubs wholly or partly with a fence.

(3) The council may by notice in writing revoke any such authority and may upon the revocation remove any such fence.

(4) The council must not give any authority under this section unless it is satisfied that the trees or shrubs, or fence, as the case may be, will not unduly obstruct the public traffic.

(5) The council must not give any authority under this section in respect of any street or road that is maintained by the Commissioner of Highways unless the Commissioner of Highways approves in writing of the giving of the authority. The Commissioner of Highways may, at any time, revoke any such approval and the council must then revoke any authority given in pursuance of the approval so revoked.

(6) An authority under this section may be granted subject to terms and conditions thought fit by the council and (without limiting the foregoing provisions of this subsection) may provide that the owner or occupier by whom any trees or shrubs are planted may be entitled to the whole or any portion of any produce of the trees or shrubs.

(7) Section 315(2) and (3) apply with respect to any trees or shrubs planted pursuant to this section.

### **Erection of certain structures**

**365b.** (1) Subject to such terms and conditions as a council thinks fit, it may authorize the erecting or placing of a structure on a public street or road within the council area.

(2) The council may at any time—

(a) revoke an authority given under subsection (1) and remove the structure;

or

(b) remove a structure which has been erected or placed without the council's authority.

(3) A person who contravenes this section is guilty of an offence.

Penalty: \$1 000.

(4) For the purposes of this section—

"**structure**" means—

(a) a stand or shelter for milk or cream containers;

(b) a stand, platform or ramp for the loading or unloading of goods or animals;

(c) a rubbish container;

or

(d) a letter box.

### **Installation of pipes and equipment**

**366.** (1) Subject to any regulations, a council may—

(a) grant a licence for laying pipes under the surface of any public street or road under the care, control and management of the council for the purpose of conveying water;

and

(b) grant a licence for installing pumps and equipment on or under any land under the care, control and management of the council.



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(2) The council may revoke any licence granted under subsection (1).

**Mining on public streets and roads**

**366a.** Notwithstanding the *Mining Act, 1971*, no claim, lease, permit, licence or other authority to mine (within the meaning of that Act) on or under any public street or road may be issued or granted except with the consent of the council.

**Underground electric cables**

**366aa.** Subject to any relevant regulation made by the Governor, the council may grant approval to any person, subject to such conditions as seem to the council necessary or desirable, for the laying of pipes, conduits, cables or wires under the surface of any public street within the area for the purposes of conveying electricity (but nothing in this section limits, affects or abrogates any right, power or privilege vested in or conferred upon ETSA Corporation or any other electricity entity under the *Electricity Act 1996*, this Act or any other Act or in any other manner).

**Power to assign numbers to houses**

**367.** (1) The council may assign a number to every house and building in any street, road or public place within the municipality, or any township within the district, and may from time to time, whenever the council thinks it expedient, assign any other number to any such house or building in lieu of the previously assigned number.

(2) The council may cause the number assigned to any such house or building or a plate bearing that number to be painted or affixed in a conspicuous position on the front door of the house or building, or on the front gate of the premises belonging to the house or building, or such other fixture on any such premises as is approved by the council or the engineer, and for the purpose of any such painting or affixing an officer or servant of the council, or any person who has entered into a contract with the council for that purpose, may enter on any private land and may do all such other things as may be necessary for or incidental to that purpose.

(3) The owner for the time of the house or building, or premises belonging to the house or building, on which any number is painted or number plate is affixed under the powers conferred by this section is liable to pay to the council the cost of painting the number or supplying and affixing the number plate.

(4) Any person who wilfully or maliciously destroys, pulls down, obliterates, or defaces any number painted on, or number plate affixed to, any house or building, or to the premises belonging to any house or building, under the powers conferred by this section, or substitutes a different number, is guilty of an offence and liable to a penalty not exceeding \$200, and the council may cause any such number so destroyed, pulled down, obliterated, or defaced to be reinstated, or any such wrong number to be removed and a proper number substituted, and recover the expense from the person who committed the offence or from the owner for the time being of the house or building. Payment of the expenses may be ordered by a court imposing penalty for the offence, or may be recovered by the council by action in any court of competent jurisdiction.

**Hawkers loitering in streets**

**368.** (1) Subject to any by-law made under this Act, a person offering any commodity for sale in any street or road within any municipality or any township within a district must not linger or loiter in the street or road, nor occupy any fixed stand in it, but must, except when actually serving a customer, keep moving along the street or road on the side to his or her left, at a walking pace of not less than two kilometres per hour, and must not travel the same route more than once within the period of one hour.

(2) Any person who contravenes subsection (1) is guilty of an offence.

Penalty: \$200.

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**Obstructing streets**

**369.** Any person who unlawfully obstructs a street or road within a municipality or township within a district, whether by standing in the street or road, or by allowing a vehicle, perambulator or animal to remain in it, or by placing any goods or other thing in it, or in any other way, so that the public is hindered in the free and proper use of the street or road longer than is necessary, is guilty of an offence.

Penalty: \$200.

**Moveable business signs**

**370.** (1) In this section—

"**moveable sign**" means any free-standing or moveable sign, but does not include a sign of a kind excluded from the ambit of this definition by the regulations.

(2) A council may, by by-law—

(a) provide that any moveable sign (or moveable sign of a specified class) placed on a specified public street, road or footpath within its area, on a public street, road or footpath within a specified part of its area, or on a public street, road or footpath within its area generally, must—

(i) be placed in a manner, and subject to conditions, specified by the by-law;

and

(ii) comply with such standards (if any) as are specified by the by-law;

(b) prohibit the placing of moveable signs (or moveable signs of a specified class) on a specified public street, road or footpath within its area, or on a public street, road or footpath within a specified part of its area.

(3) A council must not make a by-law under subsection (2)(b) unless it is satisfied—

(a) that the prohibition is reasonably necessary to protect public safety;

or

(b) that the prohibition is reasonably necessary to protect or enhance the amenity of a particular locality.

(4) A by-law under subsection (2)(b) cannot operate in relation to—

(a) a sign designed to direct people to the open inspection of any land or building that is available for purchase or lease;

or

(b) a sign of a prescribed class.

(5) A person may, without further authorization from the council, place a moveable sign on any public street, road or footpath if—

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(a) to do so does not contravene a by-law under subsection (2);

and

(b) the sign does not, by being so placed, unreasonably endanger the safety of any member of the public who might use that street, road or footpath, or unreasonably obstruct or hinder the free and proper use of that street, road or footpath by any member of the public.

(6) A person who places a sign on any public street, road or footpath in contravention of a by-law under subsection (2) is guilty of an offence.

Penalty: \$200.

(7) An authorized person may remove from any public street, road or footpath a sign that has been placed on the public street, road or footpath in contravention of a by-law under this section.

(8) If an authorized person removes a sign pursuant to subsection (7)—

(a) the authorized person must take reasonable steps to give notice of his or her action to the owner of the sign, or to a person who was apparently involved in placing the sign on the public street, road or footpath;

and

(b) if the sign is not claimed within 30 days, the authorized person may sell, destroy or otherwise dispose of the sign as he or she thinks fit.

(9) A person is not entitled to the return of a sign removed under this section unless the person pays to the council the reasonable costs incurred by the council in removing and storing the sign.

(10) Except as otherwise recovered under this section, the council may recover any reasonable costs incurred in removing, storing or disposing of a sign under this section as a debt due to the council from the person who placed the sign on the public street, road or footpath.

(11) If a sign is sold pursuant to subsection (8)(b), the proceeds of sale must be applied towards any costs recoverable by the council under this section and any excess must be paid to the owner of the sign (unless that person cannot be ascertained or located by the council after making reasonable inquiries, in which case the excess belongs to the council).

(12) No action lies against a council, an officer or employee of a council, or an authorized person, on account of—

(a) anything done, or omitted to be done, in good faith in relation to the operation of this section;

(b) any damage or injury suffered as a result of a moveable sign being placed on a public street, road or footpath by a person (other than by a person acting on behalf of the council).

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**Roadside restaurants and cafes, etc.**

**370a.** (1) A council may grant a licence permitting any person—

(a) to use portion of a public street, public road or public place for the supply of food and drink;

and

(b) to place in the public street, public road or public place tables, chairs and other furniture for the convenience of persons consuming food or drink.

(2) A licence under this section is subject to such conditions as the council thinks fit and includes in the licence.

(3) A fee fixed by resolution of the council is payable for a licence under this section.

(4) No action lies against the holder of a licence under this section for the obstruction of a public street, public road or public place arising from any act or omission authorized by the licence.

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**Prohibition of hawking in streets in which stands are appointed for street hawkers**

**371.** (1) Where a municipal council has, under a by-law, appointed stands in any street, road, public place, or portion of a street, road or public place, for street hawkers and itinerant traders and—

(a) persons have been authorized under the by-law to occupy the stands;

or

(b) the stands are available for allotment as provided by the said by-law,

no person (other than a person authorized under the by-law or any other by-law) may hawk or sell or offer for sale in any such street, road, public place, or portion of such street, road or public place, any goods or commodity authorized to be sold under the by-law.

(2) A person who contravenes subsection (1) is guilty of an offence.

Penalty: (a) for a first offence—\$20;

(b) for a second offence—\$50;

(c) for a subsequent offence—a penalty not exceeding twice the maximum penalty for the last preceding offence.

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**Licence to remove timber, stone, etc., from roads**

374. Subject to any relevant regulations made by the Governor, and to any terms and conditions prescribed by any such regulations, the council may grant licences to cut and remove timber, trees, wood, stumps, or bark on, or to quarry and remove stone, gravel, and sand from, any public roads within the district.

**Power of council to allow persons to fence in and use roads on certain conditions**

375. (1) The council may let or allow to the owner or occupier of any land abutting on any public road the use and occupation of the surface of the whole or any part of the road and the grass growing on it on such terms as the council thinks fit, or may let for cultivation purposes to any such owner or occupier any such road or part of it on such terms as the council thinks fit, and may permit the road to be enclosed with other land by the erection of fences across the road, but—

(a) in every such fence the council must direct the owner or occupier to provide, and the owner or occupier must provide, such of the following as is or are directed by the council, namely:

- (i) a gate not less than 5.5 metres in width;
- (ii) a ramp constructed as provided by paragraph (d) and a wire panel gate not less than 5.5 metres in width;
- (iii) a gate not less than 3.7 metres in width and a wire panel gate not less than 5.5 metres in width;

(b) every gate (other than a wire panel gate) must be at all times properly hung on hinges or in some other similar substantial manner to the satisfaction of the council;

(c) every wire panel gate must be constructed to the satisfaction of the council so that it may be readily taken down for the purpose of permitting the passage of vehicles;

(d) every ramp must be at least 2.75 metres in width and must be constructed of the material and in the manner approved by the council but no such ramp may be constructed through any fence which is an animal-proof fence within the meaning of the *Animal and Plant Control (Agricultural and Other Purposes) Act, 1986*;

(e) every gate, wire panel gate, and ramp must be kept in good order and repair by the owner or occupier;

(f) a notice must be prominently displayed on every such fence with the words "Public Road" legibly painted on both of its sides.

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(2) No such letting or licence to use or occupy a public road may be for a longer period than 12 months at any one time except that in the case of a letting for cultivation purposes the letting may be for a period of 3 years at any one time.

(3) Any such letting or licence may be renewed for the same or a lesser period as often as the council thinks fit, and may be determined at any time by giving to the owner or occupier 3 months prior notice in writing of the determination (but in the case of a letting for cultivation purposes the agreement under which the road is let may provide for a longer period of notice).

(3a) Where it is proposed that a council grant or renew a lease or licence for cultivation purposes under this section, the council must, at least 21 days before resolving to grant or renew the lease or licence—

- (a) by notice in a newspaper circulating in the area of the council—
  - (i) inform the public of the proposed lease or licence (describing the extent to which the road would be enclosed under the lease or licence);
- and
- (ii) invite interested persons to make written submissions to the council on the proposal within 21 days of the date of the notice or such longer period as may be allowed by the notice;

and

- (b) consult with the Department of Recreation and Sport in relation to the matter.

(3b) If a submission is received under subsection (3a) within the time specified under that subsection, the council must consider the submission before deciding whether or not to grant or renew the lease or licence.

(4) Beyond the erection of such fences and gates as mentioned above, nothing in this section entitles the owner or occupier to prevent the free use of the roads by the public in all respects as if they were unenclosed but if any such road is let for cultivation purposes, the right of the public to the free use of the road is not exercisable during the time the letting continues.

(5) Any person who opens a gate erected pursuant to this section or finds a gate open and fails to shut and fasten the gate properly immediately after using the gateway is guilty of an offence.

Penalty: \$200.

(6) Any person who remains in use or occupation of a road after the expiration of the period for which it was let or licensed to that person by the council under this section, without having given to the council written notice of intention to terminate the letting or licence, is liable to pay to the council the same amount as if the letting or licence were not terminated; and so long as any fence or gate, or part of a fence or gate, or any other obstruction placed by any person across or on a road remains there, that person will, for the purposes of this section, be taken to remain in use or occupation of the road, notwithstanding the giving of notice of intention to terminate the letting or licence.

### **Vermin-proof fences and gates**

**376.** (1) The council may cause or permit vermin-proof fences, with gates hung to the satisfaction of the council, to be erected and maintained across any public road in any portion of the district which is infested by vermin, and where the council considers this to be necessary for the destruction of vermin.

(2) Nothing in this section entitles the council to prevent the free use of the roads by the public in all respects as if they were unfenced.

(3) Any person who opens any such gate or finds it open and fails to shut and fasten the gate properly immediately after using the gateway is guilty of an offence.

Penalty: \$200.

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**PART XXII  
SQUARES, PARK LANDS AND RESERVES**

**DIVISION I—PROVISIONS APPLICABLE GENERALLY**

**Control of squares and park lands**

**450.** All park lands and public squares within an area are, for the purposes of this Act, under the care, control and management of the council of the area.

**Water reserves, etc.**

**451.** Subject to section 44 of the *Harbors Act, 1936*, all water and other reserves for public convenience situated within or outside the boundaries of an area which, by proclamation, are placed under the care, control and management of the council of the area, are vested in the council of the area.

**Power of Governor to issue grant of water reserves, etc., to council**

**452.** The Governor may—

- (a) issue to the council a grant of any such water and other reserves, as mentioned in section 451, on such trusts and under such conditions as appear expedient;
- (b) at any time before the issue of such a grant, by proclamation, resume any such water and other reserves, or any of them;
- (c) by proclamation cancel the grant of and resume any of such water or other reserves which are used, held or dealt with for purposes other than those for which they were reserved, or inconsistently with or contrary to the trusts or conditions on or under which they were granted, or which are not used or not required for the purposes for which they were reserved.

**Power of council to assume control of certain lands**

**453.** (1) If in any area, any land is dedicated and set apart for the use and enjoyment of the inhabitants of the area or any part of it, the council may, by resolution, assume the care, control and management of the land as if it had been conveyed or transferred in fee simple to the council and the land must then be maintained by the council for the use and enjoyment of the inhabitants.

(2) Notice of every such resolution of the council must be published in the *Gazette*, and given in writing to the Surveyor-General.

(3) Nothing in this section authorizes the council to assume the care, control and management of any land held by trustees under any deed or other instrument of trust.

**Power of council to improve park lands and reserves**

**454.** (1) The council may—

- (a) fence in or otherwise enclose, level, drain or plant the whole or part of any park lands, squares, reserves or land under the care, control and management of the council;
- (b) construct dams and reservoirs for the retention and formation of sheets of water on, or otherwise improve and ornament, any such park lands, squares, reserves or land;
- (c) do anything else for the adaptation of any such park lands, squares, reserves or land to the purposes of public recreation, amusement, health and enjoyment;

and



- (d) use any such park lands, squares, reserves or land (in whole or part) as a camping ground or caravan park.

(2) A council must not exercise the powers conferred on it by subsection (1)(d) in respect of land dedicated or reserved as park land or for any other purpose pursuant to the *Crown Lands Act, 1929*, unless prior consent in writing to the use of the lands in that manner has been obtained by the council from the Minister of Lands.

**Power of council to form walks, etc., through squares**

**455.** The council may from time to time level, pave, make or form walks and roads through any public square or reserve, and alter the boundaries of any such square or reserve, but no such alteration of the boundaries of any public square or reserve may, except by the formation of walks and roads through the square or reserve, diminish in any way its superficial area.

**Power of council to grant licence for depasturing**

**456.** (1) The council may grant such licences for the depasturing of horses, sheep and cattle on any of the park lands and reserves within the area which are under the care, control or management of the council and may charge such licence fees as the council by any by-law or public notice from time to time appoints.

(2) A person who drives or depastures any horses, sheep or cattle on any park lands or reserves under the care, control or management of the council without having a depasturing licence is guilty of an offence.

Penalty: \$200.

**Power to let grounds vested in council**

**457.** (1) The council may grant a lease of any portion of the park lands or of any ornamental grounds or reserve for any term not exceeding 21 years, to be used for the purpose of sports, games, agricultural shows, or public recreations or any community facilities, and may from time to time renew any such lease for a further term not exceeding 21 years.

(2) No lease of any park lands may comprise land exceeding six hectares in area unless the Minister has approved in writing of a lease comprising a greater area of land.

(3) Every such lease will be granted to two or more persons or to an incorporated body, on such terms as to the erection of booths, pavilions, and other structures on the premises, admission of the public to the premises or to any part of the premises, and generally subject to such rents, covenants, provisions and reservations as the council thinks fit.

(4) A lease cannot be granted under this section for a term exceeding three months unless at a meeting of the electors (held in accordance with Division IV of Part V) a resolution has been passed in favour of a lease being granted of the land in question under the powers conferred by this section.

\* \* \* \* \*

**Powers with respect to park lands**

**458.** (1) The council may from time to time on the park lands, reserves and ornamental grounds, construct golf links, tennis courts and other facilities for sport, and may allot sites on the park lands for the playing of games.

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(2) The council may grant permits or licences to any persons for the use of any such golf links, tennis courts, facilities or sites, and may by resolution from time to time fix or alter fees to be paid for the permits or licences, the maximum number of the permits or licences, and any conditions to be annexed to the issue of them.

(3) Any person who uses any such golf links, tennis courts, other facility or site without being the holder of a permit or licence under this section authorizing him or her to do so, or without being otherwise lawfully authorized to do so, is guilty of an offence.

Penalty: \$200.

(4) In any proceedings for an offence against this section the onus is on the defendant to prove that he or she was at the time of the commission of the alleged offence the holder of a licence or permit or was otherwise authorized as mentioned in subsection (3).

\* \* \* \* \*

**Cultivation of park lands**

**459.** (1) A council may from time to time for any period not exceeding three years—

(a) cultivate, or cause to be cultivated, any park lands, or portion of any park lands, within the area;

or

(b) grant leases for cultivation purposes of any park lands, or portion of any park lands, within the area.

(2) The powers conferred by this section cannot be exercised unless the consent in writing of the Minister of Lands is first obtained with regard to each case, and no lease can be granted under this section unless its term, the rent to be reserved by it, and the park lands to be comprised in it, have been approved in writing by the Minister of Lands, and it contains such covenants, provisions, and reservations as are required in writing by the Minister of Lands.

(3) A council cannot act under subsection (1) unless at a meeting of electors (held in accordance with Division IV of Part V) a resolution has been passed in favour of the cultivation, or leasing for cultivation purposes, of the park lands by the council.

\* \* \* \* \*

**Power to dispose of small reserves**

**459a.** (1) If any land is shown as a reserve or portion of a reserve in any plan deposited in the Lands Titles Registration Office or the General Registry Office and is vested in the council, and if the council is of opinion that the land is not required as a reserve or portion of a reserve, the council may give public notice stating the council's opinion and that it is proposed, with the consent of the Minister, to sell or otherwise dispose of the reserve or portion and stating that any person interested may make representations to the council in the matter within the time stated in the notice.

(2) After considering all such representations the council may, with the consent in writing of the Minister, sell or otherwise dispose of the land.

(3) Upon the sale or disposition of the land by the council, the land ceases to be a reserve or portion of a reserve and is freed from any trusts relating to it.

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**DIVISION IIA—POWER OF COUNCIL TO EXCHANGE RESERVES**

**Power to exchange reserves**

**464.** (1) The council may exchange any reserve vested in the council by grant of the Governor pursuant to section 452, or any land otherwise vested in the council, for other land.

(2) If the land given in exchange was subject to any trusts or conditions for public or charitable purposes, the land is upon such an exchange freed from the trusts or conditions, and the land taken in exchange is subject to the same trusts or conditions on which the land given in exchange was, immediately before the exchange, held or vested in the council.

\* \* \* \* \*

**Power of Minister where trusts not applicable**

**465.** Where the trusts or conditions affecting any land given or to be given in exchange by a council are wholly or in part inapplicable to the land taken or to be taken in exchange, or incapable of being fulfilled or observed by the council, the Minister of Lands may, by notice in writing, expressly discharge wholly or in part the land so taken or to be taken in exchange from those trusts and conditions.

**Proceedings to effect exchange**

**466.** In order to effect an exchange of land under this Part, the council must proceed as follows:

- (a) an agreement in the form No. 1 in the fourteenth schedule, or to the same effect, or as near to it as circumstances will admit, must be entered into between and be signed in duplicate by the parties to the proposed exchange;
- (b) the agreement must further state whether and to what extent it is proposed to take the land taken in exchange subject to the trusts and conditions affecting the land to be given in exchange;
- (c) the council must deposit in its office, and in the Surveyor-General's Office, a copy of the agreement, together with a survey plan, certified as correct by a licensed surveyor, showing the boundaries and positions of the land to be given and taken in exchange respectively, and the copies and plan must be open to public inspection;
- (d) the council must at the time of depositing the copy of the agreement and the survey plan in the Surveyor-General's Office pay to the Surveyor-General a fee of \$10.50;
- (e) the Surveyor-General must give public notice of the proposed exchange and the notice must—
  - (i) refer to the copies and plans so deposited;

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- (ii) describe generally the land proposed to be given and taken in exchange respectively;
  - (iii) invite all persons objecting to the exchange within 40 days from the first publication of the notice, to furnish a written statement of their objections to the council and to the Surveyor-General;
- and
- (iv) fix a day not less than 40 days from the first publication of the notice, and an hour and place for the council to meet and consider the proposed exchange and any objections to it.

**Meeting of council to consider exchange**

**467.** (1) At the time and place fixed by the notice for the meeting, or at some adjournment of the meeting, the council must consider the proposed exchange and any objections to it.

(2) Any person who, within the time limited under section 466, has furnished a written statement of objection, and that person's witnesses, may be heard (and any such person may be heard personally or by counsel).

(3) The council may either make or decline to make an order for the proposed exchange.

**Confirmation of exchange**

**468.** (1) An order for exchange, pursuant to section 467, must be in the form No. 2 in the fourteenth schedule, or to the same effect.

(2) Every such order in duplicate, under the common seal of the council, together with a copy of all the written statements of objections, must be sent to the Minister of Lands.

(3) The Minister of Lands may within six months after the date of the order confirm the order and thereupon one duplicate must be returned to the council and the other must be retained by the Minister of Lands.

(4) Notice of any such confirmation, in the form No. 3 in the fourteenth schedule, must be published in the *Gazette* within one month after the confirmation.

(5) If the order of the council is not confirmed within six months after the date on which it is made, it will be void.

**Voiding of agreement**

**469.** An agreement of exchange is null and void—

- (a) if the council declines to make an order for exchange;
  - (b) if the meeting is not held, or fails;
  - (c) if the Minister of Lands does not confirm the order within six months after the date on which it is made;
- or
- (d) if notice of confirmation is not published in the *Gazette* within seven months after the making of the order.

**Notice to Registrar-General**

**469a.** Upon the publication in the *Gazette* of the confirmation of the order for exchange, the Surveyor-General must furnish the Registrar-General with particulars of, and the plans of survey relating to, the land given and taken in exchange and a statement that the land has vested as provided by section 470.

**Confirmation of order will authorize exchange**

**470.** (1) Upon—

- (a) publication in the *Gazette* of notice of the confirmation of the order;
  - (b) payment of the amount (if any) fixed in the agreement for equality of exchange;
- and
- (c) a receipt, in the form No. 4 in the fourteenth schedule, being given to or by the council, as the case may require,

the land given in exchange vests in the person who by the order is to take it in exchange, free from the trusts and conditions referred to in section 464.

(2) The land taken in exchange by the council vests in the council.

(3) If any such land is under the provisions of the *Real Property Act, 1886*, the Registrar-General must make such entry or alteration in the register book as may be necessary to give effect to the order.

(4) For the purposes of this section, the Registrar-General may by notice in writing require any land grant or certificate of title to be delivered up by any registered proprietor or mortgagee or encumbrancee who may hold it for the purpose of giving effect to the order.

Any such person who neglects or refuses to deliver up any such land grant or certificate of title for such purpose within one month after the Registrar-General demands it, is guilty of an offence.

Penalty: \$200.

**Compensation**

**471.** (1) If any person who is not a party to the agreement for exchange, after confirmation of any order for exchange, has, or but for the order would have had, any estate, right, title or interest in the land taken by the council in exchange, that person is, after confirmation of the order for exchange, entitled to compensation under the *Land Acquisition Act, 1969*.

\* \* \* \* \*

(3) That Act is, for all purposes of compensation under this section, incorporated with this Part.

**Issue of certificates of title by the Minister**

**472.** (1) The Minister of Lands, on being satisfied that the proceedings for the exchange of land have been completed, must—

- (a) cause to be issued in the name of the council entitled to it a certificate or certificates of title in duplicate to the land taken in exchange by the council;

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(b) if the land given in exchange by the council is not under the *Real Property Act, 1886*, cause to be issued in the name of the person entitled to it a certificate or certificates of title in duplicate to the land.

(2) A certificate of title referred to in subsection (1) must be in a form approved by the Registrar-General and must be delivered to the Registrar-General.

**Duty of Registrar-General**

**473.** Upon receipt of a certificate of title under section 472, the Registrar-General must—

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(a) register the certificate under the *Real Property Act, 1886*;

and

(b) deliver the duplicate certificate of title to the council or the person entitled to it.

**After registration of certificate of title Real Property Act to be applicable to land**

**474.** (1) After registration of any such certificate of title under section 473, the *Real Property Act, 1886*, applies to the land mentioned in the certificate as if the land had been brought under the provisions of that Act on the application of a proprietor.

(2) Notwithstanding the *Real Property Act, 1886*, the certificate is conclusive evidence of the vesting of the land in the proprietor mentioned in it.

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**Power to sell reserve**

**474b.** In lieu of exchanging for other land a reserve or other land such as is referred to in section 464, a council may sell any such reserve or land and acquire other land in place of it. Any such transaction will be taken to be an exchange for the purposes of this Division and the provisions of this Division will, *mutatis mutandis*, apply to the transaction, to the reserve or land so sold and to the land so acquired.

**DIVISION III—PROVISIONS APPLICABLE TO THE MUNICIPALITY OF GAWLER**

**Power of Corporation to lease portion of park lands at Gawler**

**475.** (1) The Corporation of the Town of Gawler may lease to ETSA Corporation, for the purpose of being used as a site for a power house and other works for works for or incidental to the supplying of electricity in the Town of Gawler and the surrounding districts, that piece of land, being portion of the park lands at Gawler, described in the fifteenth schedule.

(2) The lease—

(a) must contain a condition that the piece of land must be used only for the purpose for which it is leased;

and

(b) must be subject to such other terms, conditions, covenants and provisos as may be mutually agreed upon.

(3) The lease of the piece of land will be for a term of 50 years, and may from time to time be renewed for any term not exceeding 50 years at any one time, on such terms, conditions, covenants and provisos as may be mutually agreed upon.

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**PART XXIIA  
REGULATION OF PARKING AND STANDING OF VEHICLES IN PUBLIC  
PLACES**

**Governor may make regulations under this Part**

**475a.** (1) The Governor may make such regulations as are contemplated by this Part or as are necessary or expedient for the purposes of this Part.

- (2) Without limiting the generality of subsection (1), the Governor may make regulations—
- (a) regulating, restricting or prohibiting the parking or standing of vehicles in any public places, or parts of public places, within council areas;
  - (b) providing that a council may regulate, restrict or prohibit the parking or standing of vehicles in any public place, or part of any public place, within the area of the council;
  - (c) prescribing the classes of areas and zones a council may create for the parking or standing of vehicles, or for prohibiting the parking or standing of vehicles;
  - (ca) providing for the creation by a council of parking spaces within any specified class of area or zone created by the council, or of parking spaces generally;
  - (d) prescribing, or providing for the imposition by a council of, conditions, limitations or prohibitions on the use of areas, zones or parking spaces created by the council;
  - (e) providing for the fixing and collection by a council of fees for the parking of vehicles in public places, or any parts of public places;
  - (f) providing for the installation by a council of devices for the recording of parking time or for the reception or collection of parking fees, regulating the manner in which those devices must be operated, and prohibiting the misuse of those devices;
  - (g) providing for the signs, road markings or other devices that will denote or apply to, or providing for the publication of, areas, zones and parking spaces, conditions and limitations on the use of areas, zones or parking spaces, and any other restrictions or prohibitions relating to the parking or standing of vehicles;
  - (ga) providing for the establishment of a code of signs, road markings and other devices that will denote or apply to areas, zones, parking spaces, conditions, limitations, restrictions and prohibitions relating to the parking or standing of vehicles;
  - (h) providing for the time at which areas or zones created by a council, and any conditions or limitations on the use of areas or zones, come into operation;
  - (i) providing for the temporary control by the chief executive officer of a council, or other officer of the council authorized by the chief executive officer, of the parking or standing of vehicles in public places, and providing for the manner in which any temporary control measures must be denoted or indicated;
  - (j) prescribing the obligations of owners and drivers of vehicles in relation to the parking or standing of vehicles in public places, or any parts of public places;
  - (ja) providing that the owner and the driver of a vehicle that was parked or was standing in contravention of the regulations under this Part are each guilty of an offence and liable to the prescribed penalty;



- (jb) providing or excluding defences for persons charged with offences against the regulations under this Part;
- (jc) imposing, modifying or excluding any evidentiary burden on a party to proceedings for an offence against a regulation under this Part, or providing for any other matters in respect of evidence, or burden of proof, in such proceedings;
- (k) exempting, conditionally or unconditionally, persons of any specified class, or vehicles of any specified class, from any provisions of the regulations under this Part;
- (l) fixing, and providing for the payment of, fees for any such exemptions;
- (la) providing for the supply by a council to members of the public, at a fee fixed by the council, of copies of resolutions of any specified class made under the regulations under this Part;
- (m) prescribing penalties, not exceeding \$500 in each case, for breaches of the regulations under this Part;
- (n) providing for the continued existence, operation or validity of any matter or thing, or any right or liability, in existence or in force immediately prior to any regulations under this Part coming into operation;
- (o) providing for any matters ancillary or incidental to the matters referred to in the preceding paragraphs.

(3) The Governor may, by proclamation, suspend the operation of the regulations, or any specified regulations, under this Part in relation to any council specified in the proclamation, until a day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

**Council may grant special exemptions**

**475b.** (1) A council may exempt any person, or any persons of a specified class, or any specified vehicle, or any vehicles of a specified class, from compliance within its area with any provisions of the regulations under this Part.

(2) An exemption under this section may be granted subject to the payment of such fee, and to such other conditions (if any) as the council thinks fit and specifies in the exemption.

**Parking signs, etc., need only substantially to conform with the regulations**

**475c.** A sign or device erected, or a mark placed on any footpath or roadway, by a council in relation to the parking or standing of vehicles will for all purposes be taken to have been erected or placed in accordance with the regulations under this Part if the sign or device or mark substantially conforms with the requirements of those regulations.

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**Evidentiary provision**

**475e.** (1) In any proceedings for an offence against the regulations under this Part, an allegation in the complaint—

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- (d) that, on any specified day, there were signs, devices or road markings that denoted or applied to any specified area, zone or parking space, and that those signs, devices or road markings had been erected or placed in accordance with the regulations under this Part,

is, in the absence of proof to the contrary, proof of the matters so alleged.

(2) In any proceedings for an offence against the regulations under this Part, an allegation in the complaint—

- (a) that a vehicle was parked or was standing in any area, zone or parking space, or contrary to any condition or limitation on the use of an area, zone or parking space, created by a council, or declared by an officer of a council;

- (b) that a person failed to pay a fee fixed by a council;

or

- (c) that a resolution had been passed by a council,

is conclusive proof that the area, zone, parking space, condition or limitation had been validly created or declared, that the fee and its manner of collection had been validly fixed, or that the resolution had been validly passed, as the case may require.

(3) In any proceedings for an offence against the regulations under this Part, a certificate produced by the prosecution, purporting to be signed by the chief executive officer of the council or any other officer of the council authorized for the purpose, and stating that a sign or device had been erected by the council, or a mark had been placed by the council on a footpath or roadway, is conclusive proof of the facts so stated.

(4) In any proceedings for an offence against the regulations under this Part, it is not competent for the defence to tender evidence as to the existence or validity, or otherwise, of any resolution of the council, or any declaration of an officer of the council, under this Part, or to tender evidence as to whether or not any signs, devices or marks erected or placed by a council in relation to the parking or standing of vehicles had been erected or placed pursuant to, or in accordance with, a resolution of the council, or a declaration of an officer of the council, under this Part.

**Defences**

**475f.** It is a defence for any person who is charged with an offence against the regulations under this Part to prove that the act constituting the alleged offence was done—

- (a) to avoid injury to any person or property;

or

- (b) to comply with any directions of a member of the police force or an officer of the council.

**Immunity from liability**

**475g.** Subject to this Act, no liability attaches to a council, or any officer of the council, by reason of the exercise in good faith by the council, or any officer of the council, of powers under this Part.

**Management of car parks, etc.**

**475h.** (1) A council may construct, provide and manage on land vested in, leased by, or under the care, control or management of, the council (other than park lands) such car parks, garages, parking stations and other similar places in which vehicles may be left as it thinks fit, and may fix the fees or charges for their use and for any services rendered at them by the council.

(2) A car park, garage, parking station or other similar place provided pursuant to this section will for the purposes of this Act, be taken to be—

(a) a public place;

and

(b) a permanent work and undertaking.

(3) A council may, in accordance with Division I of Part XXXIX, make by-laws with respect to the management of, and the conduct of persons in, any car park, garage, parking station or other similar place provided pursuant to this section, and the by-laws may provide penalties, not exceeding \$200 in any case, for any offence against or breach of any by-law.

**Interpretation**

**475i.** For the purposes of this Part—

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"**public place**" has the meaning assigned by section 5, and includes park lands, plantations, ornamental grounds and reserves, and, in relation to the Corporation of the City of Adelaide, includes any of the land vested in the Adelaide Festival Centre Trust, or vested in, or under the control of, the Board of the Botanic Gardens, that lie within the area of the Corporation but, in relation to any council, does not include any private access road, private parking area or private walkway within the meaning of the *Private Parking Areas Act, 1986*;

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"**vehicle**" has the meaning assigned by section 5, but does not include any vehicle operated on a railway or a tramway.

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**PART XXIII  
FORESHORES AND JETTIES**

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**Power to regulate hawking on foreshore**

**477.** (1) If the council for an area has made a by-law for the purpose of regulating, controlling or prohibiting the use or occupation of the foreshore of the sea, any part of the foreshore or a reserve adjacent to the foreshore by street hawkers or itinerant traders, a person must not hawk or sell or offer for sale any goods or commodity on the foreshore, the relevant part of the foreshore, or the adjacent reserve unless authorized to do so under a by-law of the council.

(2) A person who contravenes subsection (1) is guilty of an offence.

Penalty: \$200.

**Reserve may be adjacent to foreshore although separated by a street**

**478.** For the purposes of section 477, a reserve may be regarded as adjacent to a foreshore notwithstanding that it is separated from the foreshore by a public or other road, street or way.

**Power to plant trees, etc., on foreshore**

**479.** The council may plant with trees, shrubs or grasses any portion of the foreshore of the sea under its care, control and management.

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PART XXIV
LIGHTING, GASWORKS AND ELECTRIC SUPPLY WORKS

DIVISION I—STREET LIGHTING

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Power to light streets and public places

482. The council may—

- (a) cause the streets, roads and public places within the area, or such of them as the council thinks fit, to be lighted as the council thinks necessary;
(b) for that purpose manufacture or contract for the manufacture of gas, electricity or other illuminants, and provide or contract for any necessary apparatus and machinery;
(c) appropriate, purchase or lease any land necessary for the establishment of that manufacture.

Power to lay pipes through streets, etc.

483. (1) For the purposes of section 482, the council may, or any person with whom the council contracts for lighting any streets, roads and public places may, under the control and direction of the council and its officers—

- (a) break up within the area the soil or pavement of any street, road or public place;
(b) fix and lay in them any lamp-posts, pipes, cables, wires or lighting appliances or material, and cause them to be fixed on or against the exterior of any buildings or fences.

(2) No pipe, wire or other materials or works may be laid or carried through any private property except with the consent of the owner, or subject to the Land Acquisition Act, 1969.

Power of council to remove and alter number of lamps, and nature of the light afforded

484. Subject to any contracts made by the council, the council may cause any lamp-posts or lamps to be taken down or removed to any other place within the area, or to be altered as to the manner of lighting and the material used, or to be increased or diminished in number, as the council thinks fit.

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**DIVISION II—GASWORKS AND ELECTRIC SUPPLY WORKS**

**Power to carry on operations for supply of electricity or gas**

**489.** (1) Subject to the provisions of the *Electricity Act 1996* or any other Act, the council may carry on operations for the generation, transmission, distribution, sale or supply of electricity within its area.

(2) Subject to the provisions of the *Gas Act 1988* or any other Act, the council may carry on operations for the production, distribution, sale or supply of gas within its area.

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PART XXV  
SEWERAGE AND DRAINAGE

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**Resolution of council for providing of bacteriolytic tanks**

**528.** (1) The council may, by resolution passed by an absolute majority, declare that all the buildings within the area, or any part of the area, must be provided with bacteriolytic tanks for the disposal of sewage; but no such resolution may be passed unless the council is of opinion that there is a proper supply of water in or with respect to the area or part (as the case may be) for the purposes of the disposal of sewage by means of bacteriolytic tanks.

(1a) The council may, by resolution passed in the manner and under the circumstances provided for by subsection (1), declare that all the buildings within the area, or any part of it, which are erected after a day fixed by the resolution, must be provided with bacteriolytic tanks for the disposal of sewage. The council may, at any time subsequent to passing a resolution pursuant to this subsection, pass a resolution under subsection (1) relating to any part of the area to which a resolution under this subsection applies.

(1b) Before a resolution is passed under subsection (1) or (1a), the proposal must be submitted by the council to the South Australian Health Commission and the Commission must, after making such inquiries as it considers necessary, report to the council whether or not, in its opinion, the area or part to which it is proposed that the resolution should apply is suitable for the installation of bacteriolytic tanks and whether or not the Commission approves of the passing of the resolution. No resolution of the council under subsection (1) or (1a) has any force or legal effect unless the passing of the resolution is approved by the Commission.

(2) Every such resolution, together with the approval of the South Australian Health Commission to the passing of the resolution, must be published in the *Gazette*.

**Installation of bacteriolytic tanks**

**529.** (1) Within the time fixed by the resolution or, if no time is fixed, then within six months of the publication of the resolution in the *Gazette*, the owner of every building (to which the resolution applies) in the area or part must provide and install a bacteriolytic tank for the disposal of sewage from the building.

(2) If the owner fails to provide or install the bacteriolytic tank, the council may supply or install a bacteriolytic tank with respect to the building. For that purpose any person authorized by the council to do so may enter any land and perform any work necessary for carrying out the provisions of this section. The cost to the council of supplying or installing the tank is a debt due to the council by the owner of the building, and is until paid a charge on the land in respect of which the cost is incurred.

(3) All bacteriolytic tanks installed pursuant to this section must be installed in conformity with the *Public and Environmental Health Act 1987*.

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**Provision of treatment unit instead of bacteriolytic tank**

**530a.** In any case where, pursuant to this Division, an owner is required to provide and install a bacteriolytic tank, the council may by notice in writing permit the owner to provide and install in place of such a tank a method of treatment approved by the South Australian Health Commission. Any such permit may be given subject to conditions considered desirable by the council and may be withdrawn by the council.

**"All purpose" bacteriolytic tank**

**530b.** In any case where, pursuant to this Division, the council requires the installation of a bacteriolytic tank, the council may, with the approval of the South Australian Health Commission, require the installation of a bacteriolytic tank of the kind known as an "all purpose" tank, namely, a bacteriolytic tank which is suitable for the disposal of sullage and waste water in addition to sewerage.

**Septic tanks**

**530c.** (1) If a council proposes to undertake a scheme for the disposal of septic tank effluent, the council must give notice of the proposed scheme to the owners of land in the part of its area affected by the scheme.

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(3) A notice under subsection (1) must include, or be accompanied by—

- (a) details of the proposed scheme, including a description of any land that would be benefited by the scheme;
- (b) an estimate of the costs of the scheme;
- (c) particulars of the manner in which the scheme would be financed, including the manner in which the capital and operating costs would be recovered;

and

- (d) details of any plans and specifications relating to the scheme that are available for public inspection.

(4) An owner of land within the part of the area affected by the proposed scheme may, within 21 days after the receipt of the notice, lodge an objection to the proposed scheme with the council.

(5) The council must consider any objection lodged under subsection (4) and may abandon the scheme or proceed with it with such modifications as it thinks fit.

(6) If a scheme is undertaken, the owner of every building in the part of the council's area affected by the scheme must, at the request of the council, at the owner's own expense—

- (a) provide effluent drains conforming to specifications approved by the South Australian Health Commission that may be necessary for the purposes of the scheme;

and

- (b) remove any sludge that may from time to time accumulate in the tank.

(7) Where a request under subsection (6) is not complied with, the council may have the work carried out (and a person authorized to do so by the council may enter premises at any reasonable time for the purposes of carrying out the work).



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(8) The council may recover as a debt costs and expenses reasonably incurred under subsection (7) from the person in default.

(9) Any costs and expenses recoverable under subsection (8) are, while they remain unpaid, a charge on the land.

(10) The regulations may prescribe guidelines to assist councils in undertaking schemes for the disposal of septic tank effluent.

(11) A regulation may incorporate, adopt, apply or make prescriptions by reference to, with or without modification, any code or standard prepared or published by any body or authority as in force at the time the regulation is made or as in force from time to time.

(12) A regulation cannot be made for the purposes of this section except after consultation with the Local Government Association of South Australia.

**Limitation of application of Part**

**531.** This Part does not apply to any area or portion of an area which is included within the drainage area as defined by the *Sewerage Act, 1929*.

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PART XXVI  
PUBLIC HEALTH

DIVISION I—PROVISIONS APPLICABLE GENERALLY

**Power of council to provide public conveniences**

532. The council may—

- (a) provide public urinals, waterclosets, privies and similar conveniences, in situations or places (either above or below the surface of any public street or road, park lands, square or reserve) where the council thinks such accommodation is required;
  - (b) supply any such conveniences with water;
  - (c) maintain and keep them in good order;
- and
- (d) defray the consequent expenses, and any damage occasioned to any person by the erection of the conveniences, out of the general revenue of the council.

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**Property in nightsoil, ashes and all refuse collected**

535. (1) The nightsoil, dung, ashes, filth and refuse which the council causes to be collected from the streets, roads, houses, privies, sewers, cesspools or elsewhere within the area, and carried away, is the property of the council.

(2) The council may sell or dispose of it as the council thinks proper.

**Keeping of pigs, cattle, etc.**

536. (1) A person who keeps or breeds pigs, or allows them to remain within a municipality or township, or an area within 100 metres of the borders of a township, except at a place appointed by the council, is guilty of an offence.

Penalty: \$200.

(2) The council may by notice in writing given to the owner or occupier of premises within the municipality or township, or within 100 metres of the borders of a township, prohibit the keeping of cattle or goats on the premises and may in writing revoke any such notice. A person who keeps cattle or goats on premises contrary to such a notice is guilty of an offence.

Penalty: \$200.

(3) Subsection (1) does not apply to the keeping of pigs in a township within a district if at the commencement of the *Local Government Act Amendment Act, 1972*, or immediately prior to the commencement, the place in which they are kept was used for the keeping of pigs, but the council may give notice in writing to any person keeping pigs in any such place that at the expiration of 12 months the exemption given by this subsection will cease and at the expiration of that period of 12 months the exemption ceases accordingly.

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**Penalty if smoke, dust, fumes or gas from premises other than dwelling houses amount to nuisance**

**540a.** (1) If from any premises (other than a private dwelling), within a municipality or township within a district, smoke, dust, fumes or gases are emitted in such quantity as to be a nuisance, the owner or occupier of the premises is guilty of an offence.

- Penalty:
- (a) if not previously convicted—\$50;
  - (b) on a second conviction—\$100;
  - (c) on a third or subsequent conviction—twice the maximum penalty applicable on the last preceding conviction.

(2) In proceedings under this section it is a sufficient defence to show—

- (a) that the defendant, at all times material to the alleged offence, has, in connection with the premises in question, made use of any means generally recognized as sufficient, having regard to the nature of the manufacture or trade carried on at the premises, and to the character of the locality, for preventing the emission of smoke, dust, fumes or gases, or carried out the reasonable requirements of the council for preventing the emission;

or

- (b) that the council, after being requested in writing to do so by the defendant, has not made known its requirements for preventing the emission of smoke, dust, or such fumes or gases from the premises in question.

(3) In proceedings under this section—

- (a) it is not necessary to prove that the smoke, dust, fumes or gases are injurious to health;
- and
- (b) the premises from which the smoke, dust, fumes or gases are emitted will not be taken to be a private dwelling unless the contrary is shown.

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**PART XXX  
CEMETERIES**

**Power of council to establish cemetery, crematorium and mortuary**

**585.** (1) The council must, if of opinion that there is no adequate provision (whether within or outside the area) for the burial of persons dying within the area, make such provision by the establishment of a public cemetery.

(2) The council may establish a crematorium and may, subject to the *Cremation Act, 1891*, permit and control the cremation of the dead in it.

(3) The council may establish and manage public mortuaries for the temporary repose of the dead pending burial or cremation.

**Establishment of cemeteries**

**586.** (1) A cemetery must not be established or extended within an area by any person other than the council without the consent in writing of the council.

(2) An application for such consent must be accompanied by plans of the site of the proposed cemetery or extension.

(3) Notice of the intention to make such an application must be published in the *Gazette* and in a newspaper circulating within the area at least one month before the application is considered by the council, and the council must consider the application within three months after it is made.

(4) A person who establishes or extends a cemetery in an area without the consent in writing of the council, is guilty of an offence.

Penalty: Not less than \$100 nor more than \$200, plus a further penalty of not less than \$100 nor more than \$200 for every day during which the offence continues.

(5) No consent under this section is necessary for the establishment or extension of a cemetery on land which is dedicated by the Governor as a cemetery pursuant to the *Crown Lands Act, 1929*.

**Closing of cemeteries**

**587.** (1) The council may petition the Governor for the closure of a cemetery or part of a cemetery in the area which is unsuitable or is no longer suitable for burial purposes.

(2) The Governor, if of opinion that a cemetery or part of a cemetery (whether within or outside an area) is unsuitable or no longer suitable for burial purposes, may on any such petition or without petition, by proclamation close the cemetery or part.

(3) Upon the making of any such proclamation, the cemetery or part referred to in the proclamation ceases to be a cemetery and must not be used for burial purposes unless a right for burial purposes has been acquired over any portion of the cemetery or part, in which case the portion may be used for the burial of the person by whom the right was acquired or any member of the family of that person.

**Provisions as to closed cemeteries**

**588.** (1) If any land comprised in any cemetery closed pursuant to section 587 or a corresponding previous enactment is vested in or under the care, control and management of the council, the council may petition the Governor praying that the Governor may—

(a) determine any trust on which the land is held by the council;

(b) dedicate the land as park lands.

(2) Upon receipt of any such petition the Minister—

(a) must publish the substance of the petition at least twice in a newspaper circulating in the area, and at least twice in a newspaper published in Adelaide, calling on any persons objecting to the exercise of the powers under this section to state their objections to the Minister;

and

(b) must cause any inquiries the Minister may think fit to be made with a view to ascertaining whether any rights for burial purposes exist over the land and for otherwise ascertaining whether there is any reason why the powers given by this section should not be exercised.

(3) If the Governor is satisfied that the powers given by this section should be exercised, the Governor may by proclamation—

(a) determine any trust on which the council holds the land;

and

(b) dedicate the land as park lands.

(4) No such proclamation may be made until the expiration of six months after the publication of the last notice referred to above.

(5) Upon the making of any such proclamation—

(a) any such trust is determined;

(b) any right for burial purposes in relation to the land is determined;

and

(c) the land becomes park lands.

(6) The council must in addition to paying the costs of the advertisements pay to the Minister the cost of any inquiry under this section.

#### **Powers of council with respect to neglected cemeteries**

**589.** (1) If the council is of opinion that any cemetery within the area is in a neglected condition, or in any manner fails to comply with any requirement of any regulation made by the Governor under this Part, the council may, by notice in writing given to the person in whom the fee simple of the cemetery is vested (whether as trustee or otherwise), require that person to carry out any work for the purpose of remedying the condition of neglect or complying with the requirement.

(2) If within the time fixed by the notice the person fails to carry out the work, the council may carry out the work and for that purpose enter into and remain (by its officers and servants) on the cemetery. The cost of carrying out the work must be paid to the council by the person in default.

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If the cemetery is vested in any person as trustee and the cemetery was established before the commencement of this Act, the amount payable pursuant to this subsection to the council is limited to the amount in the hands of the trustee for the purposes of the cemetery.

**Power to take over cemeteries**

**590.** (1) If the owner of any cemetery within an area is unknown, or if any such cemetery is held by trustees who are dead or unknown, and the council is of opinion that for the proper upkeep and care of the cemetery the council should assume the care, control and management of the cemetery, the council may, by a resolution passed by an absolute majority, assume the care, control and management of the cemetery.

(2) Notice of every such resolution must be published in the *Gazette*.

(3) The cemetery becomes, on publication of the notice, a public cemetery and is thereafter under the care, control and management of the council, and the council may exercise in respect of the cemetery the same powers as if the cemetery were a public cemetery vested in the council.

**Power of council to accept conveyances of cemetery lands from trustees**

**591.** (1) The trustees of any land within an area held on trust for a cemetery may convey it to the council if the council is willing to accept the trust.

(2) The council will hold the cemetery on the original trusts or such of them as are applicable.

(3) The trustees are, from the time of the conveyance, discharged from the trusts.

(4) The council must not accept a conveyance of any such cemetery under this section if under the trusts on which the council will hold the cemetery the use of the cemetery is confined to the burial of persons of a particular religious denomination or sect.

**Power to set apart portion of cemetery for religious denomination**

**591a.** The council may set apart any portion of a cemetery vested in or under the care, control and management of the council for the burial of persons of a particular religious denomination.

**Power to manage cemeteries**

**592.** The council may grant rights for burial purposes over any part of a cemetery vested in, or under the care, control and management of, the council, and may do any other things necessary for the upkeep, maintenance and management of the cemetery. No such right for burial purposes may be granted for a longer term than 99 years.

**Penalty for interring human body except at public cemetery**

**593.** A person who interrs, or aids or suffers the interment of, any human body—

- (a) in any church or place (other than a cemetery) within any municipality or any township in any district;
- (b) in any cemetery or part of a cemetery closed pursuant to section 587 (except pursuant to rights granted before the closure),

is guilty of an offence.

Penalty: Not less than \$100 nor more than \$200, plus a further penalty of not less than \$100 nor more than \$200 for every day after notice to remove the body has been given by the council, during which the body is allowed to remain so interred.

**Power of entry**

**594.** An officer of the council authorized for the purpose may, for the purpose of inspecting a cemetery within the area, enter the cemetery at any reasonable time in the daytime.

**Regulations**

**595.** (1) The Governor may, on the recommendation of the South Australian Health Commission, make regulations—

- (a) regulating the position and depths of graves in cemeteries;
- (b) regulating the construction of coffins to be admitted to vaults;
- (c) regulating the covering of vaults so as to prevent the escape of any noxious exhalation;
- (d) regulating the exhumation or removal of corpses from any place of interment;
- (e) regulating the granting of rights for burial purposes in cemeteries and the manner of granting such rights;
- (f) regulating the maximum charges and fees which may be charged by a council for burial rights and other rights and services granted in respect of any cemetery under its care, control or management;
- (g) providing for the keeping of proper records with respect to cemeteries, including records of burials, exhumations, and of burial or other rights granted in respect of the cemetery;
- (h) for the general regulation of cemeteries and for sanitary purposes connected with any cemetery;
- (i) regulating the construction and the general regulation of mortuaries established by councils;
- (j) providing penalties not exceeding \$200 for the breach of any regulation.

(2) Any such regulation may be restricted in its application to any specified cemetery.

(3) Any such regulation which is not limited in its application as provided by subsection (2) applies to the whole of the State and to all cemeteries.

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**Provisions applicable to outside areas**

**596.** This Part applies to the portion of the State not comprised within any area, and the South Australian Health Commission has in respect of that portion of the State all the powers conferred on councils by this Part except sections 585, 590, 591 and 592, and this Part will, *mutatis mutandis*, be construed accordingly.

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**PART XXXI  
BUILDINGS**

**DIVISION I—PROVISIONS APPLICABLE GENERALLY**

**Application of Division**

**597.** This Division does not apply to any municipality or district, or part of any municipality or district, to which the *Building Act, 1971*, applies.

**Building projecting on any public street, road or place**

**598.** (1) Subject to section 600, a building erected after 23 December, 1890, in any municipality must not encroach or project on any public street, road or place.

(2) Subject to section 600, a building erected after the commencement of this Act in any district must not encroach or project on any public street, road or place.

(3) A building that encroaches or projects on any public street, road or place must not be rebuilt either in whole or in part, and any alteration in or addition to such a building must not be made, except according to a plan, to be approved by the council or the building surveyor, so that the building is placed clear of, and outside the distance defined for the breadth of, the public street, road or place.

(4) A person who erects a building contrary to subsection (1) or (2), or rebuilds, alters, or adds to any building contrary to subsection (3), is guilty of an offence.

Penalty: \$200.

(5) A person who fails to remove any such building, alteration or addition, built, altered or added to contrary to this section, within one month after notice by the council or the building surveyor to remove it, is guilty of an offence.

Penalty: \$100 plus \$40 for every week during which the neglect continues after service of the notice.

**Power of council after notice to cause encroachment to be removed**

**599.** (1) If, within one month after notice by the council or the building surveyor to remove any such building has been served on the owner, or, if the occupier has erected the building, then on the occupier, the building is not removed accordingly, the council may cause the building and all alterations in or additions to it, so far as they encroach on the public street, road or place, to be taken down, and they may be taken down accordingly and removed.

(2) The owner or occupier must pay the costs and expenses of such taking down and removal to the council.

**Erection of verandahs, etc., over streets and roads**

**600.** (1) The owner of any land within the area may in front of any building on the land erect or construct a portico, awning, verandah or balcony over any public street or road, subject however to the following conditions:

- (a) no such portico, awning, verandah or balcony may be erected without the consent in writing of the council;
- (b) every such portico, awning, verandah and balcony must be erected or constructed in such manner, and must be of such design, as the council requires and must be erected or constructed in accordance with any other conditions required by the council;



- (c) every balcony must have a framework of iron and be securely fixed with iron brackets or other supports to the satisfaction of the council;
- (d) every awning, verandah or portico must be 2.4 metres at least in height over the footway in front of the building, and the posts (if any) for its support must be placed close to the kerbstone or outer edge of the footway, as the council directs.

(2) A person who erects or constructs any portico, awning, verandah or balcony over any public street or road except in accordance with this section is guilty of an offence.

Penalty: \$50 plus \$10 for every day during which the offence continues after notice by the council to remove it has been given to the person.

## DIVISION II—PROVISIONS APPLICABLE TO MUNICIPALITIES AND PROCLAIMED TOWNSHIPS WITHIN DISTRICTS

### Application of Division

**601.** (1) Subject to subsection (3), this Division applies to all municipalities.

(2) Subject to subsection (3), such of the provisions of this Division as the Governor declares by proclamation to apply to a township within a district apply, while the proclamation remains in force, to that township.

The Governor may by proclamation made on the petition of any district council declare that the whole or any of the provisions of this Division apply to any township within the district of the council, and may by proclamation on the petition of the district council revoke or vary any such proclamation.

(3) Sections 608, 609, 610, 611, 616 and 617 cannot apply to any municipality or district, or part of a municipality or district, to which the *Building Act, 1971*, applies.

### Duties of persons erecting or pulling down buildings, etc.

**602.** A person who builds, takes down, alters, adds to, or repairs any building, or makes any excavation, thus obstructing or rendering inconvenient or dangerous any public street, road or place, or any footway, is guilty of an offence, unless the person has—

- (a) given three clear days previous notice to the council or building surveyor of his or her desire to commence the work;

and

- (b) caused to be erected or set up and maintained such hoardings, fences, platforms and handrails as the council or building surveyor may from time to time direct.

Penalty: \$200.

### Licences for hoardings, etc.

**603.** (1) A person who, without first obtaining from the council or engineer a licence in writing to do so—

- (a) erects or sets up in or on any public street, road or place, any hoarding, fence or scaffold, or any enclosure for any purpose whatever;

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(b) makes any excavation on land abutting on, or adjoining, or contiguous to, any public street, road or place, without erecting or setting up a hoarding or fence to the satisfaction of the engineer;

or

(c) deposits on any public street, road or place, stone, bricks, lime, rubbish, timber, iron or other materials, without erecting or setting up a hoarding or fence to the satisfaction of the council or engineer,

is guilty of an offence.

Penalty: \$100 plus \$50 for every day during which the offence continues.

(2) The licence mentioned in subsection (1) must state—

(a) the purpose for which it is given;

(b) the place where the hoarding, fence, scaffold, enclosure or obstruction is to be erected or set up or allowed;

(c) its description and dimensions;

and

(d) the time for which it is to be permitted to continue.

(3) Such a licence will be given subject to such further and special conditions (which must be stated in the licence) as the council or engineer thinks fit. A person who commits a breach of any such conditions is guilty of an offence.

Penalty: \$100 plus \$50 for every day during which the offence continues.

(3a) The council may, at its discretion, revoke any such licence by notice in writing to the licensee.

(4) The council may fix, charge, and recover the fees to be paid for such licences.

(5) The fee fixed by the council for any such licence may be a monthly or other periodic fee and may be fixed to increase in amount after the expiration of any period specified by the council.

**Hoardings to be kept in good condition, and lit up from sunset to sunrise**

**604.** (1) A person erecting or setting up any such hoarding or fence must keep it (together with the appurtenant platform and handrail (if any)) standing and in good condition, to the satisfaction of the council or engineer, during such time as is necessary for the public safety or convenience.

(2) A person erecting or setting up, or causing to be erected or set up, any hoarding, fence or obstruction in or on any public street, road or place, or at any excavation, must—

(a) cause it (until removed) to be well lighted from sunset to sunrise, to prevent accidents;

(b) remove it, and fill up any excavation, within a reasonable time after being required to do so by the council or engineer;

and

- (c) repair any damage done to the public street, road or place, within a reasonable time, after being required to do so by the council or engineer.

(3) The question as to what is a reasonable time will be determined by the court of summary jurisdiction before which any complaint for non-compliance with any of the requirements of this section is heard.

(4) A person guilty of a contravention of subsection (1), or subsection (2)(a) or (b), is guilty of an offence.

Penalty: \$100 plus \$50 for every day during which the offence continues.

- (5) A person guilty of a contravention of subsection (2)(c) is guilty of an offence.

Penalty (in addition to the amount of the damage): \$200.

**Power to remove and sell hoardings, etc., erected and materials deposited without or contrary to licence**

**605.** (1) If any person—

- (a) without a licence from the council or engineer, erects or sets up in or on any public street, road or place, any hoarding, fence or scaffold, or any enclosure, for any purpose whatever;
- (b) without a licence from the council or engineer, makes any excavation on any land abutting on, or adjoining, or contiguous to, any public street or place (unless the excavation is securely fenced off from the public street, road or place);
- (c) without a licence from the council or engineer, deposits stone, bricks, lime, rubbish, timber, iron or other materials, in or on any public street, road or place;
- (d) does any such act in any manner other than that permitted by the licence;
- (e) continues any such act beyond the time stated in the licence;
- or
- (f) fails to keep any hoarding, fence, platform or handrail erected or set up pursuant to any such licence in good repair,

the council may—

- (g) cause any such excavation to be filled up, and recover the costs and expenses of filling it up from the person;
- (h) cause any such hoarding, fence, scaffold, platform, handrail or enclosure to be pulled down, and its materials, and also all the stone, bricks, mortar, lime or other building materials, and all other things contained within any such enclosure to be removed, and deposited in such place as the council thinks fit, and to be kept until the charges of pulling it down and removing it are paid to the council.

(2) If the materials and things are not claimed and the charges paid within the space of eight days after the seizure of the materials and things, the council may order them to be sold, and by and out of the net proceeds of the sale pay the charges, and pay any surplus to the owner or other person by law entitled to it.

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(3) If the proceeds of any such sale are insufficient to cover the charges, and the charges of selling and disposing of the materials and things, the deficiency must be paid by the owners of the materials, matters or things, to the council.

**Damage done to footways, drains, etc., by erection of hoardings, etc., to be made good**

**606.** (1) A person who erects or sets up in any public street, road or place any hoarding, fence or scaffold, for any purpose whatever, and who damages or destroys any footway or roadway of any such street, road or place, or any kerb, watertable or drain, must make it good to the satisfaction of the council or engineer.

(2) If the person to whom any such hoarding, fence or scaffold belongs neglects or fails to make good and repair to the satisfaction of the council or engineer the footway, roadway, kerb, watertable or drain, the council may cause the repairs to be done, and recover the costs, charges and expenses of the repairs, together with any further costs, charges and expenses that have been incurred by reason of the neglect, from the person.

**Covering of footway while building is in progress**

**607.** (1) Whenever a builder or other person has erected a building or part of a building abutting on or within 1.8 metres of any footpath of any street, road or place to the height of 3.6 metres above the level of the footpath, or whenever any plastering or other building operations are in progress above that height, the builder or other person, or the plasterer or person conducting the other building operation, must cause the footway abutting on or within 1.8 metres of the building to be covered until the completion of the work then in progress with a close and substantial covering. Such a covering must be not less than 2.75 metres above the footway at the lowest part of the covering and must be suitable for retaining falling materials.

(2) A person who contravenes subsection (1) is guilty of an offence.

Penalty: \$100 plus \$50 for every day during which the offence continues.

**Roofs of houses**

**608.** (1) The roofs of all houses and other buildings must be of slate, tiles, metal, glass, artificial stone or cement.

(2) A person who constructs the roof of any house or other building with materials other than those prescribed by subsection (1) is guilty of an offence.

Penalty: \$200.

**Prohibition of wooden partitions between separate houses**

**609.** (1) A partition between separate houses or other buildings (whether the houses or other buildings belong to one or more owners) must not be constructed of wood or flammable material.

(2) If a building so partitioned is partially rebuilt by having its front taken down, or if it is raised in height, then every such flammable partition must be removed and replaced by proper party walls to be built in accordance with section 610.

(3) A person who constructs a partition contrary to subsection (1) or neglects to remove a partition of wood or flammable material and to replace it by proper party walls in any of the cases provided for in subsection (2) is guilty of an offence.

Penalty: \$200.

**Space between timbers in party walls, etc.**

**610.** (1) In every party wall there must be between the timbers on either side, to be inserted in or supported by the party wall, a space of at least 230 millimetres, filled up with solid incombustible material.

(2) No timbers in any party wall may be nearer to the back of any fireplace than 355 millimetres, nor to any flue in the party wall than 180 millimetres, the backs of fireplaces being considered as extending, for the purpose of this Act, 1.5 metres above the hearth, and flues as commencing at that height.

(3) A person who constructs a party wall except in accordance with subsection (1) or allows any timber to be in any party wall contrary to subsection (2) is guilty of an offence.

Penalty: \$200.

(4) If any timber is placed in a party wall contrary to this section, the council or building surveyor may require it to be removed, and replaced so as to be in conformity with this section.

(5) On the report in writing of the building surveyor that such a requirement has not been complied with, the council may effect the removal of the timbers and, if necessary, the reconstruction of the party wall. The expense incurred by the council in so doing must be paid to the council by the owner.

**Prohibition of erection of buildings, partitions, ceilings and verandahs of flammable materials**

**611.** (1) A person who—

(a) erects a building the external walls of which are wholly or in part of canvas, thatch or other flammable material;

(b) erects a building the internal partitions or ceilings of which consist either wholly or in part of calico, canvas, paper or other flammable material;

or

(c) roofs a verandah to a house or building with canvas or other flammable material,

is guilty of an offence.

Penalty: \$200.

(2) If a building, partition, ceiling or verandah is erected or constructed of material contrary to this section, the council may at any time cause notice to be served on the owner or occupier of the building requiring its removal within such time as the council thinks proper.

(3) In default of its removal, a justice, upon due proof of the service of the notice, and of non-compliance with it, may order any such building, roof, verandah, ceiling, or partition to be forthwith removed, either wholly or in part, as the case may require, under the superintendence of the building surveyor, and at the expense of the owner.

(4) The expense must be paid by the owner to the council.

**Power of council to suspend operation of previous ten sections, or any of them**

**612.** (1) A municipal council may by an absolute majority from time to time suspend the operation, within the municipality or any portion of it, of the provisions contained in sections 602 to 611, both inclusive, or of any of them, for such time as the council thinks fit.

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(2) Any such suspension may at any time be revoked by an absolute majority of the members of the council.

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**Penalty for allowing building material, etc., to remain in streets**

**615.** A person who—

(a) allows building materials, rubbish, or other things, or a fence, enclosure or excavation, relating to the progress of any building or other work, to remain in or adjoining any public street, road or place for an unreasonable length of time;

or

(b) does not remove or fill it up, or make it permanently secure, as the case may be, when required by the council or building surveyor,

is guilty of an offence.

Penalty: \$50 plus \$10 for every day during which the offence continues.

**Measures to be taken in case of ruinous or dangerous building**

**616.** (1) If a building or wall, or anything affixed or attached to a building or wall, is in a ruinous or dangerous condition so as, in the opinion of the building surveyor, to render either the occupiers of adjoining buildings or any other persons liable to injury, the building surveyor may cause a hoarding or fence, for preventing nearer approach than is safe, to be forthwith erected, and take such other measures of protection as the circumstances of the case in his or her discretion demand.

(2) If the circumstances permit, the building surveyor must cause notice in writing to be served on the owner or occupier of the premises, or if the owner or occupier cannot be found, to be fixed on the door or other conspicuous part of the premises, requiring the ruinous or dangerous building, wall or other thing to be taken down, repaired or secured as the case may require within such time as the surveyor thinks necessary.

(3) If such taking down, repairing or securing is not completed to the satisfaction of the building surveyor within the time prescribed by the notice, or if the circumstances do not permit the giving of such notice, the council may cause the building, wall or other thing to be taken down, repaired, rebuilt or otherwise secured in such manner as is necessary.

(4) The expenses to the council of putting up any hoarding or fence, and of taking down, repairing, rebuilding or securing a building, wall or other thing under this section, must be paid by the owner or occupier to the council, and until fully paid or recovered the amount is a charge on the land on which the building, wall or other thing is or was situated.

**Power of council to sell materials of buildings pulled down in payment of expenses incurred**

**617.** (1) If any building, wall or other property is taken down either wholly or in part under this Part, the council may sell the resulting materials.

(2) The money from the sale may be applied to the reimbursement to the council of any expenditure arising from, or incidental to, the taking down of the building, wall or other property.

(3) The surplus, if any, must be paid on demand to the owner of the property taken down.

(4) If the money arising from the sale is insufficient to defray the expenses incurred by the council, the owner of the property is liable to pay to the council the amount of the deficiency.

### **DIVISION III—PROVISIONS APPLICABLE TO DISTRICTS ONLY**

#### **Application of Division**

**618.** This Division does not apply to any district or portion of a district to which section 616 or the *Building Act, 1971*, applies.

#### **Power of council to destroy ruinous or dangerous building**

**619.** (1) If a building or wall adjoining a street or road within a district, or anything affixed or attached to any such building or wall, is in a ruinous or dangerous condition, the council may order the owner, within a time stated in the order, to take down, secure or repair the building, wall or fixture in such manner as in the opinion of the council may be necessary.

(2) If the order is not obeyed within the time so stated, the council may cause its requirements to be carried out, and may recover the expenses incurred in the work from the owner, and until fully paid or recovered the amount of the expenses is a charge on the land on which the building, wall or thing is situated.

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PART XXXII  
PREVENTION OF FIRES WITHIN MUNICIPALITIES AND PROCLAIMED  
TOWNSHIPS WITHIN DISTRICTS

**Power of council to take measures for prevention and suppression of fires**

**620.** (1) Subject to the *South Australian Metropolitan Fire Service Act, 1936*, a municipal council may—

- (a) either separately or in conjunction with any authority or other authorized body for supplying the municipality with water, cause such reservoirs, tanks, mains, pipes and fire plugs to be constructed and laid down in such streets and roads, and public or other places, as the council thinks necessary for affording a constant and ample supply of water for use in the event of fire within the municipality;
- (b) either separately or in conjunction with any fire insurance company or other persons, procure fire engines, fire escapes, ladders, and other machines and apparatus made use of for extinguishing fires and saving life and property in cases of fire;
- (c) either separately or in conjunction with any fire insurance company or other persons, organize and establish a fire brigade and make provisions for, or contribute towards the payment of, any superintendent, officer, fireman, or other person employed in the brigade, or grant any sum of money as rewards for meritorious conduct, or compensation for personal injury, to any person assisting in extinguishing, or preventing the spread of fire, or in the rescue or an attempt to rescue, any person, animal or goods from fire within the municipality;
- (d) cause alarm bells to be fixed in such situations as the council thinks desirable.

(2) If any such fire brigade is established by a council, any superintendent or officer of the brigade being present at a fire within the area of the council and being in charge of the fire brigade, may exercise any of the appropriate powers of the Chief Officer under the *South Australian Metropolitan Fire Service Act, 1936*, insofar as those powers may be necessary or expedient for extinguishing the fire or for preventing its spread or extension.

**Prohibition of stacking hay, straw and thatch in the open air**

**621.** A person who stacks or piles in the open air or stores for sale within a municipality any hay, straw or thatch, except in premises licensed or authorized by the council, is guilty of an offence.

Penalty: \$200.

**Construction of ashpits**

**622.** (1) A person must not use any pit or place in a municipality for the deposit of ashes, unless it is wholly constructed of incombustible material, and carried up on all sides with the same material 0.6 metre at least above the surface of the ground.

(2) A person who contravenes this section is guilty of an offence.

Penalty: \$200.

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**Fires in chimneys**

**624.** (1) A person who allows any chimney-flue of the dwelling house or other premises occupied by him or her within any municipality to take fire by reason of having become foul, or of any neglect, carelessness, or default of the occupier of the dwelling house or other premises, or of a servant or other person using the chimney-flue, is guilty of an offence.

Penalty: \$200.

(2) The onus of proof that any such chimney-flue did not take fire in consequence of being foul, or of any such neglect, carelessness or default, is on the defendant.

**Application to township within district**

**625.** (1) The Governor may by proclamation made on the petition of a district council declare that this Part applies within any township within the district, and may by proclamation made on the petition of the district council revoke any such proclamation.

(2) This Part will, *mutatis mutandis*, apply to any such township to which any such proclamation refers while the proclamation remains in force.

**Local Government Act 1934**

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**PART XXXIII  
ALLEYS AND COURTS WITHIN MUNICIPALITIES**

**Width and entrances of alleys and courts**

**626.** (1) An alley or court laid out or formed within a municipality must be at least six metres in width (the width to be determined as prescribed by section 5(5)).

(2) An alley or court laid out or formed within a municipality must have two entrances, each of the full width of the alley or court and one of which must be opened from the ground upwards.

**Penalties**

**627.** A person who forms any alley or court contrary to section 626 is guilty of an offence.

Penalty: \$100 plus \$50 for every day during which the alley or court is allowed so to continue after notice has been given by the council that the offence has been committed.

**Entrance to alleys**

**628.** (1) The council must, whenever it thinks it necessary, secure any alley, court or passage within the municipality against the ingress of horses and cattle, and otherwise, at its entrances.

(2) The alley, court or passage must be secured to the satisfaction of the council, and by and at the expense of such persons, and in such manner, as the council may by any public notice or by any by-law for the further regulation of the entrances of courts and alleys, direct.

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**PART XXXIV  
HIDE AND SKIN MARKETS AND BAZAARS**

**Power to licence hide and skin markets**

**629.** (1) A council may—

(a) grant annual licences to any premises within its area which the council on examination, thinks suitable for the purpose of the storage and sale of raw or green hides or skins;

and

(b) fix, charge and take such annual fees for the licence of the premises as the council thinks fit.

(2) A person who stores, keeps or has any raw or green hides in an area except in premises specially licensed by the council for that purpose, or in a tannery where raw or green hides or skins are used solely for manufacturing purposes, is guilty of an offence.

Penalty: \$200.

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**Power to licence bazaars**

**631.** A council may grant annual licences in respect of any suitable premises within its area as a bazaar or repository for the sale of horses, cattle or animals of any other kind that the council thinks appropriate.

**Penalty for selling horses, etc., except at markets or bazaars**

**632.** A person who within an area exhibits for sale any horses, cattle or animals of any other kind, except at public markets or at bazaars conducted by a council, or licensed under this Part, or by auction or private contract at a private residence, is guilty of an offence.

Penalty: \$200.

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**PART XXXV  
WATERCOURSES AND FLOOD MANAGEMENT**

**DIVISION I—PROTECTION AND MAINTENANCE OF WATERCOURSES**

**Application of Division**

**633.** This Division does not apply in respect of—

- (a) a watercourse or lake to which Part VI of the *Water Resources Act 1990* applies;
- (b) a watercourse that is under the control of the Crown or that is, by statute, under the control of a particular body corporate;

or

- (c) a watercourse declared by proclamation to be a watercourse to which this Division does not apply.

**Protection of watercourses**

**634.** The council is responsible for the protection of all watercourses within its area.

**Interference with watercourses**

**635.** (1) A person must not—

- (a) deposit anything in a watercourse;
- (b) obstruct a watercourse or do anything that might result in the obstruction of a watercourse;
- (c) alter the course of a watercourse;

or

- (d) remove rock, sand or soil from the bed or banks of a watercourse or otherwise interfere with the bed or banks of a watercourse,

unless authorized to do so by the council.

Penalty: \$2 000.

(2) An authorization may be granted under this section unconditionally or subject to conditions.

(3) An authorization conferring a right to remove rock, sand or soil from the bed or banks of a watercourse may be granted on conditions requiring the payment, on stipulated terms, of reasonable consideration to the council.

**Requirement to remove obstructions**

**636.** (1) A council may, by notice in writing served personally or by post on the owner of land through which a watercourse passes, require the owner, within a period specified in the notice, to carry out, or cause to be carried out, on the owner's land work of a kind specified in the notice for the purposes of—

- (a) removing obstructions from the watercourse;
- (b) making good damage to the watercourse;

or

(c) otherwise maintaining the watercourse in good condition.

(2) A person who fails to comply with a notice under subsection (1) within the period specified in the notice is guilty of an offence.

Penalty: \$500.

(3) A notice given to a person pursuant to subsection (1) must contain particulars of the right of appeal under this Act against the notice, or a term or condition of the notice, and also of the procedure by which such an appeal may be instituted.

### **Responsibility for maintenance of watercourses**

**637.** (1) A council may cause such work to be carried out as may be reasonably necessary for the purposes of—

(a) removing obstructions from a watercourse;

(b) making good damage to a watercourse;

and

(c) otherwise maintaining a watercourse in good condition.

(2) Where, in pursuance of this section, the council causes work to be carried out that should have been, but was not, carried out by the owner of land in pursuance of a notice under this Division, the council may, by further notice in writing served personally or by post on that owner, require the owner to pay to the council an amount determined by the council as being the cost of carrying out that work.

(3) After the expiration of 30 days from the date of service of the further notice under subsection (2), the council may proceed to recover the contribution to which the notice relates as a debt.

### **Powers of entry**

**638.** (1) An officer or employee of a council may, after giving reasonable notice to the occupier of land, enter and remain on the land for any purpose connected with the administration of this Part.

(2) A contractor engaged by a council may, after giving reasonable notice to the occupier of land, enter and remain on the land for the purpose of carrying out work at the direction of the council.

(3) A person who hinders another in the exercise of powers conferred by this section is guilty of an offence.

Penalty: \$500.

### **Proceedings**

**639.** (1) Proceedings for an offence against this Division—

(a) cannot be commenced without the consent of the council;

and

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- (b) may be commenced within 12 months of the date on which the offence is alleged to have been committed.

(2) An apparently genuine document, apparently signed by the chief executive officer, stating that the council has consented to the commencement of proceedings for an offence against this Division, will in any legal proceedings, in the absence of proof to the contrary, be accepted as proof of that consent.

**DIVISION II—FLOOD MANAGEMENT**

**Acquisition of land**

**640.** A council may, subject to and in accordance with the *Land Acquisition Act, 1969*, acquire land for the purpose of carrying out work for the prevention or mitigation of floods.

**Power of council to act in emergency**

**641.** (1) Where flooding in the area of a council has occurred or is imminent and the council is of the opinion that a situation of emergency has arisen in which there is danger to life or property, it may order such action to be taken as it thinks fit to avert or reduce the danger.

(2) A person who acts in good faith in pursuance of an order of a council under subsection (1) incurs no civil liability by doing so.

(3) A person who suffers loss in consequence of action taken in pursuance of this section is entitled to reasonable compensation from the council in respect of the loss.

(4) The following provisions apply in respect of compensation under this section:

- (a) compensation is not payable in respect of loss that would have occurred in any event whether or not action had been taken in pursuance of this section;

and

- (b) in determining the extent of the loss in respect of which compensation is payable, any loss that the claimant would have suffered if action had not been taken in pursuance of this section will be set off against the loss resulting from that action.

(5) While a declaration is in force in relation to the area of the council under the *State Disaster Act, 1980*, the powers conferred by that Act operate to the exclusion of the powers of the council under this section.

**DIVISION III—APPEALS**

**Appeals**

**642.** (1) An appeal lies to the Water Resources Appeal Tribunal—

- (a) against a refusal of the council to grant an authorization under this Part;

- (b) against the imposition by the council of a term or condition in respect of an authorization under this Part;

or

- (c) against a notice given under this Part (not being an order under section 641) or against any term or condition of such a notice.

(2) The provisions of the *Water Resources Act, 1976*, relating to appeals to the Water Resources Appeal Tribunal extend, with such modifications as may be necessary for the purpose and such further modifications as may be prescribed, to an appeal under this section.

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**PART XXXVI  
RECLAMATION OF LAND**

**Cost of reclamation of land**

**644.** (1) Where the council raises, fills in, improves, drains, levels or reclaims land in the area, the whole or part of the expense of the work may be apportioned by the council between the owners of the adjacent or adjoining ratable land improved in proportion to the amount of additional value the work has added to that land.

(2) Every such owner must pay to the council a share of the expense, according to the valuation made under section 645.

**Duty of council to value and to give notice**

**645.** The council must, upon the completion of any such work—

(a) appoint a valuer, who must fix the additional value that the work has added to the ratable land adjacent to or adjoining the land raised, filled in, improved, drained, levelled or reclaimed;

and

(b) give written notice of the valuation to every owner affected by it.

**Right of appeal**

**646.** (1) Any such owner may, within 21 days after the giving of any such notice, object to the valuation.

(2) Where an objection is made under subsection (1), the provisions of Part X for reconsideration or review of, or appeal against, a valuation apply, with the necessary changes, to the valuation to which objection is taken.

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**PART XXXVIII  
MISCELLANEOUS POWERS**

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**Council excused from oath of office and qualification when acting as a board under any Act**

**662.** (1) Whenever by any Act it is enacted that the council is to become, perform the duties of, or form part of, a board or administrative body created, appointed or authorized by or under that or any other Act, the members of the council are exempt from the necessity of taking any oath of office, or having any qualification required by any such Act, or any other Act passed before the commencement of this Act relating to any such board or body.

(2) The council is not (except where forming part only of any such board or body) required, in performing any such duties, to use any corporate name or seal other than the corporate name and common seal of the council, or to hold meetings except under this Act.

**Boundary marks**

**663.** The council may cause to be set up durable and conspicuous marks denoting the boundaries of the area and of its wards.

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**Drainage across footways**

**665.** (1) The council may in any case in which it is of the opinion that as a result of building or other work carried out on any land water drains, or is likely to drain, from that land across any footway (whether directly or indirectly across any other land), by notice in writing, require the owner of the land to construct a drain (which may be constructed under a footway) to conduct the water into any water-table or drain in or under any street or road.

(1a) A notice under subsection (1) may require two or more owners to combine in the construction of a common drain.

(2) If within the time fixed by the notice any such owner or owners fail to comply with a requirement of the notice, the council may construct the drain and recover the cost of the work from the owner or owners. In any case in which the drain so constructed is a common drain, the council must apportion the cost between the owners.

(2a) In any case in which the council thinks fit, the council may construct any such drain without giving notice as provided by subsection (1) and may recover the cost of the work from the owner or owners. In any case in which the drain so constructed is a common drain, the council must apportion the cost between the owners.

(3) Until fully paid or recovered, the amount of the cost is a charge on the land in respect of which the drain is constructed. If the cost is apportioned, such part of the cost as is apportioned to the land of each owner is, until fully paid or recovered, a charge on that land.

(4) A document appearing to be a certificate signed by the mayor or chairman and the chief executive officer is *prima facie* evidence—

- (a) of the cost of the work;
- (b) of the proportion payable by each owner.

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**Unsightly condition of land**

**666b.** (1) If the council considers that any land, or any structure or object on land, within the area of the council is unsightly and detracts significantly from the amenity of the locality in which the land is situated, the council may, by notice in writing served on the owner or occupier of the land, direct the owner to take such action as the council considers necessary to ameliorate the unsightly condition.

(2) A person to whom a direction is given under subsection (1) may, within 14 days after service of the direction, appeal to the Environment, Resources and Development Court.

(3) The Court may, if satisfied that the direction or any part of the direction is unreasonable, vary or set aside the direction.

(4) If the owner or occupier to whom a notice is given under this section fails to comply with the direction within 28 days after the service of the direction, or where there has been an appeal, within 28 days after the determination of the appeal, the council may itself take the action stipulated in the direction.

(5) Where the council, in the exercise of its powers under subsection (4), has removed any object or materials from the land, it may sell or otherwise dispose of the object or materials, and any proceeds realized by the sale—

(a) may be applied towards defraying the expenses incurred by the council in taking action under subsection (4);

and

(b) to the extent of any amount remaining after defraying those expenses, must be paid to any person who satisfies the council that he or she was the owner of the object or materials prior to the sale under this section.

(5a) Any expenses incurred by a council in taking action under subsection (4) are, to the extent to which they are not defrayed by the sale of any object or material under subsection (5), recoverable as a debt from the owner or occupier to whom a notice was given under this section.

(6) No action lies against a council or any officer or employee of a council for anything done by the council or the officer or employee in pursuance of this section.

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PART XXXIX
BY-LAWS, MODEL BY-LAWS AND REGULATIONS

DIVISION I—BY-LAWS

By-laws

667. (1) Subject to this Act, a council may make by-laws for all or any of the following purposes:

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Structures

2.

\* \* \* \* \*

- III. for regulating or prohibiting the flying of flags and the erection of flagpoles in, over, or near any public place, or from or on any verandah, structure or balcony in a public place;
IV. for appointing suitable magazines or buildings for the storage of gunpowder and other explosive substances; for regulating the quantity of such explosive substances which may be kept by any person; and for prohibiting or regulating the use of such explosive substances within the municipality (but no by-law made under this paragraph applies to the use of any explosive substance in any mine to which the Mines and Works Inspection Act, 1920, applies);

Uses and Licences

3. I.

for licensing, regulating and inspecting public restaurants and fish shops, and for prohibiting fish shops;

II.

subject to the Trade Measurements Act, 1971, for the placing, fixing and maintaining of petrol pumps in or on footways and of any apparatus, pipes and appliances in, on or under footways for the supply of motor spirit to any such petrol pumps; and the removal of any such petrol pumps, apparatus, pipes and appliances;

III.

for the granting, renewal, transfer and duration of permits for petrol pumps, and applications for such permits;

IV.

for prescribing forms of permits and conditions to be contained in permits for petrol pumps;

V.

for prescribing fees—

(a) for the granting or renewal of a permit;

(b) for the transfer of a permit;

VI.

for providing for a proportionate reduction of fees payable in respect of permits granted for less than 12 months;

VII.

for requiring insurance by holders of permits for petrol pumps against liabilities which may be incurred by them in respect of petrol pumps;

- VIII. for prohibiting or regulating the use of streets, roads and public places by street hawkers and street traders, either generally or during particular hours;
- IX. for appointing stands in streets, roads and public places for street hawkers and street traders, with power from time to time to abolish, enlarge or diminish any such stands, to limit the space to be occupied by each person on any such stand, and the number of persons who may occupy any particular stand;
- X. for fixing the charges to be paid for the right to use such stands, with power to vary the charges according to the stand used, and from time to time to increase or decrease such charges; and for fixing the conditions on which such stands are to be occupied and the times during which they may be occupied;
- XI. for fixing by priority of application, or by lot, tender or otherwise, the positions on any such stand which persons are to occupy;
- XII. for regulating the conduct of persons occupying such stands;
- XIII. for limiting the nature and size of handtrucks, barrows or other vehicles to be used on such stands; and for prohibiting any animal, whether attached to any truck, barrow, or vehicle, or not, from standing on any such stand during the time fixed for its occupation by street hawkers and street traders;
- XIV. for providing the form of authority to be issued for occupying such stands, the conditions on which such authorities are issued and under which they will be permitted to be transferred; for fixing the fee to be paid for a transfer of any such authority; and for prohibiting any person who is neither named in such an authority nor a permitted transferee of such an authority from occupying any such stand;
- XV. for controlling and licensing ice cream carts and stalls and produce carts and stalls;
- XVI. for controlling, licensing, inspecting and regulating common lodging houses and other lodging houses;
- XVII. for regulating or controlling the sale of newspapers, books, pamphlets, magazines, race cards or other printed matter, or matches, flowers or merchandise of any kind, in streets, roads or public places, and, subject to subparagraph XVIII, the age of persons selling newspapers, books, pamphlets, magazines, race cards or other printed matter, or matches, flowers or merchandise, in streets, roads or public places;
- XVIII. for the periodical licensing of persons of not less than 12 years of age to sell newspapers, books, pamphlets, magazines, race cards or other printed matter, or matches, flowers or merchandise of any kind, in the streets, roads or public places; and for preventing sales by unlicensed persons;
- XIX. for controlling and licensing newsvendors;

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- XX. for the licensing for use of any vehicles (including motor and all other vehicles) plying for hire, or kept or let for hire, either for the conveyance of passengers or goods of any kind, and for prohibiting the use of such vehicles unless so licensed; and for licensing the drivers and conductors of such vehicles, and for prohibiting the driving of such vehicles, except by a person so licensed;
- XXI. for appointing the stands for vehicles plying for hire, and the regulations to be observed thereat;
- XXII. for regulating the conduct of the drivers, conductors and other persons attendant on or in charge of licensed vehicles;
- XXIII. for regulating and licensing any such vehicles used in hawking firewood or water;
- XXIV. for fixing the rates and fares to be taken, and the manner of computing distances, with power to distinguish between different types of vehicles;
- XXV. for enforcing the obligation of owners and drivers to convey passengers and goods on demand;
- XXVI. for limiting the number of such passengers (inside and outside), their baggage and goods, and regulating the taking up and setting down of passengers and fares for children;
- XXVII. for the maintenance of vehicles in proper condition and order, and regulating how they are to be furnished, provided and kept;
- XXVIII. for enforcing the painting of the names of the owners and the numbers on the vehicles, and keeping affixed within the vehicles authorized tables of fares and distances;
- XXIX. for providing for the delivery over and disposal of articles left in licensed vehicles;
- XXX. for compelling the approved owner or driver to be in charge of such vehicles, and preventing it from being driven by others, and for preventing persons not hiring it from riding with the owner or driver;
- XXXI. for preventing smoking in any such vehicle, or by its driver;
- XXXII. for prohibiting coffins, containing the corpses of deceased persons above the age of two years, from being conveyed in any vehicle licensed for the conveyance of passengers;
- XXXIII. for punishing the misconduct of the drivers and conductors of, and persons attending any such passenger or other vehicles, in carelessly or furiously driving or racing, or in demanding or receiving more than the legal fare, or in using any threatening, abusive, indecent or insulting language; and also for punishing persons hiring such vehicles and evading or attempting to evade the payment of fares;
- XXXIV. for regulating the routes to be observed by licensed buses or passenger vehicles plying as buses;

- XXXV. for requiring all licensed vehicles, of whatever sort, to have the number of their licence conspicuously painted on and in the vehicle;
- XXXVI. for requiring and regulating the carrying of a lighted lamp inside licensed passenger vehicles whilst plying for hire after sunset;
- XXXVII. for preventing licensed drivers or others loitering with licensed vehicles in streets, or plying for hire in streets except on a stand;
- XXXVIII. for preventing any person, not being of the full age of 17 years, acting as driver;
- XXXIX. for preventing licensed drivers from being or standing away from the vehicle in their charge whilst on the stand, or for regulating the distance at and the time during which such drivers may be allowed to be away from their vehicles whilst on the stand;
- XL. for limiting the number of vehicles to be licensed by the council;
- XLI. for enforcing the painting, inside and outside, of all licensed passenger vehicles, the number of passengers the vehicle is licensed to carry outside and inside, also the rate of fares for time or distance;
- XLII. for the licensing and regulation of porters and their charges, and for appointing any badge or number to be borne by them;
- XLIII. for the licensing and regulation of those who remove sewage and their labourers, and for the regulating, numbering and licensing of the vehicles for the removal of sewage used or to be used by them;
- XLIV. for regulating, numbering and licensing the description of vehicles or vessels to be used for the removal of sewage, or liquid ammonia, or other offensive liquors or substances;
- XLV. for prohibiting any but persons licensed or appointed by the council (or their employees) from removing sewage from or disposing of sewage on any property; and for requiring sewage to be removed from any property by persons licensed or appointed by the council;
- XLVI. for regulating the licensing, supervision and control of premises as bazaars or general sale yards for the sale of horses, cattle or other animals, and the maintenance of cleanliness in the licensed premises;
- XLVII. for the general regulation of horse bazaars, sheep markets and cattle markets; for the maintenance of good order in such bazaars or markets; for the licensing of such bazaars or markets; and for fixing fees to be paid to the council in respect of sales at such bazaars and markets;
- XLVIII. for the licensing, regulation, supervision and control of premises for the sale of raw or green hides or skins situated within the municipality or a township within the district;
- XLIX. for licensing premises for keeping, storing or selling, and for preventing the keeping, storing or selling, of hides and skins of any description within the municipality or any township within the district;

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- L. for preventing the burning of rags, clippings or parings of leather, or other offensive substances, within the municipality or any township within the district;
- LI. for regulating and licensing chimney-sweeps; for prohibiting the sweeping for hire or reward of chimneys by unlicensed persons; and for fixing a tariff of the rates to be paid to licensed chimney-sweeps;
- LII. for controlling and licensing bootblacks;
- LIII. for regulating the use of aviation stations and landing grounds constructed, purchased or maintained by the council; and for fixing and making charges for their use;
- LIV. for regulating the form and conditions of any licence or permit granted by the council, the form of application for it, and its transfer, renewal, suspension or revocation, the fees to be paid on any licence or permit, or its transfer or renewal, and how any such fees may be recovered;

**Nuisances and Health**

- 4. I. for the prevention and suppression of nuisances;

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- VI. for requiring occupiers of premises to provide garbage bins for household rubbish; for regulating the kinds of garbage bins to be so supplied; and for requiring garbage bins to be properly maintained by such occupiers, and fixing the places in which such bins must be placed for the collection of garbage;
- VII. for preventing or regulating rubbish tips or the depositing of rubbish;
- VIII. for regulating the use of dipping places or tanks for the dipping of sheep constructed or provided by the council, and for fixing charges for their use and enforcing payment of any such charges;
- IX. for regulating or preventing within a municipality or a township within a district the slaughtering of any cattle, buffalo, sheep, goat, pig, deer, horse or other similar animal prescribed by the council (other than at premises being used by the holder of an accreditation under the *Meat Hygiene Act 1994* for or in connection with meat processing within the meaning of that Act);

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- XVII. for regulating the quality, condition and dressing of butchers' meat offered for sale, and for preventing the sale of objectionable butchers' meat or butchers' meat unfit for human consumption;
- XVIII. for preventing the storage or keeping of bonedust or artificial or other manure, so as to be a nuisance or injurious to health;
- XIX. for preventing the pollution of the water supply to fountains;

- XX. for preventing the contamination of any river, stream, or place for water, well, or fountain, within the municipality, by gas, or anything used in its manufacture;
- XXI. for regulating, controlling or prohibiting the use within the municipality or any township within the district of any caravan or other vehicle as a place of habitation;
- XXII. for the management of cemeteries, crematoria and mortuaries under the care, control or management of, or vested in the council, and for fixing fees for interments and rents for burial rights in any such cemetery or for the use of any such crematorium or mortuary;
- XXIII. for preventing the keeping or storage within the area or any part of it, or within a specified distance of any habitation, of any animal or thing injurious to health, dangerous, or offensive, and for preventing the storage of flammable material within a specified distance of any building;
- XXIV. for regulating, controlling or prohibiting the erection on any land abutting or within view of any public street or road or of any reserve or foreshore, of tents or of buildings or other structures constructed of other than brick, stone, concrete or similar material, and which are used for the purpose of habitation or are adapted for that purpose (but this paragraph does not apply within any area or part of an area to which the *Building Act, 1971*, applies);
- XXV. for the compulsory wrapping of bread by sellers and for prescribing any matters incidental to such wrapping;
- XXVI. for regulating the construction and erection of party-walls, external walls, parapets, and of flues and fireplaces, and the positioning of flues and fireplaces in any buildings taken down and rebuilt, after 23 December, 1890, or built or erected within the municipality after that date, and for removing any party-wall, external wall, parapet, flue or fireplace constructed or erected contrary to any such by-law (but this subparagraph does not apply to any municipality to which the *Building Act, 1971*, applies);
- XXVII. for regulating the deposit and removal of building material on and from streets and footways;
- XXVIII. for prohibiting the use of cellars for dwellings and general habitation;
- XXIX. for requiring wells to be sunk in all cellars where the building surveyor considers them to be essential for preventing the rising and accumulation of water;
- XXX. subject to compliance with section 347, for regulating, controlling or prohibiting within the municipality or within any township within the district, the digging or excavating in any land of holes or pits for the purpose of using or removing to any other place the soil, clay, stone, sand, gravel or other similar material;



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- XXXI. for compelling the owners or occupiers of tallow-chandlers' shops, soap factories, tanneries, and of houses, buildings, privies, urinals, sewers, or places which are in an unwholesome or offensive state, or likely to become so, to cleanse them as the council thinks necessary for the health and comfort of the inhabitants of the area;
- XXXII. for regulating the situation, construction, removing, emptying, cleansing and filling up of privies, earth-closets, cesspools and urinals;
- XXXIII. for regulating the removal and disposal of sewage, filth, offal and refuse, and for appointing proper places for its deposit;
- XXXIV. for the prevention or control of infectious or contagious diseases;
- XXXV. for the purification of any house, building or place, the state of which is such as to create a risk of disease and injury to the public health;
- XXXVI. for fixing the fees payable to medical advisers consulted in such cases;
- XXXVII. for preventing the use of steam whistles at factories or other establishments so as to be a nuisance to any person;
- XXXVIII. for compelling the suppression of smoke caused by factories, or by the operations carried on in, or incidental to, factories;
- XXXIX. for the preservation of cleanliness in public markets, baths and swimming pools;
- XL. for compelling the removal of waste water and impurities from cellars and other places;

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**Animals**

- 5. I. for preventing the keeping of animals or birds of any kind within the municipality or any township within the district so as to be a nuisance or injurious to health;
- II. for prohibiting the keeping of bees in any part or parts of the area where the keeping of bees is or may be a nuisance or danger to persons;
- III. for the destruction of goats at large, or trespassing within enclosures, and for regulating the burial or other disposal of the carcass of any goat destroyed under the authority of a by-law;
- IV. for preventing unyoked cattle or unbroken horses being driven through any streets, roads or public places within certain hours;
- V. for prohibiting the driving of cattle, sheep or unbroken horses in or along any streets, roads or public places;
- VI. to restrict the breaking-in of horses in the streets or roads within the municipality or within any township within the district, either by leading, riding or driving;

- VII. for the punishment of any driver or rider of horses or other animals who, in any street, road or public place within the municipality or any township within the district, leaves them unattended, or insecurely fastened to bridle-posts, so that the horses or animals may break away and bolt, to the danger or injury of any person;

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**Fires and Fire Prevention**

- 6. I. for the prevention, suppression, and speedy extinguishment of fires;
- II. subject to the *South Australian Metropolitan Fire Service Act, 1936*, for the regulation of the use of fire-plugs, alarm-bells and fire engines;
- III. for securing a prompt supply of water;
- IV. for preventing smoking in any warehouse, store, stable or out-buildings, or places likely to catch fire, or in which flammable goods are kept;
- V. for regulating, controlling or prohibiting the lighting of fires in the open air;
- VI. for prohibiting the throwing down in any building or premises, where fire might result, any lucifer or tow match, whether lighted or not, or any lighted cigar, cigarette, or ashes from any pipe;
- VII. for preventing the stacking, and for regulating the storage and keeping, of hay, straw, bark, thatch, reeds, coal or firewood; and for licensing fit buildings for the storage of such materials;
- VIII. for the proper construction of buildings and premises in which hay, straw or thatch is sold or stored;
- IX. for regulating the kind and quantity of flammable or combustible materials or substances to be kept at any one time in one place;
- X. for prohibiting the use of ashpits of improper construction and the throwing out of embers liable to rekindle in the open air;
- XI. for preventing the placing, stacking or storing of empty cases, paper shavings, crates packed with straw, or any dangerous or flammable substances in the open air;
- XII. for prohibiting the erection within the municipality or any township within the district (except by the council on the public land of the municipality or district, or by or for the Government on any Government reserve) of any tent, pavilion or other structure of calico, canvas or other flammable material without the consent of the council (which may be given for such time and on such terms as the council decides), and for requiring owners of any land to remove any such tent, pavilion or other structure erected or remaining erected without, or contrary to, such a consent;

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- XIII. for requiring owners and occupiers of property within the municipality or any township within the district to destroy inflammable grass, weeds, and other growth on their property, and for requiring any such owners and occupiers to destroy grass, weeds and other growth on their property which, whilst presently inflammable, will, if not destroyed, become inflammable in the ordinary course of the season; for requiring effective firebreaks to be made on such property; and for empowering the council to carry out any requirements of any such by-law on default by the owner or occupier and to recover the expenses of doing so from the owner or occupier;

**Streets, Roads and Footways**

- 7. I. for regulating the speed of vehicles (other than motor vehicles) and horses along streets, roads and public places;
- II. for regulating the standing of horses and other animals in streets, roads and public places; and for prescribing where and under what conditions horses and other animals may be allowed to stand in streets, roads and public places;

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- IV. for regulating or controlling horse, cycle and vehicular traffic in streets, roads and public places, and intersections of streets and roads; and for regulating or controlling pedestrian traffic on streets, roads, public places and footways;
- V. for fixing the route to be taken by persons riding, driving or conducting any animal or vehicle, or animals or vehicles of particular kinds, or vehicles laden with particular classes, kinds or descriptions of materials, or laden in any particular manner, or vehicles of which the weight together with the weight of the load (if any) exceeds a particular weight, in or along any street, road or public place;
- VI. for prohibiting persons from riding, driving or conducting any animal or vehicle, or animals or vehicles of particular kinds, or vehicles laden or exceeding the weight as mentioned in subparagraph V (whether or not any route has been fixed pursuant to that subparagraph), in or along any street, road or public place, or in or along any street, road or public place except on such route as is fixed under subparagraph V;
- VII. for requiring persons driving vehicles laden as mentioned in subparagraph V or VI or which may reasonably be suspected of exceeding the weight mentioned in subparagraph V or VI which are proceeding in or along any street, road or public place on which persons are prohibited to drive vehicles as mentioned in subparagraph V or VI, to weigh such vehicles for the purpose of ascertaining their weight, when required so to do by any officer of the council;
- VIII. for regulating, controlling or prohibiting the loading and unloading of goods, materials, substances or things of any kind on or across any footway, or path, or in any street, road or public place;

- IX. for authorizing the erection and maintenance in any street or road of such barriers, posts, rails, notice boards and other structures as the council may think proper for the purpose of securing and enforcing the observance of any by-law made under subparagraphs I to VI (both inclusive), and for preventing the destruction or removal of, or interference with, any such barrier, post, rail, notice board or other structure;
- X. for prohibiting or regulating processions in any streets, roads or public places;
- XI. for licensing, prohibiting and regulating persons acting as parking attendants to vehicles left standing on streets or roads; for setting aside any part of any streets or roads in which such persons may act as parking attendants; for regulating any appliances which may be used by such persons to safeguard vehicles, and for prohibiting the use of any specified appliances; and for fixing fees and charges which may be made by any such persons;
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- XV. for preventing obstruction of any street, or any footway, water-channel, or watercourse in a street;
- XVI. for constructing, controlling and regulating the traffic on special tracks made for purposes such as bicycle and motor traffic;
- XVII. for regulating and securing the entrances of courts and alleys;
- XVIII. for regulating the paving and repairing of the streets and footways;
- XIX. for cleansing streets and footways;
- XX. for compelling the securing, removing or filling up of any cellar, ways, or openings, in or under any footway;
- XXI. for prohibiting the erection of dangerous fences or fences with barbed wire abutting on public streets, roads and places;
- XXII. for suspending traffic on streets and roads;
- XXIII. for regulating and prohibiting the haulage of logs, stones, slates or other heavy materials over any street or road, and to prevent the use of such wheels as are calculated to damage metalled roads;
- XXIV. for requiring drivers of vehicles on which logs or sawn timber is carried or to be carried to secure and fasten the logs or sawn timber to the vehicles, and for regulating and specifying the manner in which and the materials or types of materials with which the logs or sawn timber must be so secured and fastened, and for prohibiting the driving along streets and roads of vehicles on which logs or sawn timber is carried unless the logs or sawn timber is secured and fastened in the manner and with the materials prescribed;
- XXV. for determining by measurement or number the weights of loads carried on streets and roads;

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- XXVI. subject to the *Passenger Transport Act 1994* for prohibiting buses from remaining stationary in any street or road for the purpose of picking up or setting down passengers;
- XXVII. for the punishment of any contractor, or other person, who deposits or causes to be deposited, any rubbish or materials on the surface of any street or roadway, or who excavates or leaves open any excavation without sufficient and continuous illumination from sunset to sunrise;
- XXVIII. for prohibiting or regulating singing and the playing of music in the streets and roads;
- XXIX. for regulating displays in public streets and roads of dissolving views, magic lantern exhibitions, and cinematograph pictures;
- XXX. for the punishment of persons throwing orange peel or other vegetable substances, or any offensive or noxious substance, on any footway;
- XXXI. for prohibiting or regulating the throwing or discharging of handbills or other printed matter in the streets, roads and public places;
- XXXII. for regulating the erection, construction and height of fences abutting on or within six metres of any street, road or public place, and the materials of which such fences are to be made;
- XXXIV. for regulating the height of fences, hedges and hoardings erected within six metres of the intersection or junction of any streets or roads; for authorizing the council to give notice in writing to any occupier of land on which any such fence, hedge or hoarding is situated requiring the occupier to reduce its height in conformity with any by-law made under this paragraph; and for authorizing the council to carry out any work necessary on default of any such occupier and for recovering its cost from the occupier;
- XXXV. for removing or causing to be removed any verandahs or balconies which obstruct the footway or roadway, or are dangerous, or which are erected over any street or footway without a licence from the council under this Act or the *Building Act, 1971*, or which, if erected with such a licence, have been erected for a period of at least five years, and all other obstructions to the footways or roadways;
- XXXVI. for compelling verandahs and balconies over streets and roads to be kept clean and watertight;
- XXXVII. for regulating the manner in which, and the materials of which, crossing-places for vehicles and animals from any public street or road to private residences over any footway or water-table must be constructed, and the width of such crossing-places;
- XXXVIII. for regulating, restricting or prohibiting the effluxion of water onto, into or under any public street or road;
- XXXIX. for regulating the construction of drains across footways and drains for the drainage of water from roofs;

- XL. for the planting, preserving, and protection of trees, shrubs, lawns and gardens, on any street, road or public place;
- XLI. for the erection of fences, treeguards, and other shelter and supports, for the protection of trees, shrubs, lawns and gardens growing in any place under the control of the council;
- XLII. for preventing touting in any street, road or public place;
- XLIII. for regulating, controlling or prohibiting horse and vehicular traffic on any property, street, road, public place or foreshore under the control of the council;
- XLIV. for permitting and regulating the use of gates across roads, and the construction, hangings and fastenings of any such gates;
- XLV. for prohibiting, regulating and licensing the use of ladders in public streets, roads and places within the municipality or within any township within the district, and for requiring measures to be taken for the prevention of damage by reason of the carrying out of painting and similar work in any such public streets, roads and places;
- XLVI. for regulating the hours during which ladders, scaffolding and similar appliances may be used on footways and generally for controlling and regulating the use of ladders, scaffolding and similar appliances on footways;
- XLVII. for regulating the hours during which the cleaning of footways in front of buildings may be carried out, and to prohibit the shaking of carpets, rugs or doormats in any street after a prescribed hour;
- XLVIII. for preventing trees and shrubs overreaching or overhanging streets, roads or footways;

**Council Property**

- 8. I. for regulating the management of land, or other property (real or personal), vested in, or held in trust for, or under the control of, the council for any purpose;
- II. for regulating the depasturing of horses and cattle on, or the cutting or removing of timber, trees, wood, stumps or bark and the removing of gravel and sand or quarrying of stone from or on, land let to the council, or public roads; for regulating the issue of certificates to licence any such depasturing, cutting, removing or quarrying; for providing and regulating the transfers of any such licences, and for fixing the amount and manner of payment of fees for the issue or transfer of such licences; for regulating the kind of horses or cattle allowed on any such land or roads, and for preventing any particular kind of horses or cattle from depasturing on the land or roads or any part of the land or roads; for preventing any unlicensed person from depasturing horses or cattle on the land or roads, or any licensed person from exceeding the number of horses or cattle which that person may be entitled to depasture;
- III. for regulating and controlling the driving, depasturing, feeding and watering of horses, cattle and sheep over streets and roads;

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- IV. for regulating, controlling or prohibiting the use or occupation by any person of any reserve or land or property which is under the control of the council and the removal of stone, gravel, sand or timber therefrom; for fixing and regulating the collection of fees to be paid for licences to use or occupy any such reserve, land or property, or to remove sand or timber therefrom;
- V. for regulating, maintaining, protecting and improving any water or other reserves for public purposes;
- VI. for regulating and conserving park land, public squares, plantations, ornamental grounds and reserves;
- VII. for licensing persons to depasture horses, sheep and cattle on park land, public squares, plantations, ornamental grounds or reserves;
- VIII. for preventing the driving and the depasturing of cattle on the park land, public squares, plantations, ornamental grounds and reserves by persons not having licences for so doing;
- IX. for the recovery of any such licence fees, either by distraint of horses or cattle depasturing, or by impounding and sale of them;
- X. for appointing and regulating managers or employees in relation to park land, public squares, plantations, ornamental grounds or reserves;
- XI. for regulating the time at which any such public squares, plantations, ornamental grounds, park land and reserves must be opened and closed;
- XII. for preventing or regulating, and for fixing the route to be taken in the case of, the riding, driving, or conducting of animals, or vehicles, or animals or vehicles of particular kinds, on any park land, public squares, plantations, ornamental grounds or reserves under the care, control or management of the council;
- XIII. for regulating the conduct of persons frequenting any such public squares, plantations, ornamental grounds, park land and reserves;
- XIV. for regulating the days on and the bounds or limits within which games and gymnastics will be permitted on any park land, public squares, plantations, ornamental grounds and reserves, and for otherwise regulating or prohibiting any such games and gymnastics;
- XV. for preventing or regulating the admission of vehicles, horses, asses, mules and cattle;
- XVI. for regulating shooting over, on, or in the park land, public squares, plantations, ornamental grounds and reserves;
- XVII. for regulating matches, or training for racing, with horses, dogs, or otherwise on park land, public squares, plantations, ornamental grounds or reserves;
- XVIII. for enabling council servants, police constables, or authorized persons, to remove persons who are guilty of any breach of any by-law made by the council;

- XIX. for regulating or preventing the selling, or exposing for sale, of goods, wares or merchandise on park land, public squares, plantations, ornamental grounds or reserves;
- XX. for prohibiting damage or injury to and destruction of trees, shrubs, plants, flowers and lawns in park land, public squares, plantations, ornamental grounds or reserves;
- XXI. for the proper management, control and preservation of all walks, roads and reserves, and all plantations, trees, shrubs, plants, flowers and lawns;

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The following powers (subparagraphs XXIII to XXIX) cannot be exercised in relation to a harbor within the meaning of Part III of the *Harbors Act, 1936*:

- XXIII. for conserving the banks and bed of any river or watercourse, and for preserving the waters of any river or watercourse from pollution;
- XXIV. for setting apart any portion of a river or watercourse as a water reserve for public use;
- XXV. for regulating the granting of licences or privileges for boating and other purposes, over or in respect of any lake, dam, river, watercourse or pond, and for determining the rents or fees to be paid for any such licence or privilege;
- XXVI. for regulating and defining the manner in which any lake, dam, river, watercourse or pond may be used by the holder of any privilege or licence;
- XXVII. for authorizing and regulating the construction or erection of boathouses, sheds, landing-stages, stands or other buildings, and determining the rents or fees payable in respect of them; for regulating the rights of admission by the public; and for fixing the charges to be charged for admission;
- XXVIII. for regulating the tolls, fares, and charges payable by the public in respect of the use of the waters of any such lake, dam, river, watercourse or pond;
- XXIX. for regulating fishing and angling in any such lake, dam, river, watercourse or pond;
- XXX. for regulating or prohibiting occupation or use of any bridge, jetty, pier, wharf, ferry or other structure vested in or under the care, control or management of the council;

The following powers (subparagraphs XXXI to XXXIV) are exercisable subject to the *Harbors Act, 1936*:

- XXXI. for regulating, controlling or prohibiting the use or occupation of any portion of the foreshore under the care, control or management of the council and any reserve adjacent to any such foreshore;
- XXXII. for regulating the speed of motor vehicles along or on any such foreshore or any part of it;



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XXXIII. for regulating, controlling or prohibiting the removal of sand, shells, seaweed or other material from any such foreshore;

XXXIV. for fixing and regulating the collection of fees to be paid for licences to use or occupy any such foreshore or reserve or portion of it, or to remove sand, shells, seaweed or other materials from any such foreshore;

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XXXVIII. for regulating or prohibiting bathing in any or any part of any river, creek, stream, sea or other open public water, situated within the limits of or abutting on the boundary of the area; for setting apart any place, or any portion of any such water, for the sole use of either sex; for fixing the hours within which persons may bathe; for requiring persons bathing to wear some convenient clothing; for authorizing the erection and use of bathing-houses, or machines, and charging licence fees for them; and for providing for such other matters as appear expedient for preserving decency, or promoting the convenience of the public;

XXXIX. for the general management of public baths; the conduct of visitors thereat, and for fixing the sums to be paid for their use;

XL. for the division of any such baths, so as to afford sufficient separate accommodation for the sexes, and private baths for either;

XLI. for the regulation in public bathing-houses of hot and cold baths and shower baths, vapor and medical baths, the requisites to be supplied, and the sums to be paid for them;

XLII. for regulating and controlling the use of terminal depots and other motor vehicle facilities established by the council; for fixing and regulating the number and class of motor vehicles which may use any such terminal depot or facilities;

XLIII. for providing for the charges to be made for the use of any such terminal depot or facilities and providing that such charges may be from time to time fixed by resolution of the council;

XLIV. for regulating and controlling the general management of any such terminal depot or facilities;

XLV. for regulating and controlling the conduct of persons in any such terminal depot or facilities;

XLVI. for the general regulation of markets and the maintenance of good order in them;

XLVII. for fixing the hours for holding and otherwise regulating evening sales by auction;

**Miscellaneous**

9. I. for prohibiting every kind of fraudulent device and practice in relation to the sale of marketable commodities;

- II. for regulating and controlling quarrying and blasting operations (but no by-law made under this paragraph applies to any blasting operations in any mine to which the *Mines and Works Inspection Act, 1920*, applies);
- III. for regulating and controlling the breaking of metal by the dropping of heavy weights within 100 metres of any public place or property occupied within the area of the council;
- IV. for prohibiting the sale by weight, within the area, of coal, wood, hay, bark, straw and other articles and marketable commodities usually sold by the load, unless the weight is first ascertained at a weighbridge licensed pursuant to the *Trade Measurements Act, 1971*;
- V. for compelling the weight to be ascertained at a weighbridge within the area which is licensed pursuant to the *Trade Measurements Act, 1971*, and for requiring the vendor of any articles or commodities weighed at a licensed weighbridge to supply to the purchaser a weight ticket in the form prescribed by regulations made under that Act showing the weight of the articles or commodities;
- VI. subject to any regulations made by the Governor, for fixing charges for gas or electricity supplied by the council; and fixing rent to be paid for the hire of meters or other apparatus supplied by the council;
- VII. for cutting off the supply of gas or electricity from premises in respect of which any breach of Division II of Part XXIV, or any by-law occurs;
- VIII. for preventing damage or injury to any pipes, mains, cables, wires or other apparatus of the council used for the purpose of any gas or electric supply undertaking of the council;
- IX. for regulating the types of lamps, burners or other apparatus which must be used in connection with any such supply and prohibiting the use of any types of lamps, burners or apparatus;
- X. for preventing waste of gas or electricity supplied by the council and for regulating the use of meters supplied by the council;
- XI. for providing that the register of any meter is proof of the quantity of gas or electricity supplied by the council, and for settling differences in case of dispute;
- XII. for securing the safety of the public from danger or injury from the construction or carrying out of any electric supply undertaking by any other council or person;
- \* \* \* \* \*
- XIV. for prohibiting the escape of gas;
- XV. subject to the *Gas Act, 1988*, for regulating and enforcing the inspection and testing of gas meters by officers of the council appointed for that purpose;
- XVI. generally for the good rule and government of the area, and for the convenience, comfort and safety of its inhabitants;

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- XVII. for any other purpose in respect of which the council is authorized by this or any other Act to make a by-law;
- XVIII. for fixing penalties not exceeding \$200 for any offence against or breach of any such by-laws, and in the case of a continuing offence for fixing further penalties not exceeding \$50 for every day on which the offence or breach continues.

(2) A by-law made under subsection (1) 3 XX to XLII applies only to the extent that it makes provision for matters—

- (a) that are not dealt with by or under the *Passenger Transport Act 1994* or an instrument under that Act; or
- (b) that are the subject of an exemption under that Act.

**Principles to be observed in relation to by-laws**

**668.** (1) A by-law must—

- (a) accord with the letter and intent of the enabling Act;
- (b) be directed towards the objectives of the provision that authorizes the by-law, and not beyond those objectives;
- (c) adopt a means of achieving those objectives that does not unreasonably burden the community;

and

- (d) be expressed plainly and in gender neutral language.

(2) A by-law must not—

- (a) exceed the power conferred by the Act under which the by-law purports to be made;
- (b) be inconsistent with this or any other Act, or with the general law of the State;
- (c) without clear and express authority in the enabling Act—
  - (i) have retrospective effect;
  - (ii) impose any tax;
  - (iii) purport to shift the onus of proof to a person accused of an offence;or
  - (iv) provide for any further delegation of powers delegated under an Act;
- (d) make unusual or unexpected use of the powers conferred by the Act under which the by-law is made having regard to the general purpose or object of that Act;
- (e) unreasonably interfere with rights and liberties of the person established by law;

- (f) unreasonably make rights and liberties of the person dependent on administrative and not judicial decisions;
- (g) be inconsistent with principles of justice and fairness;
- or
- (h) duplicate, overlap or conflict with other statutory rules or legislation.

(3) If a by-law is inconsistent with any trust that applies to any real or personal property held by the council, the by-law does not, to the extent of the inconsistency, apply in relation to that property.

(4) This section does not affect the validity of a by-law made before the commencement of this section.

#### **Ability to incorporate other material**

**669.** (1) A by-law may apply, adopt or incorporate any matter contained in a document, code, standard or rule formulated, issued, prescribed or published by any authority or body—

- (a) wholly or partially or as amended by the by-law;
- (b) as formulated, issued, prescribed or published at the time the by-law is made or at any time before then;
- or
- (c) as formulated, issued, prescribed or published from time to time.

(2) If a by-law has applied, adopted or incorporated any matter contained in a document, code, standard or rule as formulated, issued, prescribed or published from time to time and that document, code, standard or rule is amended, the amendment does not have effect for the purposes of the by-law until the council causes notice of the amendment to be published in the *Gazette*.

(3) The council must keep a copy of any document, code, standard or rule applied, adopted or incorporated by a by-law under this section available for public inspection, without charge and during ordinary office hours, at the principal office of the council.

#### **Reference of powers**

**670.** (1) A by-law that provides for the granting or issue of a licence, permit or authority may provide that the licence, permit or authority may be—

- (a) granted or issued subject to compliance with any examination or determination of the council, a council committee or an officer of the council appointed for the purpose by the council;
- or
- (b) granted or issued at the discretion of, or subject to any requirement of, the council, a council committee or an officer of the council appointed for the purpose by the council.

(2) A by-law may provide that any form required for the purposes of the by-law may be determined from time to time by the council.

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(3) A by-law may provide that the by-law, or any provision of the by-law, applies only within such portion or portions of the area as the council may determine from time to time.

(4) A resolution cannot be made for the purposes of subsection (3) except at a meeting of the council where at least two-thirds of the members of the council are present.

(5) A council must cause notice of a resolution made for the purposes of subsection (3) to be published in a newspaper circulating in the area of the council.

**Passing of by-laws**

**671.** (1) Where it is proposed that a council make a by-law, the council must, at least 21 days before resolving to make the by-law—

(a) make copies of the proposed by-law (and any document, code, standard or rule proposed to be applied, adopted or incorporated by the by-law) available for public inspection, without charge and during ordinary office hours, at the principal office of the council;

and

(b) by notice in a newspaper circulating in the area of the council—

(i) inform the public of the availability of the proposed by-law;

and

(ii) set out in general terms the by-law's nature and effect.

(2) A by-law cannot be made under this Act unless—

(a) the by-law is made at a meeting of the council where at least two-thirds of the members of the council are present;

and

(b) the relevant resolution is supported by an absolute majority of members of the council.

(3) A council must not make a by-law unless or until the council has obtained a certificate, in the prescribed form, signed by a legal practitioner certifying that, in the opinion of the legal practitioner—

(a) the council has power to make the by-law by virtue of a statutory power specified in the certificate;

and

(b) the by-law is not in conflict with this Act.

(4) Subject to subsection (5), a by-law comes into operation four months after the day on which it is published in the *Gazette* or from such later day or days fixed in the by-law.

(5) A by-law may take effect from an earlier day specified in the by-law if—

(a) it revokes a by-law without making any provision in substitution for that by-law;

- (b) it corrects an error or inaccuracy in a by-law;
- (c) it is required for the purposes of an Act that will come into operation on assent or less than four months after assent;

or

- (d) it confers a benefit on a person (other than the council or an authority of the council) and does not operate so as—
  - (i) to affect, in a manner prejudicial to any person (other than the council or an authority of the council), the rights of that person existing before the date of commencement of the by-law;

or

- (ii) to impose a liability on any person (other than the council or an authority of the council) in respect of anything done or omitted to be done before the date of commencement of the by-law.

#### **Expiry of by-laws**

**672.** (1) A by-law will, unless it has already expired or been revoked, expire as follows:

- (a) a by-law made before the commencement of this section, and all subsequent by-laws varying that by-law, will expire on 1 January 1998;
- (b) a by-law made after the commencement of this section, and all subsequent by-laws varying that by-law, will 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.

(2) For the purposes of this section, a by-law will be taken to have been made on the day on which it was published in the *Gazette*.

#### **Repeal of a by-law does not affect certain resolutions**

**672a.** Where a by-law repeals a by-law, or a part of a by-law, that provides that a council may pass a resolution for any particular purpose, and the repealing by-law contains provisions substantially corresponding to those of the repealed by-law—

- (a) the repeal does not affect the operation of any resolution in force immediately prior to the repeal to the extent that the resolution is not inconsistent with the provisions of the repealing by-law;

and

- (b) the resolution has effect as if it had been passed under the repealing by-law.

#### **Title and numbering of by-laws**

**673.** All by-laws made under this Act or any other Act under which the council may make by-laws, must have a title referring to the area of which they are by-laws and the subject matter of the by-laws, and must be numbered consecutively, so that no by-law bears the number borne by any other by-law of the area (but a by-law altering or substituted for any other by-law may bear the same number as that other by-law).

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**By-law not to exempt from proceedings for nuisance**

**674.** Nothing contained in any by-law exempts any person guilty of a nuisance at common law from prosecution or action in respect of the nuisance, nor from the consequences of conviction of the nuisance.

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**By-laws with minimum penalty**

**677.** A by-law may fix a minimum as well as a maximum penalty for any offence against, or any breach of, the by-law, or a maximum penalty only, or a general maximum penalty applicable to several by-laws, provided that the maximum penalty so fixed does not exceed \$200.

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**Adoption of by-laws on amalgamation**

**681.** (1) Where two or more councils are amalgamated, the council formed by the amalgamation may, subject to the provisions of any proclamation under Division II of Part II, by a majority at any meeting at which two-thirds of the members of the council are present, adopt any by-law previously in force in the areas of the councils that have been amalgamated.

(2) The resolution adopting such a by-law may provide for the repeal of any other by-law of the council dealing with any of the matters provided for by the adopted by-law.

(3) The resolution adopting such a by-law must be published in the *Gazette*.

(4) On publication of the resolution in the *Gazette* the adopted by-law has, until altered or repealed by the council, the same force and effect within the area formed by the amalgamation as if it had been enacted in and formed part of this Act, and any by-law repealed by any such resolution is effectively repealed.

**DIVISION II—MODEL BY-LAWS**

**Power to make model by-laws**

**682.** (1) The Governor may by proclamation make, alter and repeal model by-laws dealing with all or any of the subjects on which any council has power under this or any other Act to make by-laws.

(2) Every model by-law made under subsection (1) must be—

(a) published in the *Gazette*;

and

(b) laid before both Houses of Parliament within 14 days after publication, if Parliament is then in session, and if not, then within 14 days after the commencement of the next session of Parliament.

(3) If either House of Parliament passes a resolution disallowing any such model by-law, in pursuance of a notice of motion given within 14 sitting days of the House after the model by-law has been laid before it, the model by-law ceases to have effect but without affecting the validity, or curing the invalidity, of anything done, or of the omission of anything, in the meantime.

This subsection applies notwithstanding that the 14 sitting days, or some of them, do not occur in the same session of Parliament as that in which the model by-law is laid before the House.

(4) When a resolution has been passed as mentioned in subsection (3), notice of the resolution must be published forthwith in the *Gazette*.

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**Effect of alteration or repeal of model by-law by Governor**

**683.** No alteration or repeal by the Governor of any model by-law affects the prior adoption of it by any council.

**Power of council to adopt any model by-laws**

**684.** (1) The council may, by a majority at any meeting at which two-thirds of the members then in office are present, adopt any model by-law made by the Governor or any alteration of any model by-law by the Governor. The council must adopt the whole of the model by-law or alteration.

The resolution adopting the model by-law may provide for the repeal of any other by-law of the council dealing with any of the matters provided for by the model by-law.

(2) The resolution adopting any such model by-law or alteration must be published in the *Gazette*.

(3) On publication in the *Gazette* of the resolution, the model by-law or alteration so adopted has, until altered or repealed by the council, the same force and effect within the area as if it had been enacted in and formed part of this Act, and any by-law repealed by any such resolution is effectively repealed.

(4) The council may by by-law alter or repeal any model by-laws adopted by the council pursuant to this Part. Any such by-law so altering or repealing any such model by-laws must be made in the manner provided by Division I.

**Model by-laws prepared by the L.G.A.**

**685.** The Local Government Association of South Australia may prepare model by-laws with a view to their adoption by councils under this Act.

**DIVISION III—REGULATIONS**

**Regulations**

**691.** (1) The Governor may make regulations prescribing all matters and things which by this Act are contemplated, required, or permitted to be prescribed by regulation, or which may be necessary or convenient for giving effect to the provisions or objects of this Act, and in particular (without derogating from the general power), the Governor may make regulations—

- (a) prescribing accountancy, finance, tendering and reporting methods and systems and making their use by councils, controlling authorities and council officers compulsory;
- (ab) prescribing books of accounts, forms and records and making their use by councils, controlling authorities and council officers compulsory;
- (ac) prescribing the manner in which councils, controlling authorities and council officers must use any prescribed books, forms, methods, records and systems and the period for which any book, form or record must be retained by the council;



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- (ad) prescribing principles to be observed in relation to the preparation and review of annual budgets, and the form and content of such budgets;
- (ae) prescribing procedures to be followed in relation to asset management;
- (af) prescribing the manner in which money received by councils must be dealt with and the manner in which payment of any money by councils must be made;
- (ag) prescribing the fee or charge that a council may charge in respect of a particular matter;
- (b) giving effect to the provisions of this Act as to the grant of Government grants to councils, and for carrying out the purposes of those provisions;
- (c) prescribing forms in substitution for the forms set out in the schedules to this Act;
- (d) prescribing the construction of and manner of fixing permanent marks for public streets, roads, places and squares;
- (e) regulating the granting of licences pursuant to section 366, and terms and conditions on which any such licences may be granted;
- (f) regulating the procedure to be observed at meetings of councils.

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(1a) Regulations made under this Act may be of general or limited application.

(2) Regulations made under this Act may incorporate, adopt, apply or make prescriptions by reference to, with or without modification, any code or standard prepared or published by a prescribed body as in force at the time the regulations are made or as in force from time to time.

(3) Where a code or standard is incorporated, adopted, applied or referred to under subsection (2)—

- (a) a copy of the code or standard must be kept available for inspection by members of the public, without charge and during normal office hours, in such place or places as the regulations may prescribe;
- (b) in any legal proceedings, evidence of the code or standard may be given by production of a document purporting to be certified by or on behalf of the Attorney-General as a true copy of the code or standard;

and

- (c) the code or standard has effect as if it were a regulation made under this Act.

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**PART XL  
LEGAL PROCEDURE**

**Recovery of amounts due to council**

**692.** (1) If any provision of this Act provides that any fees, charges, expenses or other amounts may be recovered by the council from any person, or are payable to the council by any person, the fees, charges, expenses or other amounts may be recovered by action in a court of competent jurisdiction.

(2) If any such fees, charges, expenses or other amounts are payable by reason of anything done in respect of any ratable or other property, or are payable by any person by reason of being the owner or occupier of any ratable or other property within the area, the fees, charges, expenses or other amounts may, after the expiration of 14 days after demand for payment is given by notice in writing by the council to the person from whom recovery is sought, be recoverable in any manner (other than by exercising a power of sale) in which rates are recoverable as if the fees, charges, expenses or other amounts had been a rate declared on the property at the time of the making of the demand and of which notice had been given.

Unless otherwise provided, no such fees, charges, expenses or other amounts are a charge on the property.

Any notice in writing given by the council requiring payment of any such fees, charges, expenses or other amounts are a sufficient demand for the purpose of this subsection.

(2a) Subsection (2) does not apply with respect to—

- (a) rates, charges, interest or fines recoverable under Part X;
- (b) fees, charges, expenses or other amounts payable to a council under Division II of Part XXIV.

(3) If the payment of any such fees, charges, expenses or other amounts are declared by any provision of this Act to be a charge on any ratable or other property, the charge continues notwithstanding any change in the ownership of the property or any part of it, and the property may be sold by the council in the manner provided by Part X for the recovery of the fees, charges, expenses or other amounts, or any part of it remaining unpaid for the time provided by that Part after becoming payable to or recoverable by the council. All the provisions of that Part apply to any such sale, and for that purpose the Part will be construed as if the word "rate" included a reference to the fees, charges, expenses or other amounts.

(4) If a fee, charge, expense or other amount that is a charge on land is not paid within 30 days of a demand by the council for payment, the amount payable will bear interest at the prime bank rate for that financial year plus 3 per cent.

**Service of notices, etc.**

**693.** Whenever by this Act or by any Act the administration of which is vested either wholly or in part in any council, or by any regulation made under any such Act, any notice, order, or demand may be served on or given to, or is required to be served on or given to, any owner or occupier of land within the area, or on any other person, the notice, order, or demand may be served—

- (a) by sending it by post in a prepaid letter, addressed to the owner or occupier or person at his or her usual or last known place of residence or business or, if the owner, occupier or person is a company or body corporate, by sending it by post in a prepaid letter addressed to the company or body corporate at its place of business;

- (ab) by leaving it in the letterbox to which it would have been delivered if sent by post;
  - (b) by serving it on the owner or occupier or person or, if the owner, occupier or person is a company or body corporate, by serving it on the manager or secretary;
  - (c) by leaving it for the owner, occupier or person at his or her place of residence with someone apparently over the age of 16 years;
- or
- (d) in the case of land which is unoccupied and of which the owner is unknown to the council, by putting it up on some conspicuous part of the land, in which case it is not necessary in the notice or demand to name the owner of the land.

**Service of notice on owners and occupiers**

**694.** (1) If any provision of this Act provides for the giving of any notice to, or the service of any notice on, the owner or occupier of any property, the notice may be given to or served on any owner or occupier of the property if there are more than one such owner or occupier within the meaning of this Act, but in any such case no proceedings in respect of which the service of the notice is a necessary ingredient may, except in the circumstances provided for by subsection (2) or in the absence of other provisions in this Act to the contrary, be taken against any owner or occupier to or on whom notice is not given or served.

(2) If the owner or occupier served is a joint tenant or tenant in common, the service will be taken to be service on all joint tenants or tenants in common and the proceedings may be taken against all or any of the joint tenants or tenants in common, and the liability of the joint tenants or tenants in common will be joint and severable.

(3) This section does not apply to proceedings under Part X.

**Service on council**

**695.** Every summons, notice, writ or other proceeding required to be served on a council under this Act or, subject to any provisions of any other Act, under that other Act, is served by being given personally to the mayor or chairman or chief executive officer. Every notice or other proceeding (not being a summons or writ) required to be served on a council under this Act or, subject to any provisions of any other Act, under that other Act, may also be served by post. Service of any such summons, notice, writ or other proceeding may be accepted by a solicitor acting for a council.

**Authentication of certain documents by the council**

**696.** Every order, summons, notice or other document requiring to be authenticated by a council is, except when otherwise provided, sufficiently authenticated if signed by the mayor or chairman, or by the chief executive officer without the common seal of the council.

**Representation of council in cases of bankruptcy**

**697.** The council may authorize under its common seal the chief executive officer, or the treasurer or other officer of a council, to represent the council in all proceedings relating to the bankruptcy or assignment of the estate or composition with creditors of any person against whom the council has any claim or demand, in all respects as if the chief executive officer, treasurer or officer were the party concerned.

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**Representation of council before courts**

**698.** In all proceedings before a court of summary jurisdiction or a local court, the chief executive officer, or the treasurer or other officer of a council appointed by the council for the purpose, may represent the council in all respects as though the chief executive officer, treasurer or officer were the party concerned.

**Reimbursement of officer**

**699.** The chief executive officer, or treasurer or other officer must be reimbursed out of the general revenue of the council all damages, costs, charges and expenses to which he or she is put or with which he or she becomes chargeable by reason of anything contained in or done by virtue of section 697 or 698.

**Proceedings in bankruptcy**

**700.** Subject to the *Bankruptcy Act 1966* of the Commonwealth or any other Act of the Commonwealth relating to bankrupt or insolvent debtors, if, when any money is due and payable by any person to the council, that person becomes bankrupt or takes advantage of any of the provisions of the *Bankruptcy Act 1966*, or any other Act of the Commonwealth relating to bankrupt or insolvent debtors, the council cannot prove against the estate of the person as an unsecured creditor unless the council is of opinion that any charge in favour of the council over any of the property of the person given by this Act or any other Act in respect of the money so due is insufficient or inadequate to secure the payment to the council of the money and has by a resolution resolved that it is of that opinion.

**Power of lessee or occupier to execute works in default of owner, and deduct from rent**

**701.** (1) Whenever default is made by the owner of any building or land in the carrying out of any work which a council, under the powers conferred on it by this Act, has required the owner to carry out, the lessee or occupier of the building of any land may, with the approval of the council, cause the work to be carried out.

(2) Subject to any agreement between the lessee or occupier and the owner, the expense of the work must be paid or repaid to the lessee or occupier by the owner of the building or land; and the lessee or occupier may deduct the amount of the expense out of the rent from time to time becoming due to the owner.

**Recovery of expenses from owner**

**702.** (1) All expenses incurred by a council which the owner of any building or land is by this Act liable to pay or repay to the council may, if not forthwith so paid or repaid, be recovered by the council from the owner in an action in a court of competent jurisdiction.

(2) By way of additional remedy, and whether any such action has been brought against the owner or not, the council may, subject to section 703, require payment of all or any part of the expenses payable by the owner from the person who then, or at any time thereafter, occupies the building or land under the owner.

(3) In default of payment of the expenses by the occupier on demand, they may be recovered from the occupier by action in a court of competent jurisdiction.

**Limit of liability of occupier**

**703.** (1) The liability of an occupier under section 702 is limited as follows:

- (a) before taking proceedings against the occupier the council must demand payment from the occupier and give notice not to pay rent to the owner;

- (b) the occupier is only liable to pay to the council the amount of rent due at the time of the giving of the notice for the premises in respect of which the expenses were incurred, and such further rent as accrues due after the giving of the notice and before action;
- (c) if the occupier neglects or refuses on application made by the council to disclose the amount of the rent and the name and address of the person to whom the rent is payable, the occupier is liable to pay the whole of the expenses;
- (d) the burden of proof that the sum demanded from the occupier is greater than the rent accrued due is on the occupier.

(2) Nothing contained in this section affects any contract between an owner and occupier respecting the payment of the expenses of any such work.

**Payment of expenses by instalments in certain cases**

**704.** (1) The council may, if it thinks fit, at the request of the owner, allow time for the repayment of any expenses mentioned in section 702, and receive them by annual instalments of not less than one-seventh part of the whole sum originally due, with interest on the principal money from time to time remaining unpaid at the rate of six per cent per annum until payment.

(2) Any overdue instalment with interest may be recovered in the same manner as the whole of the expenses would have been recoverable if no time had been allowed.

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**Liability of trustees, etc.**

**705.** (1) No attorney for any owner of any building or land is liable to pay any sum of money recovered, or penalty imposed, under the provisions of this Act greater than the amount which is in the hands or under the control of the attorney, belonging to the owner in his or her own right of the building or land at the time the sum is recovered or penalty imposed.

(2) If any attorney for any owner of any building or land makes default in the payment of any sum of money payable, or penalty imposed, under this Act and the default continues for 30 days, the council has the same powers of selling the building or land in respect of which the sum of money has been recovered, or penalty imposed, as in respect of rates in arrear.

**No writ of quo warranto allowed to try title to any office**

**706.** No writ of *quo warranto* or information in the nature of *quo warranto* or other proceeding can issue, or be filed, or had or taken in the Supreme Court to try or question the title of any council, or the title of any person to act as mayor, chairman, alderman, councillor or auditor, or in any office or place in, or in the gift or appointment of, a council.

**No mandamus to issue from Supreme Court to compel council to admit, restore or elect councillors, etc.**

**707.** No *mandamus* can issue from the Supreme Court—

- (a) to admit or restore to office, or to compel any council to proceed to the election or appointment of, any mayor, chairman, alderman, councillor, auditor, officer or other person to any office or place in, or in the gift or appointment of, the council;
- (b) to compel any person or persons to proceed to any ballot or poll;

or

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- (c) to compel the production or delivery of any books, voting-papers or other documents or papers, to the production or possession of which the council or any person may be entitled under this Act.

**Certiorari taken away**

**708.** No valuation, assessment or rate, no order for declaring or making a valuation, assessment or rate, or for making or allowing any alteration of a valuation, assessment or rate, and no proceedings in relation to a valuation, assessment or rate, can be removed by *certiorari* or otherwise to the Supreme Court.

**Jurisdiction to try title to certain office, etc.**

**709.** The proceedings—

- (a) for trying the title of any officer to an office or place;
- (b) for trying the right of any person to be admitted or restored to any office or place;
- (c) to compel restoration or admission;
- (d) to compel any council to proceed to any election, poll or appointment;
- (e) to try the validity of any rate;

or

- (f) to compel the production or delivery of any books, voting-papers, or other documents or papers to the production or possession of which any council or person is entitled under this Act,

may be taken before, and be determined by, a court of summary jurisdiction in a summary way.

**Proceedings to try title to certain office, etc.**

**710.** (1) The complaint under section 709 may be laid at the instance of the council, or by any elector for the area or any other person interested.

(2) The court of summary jurisdiction may make an order—

- (a) declaring any person not to be entitled to the office or place then occupied by that person, and that the office or place is vacant, or that any other person is entitled to the office or place;
- (b) commanding the council to proceed to take the necessary steps for and to hold any election, or poll, or make any appointment;
- (c) to compel any person or persons to proceed to any ballot or poll that may be necessary;
- (d) quashing any rate which for any reason is invalid;
- (e) to compel the production or delivery of any books, voting-papers, or documents by or to the council, or any officer of the council, to or by any person.

(3) No order to admit or restore any person to any office or place can be made while any other person occupies the office or place.

**Claims by council to money not accounted for by officer**

**711.** All claims by or on the part of any council to any money, or to any vouchers, receipts, papers, writings, property, and any effects, retained or not duly accounted for by any collector, or other officer or person employed by the council, may be heard and determined by a court of summary jurisdiction in a summary way.

**Punishment on non-compliance with order**

**712.** (1) On non-compliance with an order made under section 710 or 711, any court of summary jurisdiction may, on complaint laid at the instance of the council or by any elector or person interested, order—

- (a) payment of any sum of money by or to the council, or any officer of the council, to or by any person, as compensation for any injury sustained by reason of the non-compliance with the order;
- (b) that any such officer or person be imprisoned, either for a specified time not exceeding six months, or until the order is obeyed.

(2) The imprisonment may be ordered in addition to or without any order for payment of money.

(3) On non-compliance with any order commanding anything to be done by the council, any magistrate or two justices may order the payment of any sum of money by, or the imprisonment of, any person who would, but for the passing of this Act, or of any Act repealed by this Act, have been liable to attachment, or subject to process of contempt for disobedience to any peremptory writ of mandamus issued out of the Supreme Court commanding the council to do the act directed by the order.

**Time within which the proceedings may be taken to try title to office**

**713.** (1) No proceedings to try the title of any officer to office may be taken except on complaint.

(2) Every such complaint must be laid, and every summons issued in respect of it must be served, within two months from the time when the person whose title is disputed was appointed or elected, or the cause arose by reason of which the person is liable to be ousted, whichever last happened.

**Time within which validity of assessment, etc., may be tried**

**714.** (1) No proceedings to try the validity of any rate may be taken except on complaint.

(2) Every such complaint must be laid, and every summons issued in respect of it must be served, within two months from the time when notice of the assessment or rate appeared in the *Gazette*.

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**Payment of fees, etc., to council**

**717.** (1) All fines, penalties and forfeitures recovered in proceedings commenced by the council, an officer of the council, or a controlling authority established by the council, before any court of summary jurisdiction for an offence committed within an area against this Act or a prescribed Act, or against any by-law or regulation made under this Act or a prescribed Act, must, except where otherwise provided, be paid to the council of the area, except such portion of any such fine, penalty or forfeiture as by law is or may be appropriated to any informer other than the council or an officer of the council, or for the reward of or compensation to any constable or other person.

(2) In subsection (1)—

"prescribed Act" means—

(a) the *Food Act, 1985*;

(b) the *Public and Environmental Health Act, 1987*;

and

(c) any other Act prescribed by regulation for the purposes of this section.

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**Proceedings by council**

**720.** In any information or complaint preferred by any council against any person who steals, or wilfully injures, and in any proceedings instituted in relation to, any property or thing belonging to or under the care, control or management of a council, it is sufficient to state generally that the property or thing in respect of which any such information or complaint is preferred, or any such proceedings are instituted, is the property of the council.

**Differences between councils**

**721.** (1) All differences arising between any two or more councils relating to the carrying out of the provisions of this Act, or to the fulfilment and exercise of the duties, powers, privileges or authorities of any such council, will be decided by a person appointed by the Minister on the petition of either of the contending councils.

(1a) The Minister must, before making an appointment under subsection (1), provide to the councils that are parties to the proceedings the name of the person whom the Minister intends to appoint and give those councils a reasonable opportunity to make submissions to the Minister on the matter (and the Minister may then appoint a person (being either the person whose name was provided to the councils, or another person) as the Minister thinks fit).

(1b) No interim action can be taken by the Minister on a petition while the appointment of a person is under consideration under subsections (1) and (1a).

(2) The person appointed by the Minister under subsection (1) may—

(a) hear and receive and examine evidence on oath or affirmation (which oath or affirmation the Minister's appointee is empowered to administer);

(b) summons, if the Minister's appointee thinks fit, two or more assessors;

(c) compel the attendance of witnesses;



(d) call for the production and examination of documents;

(e) commit for contempt;

and

(f) do all such other matters and things relating to the resolution of the differences in the same manner and to the same extent as may be done by any Judge of the Supreme Court in the exercise of the Court's jurisdiction.

(2a) If the person appointed by the Minister makes an order in the proceedings that a council that is a party to the proceedings pay the costs of another council in the matter, then the council against which the order is made must also pay to the Minister an amount determined by the Minister to cover the costs of the proceedings (including the fees and expenses of any person appointed under subsection (1)) (and if an order is made against more than one council then each council against which the order is made must pay to the Minister an equal share of the relevant amount determined by the Minister).

(2b) If an order of the kind referred to in subsection (2a) is not made, each council that is a party to the proceedings must pay to the Minister an equal share of an amount determined by the Minister to cover the costs of the proceedings (including the fees and expenses of any person appointed under subsection (1)).

(2c) An amount payable by a council under subsection (2a) or (2b) is recoverable by the Minister as a debt.

(3) The decision of the person appointed by the Minister with regard to any such difference will be final, and may be made a rule of the Supreme Court and enforced accordingly.

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PART XLI  
EVIDENCE

**Evidence of proclamations and order**

722. (1) The *Gazette* containing any proclamation or order made by the Governor under this Act is conclusive evidence of the fact, terms, and validity of the proclamation or order, and is evidence of the facts stated, recited or assumed in the proclamation or order.

(2) No such proclamation or order is invalid by reason of anything required as preliminary to it not having been duly done.

**Evidence of appointments and elections**

723. The *Gazette* containing a notice of the election or appointment under this Act of any person to any office in an area, or the appointment of any officer for any specified purpose, is conclusive evidence of the election or appointment, except in any proceeding brought to try the title of the person so elected or appointed.

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**Evidence of resolution, etc.**

725. (1) The *Gazette* containing a notice that any resolution was passed or order made at a meeting of the council, or that any proposition was adopted or affirmed at a meeting or poll of electors, 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;

and

(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 councillors or electors present.

(2) This section applies to any such resolution or proposition under this Act.

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**Proof of taking over of ornamental grounds**

729. The *Gazette* containing the notice of a resolution passed pursuant to section 453 is *prima facie* proof that the land referred to in the resolution was, at the time of the passing of the resolution, dedicated and set apart for the use and enjoyment of the inhabitants of the area or any part of it and that the land was not at the time held by trustees under any deed or other instrument of trust.

**Evidence of assessment book**

730. The assessment book or any of the copies of it deposited as required by this Act, or any copy of or extract from the assessment book certified as a true copy or extract under the hand of the mayor or chairman and the chief executive officer, is conclusive evidence, except on proceedings to quash the assessment, that the assessment was duly made.

**Evidence of Government assessment**

731. A copy of any valuation roll for the time being in force under the *Valuation of Land Act, 1971*, is, so far as it relates to ratable property within an area, evidence of the Government assessment in relation to any such ratable property.

**Evidence of the making of a rate**

732. The *Gazette* containing a notice of the declaration of a rate is, except in proceedings to quash the rate, conclusive evidence that the rate was duly declared.

**Saving of rights to bring evidence**

733. Nothing in section 723, 725, 730 or 732 affects any order made by any court pursuant to this Act with respect to any of the matters referred to in those sections or precludes evidence of the making of any such order being given in any proceedings.

**Evidence of maps, contracts, etc., or certified copies**

734. Books and maps which, by this Act, are authorized or required to be made, and contracts, specifications, plans, estimates and other documents in the hands of the council which by this Act are required or authorized, and any copy of or extract from them purporting to be signed by the mayor or chairman and the chief executive officer, are admissible in any proceedings before any court or person as evidence of the matters contained in them.

**Certified map of roads to be evidence**

735. Any map purporting to be issued and signed by the Surveyor-General, on which there is a certificate, purporting to be signed by the mayor or chairman and the chief executive officer, that all the streets and roads within the area, or within such part or parts of it as is or are specified in the certificate, are correctly delineated in the map, is admissible as evidence in any proceedings before any court or person, and until the contrary is proved is conclusive evidence that all streets and roads in the area, or the part or parts of it (as the case may be), are delineated, and correctly delineated, on the map.

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**Evidence of register of public streets**

738. Copies of or extracts from any register of public streets certified by the chief executive officer to be true copies of, or true extracts from, the register are sufficient evidence of the contents of the register, or of so much of it as any such extracts contain.

**Evidence of by-laws**

739. (1) Any document bearing a certificate, purporting to be signed by the mayor or chairman or the chief executive officer, that the document is a copy of any by-law in force within the area made or adopted under this Act, is admissible, without any other proof, as sufficient evidence of the existence of the by-law, and of its passing, confirming, and publishing, and of the performance of the requirements of this Act in respect of it.

(2) Any document bearing a certificate, purporting to be signed by the mayor or chairman or the chief executive officer, that the document is a copy of any resolution made under section 679 is conclusive evidence of the passing of the resolution and that the by-law to which the resolution relates applies within the portion or portions of the area to which the resolution declares that the by-law applies.

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**Evidence of model by-law**

740. The *Gazette* containing any notice of a resolution for the adoption of a model by-law published under this Act is conclusive evidence of its adoption, and if the resolution of which the notice is given provides for the repeal of any other by-law, is conclusive evidence of the repeal.

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**Evidence of costs incurred by council**

742. In any proceedings for the recovery of any expenses or amount due to the council by any person by reason of the carrying out by the council of any work under any provisions of this Act, a document purporting to be a certificate given under the hand of the mayor or chairman or the chief executive officer is *prima facie* evidence of the cost of the work and (if relevant) the proportion payable by that person, and (if relevant) the date of the completion of the work.

**Facilitation of proof**

743. In any proceedings for an offence against this Act or any repealed Act the allegation in the complaint—

- (a) that any place is a street or road, park lands, ornamental grounds, plantation, reserve, foreshore or square;
- (b) that any street or road, park lands, ornamental grounds, plantation, reserve, public place or square on which it alleged that the offence was committed is situated within any specified area or township;
- (c) that any street or road is a public street or road or a private street or road or that any place is a public place;
- (d) that a licence or permit has been issued in respect of any person, premises or thing, or has not been issued with respect to any matter authorized by this Act;
- (e) that any place is within a township within a district;
- (f) that a specified person was the owner, or one of the owners, of a specified vehicle on a specified day,

will be taken to have been proved in the absence of proof to the contrary.

**Evidentiary presumption**

743a. If in any proceedings for an offence against this Act it is proved that an animal was ridden, led or standing in contravention of this Act, it will be presumed, in the absence of evidence to the contrary, that the animal was so ridden, led or allowed to stand by its owner.

**Evidence of constitution of council, appointment of officers, etc.**

744. It is not necessary in any legal proceedings to prove the existence or constitution of a council, the appointment of any officer of a council, or the appointment of an authorized person.

**Evidence of boundaries**

745. A certificate under the hand of the chief executive officer, or the oath of any such officer or authorized person, is sufficient evidence in any proceedings of the boundaries of any area until the contrary is proved.

**Proclamations**

746. Any proclamation under this Act or notice of a proclamation in the *Gazette* will be taken not to have been revoked until the contrary is proved.

**Proof of service of notices**

747. Whenever it is necessary in any proceedings to prove the service of any notice, an affidavit of the service of the notice showing the manner of service is sufficient proof of service.

**Saving of rules of evidence**

748. Nothing contained in this Act—

(a) prevents proof being given of the tenure of any office by evidence of acting in that office;

or

(b) prevents any notice purporting to be a notice given by a council, and published or posted as directed by this Act, or a copy of it, being given in evidence in any proceedings against the council, or any officer of the council.

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**PART XLIA**  
**LITTER, WASTE MATERIAL, ETC.**

**Depositing of rubbish, etc.**

**748a.** (1) A person who, within or outside an area—

(a) deposits litter, refuse or waste matter on a street, road or public place;

or

(b) deposits goods, materials, earth, stone, gravel, or any other substance on a street, road or public place,

is guilty of an offence.

Penalty: \$4 000.

Expiation fee: \$200.

(2) In any proceedings for an offence under subsection (1)(b) it is a defence that the authority having the care, control and management of the street, road or public place (whether a council or otherwise) consented to the deposit of goods, materials, earth, stone, gravel, or other substance on the street, road or public place.

(3) Where any—

(a) litter, refuse or waste matter;

or

(b) goods, materials, earth, stone, gravel, or other substance,

falls from a vehicle onto any street, road or public place, the person by, or on whose behalf, the vehicle is driven will be taken to have deposited it on the street, road or public place.

(4) In proceedings for an offence under this section in which it is alleged that any litter, refuse, waste matter, goods, materials, earth, stone, gravel or other substance fell from a vehicle, it is a defence that the defendant could not, by the exercise of reasonable care and diligence, have prevented that alleged occurrence.

(5) The court by which a person is convicted of an offence under this section must, on application by a council in whose area the offence was committed, order the convicted person to pay to the council any costs incurred by the council in removing and disposing of any litter, refuse, waste matter, goods, materials, earth, stone, gravel or other substance deposited in contravention of this section.

(6) In this section—

"**litter**" includes bottles, cans, cartons, packages, paper, glass and foodstuffs;

"**public place**" means any place to which the public has access;

"**waste matter**" includes any discarded object or material, whether or not it has any apparent value.

(7) Where, in any proceedings under this section, evidence is given that leads, in the opinion of the court, to a reasonable inference that litter, refuse or waste matter has been deposited in a particular place by a certain person, it will be presumed in the absence of proof to the contrary that it was so deposited by that person.

**Apparently abandoned vehicles and farm implements**

**748b.** (1) A person who abandons a vehicle or farm implement in a public place is guilty of an offence.

Penalty: \$4 000.

(2) A council, or an officer authorized by a council, may remove any apparently abandoned vehicle or farm implement from a public place and, if no claim is made for the return of the vehicle or farm implement within seven days after its removal, the council may proceed to sell or dispose of the vehicle or farm implement.

(3) The proceeds of a sale under subsection (2) must be paid into the general funds of the council.

(4) The court by which a person is convicted of an offence under this section must, on application by the council, order the convicted person to pay to the council any costs incurred by the council in removing or disposing of a vehicle or farm implement under this section.

**Removal of litter, waste, etc., resulting from motor vehicle accident**

**748ba.** Where as a result of any accident involving a vehicle or vehicles any—

- (a) litter, refuse or waste matter;
- (b) goods, materials, earth, stone, gravel or other substance;
- or
- (c) parts of the vehicle or vehicles,

are left on any part of any street, road or public place, or on any land owned by, or under the care, control and management of the council, the council may clear the area by removing it and may recover the cost of so doing from the driver of the vehicle or, if more than one vehicle was involved in the accident, the driver of any one of the vehicles.

**Removal of vehicles left on streets and roads**

**748c.** (1) If a vehicle of any kind is left on any part of any street, road or public place, or on any land or building owned by, or under the care, control and management of, the council, for a period of not less than 24 hours, the council or an officer authorized by the council may cause the vehicle to be removed to such place as the council or officer, as the case may be, thinks fit.

(2) Forthwith after any such removal, the council must give to the owner of the vehicle written notice of the removal and the place to which the vehicle was removed.

(3) The notice must, where practicable, be served on the owner personally but if the owner is unknown or cannot be found, the notice may be given by advertisement in two newspapers circulating generally in the State.

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(4) If the owner of the vehicle does not, within 14 days after the service or advertisement of the notice, pay all expenses in connection with the removal, custody, and maintenance of the vehicle, and of serving or advertising the notice, and take possession of the vehicle, the council must, subject to subsection (5), sell the vehicle and apply the proceeds as follows:

- (a) firstly, in payment of the expenses of the sale;
- (b) secondly, in payment of the cost of removal, custody, and maintenance of the vehicle, and of the notice served or advertised under this section;
- (c) thirdly, in payment of the balance to the owner or if, after reasonable inquiry, an owner cannot be found, to the general funds of the council.

(5) Where in the opinion of the council it is not practicable or convenient to sell the vehicle, it may dispose of it in any manner that it thinks fit.

(6) The owner of the vehicle is liable to the council for any expenses incurred by the council in the removal, custody, maintenance, sale or attempted sale, or otherwise in the disposal, of the vehicle under this section, and the council may recover so much of those expenses as have not been satisfied by proceeds from the sale of the vehicle as a debt due to it.

(7) This section does not derogate from the powers of a council under any other provision of this Part.

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PART XLII  
PENALTIES

**Disqualified person acting as mayor, alderman, councillor or auditor**

749. A person who—

(a) at the time of election or appointment to the office of mayor, alderman, councillor or auditor is disqualified to act in that office, and is then, or afterwards becomes, aware of the disqualification;

or

(b) after election or appointment to that office becomes disqualified to so act, and is or becomes aware of the disqualification,

and acts in any manner in the office while aware of the existence of the disqualification, is guilty of an offence.

Penalty: \$200.

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**Penalty on disqualified person failing to give notice of disqualification**

750. A person elected or appointed to the office of mayor, alderman, councillor or auditor who, at the time of election or appointment, is disqualified to act in that office, or who, after election or appointment, becomes disqualified so to act, and does not, within 14 days after becoming aware of the election or appointment or the existence of the disqualification (whichever is the later), deliver or send through the post to the chief executive officer, or if there is no chief executive officer, to the Minister, a notice stating the fact of the disqualification, with its grounds, is guilty of an offence.

Penalty: \$200.

**Person elected as mayor, alderman, or councillor refusing to act**

751. A person duly qualified and not exempt who—

(a) having been duly appointed or elected as mayor, alderman, or councillor refuses to assume the office of mayor or alderman or councillor and to act in it;

or

(b) neglects to assume the office of mayor, alderman, or councillor and to act in it for three consecutive ordinary meetings of the council next after appointment or election,

is guilty of an offence.

Penalty: \$200.

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**Obstructing meetings**

**768.** A person who wilfully obstructs or hinders proceedings at any meeting of the council, at a meeting of a council committee or at any meeting of the electors, is guilty of an offence.

Penalty: \$200.

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**Impersonating officers**

**769a.** A person who falsely represents himself or herself to be an officer of the council is guilty of an offence.

Penalty: \$200.

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**Persons examined on oath, etc., making false statement guilty of perjury**

**771.** A person who on being examined on oath, affirmation or declaration by any court or council, or any magistrate, justice or justices, or other person under the authority of this Act, wilfully makes any false statement, is guilty of perjury, and will be punished accordingly.

**Forgery**

**772.** Any person who forges or alters, or utters, uses, disposes of, or puts off, knowing it to be forged or altered, any document or writing required or authorized by this Act, or any signature to or seal on any such document, is guilty of an offence.

Penalty: Imprisonment for seven years.

**Publishing or posting false notices, etc.**

**773.** A person who—

- (a) wilfully publishes in the *Gazette* any false petition, notice or other document in any matter in which a petition, notice or other document is by this Act required or authorized to be published in the *Gazette*;
- (b) wilfully posts any false notice in any matter of which public notice or any notice is by this Act required to be given;

or

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- (c) tears down, mutilates, defaces or obliterates any public notice or other document posted under the authority of this Act in any place within an area,

is guilty of an offence.

Penalty: \$200.

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**Penalty for extinguishing light**

**778.** A person who damages, extinguishes, removes or improperly interferes with any light or reflector affixed or placed by the engineer, any officer, any contractor or builder or any other person, to or near any barrier, fence, hoarding or other work in any street or road, is guilty of an offence.

Penalty: \$200.

**Improperly interfering with council property**

**778a.** A person who improperly removes or improperly interferes with any chattel or thing being the property of the council is guilty of an offence.

Penalty: \$200.

**Penalty for damaging property of council**

**779.** A person who destroys, damages or injures, or causes the destruction of or any damage or injury to any street, road, footway, dam, parapet, bridge, culvert, drain, wall, guard fence, railing, gate, post, tree, treeguard, stake, shrub, lawn, plants, flowers, building, kiosk, safety stand, sewer, watercourse, well, fountain, lamp, lamp-post, water-pipe, name of street, traffic indicator, traffic sign, direction sign, notice board, or structure or other property which is the property of or is vested in or is under the care, control or management of a council, must pay the council the value of the property destroyed or the cost of repairing it and, if the damage is done wilfully or maliciously, is guilty of an offence.

Penalty: \$1 000.

Payment of any such value or cost to the council may be ordered by a court imposing any such penalty or may be recovered by the council by action in a court of competent jurisdiction.

**Prohibition of traffic on unsafe bridge or road**

**779a.** (1) If the council is satisfied that, by reason of any temporary conditions occasioned by floodwaters or any similar cause, any bridge, street or road is unsafe for traffic, either generally or for any kind of traffic, or would be damaged unduly if used by traffic generally or by any kind of traffic, the council may cause a notice or notices to be displayed on the bridge, street or road stating either—

- (a) that the bridge, street or road is closed to the passage of all traffic;

or

(b) that the bridge, street or road is closed to all traffic of a kind specified in the notice.

If notice is given as provided by paragraph (b), the notice may specify that the bridge, street or road is closed to use by vehicles of a particular description or by vehicles of which the total laden weight exceeds a specified weight, or both.

(2) A person who, without the consent of the council or an authorized officer of the council, drives or propels any vehicle, or drives, rides, or leads any horse or cattle, or rides or propels any cycle or motor cycle, over or across any bridge, street or road contrary to such a notice is guilty of an offence.

Penalty: \$200.

(3) A council is not subject to any liability in negligence in respect of the erection of a notice under this section.

**Power to stop traffic in streets and roads during portions of year**

**779b.** (1) If the council is satisfied that a public street or road, if used by traffic generally or by a particular kind of traffic during any particular portion of the year, would be seriously damaged, the council may cause notices to be displayed on the public street or road stating that during the period specified in the notices—

(a) the public street or road is closed to the passage of all traffic;

or

(b) the public street or road is closed to all traffic of a kind specified in the notices.

If notice is given as provided by paragraph (b), the notices may specify that the public street or road is closed to use by vehicles of a particular description or by vehicles of which the total laden weight exceeds a specified weight, or both.

(2) The notices required to be displayed by subsection (1) must be placed so as to be easily visible to all persons entering the public street or road so closed to traffic from any public highway.

(3) At least seven days before notices are so displayed, the council must also publish in a newspaper circulating in the area a notice setting forth in respect of the public street or road the matters required to be notified by subsection (1).

(4) A person who, without the consent of the council or an authorized officer of the council, drives or propels any vehicle over any public street or road contrary to a notice given by the council under this section, is guilty of an offence and liable to a penalty not exceeding \$200 and is also liable to pay to the council the amount of any damage caused to the public street or road by the driving or propelling of the vehicle.

Payment of any such amount may be ordered by a court imposing any such penalty or may be recovered by the council by action in a court of competent jurisdiction.

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**Persons removing timber, etc., without licence**

**780.** A person who cuts, saws or removes any timber, trees, wood, stumps or bark growing, or lying or being on, or carries away any stone, sand or any other material or thing from any land or public reserve, street, road or place belonging to, held in trust for, vested in, or under the care, control or management of a council, without having a licence or authority from the council so to do, is guilty of an offence and liable to a penalty not exceeding \$1 000, and is, in addition, liable to pay to the council the value of the timber, trees, wood, stumps or bark so cut down, sawn or removed, or of the stone, sand or other material or thing so carried away.

Payment of any such value to the council may be ordered by a court imposing any such penalty, or may be recovered by the council by action in a court of competent jurisdiction.

**Persons constructing buildings, etc., across street or road without authority**

**780a.** (1) A person who constructs, maintains, manages or operates any building, structure or works on, across, under or over a public street or road, without being authorized to do so under this Act or any other Act, is guilty of an offence.

Penalty: \$200.

(2) The council may remove any building, structure or other works constructed, maintained, managed or operated in contravention of this section and may recover the cost of the removal from the person who so contravened this section.

(3) In any legal proceedings under this section, the onus of proving that the defendant was authorized under this Act or any other Act to construct, maintain, manage or operate the building, structure or works lies on the defendant.

**Posting bills, etc., in public places without permission of council**

**781.** (1) A person must not in any street, road or public place, or in any park lands, ornamental grounds, squares or reserves—

(a) fix any posting bills or other papers or advertisement of any kind against or on any building, wall, fence, tree, street, board, verandah, lamp-post, telegraph-post, or other post, rail, pole, seat, or any kerb, flag, or footpath, the property of or under the control of the council;

or

(b) write on, soil, deface, stencil, chalk, paint or mark any such building, wall, fence, tree, board, verandah-post, lamp-post, telegraph-post, bridle-post, or other post, rail, pole, seat, kerb, flag, footpath, or any fixture or appendage thereto, or the surface of any street or road,

except in accordance with the consent of the council (which may be granted for such time and on such terms as the council thinks fit).

(2) A person who contravenes this section is guilty of an offence.

Penalty: \$200.

(3) Any such bill, paper or advertisement fixed contrary to subsection (1) may be removed or destroyed by any officer of the council or any person authorized by the council, and any such writing, stencilling, chalk, paint or mark made contrary to subsection (1) may be obliterated by any officer of the council or any person authorized by the council.

(4) A consent under this section is given subject to the *Planning Act, 1982*.

(5) This section does not apply to any highway, lighthouse, traffic beacon, traffic sign or direction sign erected on any street or road pursuant to licence granted by the Commissioner of Highways under the *Highways Act, 1926*.

**Advertising, etc., in streets**

**781a.** A person who without the consent of the council—

- (a) in any street, road or public place drives any vehicle which is used wholly or substantially for the display of an announcement or advertisement;
- (ab) in any street, road or public place drives or leads an animal on which is displayed any advertisement or announcement;
- (b) in any street, road or public place carries any placard, board or other thing displaying an announcement or advertisement;
- (c) in any street, road or public place, amplifies or reproduces or causes to be amplified or reproduced for the purpose of making any announcement or advertisement, any words or other sounds by means of any apparatus or device, whether electrical, mechanical, or of any other kind;

or

- (d) in any place other than a street, road or public place amplifies or reproduces or causes to be amplified or reproduced for the purpose of making any announcement or advertisement, any words or other sounds by means of any apparatus or device, whether electrical, mechanical, or of any other kind, so that the words or sounds are audible in any street, road or public place,

is guilty of an offence.

Penalty: \$200.

**Penalty for driving on footways, etc.**

**782.** (1) A person who, without the consent of the council or an authorized officer of the council, drives or propels any vehicle, or drives, rides or leads any horse or cattle, or rides or propels any cycle or motor cycle, over or across any footway (except at a crossing-place across the footway) in any street or road, or over or across or on to any lawn or garden in any street, road, park lands, reserve, ornamental grounds or public place, is guilty of an offence.

Penalty: \$200.

Expiation fee: \$25.

(2) In this section—

"**footway**" means a footway which has been formed or kerbed.

**Penalty for walking, driving vehicle, etc., on cycle track or way**

**782a.** (1) The council may by resolution declare that any track or way on any public street or road or across any park lands, square, reserve or other land under the care, control or management of the council is set aside as a track for bicycle traffic and may cause a notice or notices to be displayed near the track indicating that it is set aside for bicycle traffic.

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(2) A person who, without the consent of the council or an authorized officer of the council, drives or propels any vehicle, or drives, rides or leads any horse or cattle, or rides or propels any motor cycle over or across any such track for bicycle traffic (except at any part of the track which is intersected by any part of a street or road not being such a track) or who walks along the track is guilty of an offence.

Penalty: \$200.

(3) In any proceedings for an offence against this section, the offence is not proved unless evidence is given that at the relevant time a notice was displayed near the track which gives reasonable indication that the track was set aside for bicycle traffic.

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**Destroying, etc., fences or gates**

**784.** (1) A person who wilfully or maliciously cuts, breaks, levels, pulls up or unhinges, or removes, damages or destroys, any fence or gate, or any portion of a fence or gate, erected across any road as mentioned in section 375 or 376, is guilty of an offence and liable to a penalty not exceeding \$200, and is, in addition, liable to pay to the council the amount of the damage.

Payment of any such amount to the council may be ordered by a court imposing any such penalty, or may be recovered by the council by action in a court of competent jurisdiction.

(2) A person who, having been convicted of any such offence, afterwards commits another offence against subsection (1), is liable to imprisonment for a term not exceeding six months.

**Penalty for placing hives of bees on streets**

**785.** (1) A person who places or keeps any bee-hive or causes any bee-hive to be placed or kept on a street, road or public place is guilty of an offence.

Penalty: \$200.

(2) The council may destroy or remove any such bee-hive and may recover the cost of so doing from the offender.

Payment of any such amount to the council may be ordered by the court imposing penalty for an offence against this section or may be recovered by the council by action in a court of competent jurisdiction.

**Penalty on occupier obstructing owner from carrying Act into effect**

**786.** (1) If the occupier of any building or land within an area prevents the owner from carrying into effect in respect of the building or land any of the provisions of this Act, after notice of intention to do so has been given by the owner to the occupier, any justice, on proof of that fact, may make an order in writing requiring the occupier to permit the owner to carry out all such work with respect to the building or land as may be necessary for carrying into effect the provisions of this Act.

(2) If, after the expiration of 10 days from the service of the order, the occupier continues to prevent the owner from carrying out the work, the occupier is guilty of an offence.

Penalty: \$50 for every day during which the occupier continues to prevent the owner from carrying out the work.

(3) Such an owner is not during the continuance of any such prevention after the service of the order liable for any penalties to which the owner might otherwise have become liable by reason of default in carrying out the work.

**Penalty for laying out street less than prescribed width**

**787.** A person who lays out any new street or road which is less than the width prescribed for the street or road according to this Act is guilty of an offence.

Penalty: Not less than \$100 nor more than \$200, plus not less than \$50 nor more than \$100 for every day during which the street or road so continues to be laid out or made.

**Penalty for improper use of public fountains**

**788.** A person who washes himself or herself, or any animal, article or thing, at any public fountain, cock or water-pipe, or uses any private key for opening any cock, or clandestinely uses water from any public fountain or pipe, or leaves open any cock of any public fountain so that the water runs to waste, is guilty of an offence.

Penalty: \$200.

**Blasting**

**789.** (1) A person who within any municipality or any township within any district blasts with explosive any stone, timber or other material without the permission of the council or engineer is guilty of an offence.

Penalty: \$200.

(2) This section does not apply with respect to any blasting with explosives in any mine to which the *Mines and Works Inspection Act, 1920*, applies.

**Duty of owner to give information to identify driver**

**789a.** (1) An owner of a vehicle must, if required by a member of the police force, an authorized person or an officer of the council, truly answer any question which may lead to the identification of the person who was driving that vehicle on any occasion when an offence under this Act or any by-law is alleged to have been, or is suspected of having been, committed.

(2) An owner who refuses to answer, or fails to answer truly, any such question is guilty of an offence.

Penalty: \$200.

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**Owner of vehicle guilty of offence**

**789b.** Without derogating from the liability of any other person, but subject to this Act, where it is an offence against this Act for a person to drive, draw, propel, park or stand a vehicle in particular circumstances, the owner of the vehicle is guilty of an offence and liable to the same penalty as is prescribed for the principal offence and the expiation fee that is fixed for the principal offence applies in relation to an offence against this section.

**Owner and driver not both liable to conviction**

**789c.** The owner and driver of a vehicle are not both liable to be convicted of an offence arising out of the same circumstances and consequently conviction of the owner exonerates the driver and conversely conviction of the driver exonerates the owner.



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**Owner of vehicle may name driver**

**789d.** (1) An expiation notice or expiation reminder notice given under the *Expiation of Offences Act 1996* to the owner of a vehicle for an alleged offence against this Act arising out of the use of the vehicle must be accompanied by a notice inviting the owner, if he or she was not the driver at the time of the alleged offence, to provide the council, within the period specified in the notice, with a statutory declaration—

- (a) setting out the name and address of the driver; or
- (b) if he or she had transferred ownership of the vehicle to another prior to the time of the alleged offence and has complied with the *Motor Vehicles Act 1959* in respect of the transfer—setting out details of the transfer (including the name and address of the transferee).

(2) Before proceedings are commenced against the owner of a vehicle for an offence against this Act arising out of the use of the vehicle, the complainant must send the owner a notice—

- (a) setting out particulars of the alleged offence; and
- (b) inviting the owner, if he or she was not the driver at the time of the offence, to provide the complainant, within 21 days of the date of the notice, with a statutory declaration setting out the matters referred to in subsection (1).

(3) Subsection (2) does not apply to—

- (a) proceedings commenced where an owner has elected under the *Expiation of Offences Act 1996* to be prosecuted for the offence; or
- (b) proceedings commenced against an owner of a vehicle who has been named in a statutory declaration under this section as the driver of the vehicle.

(4) Subject to subsection (5), in proceedings against the owner of a vehicle for an offence against this Act, it is a defence to prove—

- (a) that, in consequence of some unlawful act, the vehicle was not in the possession or control of the owner at the time of the alleged offence; or
- (b) that the owner provided the complainant with a statutory declaration in accordance with an invitation under this section.

(5) The defence in subsection (4)(b) does not apply if it is proved that the owner made the declaration knowing it to be false in a material particular.

(6) If—

- (a) an expiation notice is given to a person named as the alleged driver in a statutory declaration under this section; or
- (b) proceedings are commenced against a person named as the alleged driver in such a statutory declaration,

the notice or summons, as the case may be, must be accompanied by a notice setting out particulars of the statutory declaration that named the person as the alleged driver.

(7) In proceedings against a person named in a statutory declaration under this section for the offence to which the declaration relates, it will be presumed, in the absence of proof to the contrary, that the person was the driver of the vehicle at the time at which the alleged offence was committed.

(8) In proceedings against the owner or driver of a vehicle for an offence against this Act, an allegation in the complaint that a notice was given under this section on a specified day will be accepted as proof, in the absence of proof to the contrary, of the facts alleged.

#### **Non-performance of provisions of this Act**

**790.** Where any matter or thing is by or under this Act or under any regulation or by-law made or continued under this Act or by any order or notice made under the authority of this Act or any such regulation or by-law, directed or forbidden to be done, or where any authority is given by this Act or any such regulation or by-law to any person to direct any matter or thing to be done, or to forbid any matter or thing to be done, and the act so directed to be done remains undone, or the act so forbidden to be done is done, a person offending against the direction or prohibition is guilty of an offence.

#### **Penalty for offence against this Act**

**791.** A person guilty of an offence against this Act, or any regulation or by-law made or continued under this Act, punishable on summary conviction is, for every such offence, liable to a penalty specifically imposed by this Act or by a by-law for that purpose, and, if no penalty is so imposed, to a penalty not exceeding \$200.

#### **Power of Governor to remit fines**

**792.** The Governor may remit the whole or any part of any fine or penalty, although it may be appropriated to a council.

#### **Conviction not to bar action**

**793.** (1) The imposition of a penalty or punishment for any offence under this Act, does not affect any action or other remedy, at the instance of the council or any person, for compensation for, or the prevention of, injury that may result from the offence.

(2) The imposition by this Act of any penalty or punishment for any offence does not prevent any person from being liable to be indicted, prosecuted or proceeded against for any offence under this or any other Act or otherwise, so long as the person is not punished twice for the same offence.

#### **Liability of person causing commission of offences**

**794.** Every penalty imposed by or under this Act in the case of a person committing an offence extends and applies also to any person—

- (a) who causes the commission of the offence;
  - (b) by whose order or direction the offence is committed;
- or
- (c) who aids, abets, counsels or procures, or by act or omission is directly or indirectly concerned in, the commission of the offence.

#### **Expiation fees may be fixed**

**794a.** (1) Expiation fees may be fixed by regulation for alleged offences against the regulations.

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(2) Expiation fees may be fixed for alleged offences against by-laws by—

(a) by-laws; or

(b) the council,

but an expiation fee fixed by the council cannot exceed 25% of the maximum fine for the offence to which it relates.

**Proceedings for parking offences may only be taken by authorized officers, etc., or with certain approvals**

**794b.** (1) No person, other than a member of the police force, or an officer or employee of a council who is authorized by the council generally to take such proceedings in relation to its area, may commence proceedings against a person for an offence against a regulation under Part XXIIA without the prior approval of the Commissioner of Police, or the chief executive officer of the council of the area in which the alleged offence was committed.

(2) Where, in any proceedings for an offence against a regulation under Part XXIIA, it appears from the complaint that the complainant is a member of the police force, or is an officer or employee of a council, it will be presumed, in the absence of proof to the contrary, that the proceedings were lawfully commenced.

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**PART XLV  
PROVISIONS AFFECTING THE CORPORATION OF THE CITY OF ADELAIDE  
ONLY**

**DIVISION I—GENERAL**

**Corporate name of the City of Adelaide**

**848.** The corporate name of the Corporation of Adelaide is "The Corporation of the City of Adelaide".

**Boundaries of the City of Adelaide**

**849.** The boundaries of the City of Adelaide, until Parliament otherwise directs, are the exterior boundaries of the park lands of the city, as delineated on the public maps and plans deposited in the office of the Surveyor-General.

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**Land known as "The Corporation Acre" to continue vested in Corporation**

**851.** The section of land numbered 203, known as "The Corporation Acre" in King William Street, within the city, continues to be vested in the Corporation.

**Reserves and park lands excepted from under control of council**

**852.** Notwithstanding section 450, but subject to section 871, the reserves and portions of the park lands of the city which immediately prior to the commencement of this Act were not under the care, control and management of the council of the city will continue not to be under that care, control and management.

**Power of Governor to take temporary control of park lands for military purposes**

**853.** The Governor may, by proclamation, take the temporary control of and use any portion of the park lands of the city which may be required for the purpose of military training and exercise, or for other military purposes.

**Power to lease racecourse**

**854.** (1) The council may from time to time lease to any person for any term of years, not exceeding 21 years at any one time, to take effect in possession or within 6 months from the making of the lease, portion of the east park lands, situated to the south of Wakefield Road, in the City of Adelaide, and not exceeding 52.6 hectares in extent, subject to such rents as may be fixed by the council, and to such covenants, conditions, clauses, provisos, limitations and agreements, and with such powers authorized by this section as may be determined by the council, and reserved and contained by and in any such lease.

(2) Every such lease may contain powers authorizing the lessee—

- (a) to erect, according to drawings and specifications to be approved in writing by the council, such grandstands, booths, fences, and other structures convenient or necessary for racing purposes on such part of the leased land as the council may approve, and, with the consent in writing of the council, to remove and rebuild or re-erect the whole or any of the buildings and structures for the time being on the land;
- (b) to exclude, eject or remove, at times prescribed in the lease, any animals or vehicles, or animals and vehicles, from the leased land or any portion of it;

- (c) at any time to exclude, eject or remove any person from the grandstands, other buildings, and enclosures, not exceeding three hectares surrounding any such grandstands and other buildings, and to charge for the admission of any person any fees not exceeding the maximum amount determined by the council and inserted in the lease;
- (d) to reserve portions of the leased land not exceeding in the whole one hectare from which any persons may be excluded on the days when the leased land is being used for race meetings, and to eject or remove any person from the leased land, or any portion of it, when the leased land is being used for race meetings,

and the lease may also contain such other clauses, powers, provisos or limitations as the council may consider advisable or necessary for ensuring the proper management, maintenance and use of the racecourse, and the repair and preservation of the grandstands, buildings and structures on it, or otherwise in relation to it.

(3) The council may at any time accept the surrender of the land, or any portion of the land, demised by any lease granted pursuant to *The Adelaide Racecourse Act*, or any lease made in pursuance of the provisions of this section.

(4) Any lease proposed to be granted under this Act must be laid before Parliament for 14 days before being executed, and if disallowed by either House of Parliament it must not be executed.

(5) Any lease purporting to be granted pursuant to *The Adelaide Racecourse Act*, the term of which is current at the commencement of this Act, will be taken for all purposes to have been granted pursuant to the powers conferred by this section.

#### **Power to lease Adelaide Oval**

**855.** (1) The council may from time to time lease to three or more persons for any term of years, not exceeding 50 years, to take effect in possession or within 6 months of the making of the lease, that portion of the north park lands known as the Adelaide Oval, not exceeding in the whole 6.5 hectares in area, subject to such rents as may be fixed by the council, and to such covenants, conditions, clauses, provisos, limitations and agreements, and with such powers authorized by this section, as may be determined by the council and reserved and contained by and in any such lease.

(2) Every such lease may contain powers authorizing the lessees—

- (a) to erect, according to drawings and specifications to be approved of in writing by the council, in addition to the buildings and structures on the land at the time of granting any such lease, such grandstands, booths, fences, and other structures convenient and necessary for the purposes of the Oval, or any of those purposes, on such part of the leased land as the council may approve; and, with the consent in writing of the council, to remove the whole or any of the buildings and structures for the time being on the land, and to rebuild or re-erect the whole or any portion of the buildings and structures so removed;
- (b) to exclude, eject or remove any animals or vehicles, or animals and vehicles, from the leased land or any portion of it;
- (c) at any time to exclude, eject or remove any person from the leased land, or any portion of it, and to charge for the admission of any person to the land and to the enclosures and the grandstand and other buildings on the land, and for the admission of horses and vehicles to the land, any fees not exceeding the maximum amount determined by the council and inserted in the lease,

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and the lease may also contain such other clauses, powers, provisos or limitations as the council may consider advisable or necessary for ensuring the proper management, maintenance and use of the land for the purposes of the Oval or any of them, and the repair and preservation of the grandstands, buildings and structures on it, or otherwise in relation to it.

(3) The council may at any time accept the surrender of the land, or any portion of the land, demised by any lease granted in pursuance of *The Adelaide Oval Act, 1897*, and any lease made in pursuance of this section.

(4) Every lease proposed to be granted pursuant to this section must before executed either be approved by the Governor or laid before Parliament and, if so laid, must not be executed if either House of Parliament by resolution disapproves of any term or condition of it.

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**Powers relating to west park lands**

**855a.** (1) The council may from time to time lease to any club, organization or association for any term of years, not exceeding 25 years, to take effect in possession or within 6 months from the making of the lease, the whole or any part or parts of that portion of the west park lands not exceeding in the whole 26 hectares in area bounded on the west by the Adelaide to Nairne railway, on the south by Hilton Road, on the east by West Terrace and on the north by the southern boundary of the Adelaide Boy's High School Reserve Section 543 Hundred of Adelaide and the prolongation of that boundary (which portion of the west park lands is, in this section, referred to as "the subject land"), subject to such rents as may be fixed by the council and on such covenants, conditions, clauses, provisos, limitations and agreements, and with such powers authorized by this section, as may be determined by the council and reserved and contained by and in any such lease.

(2) Any such lease may contain powers authorizing the lessees—

- (a) to erect, according to drawings and specifications to be approved of in writing by the council, in addition to the buildings and structures on the land at the time of granting any such lease, such grandstands, booths, fences, and other structures convenient and necessary for the purposes of public recreation, amusement, health and enjoyment, or any of those purposes, on such part of the subject land as the council may approve; and, with the consent in writing of the council, to remove the whole or any of the buildings and structures for the time being on the land, and to rebuild or re-erect the whole or any portion of the buildings and structures so removed;
- (b) to exclude or remove any animals or vehicles, or animals and vehicles, from the subject land or any portion of it;
- (c) to prohibit the admission of any person to the subject land, or any portion of it, during any period or periods while any organized sport is in progress, to remove any person therefrom and to charge for the admission of any person to the land and to the enclosures and the grandstand and other buildings on the land, and for the admission of horses and vehicles to the land, any fees not exceeding the maximum amount determined by the council and inserted in the lease,

and the lease may also contain such other clauses, powers, provisos or limitations as the council may consider advisable or necessary for ensuring the proper management, maintenance and use of the land for the above purposes or any of them, and the repair and preservation of the grandstands, buildings and structures on it or otherwise in relation to it.

(3) The council may at any time accept the surrender of the land, or any portion of it, demised by any lease made in pursuance of this section.

(4) Every lease proposed to be granted pursuant to this section must before being executed be laid before both Houses of Parliament and must not be executed if either House of Parliament by resolution within 14 sitting days of the House after the lease has been laid before it disapproves of any term or condition of it.

(5) The council may from time to time in addition to the powers contained in sections 454 and 458—

- (a) exclude or remove any animals or vehicles, or animals and vehicles, from the land or any portion of it;
- (b) prohibit the admission of any person to the land, or any portion of it, during any period or periods while any organized sport is in progress, or remove any person from it, and charge for the admission of any person to the land and to any enclosures, grandstands or other buildings on the land, and for the admission of horses and vehicles to the land.

(6) The council may from time to time grant permits or licences to any club, organization or association for any period or periods not exceeding 6 months in any one case for the use of any part or parts of the land for the purposes of public recreation, amusement, health or enjoyment, on such terms and conditions, including conditions as to the prohibition of the admission during any period or periods while any organized sport is in progress of persons, animals, or vehicles to, and as to the making of charges for admission to, such part or parts, as the council thinks fit.

#### **Powers relating to Memorial Drive Tennis Centre**

**855b.** (1) Subject to this section, the council may from time to time lease to one or more persons for any term of years, not exceeding 50 years, that portion (or any part of that portion) of the north park lands north of Memorial Drive delineated by the area marked by the letter X in G.R.O. Plan G.P. 71/1998 for any of the purposes set out in subsection (2), subject to any rent fixed by the council, and subject to the covenants, conditions, clauses, provisos, limitations and agreements, and with any of the powers authorised by subsection (3), as may be determined by the council and contained in the lease.

(2) A lease under this section may permit the lessee or lessees to use the leased land or any part of the leased land for the purposes of—

- (a) any sport; or
- (b) any health, fitness, leisure or other similar activity; or
- (c) public recreation or entertainment; or
- (d) conventions, conferences or receptions, or other similar activities; or
- (e) other activities that are incidental, ancillary or subsidiary to a preceding purpose.

(3) A lease under this section may contain powers authorising the lessee or lessees—

- (a) for any of the purposes set out in subsection (2), with the consent in writing of council, to erect various kinds of facilities, club rooms, grandstands, booths, fences and other buildings or structures on any part of the leased land, or to remove the whole or any part of a building or structure for the time being on the leased land, or to rebuild or re-erect the whole or any part of a building or structure on the leased land; and
- (b) to exclude or remove vehicles from the leased land, or from any part of the land; and

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- (c) to exclude, eject or remove any person from the leased land or from any part of the land, and to charge for the admission of any person to the leased land or to any part of the land, or for the use of any part of the leased land, and for the admission of vehicles to the leased land; and
- (d) with the consent in writing of the council, to sublease any part of the leased land (for purposes consistent with the purposes set out in subsection (2)),

and a lease may also contain such other powers, limitations or provisions as the council may consider necessary or advisable for ensuring the proper management, maintenance and use of the leased land, and the repair and preservation of buildings and structures on the land from time to time.

(4) The council may at any time accept the surrender of the land, or of any part of the land, demised by a lease from the council (whether entered into before or after the commencement of this section).

(5) This section operates to the exclusion of section 457.

**Constructions over or under roads**

**855c.** Since 1 January, 1968, the council of the City of Adelaide has had the right—

- (a) to construct and maintain any building or work;
- and
- (b) to grant to any person a permit, for any period not exceeding 99 years, to construct and maintain any building or work,

over or under any public street or road the fee simple of which is vested in the council pursuant to section 306.

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**DIVISION III—RIVER TORRENS IMPROVEMENT**

**River Torrens dam**

**865.** (1) The council of the City of Adelaide continues to have the care, control and management of the dam erected pursuant to the powers conferred by the *River Torrens Improvement Act, 1869*, and of the waters impounded by the dam.

(2) The council may build, erect or place on the banks or shores of the River Torrens, or on the park lands or on any land under the care, control or management of the council, any sheds, boat houses, stands, landing stages and other buildings as the council thinks fit.



(3) The council may from time to time lease to any person or persons for any term of years, not exceeding 50 years, to take effect in possession or within 6 months from the making of the lease, any part or parts of any such banks or shores on which any such sheds, boat houses, stands, landing stages or other buildings have been built, erected or placed by the council (or if not so built, erected or placed, for the purposes of the construction by the person or persons of any sheds, boat houses, stands, landing stages or other buildings) for the use of that person or those persons, subject to such rents as may be fixed by the council, and on such covenants, conditions, clauses, provisions and agreements as may be determined by the council and contained by and in any such lease. Every lease proposed to be granted pursuant to this subsection must before being executed be laid before both Houses of Parliament and must not be executed if either House of Parliament by resolution within 14 sitting days of the House after the lease has been laid before it disapproves of any term or condition of it.

### **Rights of fishing**

**866.** (1) The council has the exclusive right over and control of the fisheries in the waters mentioned in section 865 and may, subject to any by-laws, grant and assign to any person (by way of licence or otherwise) rights of fishing and angling in those waters (but the council or a person so authorized by the council must not take or catch fish by means of any seine, net, weir or night line).

(2) A person who—

(a) takes or catches or attempts to take or catch any fish from those waters without the authority of the council;

or

(b) takes or catches or attempts to take or catch any fish from those waters with any seine, net, weir or night line,

is guilty of an offence.

Penalty: \$200.

### **Saving of rights**

**867.** (1) The provisions of this Division do not exonerate the council from liability for injury or damage arising—

(a) from the construction of the dam mentioned above;

(b) from the bursting of the dam;

(c) from the retention and storing of waters by means of the dam;

or

(d) from any other cause arising out of the construction of the dam or retention of waters in it.

(2) Those provisions do not prejudice or affect in any way any rights, advantages or interests of any kind of any person in respect of any part of the river or of its shores or banks.

(3) The council must pay full compensation to any person who by reason of the exercise of any power under this Division sustains any damage.

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**Penalty for placing filth, etc., in River Torrens**

**868.** Any person who within the Municipality of Adelaide discharges, empties or deposits, or causes to be discharged, emptied or deposited, into any part of the River Torrens above the dam any filth, sewage or other offensive matter is guilty of an offence.

Penalty: \$200.

**Saving of rights of Crown**

**869.** Nothing in this Division affects any right, title or interest of the Crown in respect of the bed, soil, banks or shores of the River Torrens or any reserve or land of the Crown, other than and except as regards the powers granted by this Division to the council.

**Saving of other powers of council**

**870.** The powers conferred by this Division are in addition to, and not in substitution for, any other powers conferred by this Act.

**Control, etc., of portion of bank of River Torrens**

**871.** The piece of land described in the twenty-first schedule is under the care, control and management of the council.

**Division subject to Catchment Water Management Act 1995**

**871aa.** This Division is subject to the *Catchment Water Management Act 1995*.

**DIVISION IV—POWERS RELATING TO STREETS AND ROADS**

**Power to take land**

**871a.** (1) Without limitation of any other power conferred on the council, the council of the City of Adelaide may acquire by agreement or compulsorily any land in the city which in the opinion of the council is required for the construction of new streets or roads or for the widening, altering, diverting or extension of existing public streets or roads.

(2) In deciding the land to be acquired, the council is not restricted to the acquisition of the land actually required for the above purposes, but the council may acquire such additional land on either side or on both sides or at either or both ends of the proposed new street or road or of the street or road to be widened, altered, diverted or extended, for such depth, as the council may think expedient.

(3) Without limiting the generality of subsection (2), the powers conferred by subsection (2) may be exercised notwithstanding that the additional land acquired thereunder—

- (a) may or may not be required for or in connection with any of the purposes set out in subsection (1);
- (b) may be so acquired for sale or resale and for the purpose of applying the proceeds in defraying in whole or in part any expenses incurred by the council in carrying out any work on land acquired for any of the purposes set out in subsection (1).

**Power to enter lands**

**871b.** For the purposes of this Division, the council may, by its officers, servants or agents, enter on and survey any land within the city.

**Dealing with land when acquired**

**871c.** The council may, in respect of any land acquired by it under this Division, do all or any of the following things:

- (a) demolish or repair any buildings or works on the land;
- (b) construct new buildings or structures on the land;
- (c) close, alter, widen, extend or divert any existing street or road on the land;
- (d) construct and open any new street or road on the land;
- (e) alter the levels of the land, and alter existing drains, and construct new drains and storm-water sewers, on the land;
- (f) generally alter, remodel and improve the land and buildings in such manner as the council may think fit;
- (g) sell the whole or any portion of the land, in one or more lots, on such terms and conditions (including power to take securities for any balance of purchase money) as the council may think fit;
- (h) lease the whole or any portion of the land for such periods, and on such terms and conditions, as the council may think fit.

#### **Colonnading of streets and roads when acquiring land for footway**

**871d.** (1) Without limitation of any other power conferred on the council, the council may widen any public street or road by including in the carriageway the whole or a part of the footway, and acquiring by agreement or compulsorily from any owner of abutting land any land required for the whole or a part of a new footway, subject to a reservation of specified rights in favour of the owner.

(2) Any land required for widening a public street or road in accordance with this section may be acquired, subject to a reservation of such of the following rights in favour of the owner as the council may at or before the time of acquisition determine, that is to say:

- (a) a right to the ownership, possession, occupation, and use of any existing building, room or cellar, so far as it is at a specified height or depth above or below the level of the new footway, and subject to the right of the council to make such structural alterations as may be required;
- (b) a right to erect any building in accordance with the provisions of any Act relating to the erection of buildings in the city at a specified height above the level of the new footway, and to own, possess, occupy, and use the building;
- (c) a right of support for any building to which paragraph (a) or (b) applies.

#### **Re-alignment of streets or roads**

**871e.** (1) The council may cause any aligned public street or road to be re-aligned under this section in order to widen the street or road.

(2) Any re-alignment under this section may be carried into effect by the acquisition under this Division of the necessary land, or under the following provisions of this section relating to the re-alignment method of acquiring land, or by a combination of those methods.

(3) Where the council proposes to apply the re-alignment method of acquisition to any lands affected by a re-alignment, it must serve notice accordingly on the owners of land affected; and until such notice is served the interests of the owners are not affected by the re-alignment.

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(3a) Where a notice is served under subsection (3) on the owners of land affected by the re-alignment, the council is not, for the purposes of the *Land Acquisition Act, 1969*, required to serve a notice of intention to acquire the land on each person having an interest in the land and the notice under that subsection has effect for the purposes of that Act as if it were a notice of intention to acquire land.

(4) A plan showing the re-alignment must be lodged by the council in the office of the Registrar-General and in the office of the Surveyor-General. The provisions of Division III of Part XVII do not apply to a re-alignment under this section.

(5) Under the re-alignment method, compensation for any injurious effects suffered by reason of the re-alignment may be claimed, but is limited to payment of the value of the land taken from an owner by reason of the re-alignment, together with the damage, if any, caused by the severing of the land from other land of the owner.

The value and damage are ascertained and the compensation is payable—

(a) in the case of vacant land, as at the date when the notice referred to in subsection (3) is served on the owner of the land;

and

(b) in all other cases, as at the date when the land is cleared of buildings and obstructions by the owner or lessee, whether for the purpose of building to the new alignment or not.

Subject to this section, from the date on which the compensation is payable, the land vests in the council for a public street or road. For the purpose of ascertaining the compensation, the land will be taken to have been acquired compulsorily by the council and the value of the land will be taken to be its value as vacant land at the date the compensation becomes payable.

(6) Where any public street or road is re-aligned, and where the re-alignment method is applied, the owner of any land or building or work affected by the re-alignment must not, except in the circumstances provided for in subsection (10), construct, build, place, reconstruct, rebuild, replace or repair any building or work, or portion of a building or work, standing on the land between the old alignment and the new (but the council may approve the carrying out of minor and not substantial repairs in order to permit the reasonable preservation of any existing building or work, but not so as to violate the intention of this section).

(7) Whether or not the council has elected to apply the re-alignment method, it may at any time, and notwithstanding any such election, decide to acquire any or all of the land affected by the re-alignment.

(8) Notwithstanding the provisions of any Act, the land between the old alignment and the new does not form part of the street or road until the council has acquired title to the land, and has notified the fact in the *Gazette*, or a dedication of the land as a public street or road has been effected.

(9) Where land is acquired by the re-alignment method, the council may, notwithstanding anything contained in this Act, lease the whole or any part of the land to any owner of land from whom the land is acquired, or to any such owner's successors in title, for not more than ten years at any one time and subject to such terms, conditions and reservations as the council may decide.

(10) The lessee of any such land may erect on it at the lessee's own expense a building not exceeding one storey in height, or other improvements of such materials and to such design as are approved by the council.

The council is not bound to require any such structure to be erected of brick, stone, concrete or other similar materials of a permanent nature, notwithstanding the provisions of any Act, regulation, or by-law relating to building for the time being in force.

(11) All buildings or other improvements so erected by the lessee remain the property of the lessee and must be removed by the lessee immediately on, or prior to, the determination of the lease.

(12) No compensation is payable in respect of any injury, damage or disturbance arising from the re-entry by the council into possession of the land on the expiration or determination of any such lease.

(13) The council may at any time, notwithstanding anything contained in this Act, abandon the re-alignment proposal and may, where land has been acquired by the re-alignment method, offer the land for sale to the owner from whom it was acquired or a successor in title.

**Wires, etc., above new or widened streets or roads**

**871f.** (1) If any new street or road is opened pursuant to this Division or if any street or road is widened, altered, diverted, or extended pursuant to this Division, then, notwithstanding the provisions of any other Act to the contrary, a person must not construct or place or cause to be constructed or placed any wires, cables, pipes, conduits, poles, feeder-pillars or any other works of any kind (all of which are referred to below as "works") so that any part is above the surface of the street or road unless the consent of the council is obtained and unless the works are constructed and placed in such appropriate manner and place and subject to such reasonable conditions as the council may require.

(2) If—

(a) the council refuses or neglects to give its consent to any person who apart from this section is by law entitled to construct or place such works above the surface of the street or road;

or

(b) consent is given by the council but the person to whom the consent is given is dissatisfied with any requirement of the council in connection with the construction or placing of the works,

the person may apply to the local court of full jurisdiction at Adelaide for an order under this subsection. Upon such an application the local court may by order direct that the person may construct or place or cause to be constructed or placed such works above the surface of the street or road and may give any directions as to the manner in and place where and conditions upon which the works are to be constructed or placed. Such an order is final and conclusive.

(3) If any works are constructed or placed contrary to this section, the council may remove them and re-instate the street or road and recover the cost of so doing from the person who constructed or placed or caused to be constructed or placed them.

(4) This section does not apply to anything done pursuant to the *Sewerage Act, 1929*, or the *Waterworks Act, 1932*.

**Local Government Act, 1934**

(5) This section does not apply to anything done by the Passenger Transport Board.

**Removal of wires, mains, etc.**

**871g.** (1) Subject to subsection (3), if by reason of the widening, altering, diverting or extending of any street or road pursuant to this Division it becomes necessary or expedient to remove any wire, cable, pipe, conduit, pole, feeder-pillar, inspection pit, drain or other works of any kind (all of which are referred to below as "works") constructed, erected or laid above, on, in, or under the street or road, the owner of the works may, and on receiving notice from the council to do so, must, remove the works and may, subject to compliance with section 871f, construct, erect, or lay down the same or other similar works in the street or road. Any such owner may in any court of competent jurisdiction recover from the council any cost reasonably incurred by the owner by reason of or incidental to the removal, or construction, erection, or laying down of the works.

(2) If by reason of the widening, altering, diverting or extending of any street or road pursuant to this Division it becomes necessary or expedient, in the opinion of the Minister of Public Works or the Passenger Transport Board, to remove any wire, cable, pipe, conduit, pole, feeder-pillar, inspection pit, drain, sewer, main, hydrant or other works of any kind (all of which are referred to below as "works") of the Minister of Public Works, or the Passenger Transport Board, as the case may be, which is constructed above, on, in or under the street or road, the Minister of Public Works, or the Passenger Transport Board, as the case may be, may remove the works and may construct, erect or lay down the same or similar works in the street or road and may, in any court of competent jurisdiction, recover from the council any cost reasonably incurred by reason of or incidental to the removal or construction, erection or laying down of the works.

(3) Subsection (1) does not apply to any pole, post, cable or wire of an electricity entity under the *Electricity Act 1996* in respect of which the Commissioner of Highways has given a certificate under section 363a.

**Restriction on use of streets for tramways**

**871h.** If any new street or road is opened pursuant to this Division, or if any street or road is widened, altered, diverted or extended pursuant to this Division, then, notwithstanding the provisions of any other Act to the contrary, a person must not lay down any tramway in the street or road unless the consent of the council is first obtained (but nothing in this subsection applies to the repair, renewal or alteration of any tramway which is in any street or road at the time of its widening, alteration, diversion or extension).

**Use of streets or roads for bus services**

**871i.** (1) At least one month before any new street or road is opened pursuant to this Division or any street or road is widened, altered, diverted or extended pursuant to this Division, the council may give to the Passenger Transport Board notice in writing of the intention of the council to open the new street or road or to widen, alter, divert or extend the street or road, as the case may be. The Passenger Transport Board may within one month of the giving of the notice, by notice in writing, inform the council that it is the intention of the Authority to use or permit the use of the new street or road or the widened, altered, diverted or extended street or road, as the case may be, as a route for buses.

(2) If such a notice is given by the council and the Passenger Transport Board does not inform the council as mentioned above, then, notwithstanding the provisions of any other Act to the contrary, the new street or road so opened or, as the case may be, the street or road so widened, altered, diverted or extended must not be used as the route of any bus unless the council consents to that use.

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**Exercise of certain powers by council**

**871s.** (1) The council must not exercise any of the powers given to the council by section 871a, 871d or 871e, or by section 871c(*b*) or (*f*), unless at least two-thirds of the members of the council then in office vote in favour of a resolution for the exercise of the power.

(2) If two-thirds of the number of the members of the council at the relevant time is not an integer, then, for the purposes of this section, two-thirds of the members of the council will be taken to be the integer nearest to but more than two-thirds of the number of members then in office.

**Application of Division to other councils**

**871t.** The Governor may, by proclamation, declare that the provisions of this Division apply with respect to any other municipal council named in the proclamation.

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Local Government Act, 1934

PART XLVI  
MISCELLANEOUS MATTERS

**River, stream or watercourse forming a common boundary**

872. Where any river, stream, creek or watercourse is described as the boundary of an area, or of a ward, a line along the middle of the river, stream, creek or watercourse will be taken to constitute the boundary.

**Cost of advertisements**

873. (1) The cost of any advertisement required by this Act must be paid by the council, controlling authority or person whose action immediately necessitates the advertisement.

(2) The Minister may require payment of the cost before causing the advertisement to be inserted.

**Microfilm records**

873a. (1) Where a council makes a copy of any record that it is required to make or keep under this Act on microfilm, the microfilm is admissible in any legal proceedings in place of the record.

(2) Where a provision of this Act requires the production of a record, it is sufficient compliance with that requirement to produce a microfilm copy of that record.

**Certified copies of by-laws**

874. (1) A person is entitled, on payment of a fee set by the council, to a certified copy of any by-law of the council in force in its area (or a part of its area) at that particular time.

(1a) The certificate referred to in subsection (1) is to be given by the mayor or chairman, or chief executive officer, of the council.

(2) If any such by-law is a by-law to which section 670(3) applies and the council has in pursuance of the powers conferred by that section passed a resolution providing for the application of the by-law to any portion or portions of the area, a copy of all resolutions of the council made and published as provided by section 670(3) which have reference to the by-law must be supplied with the printed copy of the by-law. No additional fee may be charged for the copy of the resolutions.

\* \* \* \* \*

**Powers of entry by officers of council**

876. (1) A council has, for the purposes of this Act, except where otherwise provided, power by its members or officers to enter at all reasonable hours in the daytime into and on any building or land within the area for the purpose of carrying out any work or making any inspection that the council is authorized to carry out or make under this Act, without being liable to any legal proceedings on that account.

(2) Except as otherwise provided in this Act, the council must not make any such entry on occupied premises (except with the consent of the occupier) until after the expiration of 24 hours notice for that purpose given to the occupier.

**Power to enter and occupy lands in connection with projects**

877. (1) Subject to this section, an officer, employee or contractor of a council may, insofar as may be reasonably necessary for carrying out a project—

- (a) enter land at any reasonable time;



- (b) occupy the land on behalf of the council;
- (c)
  - (i) obtain earth, minerals or timber from the land;
  - (ii) deposit soil on the land;
  - (iii) construct temporary roads and structures on the land;
  - (iv) deposit or store materials on the land;
  - (v) carry out any other incidental activity on the land.

(2) The council is, except in relation to an owner or occupier of the land, liable for any nuisance or damage caused while in occupation of the land.

(3) The council must pay to the owner or occupier of the land—

- (a) 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;
- (b) within one month after occupying the land—reasonable compensation for damage caused to any crops on the land;

and

- (c) within six months of ceasing to occupy the land—reasonable compensation for any other loss or damage caused by the council, including the full value of any earth, clay, stone, gravel, sand or other minerals or resources taken from the land.

(4) Compensation payable by the council under this section may be recovered as a debt.

(5) The council must, at the request of an owner or occupier of the land, erect a fence of reasonable quality and design between the land and adjoining land.

(6) A council is not authorized under this section to enter or occupy—

- (a) land that is within 450 metres of the curtilage of a house;
- (b) a garden or a park;
- (c) a quarry, brickfield or other similar place from which materials are commonly obtained for commercial purposes.

**Power to enter land for surveys, etc.**

**877a.** An officer, employee or contractor of a council may, insofar as may be reasonably necessary for carrying out a project, enter land at any reasonable time for the purpose of conducting surveys, taking levels and setting out land.

**Licences**

**878.** (1) The council may by resolution from time to time fix the maximum number of any class of licences or permits which may be issued pursuant to this Act.

(2) The granting or refusal of any licence or permit to any person, and the granting or refusal of the renewal of any licence or permit to any person, is at the discretion of the council.

**Local Government Act, 1934**

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(3) A licence or permit may be granted or renewed subject to such conditions in a particular case as the council thinks fit.

**Declarations**

**879.** (1) Declarations required by this Act to be made by any person may be made before a notary public, justice, or commissioner for taking affidavits in the Supreme Court, and are sufficient if purporting to be solemnly and sincerely made in pursuance of this Act.

(2) A person who wilfully makes a false declaration purporting to be made in pursuance of this Act is guilty of perjury, and is liable to be punished accordingly.

**Mayors and chairmen to be justices**

**879a.** A mayor or chairman for the time being is, *ex officio*, a justice from such time as he or she takes the oath of allegiance and the judicial oath as required by the *Justices Act, 1921*, and continues to be a justice without again taking those oaths for so long as he or she continues to be re-elected or re-chosen for successive terms of office.

**Crown land under management of council for certain purposes**

**880.** For the purpose of any Act inflicting fines and penalties for offences committed on Crown land, where by that Act and this Act the fines and penalties form part of the revenue of the council, all Crown land within the area will be taken to be under the management of the council.

**Cutting of trees**

**880a.** (1) A council must not cause any tree growing in any street, road or in any land under the care, control or management of the council to be cut down or otherwise destroyed except pursuant to a resolution of the council.

(2) In this section—

"tree" means any bush or tree which is 4.5 metres or more in height.

**Interests in companies**

**880b.** Subject to the powers of a council to invest money under this Act, a council must not—

(a) participate in the formation of a company;

or

(b) acquire shares in a company.

**Duty of Registrar-General to supply particulars to councils**

**881.** When—

(a) an estate in fee simple or any estate of freehold in any Crown land is granted, or contracted to be granted, to any person;

or

(b) a lease of any Crown land is granted to any person, or a transfer of any such lease, or any part of it, is consented to,

and the estate, lease or transfer is registered in the Lands Titles Registration Office, the Registrar-General must forthwith furnish the council of the area within which the land is situated with—

(c) the full Christian name and surname of the person in whose name the estate or lease is so registered, or of the transferee;

and

(d) the particulars of the estate or of the lease and of the purchase-money or rent,

and the notice so furnished will be received as sufficient evidence of the matters stated in it until the contrary is proved.

\* \* \* \* \*

**Special provisions relating to the District Council of Coober Pedy**

**883.** (1) In this section—

"**the council**" means the District Council of Coober Pedy.

(2) Notwithstanding any other provision of this Act, land within the area of the council that is subject to a mining lease or comprised in a registered precious stones claim is not ratable property for the purposes of this Act.

(3) Notwithstanding any other Act, the following provisions apply in respect of the council and its area:

(a) the council is not responsible for the performance of any function under the *Food Act, 1985*, or the *Health Act, 1935*;

(b) the South Australian Health Commission may perform in relation to the area of the council any function that the council would, but for paragraph (a), be responsible to perform under the *Food Act, 1985*, or the *Health Act, 1935*.

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**The Glenelg amusement park**

**886ba.** (1) In this section—

\* \* \* \* \*

"**the Council**" means the Corporation of the City of Glenelg;

"**the Park**" means the whole of the land comprised in Certificate of Title Register Book Volume 912 Folio 32.

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Local Government Act, 1934

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(5) The Council—

(a) must continue to maintain the Park as a public park;

and

(b) may—

(i) provide in the Park facilities or amenities for public refreshment, recreation or amusement;

(ii) grant, on such terms and conditions as the Council thinks fit, leases or licences in respect of land comprised in the Park with a view to provision by the lessees or licensees of facilities or amenities for public refreshment, recreation or amusement;

(iii) otherwise deal with land comprised in the Park, as the Minister may approve.

(6) Section 46 of the *Planning Act, 1982*, does not apply to the grant of a lease or licence by the Council under this section.

**Vesting of Beaumont Common in the Corporation of the City of Burnside**

**886c.** (1) The Beaumont Common is vested in the Corporation of the City of Burnside for an estate of fee simple.

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(3) The Corporation of the City of Burnside must maintain the Beaumont Common in perpetuity as park lands.

(4) The council must not develop, or adapt the Beaumont Common or any part of it, for the purpose of any organized sporting activity.

(5) In this section—

"**the Beaumont Common**" means the whole of the land comprised in Certificate of Title Volume 479 Folio 61.

**Vesting of Levi Park in the Corporation of the Town of Walkerville**

**886d.** (1) Levi Park is vested in the Walkerville Council for an estate of fee simple.

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(3) The Council must—

(a) maintain Levi Park in perpetuity as a public park;

(b) preserve for as long as possible the Moreton Bay fig tree growing, at the commencement of this section, in the Park;

(c) maintain and preserve Vale House, and make it available for appropriate community use;

and

(d) maintain and preserve the caravan park and camping ground in the Park.

(4) The Council will be taken to have constituted, in pursuance of this Act, a controlling authority to undertake the care, control and management of Levi Park, and the controlling authority must not be abolished unless the Minister consents to its abolition.

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(7) The Council must not alter the nature of the use to which the Park or any part of the Park is put unless the Minister consents.

(8) In this section—

"**Levi Park**" or "**the Park**" means the whole of the land that immediately before the commencement of this section constituted the park administered under the *Levi Park Act, 1948-1976*;

"**Vale House**" means the building situated in the Park and known under that name;

"**the Walkerville Council**" or "**the Council**" means the Corporation of the Town of Walkerville.

**Proceedings for recovery of rates**

**887.** (1) Proceedings for the recovery of rates under this Act or of any amount payable to or recoverable by the council, the payment of which is by this Act made a charge on any land, may, notwithstanding any statute of limitations, be taken at any time within 20 years from the date when the rates or amount became due and payable.

(2) Proceedings for the recovery of any other amount payable to or recoverable by the council by reason of the operation of any provision of this Act may, notwithstanding any statute of limitations, be taken at any time within 6 years from the date when the amount became due and payable.

**Application to Crown**

**888.** Except where expressly provided by this Act, this Act does not apply to or bind the Crown.

**Delegation by Ministers**

**889.** (1) The Minister may delegate any power or function of the Minister under this Act (other than a power or function under Division XIII of Part II).

(2) A delegation by the Minister—

(a) may be conditional or unconditional;

(b) is revocable at will;

and

**Local Government Act, 1934**

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(c) does not derogate from the power of the Minister to act in any matter personally.

(3) A delegation under this section may be made to a specified person or may be made to the holder for the time being of a specified office.

(4) A register of delegations must be kept and made available for public inspection.

**Incorporation of Standards, etc.**

**890.** A regulation under this Act may apply, adopt or incorporate, with or without modification, any code, standard or other document prepared or approved by a body or authority referred to in the regulation as in force from time to time or as in force at a specified time.

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**Local Government Act, 1934**

**SCHEDULES**

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**THE FOURTEENTH SCHEDULE**

**FORM NO. 1**

*Agreement for Exchange of Land between the Council and the Owner  
or the Owner and Occupier of the Land to be taken in Exchange*

Municipality or District of

This agreement made this            day of            , 19            , pursuant to the *Local Government Act, 1934*, between the Corporation of the City (or Town) of            or District Council of            of the first part, A.B., of            , the owner of the premises described in the First Schedule to this agreement, of the second part and, C.D., the occupier of those premises, of the third part.

Whereas the council now holds the premises described in the Second Schedule to this agreement (*if applicable, add* on the trusts and subject to the conditions stated in that Schedule), and desires to obtain in exchange for them the premises described in the First Schedule.

The council will give the premises described in the Second Schedule in exchange for the premises described in the First Schedule, and will pay to (or receive from, *as the case may be*) A.B. the sum of \$            [and to (or from) C.D. the sum of \$            ] for equality of exchange (*if applicable, add* and the premises described in the Second Schedule will, from and after the exchange, be freed from the trusts and conditions stated in that Schedule, and the premises described in the First Schedule will be held by the council on and subject to those trusts and conditions, and in the same manner as the premises given by the council in exchange were held).

This agreement is evidenced by the common seal of the council and the signatures of A.B. and C.D. appearing below.

FIRST SCHEDULE TO AGREEMENT

[Here describe, by position, boundaries, and area, the land owned by A.B.]

SECOND SCHEDULE TO AGREEMENT

[Here describe, by position, boundaries, and area, the land to be given in exchange by the council, and set out the trusts and conditions (if any) which, at the time of the exchange, affect the land.]

FORM NO. 2

*Order for Exchange of Land*

Corporation of the City (or Town) of \_\_\_\_\_ or District Council of \_\_\_\_\_

Whereas the Corporation of the City (or Town) of \_\_\_\_\_ or District Council of \_\_\_\_\_, considering it expedient to exchange the piece of land containing \_\_\_\_\_ being situated [*here describe the piece of land generally*], and within the municipality or district, for another piece of land containing \_\_\_\_\_, being situated [*here describe the piece of land generally*], and situated within the municipality or district, has, pursuant to the *Local Government Act, 1934*, entered into an agreement for the exchange with \_\_\_\_\_ the owner [and the occupier] of the last-mentioned land, and has caused a survey plan showing the boundaries and positions of those pieces of land to be deposited in the Surveyor-General's Office: And whereas the council has caused a notice to be inserted in the *South Australian Government Gazette* of the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, stating the proposed exchange, and giving all the other particulars required by the Act: And whereas no objections having been made to the exchange [*or notice having been given to the council by [names of objectors] of [state how many] objections to the exchange*], a meeting of the council, was held after the expiration of 40 days and within 60 days from the first publication of the *Gazette* notice, that is to say, on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ in the State, being the time and place appointed in the *Gazette* notice, at which meeting the council considered the proposed exchange [and the objections], and determined to make the following order: Now, therefore, in pursuance of the provisions of the Act, the council orders that the piece of land first described above be exchanged for the piece of land secondly described above, in manner set forth in the *Gazette* notice.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

[*Seal of the Council.*]

FORM NO. 3

*Notice of Confirmation of Order for Exchange of Land*

Corporation of the City (or Town) of \_\_\_\_\_ or District Council of \_\_\_\_\_

Whereas the Corporation of the City (or Town) of \_\_\_\_\_ or District Council of \_\_\_\_\_ did on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, cause to be published a notice of a proposal to exchange the piece of land situated [*describe generally the situation of the land*] for [*give general description of the piece to be taken in exchange*]; and the council, by an order of the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, having ordered the exchange to take place in the manner stated in the notice, the Minister of Lands has been pleased to confirm the order and may issue certificates of title to the persons entitled respectively to the land mentioned in the order.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_, Surveyor-General.



**Local Government Act, 1934**

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FORM NO. 4

*Receipt for Money Paid for Equality of Exchange of Land  
(where endorsed on the agreement)*

Corporation of the City (or Town) of \_\_\_\_\_ or District Council of \_\_\_\_\_

We (or I), the within named \_\_\_\_\_, do hereby acknowledge to have received from the within named \_\_\_\_\_ the sum of \_\_\_\_\_, being the amount within agreed to be paid by \_\_\_\_\_ to \_\_\_\_\_ for equality of exchange.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

[Where not endorsed.]

Corporation of the City (or Town) of \_\_\_\_\_ or District Council of \_\_\_\_\_

Whereas by an agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, and made pursuant to the *Local Government Act, 1934*, between the Corporation of the City (or Town) of \_\_\_\_\_ or District Council of \_\_\_\_\_ it was agreed [*recite the agreement for exchange*], and whereas the sum of \_\_\_\_\_, the amount agreed to be paid for equality of exchange, has been paid to \_\_\_\_\_ by \_\_\_\_\_, I (or we), \_\_\_\_\_ do hereby acknowledge receipt of that amount.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

\* \* \* \* \*

**THE FIFTEENTH SCHEDULE**

All that piece or parcel of land being portion of the Park Lands adjoining Gawler Town and containing 0.311 hectare, within a boundary commencing at a point fixed as follows, that is to say, 20.217 metres from the south-east corner of Lot 22 Gawler Town on the prolongation southwards of the eastern boundary, thence in a south-westerly direction at an angle of 119° 32' therefrom for a distance of 19.01 metres; from the point of commencement 148.261 metres in that south-westerly direction on the prolongation of that line 19.01 metres in length, thence north-easterly at an angle of 18° 44' for a distance of 130.759 metres, thence south-easterly at an angle of 101° 28' to the point of commencement.

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**THE TWENTY-FIRST SCHEDULE**

Comprising that portion of the City of Adelaide bounded as follows:—Commencing at the intersection of the production northerly of the eastern side of Morphett Street with the southern bank of the River Torrens; thence generally easterly along the bank of the River Torrens to the western boundary of land defined in The Schedule of *The Railway and Corporation Lands Act, 1904*, thence southerly along the boundary and its production southerly for 26.165 metres; thence westerly at right angles to the production northerly of the eastern side of Morphett Street; thence northerly along that production to the point of commencement.

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## Local Government Act, 1934

## APPENDIX

## LEGISLATIVE HISTORY

## Repeals

The *Local Government Act, 1934*, repealed the following Acts:

Reference to Act	Title or Short Title
No. 5 of 1840	An Act to regulate the Slaughtering and prevent the Stealing of Cattle.
No. 2 of 1844	An Ordinance to Authorize the Levying of Fees on the Slaughtering of Cattle in South Australia.
No. 8 of 1847	Ordinance for the Establishment and Regulation of Markets.
No. 19 of 1862	An Act for the Regulation of Cemeteries.
No. 13 of 1869-70	<i>River Torrens Improvement Act, 1869-70.</i>
No. 8 of 1872	An Act to amend the <i>River Torrens Improvement Act, 1869-70.</i>
No. 138 of 1879	<i>The Local Improvements Act, 1879.</i>
No. 212 of 1881	<i>The Manufacturing Districts Act.</i>
No. 234 of 1881	<i>The Ornamental Grounds Act, 1881.</i>
No. 249 of 1882	<i>The Manufacturing Districts Amendment Act.</i>
Private Act, 1883	<i>Victoria-square Thororoughfare Act, 1883.</i>
No. 365 of 1885	<i>Grants-in-Aid Regulation Act, 1885.</i>
No. 425 of 1888	<i>By-laws Enabling Act, 1888.</i>
No. 436 of 1888	<i>The Ferries Act, 1888.</i>
No. 467 of 1889	<i>The Sparrow Destruction Act, 1889.</i>
No. 481 of 1890	<i>The District Councils and Corporations Subsidy Act, 1890.</i>
No. 531 of 1891	<i>The Gas and Electric Lighting Act, 1891.</i>
Private Act, 1892	<i>The Adelaide Racecourse Act.</i>
No. 676 of 1897	<i>The Cemeteries Act Amendment Act, 1897.</i>
Private Act, 1897	<i>The Adelaide Oval Act, 1897.</i>
No. 700 of 1898	<i>The Free Libraries Act, 1898.</i>
No. 708 of 1898	<i>The Noisy Trades Act, 1898.</i>
No. 762 of 1901	<i>The Municipal Corporations and District Councils Validating Act, 1901.</i>
No. 879 of 1905	<i>The District Councils Assessment Validating Act, 1905.</i>
No. 1033 of 1910	<i>The Local Government Act, 1910.</i>
No. 1040 of 1911	<i>The City of Adelaide Municipal Loan Act, 1911.</i>
No. 1378 of 1919	<i>Commonwealth Advances for the Employment of Returned Soldiers Act, 1919.</i>
No. 1445 of 1920	<i>City of Adelaide Municipal Loan Act Amendment Act, 1920.</i>
No. 1457 of 1921	<i>Sparrow Destruction Act Amendment Act, 1921.</i>
No. 1558 of 1923	<i>Municipal Corporations Act, 1923.</i>
No. 1571 of 1923	<i>Gladstone Institute Act, 1923.</i>
No. 1589 of 1923	<i>Glenelg Foreshore Act, 1923.</i>
No. 1602 of 1923	<i>Gawler Park Lands Act, 1923.</i>
No. 1637 of 1924	<i>Municipal Corporations Act Amendment Act, 1924.</i>
No. 1694 of 1925	<i>Municipal Corporations Act Amendment Act, 1925.</i>
No. 1735 of 1926	<i>Port Augusta Bridge Act, 1926.</i>
No. 1778 of 1926	<i>Municipal Corporations Act Amendment Act, 1926.</i>
No. 1818 of 1927	<i>Harbors Act Amendment Act, 1927.</i>
No. 1872 of 1928	<i>Local Government Act Amendment Act, 1928.</i>
No. 1911 of 1929	<i>Municipal Corporations Act Amendment Act, 1929.</i>
No. 1924 of 1929	<i>District Councils Act, 1929.</i>
No. 1931 of 1929	<i>Local Government Loans Act, 1929.</i>
No. 1959 of 1930	<i>Municipal Corporations Act Amendment Act, 1930.</i>
No. 1964 of 1930	<i>Mayor's Bounty Fund (Kapunda) Act, 1930.</i>
No. 1968 of 1930	<i>District Council of Tatiara Loan Act, 1930.</i>
No. 1972 of 1930	<i>Municipal Corporations Act Amendment Act (No. 2), 1930.</i>
No. 1978 of 1930	<i>District Councils Act Amendment Act, 1930.</i>
No. 1987 of 1930	<i>Local Government Grants Act, 1930.</i>
No. 2032 of 1931	<i>Local Government Grants Act, 1931.</i>
No. 2040 of 1931	<i>District Councils Act Amendment Act, 1931.</i>
No. 2045 of 1931	<i>Municipal Corporations Act Amendment Act, 1931.</i>
No. 2098 of 1932	<i>Municipal Corporations Act, 1932.</i>
No. 2099 of 1932	<i>Gas and Electric Lighting Act, 1932.</i>
No. 2105 of 1932	<i>District Councils Act Amendment Act, 1932.</i>

The *Local Government Act Amendment Act (No. 2), 1975*, repealed the following Acts:

*Garden Suburb Act, 1919-1973*

*Garden Suburb Act, 1919*

*Garden Suburb Act Amendment Act, 1921*

*Garden Suburb Act, 1925*

So much of the second schedule to the *Statute Law Revision Act, 1936*, as relates to the *Garden Suburb Act, 1919-1925*

*Garden Suburb Act Amendment Act, 1960*

So much of the second schedule to the *Statute Law Revision Act, 1973*, as relates to the *Garden Suburb Act, 1919-1960*, or the *Garden Suburb Act Amendment Act, 1960*

The *Local Government Act Amendment Act (No. 2), 1977*, expired before being brought into operation

The *Local Government Act Amendment Act, 1982*, repealed the *Levi Park Act, 1948-1976*

The *Local Government Act Amendment Act, 1983*, amended the *Valuation of Land Act, 1971*

The *Local Government Act Amendment Act, 1988*, amended the *Rates and Land Tax Remission Act, 1986*

The *Statutes Amendment (Local Government) Act, 1988*, amended the *Local Government Act Amendment Act, 1988*

#### **Transitional Provisions**

*(Transitional provision from the Local Government Act Amendment Act 1988, s. 53)*

53. (1) The amendments made to the principal Act by this Act do not affect—

- (a) a memorial received by a council before the commencement of this Act or the declaration, operation or recovery of any rate in pursuance of such a memorial;
- (b) any inquiry instituted before the commencement of this Act into the disposal of land held by the council in trust for a charitable purpose and the steps that can be taken as a result of the inquiry;
- (c) any approval obtained by a council from the South Australian Planning Commission to undertake a scheme for the development of land or from the Minister to acquire land for the purposes of the scheme;
- (d) the planning and execution of any scheme for carrying out an activity for the benefit of an area where the council has before the commencement of this Act given notice of the scheme in accordance with the principal Act;
- (e) any scheme submitted to the Minister before the commencement of this Act;
- (f) the power of a council to redeem debentures issued before the commencement of this Act,

and the principal Act will continue to apply in relation to those matters as if it had not been amended by this Act.

(2) Where a council had before the commencement of this Act obtained approval to provide any of the following services—

- (a) septic tank effluent disposal;
- (b) any other service approved by the Minister for the purposes of this provision,

the council may, after the commencement of this Act, impose in respect of that service a service rate or service charge on land in accordance with Part X of the principal Act (as amended by this Act), notwithstanding that the approval obtained by the council provided for the imposition of a separate rate.

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(3) A remission or postponement of rates granted by a council before the commencement of this Act will continue as a remission or postponement of rates under the principal Act as amended by this Act.

(4) A controlling body established under section 666c of the principal Act before the commencement of this Act will be regarded as a controlling authority established under section 199 of the principal Act as amended by this Act.

(5) A controlling authority incorporated under Part XIX of the principal Act before the commencement of this Act will be regarded as a controlling authority established under section 200 of the principal Act as amended by this Act.

(6) The Minister may, on application by a council, in respect of the financial year 1988/1989, permit the council to send accounts for the payment of rates to the occupiers of ratable land within its area (and not necessarily to principal ratepayers).

*(Transitional provisions from the Local Government (Reform) Amendment Act 1992, s. 28)*

28. (1) Subject to subsection (2), no proposal may be referred to the Commission after the proclaimed day.

(2) Subsection (1) does not apply to a proposal contained in a report of a council under section 28 of the principal Act (as in force immediately before the enactment of this Act) if the report is given to the Minister within one month after the proclaimed day.

(3) The following provisions apply in relation to proceedings before the Commission on 1 June 1992 that relate to the report of a council under section 28 of the principal Act (as in force immediately before the enactment of this Act):

(a) the proceedings may, according to the determination of the council—

(i) continue before the Commission;

or

(ii) be referred to the Electoral Commissioner,

(but if no determination is made by the council by 1 July 1992, the council will be taken to have determined that the proceedings continue before the Commission);

(b) if the council determines that the proceedings are to continue before the Commission—

(i) the costs of the proceedings from 1 July 1992 will be payable by the council (and any question as to the amount payable will be determined by the Under-Treasurer);

and

(ii) the proceedings may be dealt with by the Commission, and any consequential recommendation may be the subject of a proclamation by the Governor, as if this Act had not been enacted;

(c) if the council determines that the proceedings are to be referred to the Electoral Commissioner—

(i) the proceedings will be referred on 1 July 1992;

(ii) the matter may proceed as if it had been referred to the Electoral Commissioner under section 24 of the principal Act (as enacted by this Act);

and

- (iii) the Electoral Commissioner may give directions (which will have effect according to their terms) as to the procedures to be followed to determine the matter under section 24 (including directions varying a procedure prescribed by section 24).

(4) The following provisions apply in relation to proceedings before the Commission on 1 June 1992 (other than proceedings that are subject to the operation of subsection (3)):

- (a) the parties to the proceedings may agree that the proceedings—
  - (i) continue before the Commission;
  - (ii) be transferred to a panel constituted under section 18 of the principal Act (as enacted by this Act);

or

- (iii) lapse;

- (b) if the parties agree that the proceedings are to continue before the Commission—

- (i) the costs of the proceedings from 1 July 1992 will be payable by the council or councils to which those proceedings relate (and any dispute as to the amount payable by a particular council will be determined by the Under-Treasurer);

and

- (ii) the proceedings may be dealt with by the Commission, and any consequential recommendation may be the subject of a proclamation by the Governor, as if this Act had not been enacted;

- (c) if the parties agree that the proceedings be transferred to a panel constituted under section 18 of the principal Act (as enacted by this Act)—

- (i) the Local Government Association of South Australia will constitute a panel to deal with the matter as if a proposal had been referred to it under section 18 (as enacted by this Act);
- (ii) the Local Government Association of South Australia will determine who is to act as representatives of the parties to the proposal;
- (iii) any documents in the possession of the Commission relevant to the determination of the proposal must be transferred to the panel;

and

- (iv) the panel may give directions (which will have effect according to their terms) as to the procedures to be followed to determine the matter (including directions varying a procedure prescribed by sections 18, 19 or 20);

and

- (d) if no agreement is reached under paragraph (a) by 1 July 1992, the parties will be taken to have agreed that the proceedings be transferred to a panel under section 18 of the principal Act (as enacted by this Act).

(5) If a report of a council under section 28 of the principal Act (as in force immediately before the enactment of this Act) is given to the Minister more than one month after the proclaimed day—

- (a) the Minister will refer the report to the Electoral Commissioner;
- (b) from 1 July 1992 the matter may proceed as if it had been referred to the Electoral Commissioner under section 24 of the principal Act (as enacted by this Act);

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and

- (c) the Electoral Commissioner may give directions (which will have effect according to their terms) as to the procedures to be followed to determine the matter (including directions varying a procedure prescribed by section 24).

(6) Any recommendation of the Commission made before 1 July 1992 may be the subject of a proclamation by the Governor as if this Act had not been enacted.

(7) The Local Government Association of South Australia is not required to refer a proposal to a panel under section 18 of the principal Act (as enacted by this Act) if in its opinion a previous proposal of the same or a similar effect has been reported on by the Commission since 1 July 1989.

(8) In this section—

"the Commission" means the Local Government Advisory Commission:

"the proclaimed day" means a day declared by proclamation to be the proclaimed day for the purposes of this section.

*(Transitional provision from Local Government (City of Adelaide Wards) Amendment Act 1992, s. 3)*

3. The wards of the City of Adelaide in existence immediately before the repeal of section 850 of the principal Act will continue in existence after the enactment of this Act until such time as those wards may be altered or abolished pursuant to a proposal or recommendation under Part II of the principal Act (including a proposal or recommendation based on a review of the wards of the City of Adelaide carried out before the enactment of this Act).

*(Transitional provision from Statutes Repeal and Amendment (Development) Act 1993, s. 30)*

30. The amendment effected by section 9(e) of this Act does not apply to a project approved before the commencement of that section by the Minister responsible for the administration of the *Local Government Act 1934* under section 197 of that Act, or to a project for which planning consent under Part V of the *Planning Act 1982* was obtained before the commencement of that section.

*(Transitional provision from Local Government (Boundary Reform) Amendment Act 1995, s. 21)*

21. (1) A proposal for—

- (a) the amalgamation of two or more councils; or
- (b) the alteration of the boundaries of a council area,

initiated under Subdivision 1 of Division XI of Part II of the principal Act before the commencement of this Act and referred to the Local Government Association of South Australia for the constitution of a panel under that subdivision before 30 November 1995 may proceed under that Part (and be the subject of any appropriate proclamation) as if this Act had not been enacted.

(2) If—

(a) a council is participating in, or affected by—

- (i) a proposal for the amalgamation of two or more councils that is proceeding under subsection (1); or
- (ii) a proposal under consideration under Division X of Part II of the principal Act (as enacted by this Act); and

(b) the council would, apart from this subsection, be required to conduct a review under section 24 of the principal Act while the proposal is still under consideration,

the requirement to conduct the review is suspended until the consideration of the proposal is finalised.

(Transitional provision from Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996, s. 5)

5. An Act repealed or amended by this Act will continue to apply (as in force immediately prior to the repeal or amendment coming into operation) to an expiation notice issued under the repealed or amended Act.

### Legislative History

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 6 of The Public General Acts of South Australia 1837-1975 at page 191.
- Certain textual alterations were made to this Act by the Commissioner of Statute Revision when preparing the reprint of the Act that incorporated all amendments in force as at 1 March 1989. A schedule of these alterations was laid before Parliament on 14 February 1989.
- Legislative history since 3 February 1976 (**entries in bold type indicate amendments incorporated since the last reprint**) is as follows:

Section 2:	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as its function is now exhausted
Section 3:	amended by 12, 1976, s. 3; 77, 1976, s. 3; 32, 1978, s. 3; 33, 1978, s. 3; 17, 1980, s. 3; 29, 1981, s. 17(a); 27, 1983, s. 3; 104, 1983, s. 4; 34, 1984, s. 3; 58, 1984, s. 3; 13, 1985, s. 3; 78, 1986, (Sched. 5 s. 2); repealed by 33, 1988, s. 3
Section 4:	substituted by 58, 1984, s. 4; repealed by 33, 1988, s. 55 (Sched.)
Section 5(1):	amended by 33, 1988, s. 55 (Sched.) definition of "accounting records" inserted by 85, 1992, s. 3 definition of "alderman" inserted by 58, 1984, s. 5(a) definition of "area" substituted by 58, 1984, s. 5(b) definition of "assessment" substituted by 29, 1981, s. 16(a); repealed by 33, 1988, s. 4(a) definition of "assessment book" repealed by 33, 1988, s. 4(a) definition of "assessed value" substituted by 29, 1981, s. 16(b); repealed by 33, 1988, s. 4(a) definition of "authorized person" inserted by 58, 1984, s. 5(c) definition of "Board" inserted by 108, 1995, s. 3 definition of "business day" inserted by 43, 1992, s. 3 definition of "capital value" inserted by 29, 1981, s. 16(b) definition of "chairman" substituted by 58, 1984, s. 5(d) definition of "clerk" repealed and definition of "chief executive officer" inserted in its place by 58, 1984, s. 5(e); amended by 33, 1988, s. 55 (Sched.) definition of "the Commission" inserted by 12, 1976, s. 4(a); substituted by 58, 1984, s. 5(f); repealed by 29, 1992, s. 3(a) definition of "company" inserted by 33, 1988, s. 4(b) definition of "council" substituted by 58, 1984, s. 5(g) definition of "council committee" inserted by 58, 1984, s. 5(g) definition of "councillor" substituted by 58, 1984, s. 5(g) definition of "Crown lands" repealed by 33, 1988, s. 4(c) definition of "deputy returning officer" inserted by 88, 1980, s. 3(a); repealed by 58, 1984, s. 5(h) definition of "district" substituted by 58, 1984, s. 5(i) definition of "district clerk" repealed by 58, 1984, s. 5(i) definition of "district office" repealed by 58, 1984, s. 5(j) definition of "domestic premises" inserted by 33, 1988, s. 4(d) definition of "driver" inserted by 69, 1990, s. 3(a) definition of "elector" inserted by 77, 1976, s. 4; amended by 1, 1977, s. 3(a); substituted by 32, 1978, s. 4(a); 58, 1984, s. 5(k) definition of "the Electoral Commissioner" inserted by 77, 1976, s. 4



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definition of "electoral officer" inserted by 58, 1984, s. 5(l)  
definition of "engineer" inserted by 26, 1991, s. 3(a)  
definition of "equal employment opportunity programme" inserted by 26, 1991, s. 3(a)  
definition of "foreshore" substituted by 32, 1978, s. 4(b); 33, 1988, s. 55 (Sched.)  
definition of "general election" inserted by 99, 1988, s. 4(a)  
definition of "Government assessment" amended by 29, 1981, s. 16(c); substituted by 58, 1984, s. 5(m); repealed by 33, 1988, s. 4(e)  
definition of "Government assessment of annual value" repealed by 33, 1988, s. 4(e)  
definition of "Government assessment of capital value" inserted by 29, 1981, s. 16(d); repealed by 33, 1988, s. 4(e)  
definition of "Government assessment of land value" repealed by 33, 1988, s. 4(e)  
definition of "land" amended by 38, 1996, s. 12(a)  
definition of "land value" substituted by 29, 1981, s. 16(e); repealed by 33, 1988, s. 4(e)  
definition of "land" inserted by 33, 1988, s. 4(e)  
definition of "mayor" substituted by 58, 1984, s. 5(n)  
definition of "member" substituted by 58, 1984, s. 5(o)  
definition of "merit" inserted by 26, 1991, s. 3(b)  
definition of "metropolitan municipal council" and "metropolitan district council" repealed by 58, 1984, s. 5(p)  
definition of "metropolitan council" repealed by 58, 1984, s. 5(p)  
definition of "municipality" substituted by 58, 1984, s. 5(q)  
definition of "nominated agent" inserted by 32, 1978, s. 4(c); substituted by 58, 1984, s. 5(r)  
definition of "nomination day" or "day of nomination" amended by 33, 1988, s. 55 (Sched.)  
definition of "obstruction" inserted by 104, 1983, s. 5(a)  
definition of "occupier" substituted by 33, 1988, s. 55 (Sched.)  
definition of "office" substituted by 58, 1984, s. 5(s)  
definition of "officer" repealed by 58, 1984, s. 5(t)  
definition of "outlying district" repealed by 58, 1984, s. 5(u)  
definition of "owner" of land substituted by 33, 1988, s. 4(f)  
definition of "owner", in relation to a motor vehicle, inserted by 69, 1990, s. 3(b); amended by 65, 1996, Sched. cl. 1  
definition of "park lands" repealed and definition of "park land" inserted in its place by 33, 1988, s. 55 (Sched.)  
definition of "pave" repealed by 33, 1988, s. 55 (Sched.)  
definition of "periodical election" inserted by 58, 1984, s. 5(v)  
definition of "petrol pump" moved from s. 332(1) in pursuance of the *Acts Republication Act, 1967*  
definition of "presiding officer" inserted by 88, 1980, s. 3(b); substituted by 58, 1984, s. 5(v)  
definition of "prime bank rate" inserted by 33, 1988, s. 4(g); substituted by 17, 1994, Sched. 4 cl. 6  
definition of "principal office" inserted by 58, 1984, s. 5(v)  
definition of "project" inserted by 33, 1988, s. 4(h)  
definition of "public place" amended by 32, 1978, s. 4(d); 38, 1996, s. 12(b)  
definition of "ratable property" amended by 12, 1976, s. 4(b), (c); 32, 1978, s. 4(e); 34, 1984, s. 4; repealed and definition of "ratable land" or "ratable property" inserted in its place by 33, 1988, s. 4(i)  
definition of "refuse" inserted by 12, 1976, s. 4(d)  
definition of "returning officer" inserted by 32, 1978, s. 4(f); substituted by 88, 1980, s. 3(c); 58, 1984, s. 5(w)  
definition of "selection processes" inserted by 26, 1991, s. 3(c)  
definition of "site value" inserted by 33, 1988, s. 4(j)  
definition of "spouse" inserted by 58, 1984, s. 5(w)

	definition of "this Act" repealed by 33, 1988, s. 55 (Sched.)
	definition of "town clerk" repealed by 58, 1984, s. 5(x)
	definition of "town office" repealed by 58, 1984, s. 5(x)
	definition of "township" substituted by 33, 1988, s. 55 (Sched.)
	definition of "trustee investment" inserted by 33, 1988, s. 4(k)
	definition of "unalienated Crown land" inserted by 33, 1988, s. 4(k)
	definition of "urban farm land" substituted by 12, 1976, s. 4(e); repealed and definition of "valuation" inserted in its place by 33, 1988, s. 4(l)
	definition of "voters roll" inserted by 58, 1984, s. 5(y)
	definition of "watercourse" inserted by 104, 1983, s. 5(b)
Section 5(1a):	inserted by 13, 1985, s. 4
Section 5(1b):	inserted by 101, 1986, s. 3
Section 5(6):	repealed by 33, 1988, s. 55 (Sched.); inserted by 29, 1992, s. 3(b)
Section 5(7):	substituted by 58, 1984, s. 5(z); amended by 99, 1988, s. 4(b)
Section 5(8):	repealed by 29, 1981, s. 16(f); inserted by 57, 1981, s. 2; repealed by 33, 1988, s. 4(m)
Section 5(10):	inserted by 1, 1977, s. 3(b); repealed by 58, 1984, s. 5(za)
Section 5(11):	inserted by 88, 1980, s. 3(d); repealed by 58, 1984, s. 5(za)
Section 5A:	inserted by 108, 1995, s. 4
Section 6:	repealed by 58, 1984, s. 6
Section 6a:	inserted by 12, 1976, s. 5; repealed by 58, 1984, s. 6
	Part II comprising ss. 7 - 45a and headings amended by 12, 1976, ss. 6 - 8; 77, 1976, ss. 5 - 15; 1, 1977, ss. 4 - 6; 32, 1978, ss. 6 - 17; 88, 1980, s. 4; 29, 1981, s. 17(b), (c); 103, 1983, s. 3; 34, 1984, ss. 5 - 7; repealed and ss. 6 - 34 and headings inserted in its place by 58, 1984, s. 7
	Division I of Part II comprising s. 6 and heading amended by 99, 1988, s. 5; repealed and s. 6 and heading inserted in its place by 29, 1992, s. 4
Section 6(5):	inserted by 108, 1995, s. 5
	Division II of Part II comprising s. 7 and heading amended by 99, 1988, s. 6; repealed and s. 7 and heading inserted in its place by 29, 1992, s. 4
Section 7(6):	substituted by 108, 1995, s. 6(a)
Section 7(7):	amended by 108, 1995, s. 6(b)
Section 7(8):	amended by 108, 1995, s. 6(c)
	Division III of Part II comprising ss. 8 and 9 and heading repealed and s. 8 and heading inserted in its place by 29, 1992, s. 4
Section 8(2):	amended by 108, 1995, s. 7
Section 9(2):	substituted by 108, 1995, s. 8
Section 9(3):	inserted by 108, 1995, s. 8
	Division IV of Part II comprising s. 10 and heading repealed and s. 9 and heading inserted in its place by 29, 1992, s. 4
	Division V of Part II comprising s. 11 and heading amended by 33, 1988, s. 55 (Sched.); 99, 1988, s. 7; repealed and s. 10 and heading inserted in its place by 29, 1992, s. 4
	Division VI of Part II comprising s. 12 and heading amended by 33, 1988, s. 55 (Sched.); repealed and s. 11 and heading inserted in its place by 29, 1992, s. 4
Section 11(4) - (6):	inserted by 108, 1995, s. 9

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- Section 11(7) and (8): inserted by 58, 1996, s. 2
- Division VII of Part II comprising s. 13 and heading amended by 99, 1988, s. 8; repealed and s. 12 and heading inserted in its place by 29, 1992, s. 4
- Division VIII of Part II comprising s. 14 and heading repealed and s. 13 and heading inserted in its place by 29, 1992, s. 4
- Division IX of Part II comprising ss. 15 - 18 and heading amended by 99, 1988, s. 9; repealed and s. 14 and heading inserted in its place by 29, 1992, s. 4; 108, 1995, s. 10
- Division X of Part II comprising ss. 19 - 27 and headings amended by 33, 1988, s. 55 (Sched.); 99, 1988, ss. 10 - 12; repealed and s. 15 and heading inserted in its place by 29, 1992, s. 4; repealed and ss. 15 - 22G and headings inserted in its place by 108, 1995, s. 10
- Section 21(13): amended by 98, 1996, s. 3(a)
- Section 21(14): amended by 98, 1996, s. 3(b)
- Section 21(17) and (18): inserted by 66, 1997, s. 3
- Section 22E(2): amended by 66, 1997, s. 4
- Section 22G: amended by 66, 1997, s. 5
- Division XI of Part II comprising s. 28 and heading amended by 33, 1988, s. 55 (Sched.); 99, 1988, s. 13; repealed and ss. 16 - 28 and headings inserted in its place by 29, 1992, s. 4; redesignated to comprise ss. 23 - 26 by 108, 1995, s. 11
- Section 23(2): amended by 108, 1995, s. 12
- Section 24(6): amended by 108, 1995, s. 13
- Heading preceding section 25: substituted by 108, 1995, s. 14
- Subdivision 4 of Division XI of Part II comprising ss. 27, 28 and heading repealed by 108, 1995, s. 15
- Division XII of Part II comprising s. 29 and heading repealed and s. 29 and heading inserted in its place by 29, 1992, s. 4
- Section 29(1): amended by 108, 1995, s. 16
- Section 30(1) - (4) and (6): amended by 33, 1988, s. 55 (Sched.)
- Section 33(9): amended by 33, 1988, s. 55 (Sched.)
- Section 34(3): amended by 6, 1994, s. 3
- Section 34a: inserted by 12, 1986, s. 3; substituted by 6, 1994, s. 4
- Section 34(5): inserted by 66, 1997, s. 6
- Section 34a(9): inserted by 66, 1997, s. 7
- Part IIA comprising s. 45b and heading inserted by 32, 1978, s. 18; repealed by 58, 1984, s. 7
- Part III comprising ss. 46 - 73 and headings amended by 77, 1976, ss. 16 - 18; 1, 1977, s. 7; 32, 1978, ss. 19 - 21; 88, 1980, ss. 5, 6; 27, 1983, s. 4; repealed and ss. 35 - 42 and headings inserted in its place by 58, 1984, s. 7
- Section 35a: inserted by 26, 1991, s. 4
- Section 36(3): substituted by 33, 1988, s. 5
- Section 36(4): inserted by 33, 1988, s. 5
- Section 37(1): amended by 33, 1988, s. 6
- Section 37a: inserted by 33, 1988, s. 7
- Section 41(1): substituted by 54, 1993, s. 9(a)

Section 41(1a): inserted by 54, 1993, s. 9(a)  
Section 41(2): amended by 33, 1988, s. 8(a), (b); 85, 1992, s. 4  
Section 41(6): inserted by 33, 1988, s. 8(c)  
Section 41(7): inserted by 54, 1993, s. 9(b)

Division VII of Part III comprising s. 42a and heading inserted by 26, 1991, s. 5

Section 42a(1a): inserted by 31, 1991, s. 3  
Section 42a(1b): inserted by 108, 1995, s. 17

Part IV comprising ss. 74 - 82 and heading amended by 77, 1976, ss. 19, 20; 88, 1980, ss. 7, 8; repealed and ss. 43 - 57 and headings inserted in its place by 58, 1984, s. 7

Section 43(1a): inserted by 29, 1992, s. 5  
Section 43(2): amended by 33, 1988, s. 55 (Sched.)  
Section 43(3): amended by 33, 1988, s. 55 (Sched.); 14, 1997, s. 2(a)  
Section 43(5): amended by 33, 1988, s. 55 (Sched.); 14, 1997, s. 2(b)  
Section 43(8): amended by 33, 1988, s. 55 (Sched.)  
Section 46(1): redesignated as s. 46 in pursuance of the *Acts Republication Act, 1967*  
Section 46(2): repealed by 99, 1988, s. 14  
Section 47(1): amended by 33, 1988, s. 55 (Sched.); 99, 1988, s. 15  
Section 47(2): amended by 12, 1986, s. 4; 29, 1992, s. 6  
Section 48: amended by 13, 1985, s. 5; 12, 1986, s. 5; substituted by 101, 1986, s. 4  
Section 49(1): amended by 33, 1988, s. 55 (Sched.)  
Section 49(2) and (3): substituted by 99, 1988, s. 16  
Section 49(4): amended by 33, 1988, s. 55 (Sched.)  
Section 49(5): substituted by 12, 1986, s. 6; amended by 101, 1986, s. 5  
Section 49(6): substituted by 33, 1988, s. 55 (Sched.)  
Section 49a: inserted by 69, 1990, s. 4  
Section 50: substituted by 13, 1985, s. 6  
Section 52: substituted by 33, 1988, s. 55 (Sched.)  
Section 53(1): amended by 33, 1988, s. 55 (Sched.)  
Section 53(3) and (4): substituted by 33, 1988, s. 55 (Sched.)  
Section 54(1) and (3): amended by 33, 1988, s. 55 (Sched.)  
Section 54(4): amended by 12, 1986, s. 7; 33, 1988, s. 55 (Sched.)  
Section 54(5): substituted by 33, 1988, s. 55 (Sched.)  
Section 54(7): amended by 33, 1988, s. 55 (Sched.)  
Section 55: substituted by 33, 1988, s. 55 (Sched.); repealed by 35, 1992, s. 17  
Section 56: repealed by 35, 1992, s. 17  
Section 57(1): amended by 33, 1988, s. 55 (Sched.)  
Section 57a: inserted by 33, 1988, s. 9

Part V comprising ss. 83 - 87 and heading amended by 32, 1978, ss. 22, 91 (Sched.); 88, 1980, ss. 9 - 11; repealed and ss. 58 - 65 and headings inserted in its place by 58, 1985, s. 7

Section 58(3): amended by 13, 1985, s. 7(a)  
Section 58(5): amended by 99, 1988, s. 17  
Section 58(5a): inserted by 13, 1985, s. 7(b)  
Section 58(11a) and (11b): inserted by 98, 1996, s. 4  
Section 58(12): inserted by 13, 1985, s. 7(c)  
Section 60(2): amended by 33, 1988, s. 55 (Sched.)  
Section 60(2a): inserted by 101, 1986, s. 6; amended by 98, 1996, s. 5(a), (b)  
Section 60(2a)(b): repealed by 98, 1996, s. 5(a)  
Section 60(3): substituted by 66, 1993, s. 3  
Section 60(5) and (6): amended by 33, 1988, s. 55 (Sched.)  
Section 61(1): amended by 13, 1985, s. 8(a)  
Section 61(1a) and (1b): inserted by 13, 1985, s. 8(b)  
Section 61(2): amended by 13, 1985, s. 8(c)

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Section 61(3):	amended by 99, 1988, s. 18
Section 61(4) - (10):	inserted by 13, 1985, s. 8(d)
Section 61(11) and (12):	inserted by 98, 1996, s. 6
Section 62(2):	substituted by 98, 1996, s. 7
Section 62(2a):	inserted by 98, 1996, s. 7
Section 62(3):	substituted by 33, 1988, s. 55 (Sched.)
Section 63(5):	amended by 33, 1988, s. 55 (Sched.)
Section 63(6):	amended by 33, 1988, s. 55 (Sched.)
Section 63(8):	substituted by 12, 1986, s. 8
Section 64(1a):	inserted by 13, 1985, s. 9(a)
Section 64(2):	amended by 13, 1985, s. 9(b); 33, 1988, s. 55 (Sched.)
Section 64(6):	amended by 98, 1996, s. 8(a)
Section 64(7):	substituted by 98, 1996, s. 8(b)
Section 64(7a):	inserted by 98, 1996, s. 8(b)
Sections 65AAA and 65AAB:	inserted by 98, 1996, s. 9
	Part VA comprising ss. 65a - 65zzc and headings inserted by 31, 1991, s. 4
Section 65a(1):	definition of "State Records" substituted by 8, 1997, Sched. cl. 3(a)
Section 65b:	amended by 8, 1997, Sched. cl. 3(b)
Section 65d:	repealed by 98, 1996, s. 10
Section 65t:	redesignated as s. 65t(1) by 98, 1996, s. 11
Section 65t(2):	inserted by 98, 1996, s. 11
Section 65zb(2):	amended by 8, 1997, Sched. cl. 3(c)
Section 65zb(3) and (4):	repealed by 98, 1996, s. 12
Section 65zd(2):	amended by 8, 1997, Sched. cl. 3(d)
Section 65zd(2a):	inserted by 8, 1997, Sched. cl. 3(e)
Section 65zd(3):	amended by 8, 1997, Sched. cl. 3(f)
Section 65zd(4):	amended by 8, 1997, Sched. cl. 3(g)
Section 65zq(1):	amended by 98, 1996, s. 13
	Part VI comprising ss. 88 - 101 and headings amended by 77, 1976, ss. 21, 22; 1, 1977, ss. 8 - 10; repealed and ss. 88 - 95 and heading inserted in its place by 32, 1978, s. 23; amended by 61, 1981, s. 2; repealed and ss. 66 - 84 and headings inserted in its place by 58, 1984, s. 7
Heading preceding section 66:	substituted by 26, 1991, s. 6
Section 66(1):	substituted by 26, 1991, s. 7(a)
Section 66(4):	substituted by 13, 1985, s. 10; amended by 33, 1988, s. 55 (Sched.)
Section 66(5):	amended by 33, 1988, s. 55 (Sched.); repealed by 26, 1991, s. 7(b)
Section 66(5a):	inserted by 12, 1986, s. 9(a); repealed by 26, 1991, s. 7(b)
Section 66(6):	amended by 12, 1986, s. 9(b); substituted by 33, 1988, s. 55 (Sched.); repealed by 26, 1991, s. 7(b)
Section 66(9):	amended by 33, 1988, s. 55 (Sched.)
Section 67:	amended by 33, 1988, s. 55 (Sched.); substituted by 26, 1991, s. 8
Section 68:	substituted by 26, 1991, s. 8
	Division II of Part VI comprising ss. 68, 68a and 69 and heading amended by 13, 1985, s. 11; 12, 1986, s. 10; 99, 1988, s. 19; repealed and s. 69 and heading inserted in its place by 26, 1991, s. 8
	Division IIA of Part VI comprising s. 69a and heading inserted by 26, 1991, s. 8
	Division IIB of Part VI comprising ss. 69b - 69e and heading inserted by 26, 1991, s. 8
Section 69b(6):	amended by 6, 1994, s. 5
Section 69c(2):	amended by 6, 1994, s. 6

Section 69e(3):	amended by 6, 1994, s. 7
Section 70a:	inserted by 69, 1990, s. 5
Section 70b:	inserted by 29, 1992, s. 7
Section 71(2):	amended by 33, 1988, s. 55 (Sched.)
Section 72(1):	amended by 33, 1988, s. 55 (Sched.)
Section 73(1) and (2):	substituted by 29, 1992, s. 8
Section 73(3):	repealed by 29, 1992, s. 8; inserted by 98, 1996, s. 14
Section 73(4):	repealed by 29, 1992, s. 8; inserted by 98, 1996, s. 14; amended by 66, 1997, s. 8
Section 73(4a) and (4b):	inserted by 98, 1996, s. 14
Section 73(6):	definition of "officer" or "employee" repealed by 43, 1992, s. 4
Section 74(3):	amended by 33, 1988, s. 55 (Sched.); substituted by 29, 1992, s. 9
Section 74(3a):	inserted by 29, 1992, s. 9
Section 75:	amended by 29, 1992, s. 10
Section 77(3):	amended by 33, 1988, s. 55 (Sched.)
Section 78(3):	amended by 33, 1988, s. 55 (Sched.)
Section 79:	substituted by 33, 1988, s. 55 (Sched.); repealed by 35, 1992, s. 17
Section 80(1) and (2):	substituted by 33, 1988, s. 55 (Sched.)
Section 80(3):	amended by 33, 1988, s. 55 (Sched.)
Section 80(5):	substituted by 29, 1992, s. 11
Section 80(6):	inserted by 29, 1992, s. 11; amended by 54, 1993, s. 9(c)
Section 81:	repealed by 35, 1992, s. 17
Section 81a:	inserted by 26, 1991, s. 9
Section 82(3) and (4):	amended by 33, 1988, s. 55 (Sched.)
Section 82(5):	substituted by 33, 1988, s. 55 (Sched.)
Section 83(1):	amended by 33, 1988, s. 55 (Sched.); 66, 1997, s. 9
Section 84(1) and (2):	amended by 33, 1988, s. 55 (Sched.)

Part VII comprising ss. 102 - 142a and heading amended by 12, 1976, s. 9; 77, 1976, ss. 23 - 30; 1, 1977, ss. 11 - 13; 32, 1978, ss. 24 - 28, 91 (Sched.); 70, 1978, ss. 2 - 4; 88, 1980, ss. 12 - 31; 61, 1981, s. 3; 27, 1983, s. 5; repealed and ss. 85 - 145 and headings inserted in its place by 58, 1984, s. 7

Section 85:	redesignated as s. 85(1) by 99, 1988, s. 20(d) definition of "declaration vote" substituted by 99, 1988, s. 20(a) definition of "polling booth" inserted by 99, 1988, s. 20(b) definition of "polling day" inserted by 99, 1988, s. 20(b) definition of "polling place" inserted by 99, 1988, s. 20(b) definition of "voting material" amended by 99, 1988, s. 20(c)
Section 85(2):	inserted by 99, 1988, s. 20(d); amended by 98, 1996, s. 15
Section 86(2):	substituted by 99, 1988, s. 21
Section 87(1):	amended by 33, 1988, s. 55 (Sched.)
Section 88(1) and (2):	amended by 33, 1988, s. 55 (Sched.)
Section 89:	amended by 33, 1988, s. 55 (Sched.); substituted by 99, 1988, s. 22
Section 89(1):	amended by 98, 1996, s. 16(a)
Section 89(4):	amended by 98, 1996, s. 16(b)
Section 89(11) and (12):	inserted by 98, 1996, s. 16(c)
Section 90:	amended by 33, 1988, s. 55 (Sched.)
Section 91:	substituted by 101, 1986, s. 7
Section 91(7) and (8):	inserted by 99, 1988, s. 23
Section 92(2):	amended by 12, 1986, s. 11(a); 33, 1988, s. 55 (Sched.); 99, 1988, s. 24(a)
Section 92(2a):	inserted by 12, 1986, s. 11(b)
Section 92(2b):	inserted by 99, 1988, s. 24(b)
Section 92(4):	substituted by 101, 1986, s. 8
Section 92(5):	substituted by 101, 1986, s. 8; amended by 99, 1988, s. 24(c), (d)
Section 92(8), (10) and (11):	amended by 33, 1988, s. 55 (Sched.)
Section 93(1):	substituted by 13, 1985, s. 12; amended by 33, 1988, s. 55 (Sched.)
Section 93(2) and (3):	amended by 33, 1988, s. 55 (Sched.)
Section 94(1):	amended by 101, 1986, s. 9(a); substituted by 98, 1996, s. 17(a)

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Section 94(1a):	inserted by 101, 1986, s. 9(b); amended by 99, 1988, s. 25(a); repealed by 29, 1992, s. 12; inserted by 14, 1997, s. 3
Section 94(1b):	inserted by 101, 1986, s. 9(b); substituted by 99, 1988, s. 25(b); repealed by 43, 1992, s. 5
Section 94(1c):	inserted by 101, 1986, s. 9(b); repealed by 43, 1992, s. 5
Section 94(2):	substituted by 99, 1988, s. 25(c)
Section 94(2a):	inserted by 99, 1988, s. 25(c)
Section 94(3):	substituted by 101, 1986, s. 9(c)
Section 94(4):	inserted by 101, 1986, s. 9(c); substituted by 99, 1988, s. 25(d)
Section 94(5) - (8):	inserted by 79, 1994, s. 2; repealed by 98, 1996, s. 17(b)
Section 95(1):	amended by 33, 1988, s. 55 (Sched.)
Section 95(2):	substituted by 33, 1988, s. 55 (Sched.)
Section 95(3) and (4):	amended by 33, 1988, s. 55 (Sched.)
Section 96(2):	substituted by 33, 1988, s. 55 (Sched.)
Section 96(5):	substituted by 101, 1986, s. 10(a); amended by 99, 1988, s. 26(a)
Section 96(6):	substituted by 101, 1986, s. 10(a); amended by 99, 1988, s. 26(b)
Section 96(7) and (10):	amended by 33, 1988, s. 55 (Sched.)
Section 96(13):	amended by 99, 1988, s. 26(c)
Section 96(14):	amended by 99, 1988, s. 26(d)
Section 96(15):	inserted by 101, 1986, s. 10(b)
Section 97:	substituted by 101, 1986, s. 11
Section 98(2):	substituted by 33, 1988, s. 55 (Sched.)
Section 99(7):	inserted by 101, 1986, s. 12; substituted by 69, 1990, s. 6
Section 100:	substituted by 101, 1986, s. 13
Section 100(3):	substituted by 99, 1988, s. 27
Section 101(1a):	inserted by 12, 1986, s. 12; substituted by 99, 1988, s. 28(a)
Section 101(2):	amended by 99, 1988, s. 28(b)
Section 104(1):	amended by 33, 1988, s. 55 (Sched.)
Headings preceding section 106:	substituted by 99, 1988, s. 29
Section 106(1):	substituted by 33, 1988, s. 55 (Sched.); 99, 1988, s. 30(a); amended by 98, 1996, s. 18(a)
Section 106(2):	amended by 99, 1988, s. 30(b)
Section 106(3):	amended by 101, 1986, s. 14(a); 33, 1988, s. 55 (Sched.); 99, 1988, s. 30(c); 98, 1996, s. 18(b)
Section 106(3a) and (3b):	inserted by 98, 1996, s. 18(c)
Section 106(4):	amended by 101, 1986, s. 14(b), (c); 99, 1988, s. 30(d)
Section 106(5):	amended by 13, 1985, s. 13
Section 106(6):	substituted by 99, 1988, s. 30(e); 69, 1990, s. 7(a)
Section 106(7):	amended by 101, 1986, s. 14(d); substituted by 99, 1988, s. 30(e); repealed by 69, 1990, s. 7(a)
Section 106(8):	amended by 33, 1988, s. 55 (Sched.); repealed by 99, 1988, s. 30(e)
Section 106(9):	inserted by 101, 1986, s. 14(e); amended by 99, 1988, s. 30(f)
Section 106(10):	inserted by 99, 1988, s. 30(g); amended by 69, 1990, s. 7(b)
Section 106a:	inserted by 101, 1986, s. 15
Section 106a(1):	substituted by 98, 1996, s. 19(a)
Section 106a(1a):	inserted by 98, 1996, s. 19(a)
Section 106a(2):	amended by 99, 1988, s. 31(a); 98, 1996, s. 19(b)
Section 106a(3):	amended by 99, 1988, s. 31(b), (c); 98, 1996, s. 19(c)-(e)
Section 106a(3a):	inserted by 99, 1988, s. 31(d); substituted by 98, 1996, s. 19(f)
Section 106a(3b):	inserted by 99, 1988, s. 31(d); amended by 98, 1996, s. 19(g)
Section 106a(4):	amended by 99, 1988, s. 31(e)
Section 106a(7):	repealed by 99, 1988, s. 31(f)
Section 106a(9):	substituted by 99, 1988, s. 31(g); 69, 1990, s. 8(a)
Section 106a(9a):	inserted by 99, 1988, s. 31(g); repealed by 69, 1990, s. 8(a)
Section 106a(9b):	inserted by 99, 1988, s. 31(g); amended by 69, 1990, s. 8(b)
Section 106a(10):	repealed by 98, 1996, s. 19(h)
Section 107:	amended by 101, 1986, s. 16; 33, 1988, s. 55 (Sched.); substituted by 99, 1988, s. 32
Section 107(1):	amended by 98, 1996, s. 20(a), (b)
Section 107(2):	substituted by 69, 1990, s. 9; amended by 98, 1996, s. 20(c)
Section 108:	amended by 33, 1988, s. 55 (Sched.); substituted by 99, 1988, s. 32

Section 109:	substituted by 101, 1986, s. 17
Section 110:	amended by 33, 1988, s. 55 (Sched.)
Section 111:	repealed by 101, 1986, s. 18
	Division VIII of Part VII comprising ss. 112 - 120 and heading amended by 101, 1986, s. 19; 33, 1988, s. 55 (Sched.); repealed and ss. 111 - 116 and headings inserted in its place by 99, 1988, s. 33
Section 111(5):	amended by 98, 1996, s. 21(a)
Section 111(5a):	inserted by 98, 1996, s. 21(b)
Section 111(8a):	inserted by 98, 1996, s. 21(c)
Section 114a:	inserted by 69, 1990, s. 10
Section 120:	inserted by 99, 1988, s. 34
Section 120(1):	amended by 98, 1996, s. 22(a)
Section 120(2):	amended by 98, 1996, s. 22(b)
Section 120(3):	amended by 98, 1996, s. 22(c)
Section 121(1):	amended by 101, 1986, s. 20(a); 33, 1988, s. 55 (Sched.); 99, 1988, s. 35(a)-(d)
Section 121(2):	amended by 33, 1988, s. 55 (Sched.); substituted by 99, 1988, s. 35(e)
Section 121(2a):	inserted by 101, 1986, s. 20(b); repealed by 99, 1988, s. 35(e)
Section 121(3) and (4):	amended by 33, 1988, s. 55 (Sched.)
Section 121(7):	amended by 101, 1986, s. 20(c)
Section 121(8):	amended by 101, 1986, s. 20(c); 33, 1988, s. 55 (Sched.); substituted by 99, 1988, s. 35(f)
Section 121(8a):	inserted by 101, 1986, s. 20(d)
Section 121(9):	amended by 33, 1988, s. 55 (Sched.); 99, 1988, s. 35(g)
Section 121(10):	amended by 33, 1988, s. 55 (Sched.)
Section 121(12):	amended by 99, 1988, s. 35(h)
Section 121a:	inserted by 99, 1988, s. 36
Section 122(2):	repealed by 13, 1985, s. 14(a)
Section 122(3):	amended by 13, 1985, s. 14(b); substituted by 101, 1986, s. 21; amended by 99, 1988, s. 37; 69, 1990, s. 11; 29, 1992, s. 13
Section 123(1):	amended by 33, 1988, s. 55 (Sched.); 99, 1988, s. 38(a)-(c)
Section 123(3):	substituted by 99, 1988, s. 38(d)
Section 123(4):	amended by 33, 1988, s. 55 (Sched.); repealed by 99, 1988, s. 38(d)
Section 123(6):	amended by 99, 1988, s. 38(e)
Section 123(7):	amended by 33, 1988, s. 55 (Sched.); substituted by 99, 1988, s. 38(f)
Section 123(8):	amended by 33, 1988, s. 55 (Sched.); 99, 1988, s. 38(g)
Section 123(9):	amended by 33, 1988, s. 55 (Sched.)
Section 123a:	inserted by 101, 1986, s. 22; substituted by 69, 1990, s. 12
Section 123b:	inserted by 69, 1990, s. 12
Section 124:	redesignated as s. 124(1) by 99, 1988, s. 39
Section 124(2):	inserted by 99, 1988, s. 39
Section 124a:	inserted by 99, 1988, s. 40
Section 126(1):	amended by 33, 1988, s. 55 (Sched.)
Section 127:	substituted by 99, 1988, s. 41
Section 128:	amended by 99, 1988, s. 42
Section 128a:	inserted by 69, 1990, s. 13
Section 129:	substituted by 99, 1988, s. 43
Section 130:	amended by 33, 1988, s. 55 (Sched.); 99, 1988, s. 44
Section 131:	substituted by 99, 1988, s. 45
Sections 131a and 131b:	inserted by 99, 1988, s. 45
Section 132(1):	amended by 33, 1988, s. 55 (Sched.); 98, 1996, s. 23
Section 132(2):	substituted by 33, 1988, s. 55 (Sched.)
Section 132a:	inserted by 99, 1988, s. 46; amended by 98, 1996, s. 24
Sections 132b and 132c:	inserted by 99, 1988, s. 46
Section 133(3):	inserted by 101, 1986, s. 23; amended by 99, 1988, s. 47
Section 133a:	inserted by 99, 1988, s. 48
Section 133b:	inserted by 69, 1990, s. 14
Section 136:	redesignated as s. 136(1) by 99, 1988, s. 49
Section 136(2):	inserted by 99, 1988, s. 49



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- Section 137(2): substituted by 69, 1990, s. 15(a)  
 Section 137(3): amended by 33, 1988, s. 55 (Sched.); 69, 1990, s. 15(b)  
 Section 137(4): amended by 69, 1990, s. 15(c)  
 Section 141(1): amended by 33, 1988, s. 55 (Sched.)  
 Section 141a: inserted by 101, 1986, s. 24  
 Section 144(1): amended by 101, 1986, s. 25  
 Section 144(1a): inserted by 69, 1990, s. 16(a)  
 Section 144(2): amended by 69, 1990, s. 16(b)
- Part VIIA comprising ss. 142aa - 142r and heading inserted by 32, 1978, s. 29; amended by 34, 1981, ss. 56 - 58; repealed by 58, 1984, s. 7
- Part VIII comprising ss. 143 - 156 and heading amended by 12, 1976, s. 10; 77, 1976, s. 31; 88, 1980, s. 32; 62, 1982, s. 3(7) (Sched. Pt. VII); repealed and ss. 146 - 151 and heading inserted in its place by 58, 1984, s. 7
- Section 146: definition of "financial benefit" amended by 33, 1988, s. 55 (Sched.)  
 Section 147(1): repealed by 33, 1988, s. 55 (Sched.)  
 Section 147(2): amended by 33, 1988, s. 55 (Sched.); redesignated as s. 147 in pursuance of the *Acts Republication Act, 1967*  
 Section 148: amended by 33, 1988, s. 55 (Sched.)  
 Section 149(1) - (3), (5) - (7): amended by 33, 1988, s. 55 (Sched.)  
 Section 150(1) and (2): amended by 33, 1988, s. 55 (Sched.)  
 Section 150(3): substituted by 13, 1985, s. 15; 12, 1986, s. 13  
 Section 150(4): substituted by 13, 1985, s. 15  
 Section 151(1): amended by 13, 1985, s. 16(a); 98, 1996, s. 25  
 Section 151(2): substituted by 13, 1985, s. 16(b); 33, 1988, s. 55 (Sched.)
- Part IX comprising ss. 157 - 163 and heading amended by 12, 1976, ss. 11, 12; 32, 1978, ss. 30, 91 (Sched.); 88, 1980, s. 33; 27, 1983, ss. 6, 7; 102, 1983, s. 2; 7, 1984, ss. 2, 3; repealed by 58, 1984, s. 7;  
 Part IX comprising ss. 152 - 166 and headings inserted by 33, 1988, s. 10
- Heading preceding section 158: substituted by 85, 1992, s. 5  
 Section 158(4) - (7): repealed by 85, 1992, s. 6
- Division V of Part IX comprising s. 159 and heading repealed and ss. 158a - 161 and heading inserted in its place by 85, 1992, s. 7
- Division VI of Part IX comprising ss. 160, 161 and heading repealed by 85, 1992, s. 7
- Section 162(3): substituted by 26, 1991, s. 10(a); amended by 85, 1992, s. 8(a)  
 Section 162(3a): inserted by 85, 1992, s. 8(b)  
 Section 162(7): amended by 26, 1991, s. 10(b)  
 Section 163(1): amended by 85, 1992, s. 9(a)  
 Section 163(3): substituted by 85, 1992, s. 9(b)  
 Section 164(2): amended by 85, 1992, s. 10  
 Section 166a: inserted by 43, 1992, s. 6
- Part IXA comprising ss. 163a - 163j and heading amended by 102, 1983, s. 3; repealed by 58, 1984, s. 7
- Part IXAA comprising ss. 163ja - 163jh and heading amended by 12, 1976, s. 14; 102, 1983, s. 4; repealed by 58, 1984, s. 7
- Part IXB comprising ss. 163k - 163nn and heading repealed by 12, 1976, s. 13

Part X comprising ss. 164 - 200 and headings amended by 12, 1976, ss. 15 - 17; 77, 1976, ss. 32 - 38; 32, 1978, ss. 31 - 34, 91 (Sched.); 88, 1980, ss. 34, 35; 29, 1981, s. 17(d)-(l); 57, 1981, s. 3; 27, 1983, ss. 8, 9; 58, 1984, ss. 8, 9, 47(c); repealed and ss. 167 - 194 and headings inserted in its place by 33, 1988, s. 10

Section 168(2): amended by 43, 1992, s. 7  
Section 168(4): amended by 38, 1996, s. 13(a)  
Section 168(4a) - (4d): inserted by 38, 1996, s. 13(b)  
Section 169(3): amended by 85, 1992, s. 11  
Section 171(3): amended by 85, 1992, s. 12  
Section 171(2): amended by 66, 1997, s. 10(a)  
Section 171(3): amended by 66, 1997, s. 10(b)  
Section 171(5): inserted by 66, 1997, s. 10(c)  
Section 172(2): amended by 66, 1997, s. 11(a)  
Section 172(3): amended by 66, 1997, s. 11(b)  
Section 173(1): amended by 66, 1997, s. 12(a)  
Section 173(9) - (11): amended by 66, 1997, s. 12(d)  
Section 174(1): amended by 85, 1992, s. 13  
Section 174A: inserted by 108, 1995, s. 18  
Section 174A(2): amended by 66, 1997, s. 13(a)  
Section 174A(2a) and (2b): inserted by 66, 1997, s. 13(b)  
Section 176(1): amended by 29, 1992, s. 14(a)  
Section 176(2): substituted by 29, 1992, s. 14(b); 108, 1995, s. 19  
Section 176(6): substituted by 43, 1992, s. 8  
Section 176(15): definition of "zone" substituted by 54, 1993, s. 9(d); amended by 53, 1995, s. 10  
Section 178(4): substituted by 99, 1988, s. 51(a)  
Section 178(4a): inserted by 99, 1988, s. 51(a)  
Section 182: amended and redesignated as s. 182(1) by 38, 1996, s. 14  
Section 182(2): inserted by 38, 1996, s. 14(b)  
Section 183(2): substituted by 43, 1992, s. 9(a)  
Section 183(4a) - (4c): inserted by 43, 1992, s. 9(b)  
Section 184(7a): inserted by 99, 1988, s. 51(b)  
Section 184(12): substituted by 29, 1992, s. 15  
Section 187(10): amended by 39, 1994, Sched. 3  
Section 190(3): amended by 69, 1990, s. 17; 6, 1994, s. 8(a)  
Section 190(3a) and (3b): inserted by 6, 1994, s. 8(b)  
Section 191(2): amended by 43, 1992, s. 10(a)  
Section 191(3) and (4): substituted by 43, 1992, s. 10(b)  
Section 191(5): amended by 43, 1992, s. 10(c)  
Section 191(6): inserted by 43, 1992, s. 10(d)  
Section 192(1): substituted by 43, 1992, s. 11  
Section 193(6) and (7): inserted by 98, 1996, s. 26  
Section 194(3): amended by 29, 1992, s. 16  
Section 194a: inserted by 43, 1992, s. 12

Part XI comprising ss. 201 - 213a and headings amended by 12, 1976, ss. 18, 19; 29, 1981, s. 17(m); 27, 1983, s. 10; 58, 1984, ss. 10, 47(c); 88, 1984, s. 8(2) (Sched. Pt. II); 13, 1985, s. 17; repealed and s. 195 and heading inserted in its place by 33, 1988, s. 10

Section 195(1): amended by 29, 1992, s. 17(a)  
Section 195(8): inserted by 29, 1992, s. 17(b)

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Part XII comprising ss. 214 - 248c and headings amended by 12, 1976, ss. 20 - 34; 77, 1976, ss. 39 - 46; 55, 1977, ss. 11, 12; 32, 1978, s. 35; 70, 1978, ss. 5, 6; 88, 1980, ss. 36 - 38; 29, 1981, s. 17(n)-(q); 62, 1982, s. 3(7) (Sched. Pt. VIII); 27, 1983, ss. 11 - 14; 34, 1984, ss. 8, 9; 58, 1984, ss. 11, 47(c); 13, 1985, s. 18; 78, 1986, (Sched. 5 s. 2); repealed and ss. 196 - 198 and heading inserted in its place by 33, 1988, s. 10

Heading preceding section 196: substituted by 43, 1992, s. 13  
 Section 196(5) - (7): inserted by 54, 1993, s. 9(e)  
 Section 197(1): amended by 85, 1992, s. 14  
 Section 197(3)(i): repealed by 43, 1992, s. 14(a)  
 Section 197(3a) - (3c): inserted by 43, 1992, s. 14(b)  
 Section 197(5)(c): repealed by 43, 1992, s. 14(c)  
 Section 197(6) - (8): repealed by 43, 1992, s. 14(d)

Part XIII comprising ss. 249 - 267b and headings amended by 12, 1976, ss. 35 - 41; 32, 1978, ss. 36 - 40, 91 (Sched.); 29, 1981, s. 17(r), (s); 58, 1984, s. 47(c); repealed and ss. 199, 200 and heading inserted in its place by 33, 1988, s. 10

Section 199(10) and (11): inserted by 43, 1992, s. 15  
 Section 200(1): amended by 43, 1992, s. 16(a)  
 Section 200(4): substituted by 99, 1988, s. 51(c)  
 Section 200(5): amended by 99, 1988, s. 51(d), (e)  
 Section 200(16a) and (16b): inserted by 43, 1992, s. 16(b)  
 Section 200(18) and (19): inserted by 43, 1992, s. 16(c)  
 Section 201: inserted by 66, 1997, s. 14

Part XIV comprising ss. 268 - 283 and heading amended by 12, 1976, ss. 42 - 44; 58, 1984, ss. 12, 47(c); repealed by 33, 1988, s. 10

Part XV comprising ss. 284 - 298b and heading amended by 12, 1976, ss. 45 - 48; 77, 1976, s. 47; 32, 1978, ss. 41, 42; 88, 1980, s. 39; 34, 1984, ss. 10, 11; 58, 1984, ss. 13 - 17, 47(c); 13, 1985, ss. 19, 20; 12, 1986, ss. 14 - 16; repealed by 33, 1988, s. 10

Sections 299 and 300: repealed by 34, 1984, s. 12  
 Section 300a(2a): deleted in pursuance of the *Acts Republication Act, 1967*, as it is now obsolete  
 Section 300a(3): repealed by 34, 1984, s. 13  
 Section 301(1): amended by 62, 1982, s. 3(7) (Sched. Pt. VII); 80, 1986, s. 2  
 Section 303(1): amended by 101, 1986, s. 26  
 Section 304(1): amended by 58, 1984, s. 47(c)  
 Section 305(2a): inserted by 12, 1986, s. 17  
 Section 305(3): amended by 9, 1990, s. 42 (Sched.)  
 Section 307: amended by 62, 1982, s. 3(7) (Sched. Pt. VII)  
 Section 311(2): amended by 58, 1984, s. 47(c)  
 Section 312(3): amended by 77, 1976, s. 48  
 Section 313(1): amended by 58, 1984, s. 47(c)  
 Section 313(2): amended by 77, 1976, s. 49; 58, 1984, s. 47(c); 33, 1988, s. 11  
 Section 313a: repealed by 34, 1984, s. 14  
 Section 319(2): amended by 38, 1996, s. 15  
 Section 319(3): substituted by 32, 1978, s. 43(a)  
 Section 319(3a) - (3f): inserted by 32, 1978, s. 43(a)  
 Section 319(5): amended by 32, 1978, s. 43(b), (c)  
 Section 319(6): amended by 58, 1984, s. 47(c)  
 Section 319(10a): inserted by 32, 1978, s. 43(d)  
 Section 319(11): amended by 12, 1976, s. 49; 32, 1978, s. 43(e)  
 Section 319a: deleted in pursuance of the *Acts Republication Act, 1967*, as its function is now exhausted

Section 322:	amended by 13, 1985, s. 21
Section 324:	amended by 32, 1978, s. 91 (Sched.); 13, 1985, s. 22
Section 325(2):	amended by 58, 1984, s. 18
Section 325(4):	amended by 32, 1978, s. 91 (Sched.)
Section 328(2):	amended by 12, 1976, s. 50; 32, 1978, s. 44(a); 38, 1996, s. 16
Section 328(3):	substituted by 32, 1978, s. 44(b)
Section 328(3a) - (3g):	inserted by 32, 1978, s. 44(b)
Section 328(4):	amended by 32, 1978, s. 44(c)
Section 328(5):	amended by 58, 1984, s. 47(c)
Section 328(9):	inserted by 32, 1978, s. 44(d)
Section 330(3):	amended by 32, 1978, s. 45(a)
Section 330(4) - (8):	inserted by 32, 1978, s. 45(b)
Section 331:	amended by 32, 1978, s. 91 (Sched.); 13, 1985, s. 23
Section 332(1):	amended by 34, 1984, s. 15
Section 333(2):	amended by 32, 1978, s. 91 (Sched.)
Section 334:	amended by 32, 1978, s. 91 (Sched.)
Section 336:	amended by 13, 1985, s. 24
Section 337(4):	amended by 13, 1985, s. 25
Section 338(2):	amended by 32, 1978, s. 91 (Sched.)
Section 338(4):	amended by 30, 1994, Sched. 4 cl. 2(a)(i); 96, 1996, Sched. 1 cl. 2(a)
Section 338(4)(c):	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as it is now obsolete
Section 339(2):	amended by 32, 1978, s. 91 (Sched.)
Section 339(5):	amended by 30, 1994, Sched. 4 cl. 2(a)(ii); 96, 1996, Sched. 1 cl. 2(b)
Section 339(5)(c):	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as it is now obsolete
Section 342(8):	amended by 58, 1984, s. 47(c)
Section 342(10):	substituted by 32, 1978, s. 46; 27, 1983, s. 15(a)
Section 342(10a):	inserted by 32, 1978, s. 46; amended by 27, 1983, s. 15(b)
Section 342(10b):	inserted by 32, 1978, s. 46
Section 342(10ba):	inserted by 27, 1983, s. 15(c)
Section 342(10c):	inserted by 32, 1978, s. 46
Section 342(12a):	amended by 38, 1996, s. 17
Section 343(5):	substituted by 32, 1978, s. 47; 27, 1983, s. 16(a)
Section 343(5a):	inserted by 32, 1978, s. 47; amended by 27, 1983, s. 16(b)
Section 343(5b):	inserted by 32, 1978, s. 47
Section 343(5ba):	inserted by 27, 1983, s. 16(c)
Section 343(5c):	inserted by 32, 1978, s. 47
Section 343(6):	amended by 58, 1984, s. 47(c)
Section 343(7a):	amended by 38, 1996, s. 18
Section 344(6):	inserted by 27, 1983, s. 17
Section 344a(3):	substituted by 32, 1978, s. 48; 27, 1983, s. 18(a)
Section 344a(3a):	inserted by 32, 1978, s. 48; amended by 27, 1983, s. 18(b)
Section 344a(3b):	inserted by 32, 1978, s. 48
Section 344a(3ba):	inserted by 27, 1983, s. 18(c)
Section 344a(3c):	inserted by 32, 1978, s. 48
Section 344a(4):	amended by 58, 1984, s. 47(c)
Section 344a(5a):	amended by 38, 1996, s. 19
Section 344b:	inserted by 88, 1980, s. 40
Section 345(4):	amended by 38, 1996, s. 20
Section 347(1a):	inserted in pursuance of the <i>Acts Republication Act, 1967</i>
Section 348(3a):	amended by 38, 1996, s. 21

Division XIII of Part XVII comprising s. 352 and heading repealed by 12, 1986, s. 18

Heading preceding section 353:	repealed by 32, 1978, s. 49
Section 355b(3):	amended by 32, 1978, s. 91 (Sched.)
Section 358(1):	amended by 12, 1986, s. 19(a)
Section 358(1a):	repealed by 12, 1986, s. 19(b)
Section 358(2):	amended by 32, 1978, s. 91 (Sched.); 13, 1985, s. 26(a); 43, 1992, s. 17

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Section 358(3):	inserted by 13, 1985, s. 26(b)
Section 359:	repealed by 34, 1984, s. 16; inserted by 12, 1986, s. 20
Section 359(1):	amended by 101, 1986, s. 27
Section 362:	amended by 32, 1978, s. 50
Section 363:	amended by 13, 1985, s. 27
Section 363a(1):	amended by 96, 1996, Sched. 1 cl. 2(c), (d)
Section 363a(2):	amended by 96, 1996, Sched. 1 cl. 2(e)
Section 364:	substituted by 12, 1976, s. 51
Section 364(1):	amended by 29, 1992, s. 18(a)
Section 364(2):	repealed by 29, 1992, s. 18(b)
Section 365(1):	substituted by 12, 1976, s. 52(a); amended by 29, 1992, s. 19(a)
Section 365(2):	amended by 29, 1992, s. 19(b)
Section 365(2a):	inserted by 12, 1987, s. 52(b)
Section 365(6):	amended by 29, 1992, s. 19(c)
Section 365(7):	substituted by 12, 1976, s. 52(c)
Section 365b:	amended by 12, 1976, s. 53; substituted by 12, 1986, s. 21
Section 366(1):	amended by 29, 1992, s. 20
Section 366aa:	amended by 96, 1996, Sched. 1 cl. 2(f)
Section 367(2):	amended by 13, 1985, s. 28
Section 367(4):	amended by 32, 1978, s. 91 (Sched.)
Section 368(1):	amended by 27, 1983, s. 19
Section 368(2):	amended by 32, 1978, s. 91 (Sched.)
Section 369:	amended by 32, 1978, s. 91 (Sched.)
Section 370:	repealed by 33, 1978, s. 4; inserted by 43, 1992, s. 18
Heading preceding section 371:	repealed by 32, 1978, s. 51
Section 371(1):	amended by 34, 1984, s. 17
Section 371(2):	amended by 32, 1978, s. 91 (Sched.)
Heading preceding section 373:	repealed by 32, 1978, s. 52
Section 373:	amended by 12, 1976, s. 54; 32, 1978, s. 91 (Sched.); repealed by 33, 1978, s. 4
Heading preceding section 374:	repealed by 32, 1978, s. 53
Section 375(1):	amended by 32, 1978, s. 54
Section 375(1a):	inserted in pursuance of the <i>Acts Republication Act, 1967</i> ; repealed by 29, 1992, s. 21(a)
Section 375(3a) and (3b):	inserted by 29, 1992, s. 21(b)
Section 375(5):	amended by 32, 1978, s. 91 (Sched.)
Section 376(3):	amended by 32, 1978, s. 91 (Sched.)
	Part XVIII comprising ss. 377 - 383 and headings amended by 12, 1976, s. 55; 88, 1980, s. 41; 62, 1982, s. 3(7) (Sched. Pt. VII); 58, 1984, ss. 19, 47(c); 12, 1986, s. 22; repealed by 33, 1988, s. 12
	Part XVIII A comprising s. 383a and heading inserted by 12, 1986, s. 23; repealed by 33, 1988, s. 12
	Part XIX comprising ss. 384 - 406a and heading amended by 32, 1978, ss. 55, 91 (Sched.); 70, 1978, ss. 7 - 12; 13, 1985, ss. 29, 30; repealed by 33, 1988, s. 12
	Part XX comprising ss. 407 - 422 and heading amended by 32, 1978, s. 56; 58, 1984, s. 47(c); repealed by 33, 1988, s. 12
	Part XXI comprising ss. 424 - 449d and heading amended by 12, 1976, ss. 56 - 59; 77, 1976, ss. 50 - 57; 86, 1976, s. 2; 32, 1978, ss. 57 - 63; 88, 1980, s. 42; 103, 1983, ss. 4 - 8; 58, 1984, ss. 20, 47(c); 12, 1986, s. 24; repealed by 33, 1988, s. 12
Section 454(2):	amended by 32, 1978, s. 64
Section 456(2):	amended by 32, 1978, s. 91 (Sched.)
Section 457(1):	amended by 32, 1978, s. 65(a), (b)

Section 457(4):	amended by 77, 1976, s. 58; 1, 1977, s. 14; 32, 1978, s. 65(c); 58, 1984, s. 21(a), (b)
Section 457(5):	repealed by 58, 1984, s. 21(c)
Section 458(3):	amended by 32, 1978, s. 91 (Sched.)
Section 459(1):	amended by 58, 1984, s. 22(a)
Section 459(3)	amended by 77, 1976, s. 59; substituted by 58, 1984, s. 22(b)
Section 459(4):	repealed by 58, 1984, s. 22(b)
Section 468(2):	amended by 88, 1980, s. 43(a)
Section 468(3):	substituted by 88, 1980, s. 43(b)
Section 469:	amended by 88, 1980, s. 44
Section 470(4):	amended by 32, 1978, s. 91 (Sched.)
Section 472(2):	substituted by 9, 1990, s. 42 (Sched.)
Section 474a:	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as it is now obsolete
Section 475(1):	amended by 96, 1996, Sched. 1 cl. 2(g)
	Part XXIIA comprising ss. 475a - 475g and heading amended by 12, 1976, s. 60; 32, 1978, s. 91 (Sched.); repealed and ss. 475a - 475h and heading inserted in its place by 33, 1978, s. 5
Section 475a(2):	amended by 50, 1979, s. 3; 89, 1980, s. 3; 58, 1984, s. 47(c); 12, 1986, s. 25; 69, 1990, s. 18
Section 475b(1):	amended by 89, 1980, s. 4
Section 475c:	amended by 50, 1979, s. 4; 89, 1980, s. 5
Section 475d:	repealed by 69, 1990, s. 19
Section 475e(1):	amended by 50, 1979, s. 5(a); 43, 1992, s. 19(b)
Section 475e(1)(a):	repealed by 43, 1992, s. 19(a)
Section 475e(1)(b) and (c):	repealed by 69, 1990, s. 20
Section 475e(2):	substituted by 50, 1979, s. 5(b)
Section 475e(3):	amended by 89, 1980, s. 6(a); 58, 1984, s. 47(c)
Section 475e(4):	amended by 50, 1979, s. 5(c), (d); 89, 1980, s. 6(b)
Section 475i:	inserted by 50, 1979, s. 6 definition of "owner" inserted by 89, 1980, s. 7(a); amended by 12, 1986, s. 26; repealed by 69, 1990, s. 21 definition of "public place" amended by 89, 1980, s. 7(b) definition of "registered owner" inserted by 89, 1980, s. 7(c); repealed by 69, 1990, s. 21
Section 476:	amended by 109, 1978, s. 37(1)(a); repealed by 33, 1988, s. 13
Section 477(1):	amended by 34, 1984, s. 18
Section 477(2):	amended by 32, 1978, s. 91 (Sched.)
Section 478:	amended by 34, 1984, s. 19; 33, 1988, s. 14
Section 480:	repealed by 109, 1978, s. 37(1)(b)
Section 481:	repealed by 12, 1986, s. 27
Subheading preceding section 482:	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as its function is now exhausted
Subheading preceding section 485:	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as its function is now exhausted
Section 485:	amended by 77, 1976, s. 60; repealed by 34, 1984, s. 20
Section 486:	repealed by 34, 1984, s. 20
Subheading preceding section 487:	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as its function is now exhausted
Section 487:	amended by 77, 1976, s. 61; repealed by 34, 1984, s. 20
Section 488:	repealed by 34, 1984, s. 20
Section 489:	substituted by 96, 1996, Sched. 1 cl. 2(h)
Section 495:	repealed by 96, 1996, Sched. 1 cl. 2(h)
Section 496:	redesignated as s. 496(1) in pursuance of the <i>Acts Republication Act, 1967</i> ; repealed by 96, 1996, Sched. 1 cl. 2(h)
Sections 497 - 499:	repealed by 96, 1996, Sched. 1 cl. 2(h)
Section 500:	amended by 88, 1980, s. 45; repealed by 96, 1996, Sched. 1 cl. 2(h)
Sections 501 and 502:	repealed by 96, 1996, Sched. 1 cl. 2(h)

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Section 503:	amended by 32, 1978, s. 91 (Sched.); repealed by 96, 1996, Sched. 1 cl. 2(h)
Section 504:	repealed by 96, 1996, Sched. 1 cl. 2(h)
Section 504a:	amended by 33, 1988, s. 15; repealed by 96, 1996, Sched. 1 cl. 2(h)
Sections 505 - 508:	repealed by 96, 1996, Sched. 1 cl. 2(h)
Sections 510 and 511:	repealed by 96, 1996, Sched. 1 cl. 2(h)
Section 512:	amended by 32, 1978, s. 91 (Sched.); repealed by 96, 1996, Sched. 1 cl. 2(h)
Section 513:	amended by 33, 1988, s. 16; repealed by 96, 1996, Sched. 1 cl. 2(h)
Section 514:	repealed by 33, 1988, s. 17
Section 514a:	repealed by 33, 1988, s. 18
Section 515:	repealed by 33, 1988, s. 19
Section 516:	repealed by 96, 1996, Sched. 1 cl. 2(h)
Section 517:	amended by 32, 1978, s. 91 (Sched.); repealed by 96, 1996, Sched. 1 cl. 2(h)
Section 518:	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as its function is now exhausted
Sections 519 and 520:	repealed by 96, 1996, Sched. 1 cl. 2(h)
Sections 521 and 522:	repealed by 12, 1986, s. 28
Sections 523 and 524:	amended by 32, 1978, s. 91 (Sched.); repealed by 12, 1986, s. 28
Sections 525 - 527:	repealed by 12, 1986, s. 28
Section 528(1b) and (2):	amended by 37, 1987, s. 32
Section 529(3):	amended by 37, 1987, s. 33
Section 530:	repealed by 33, 1988, s. 20
Section 530a:	amended by 37, 1987, s. 34
Section 530b:	amended by 37, 1987, s. 35
Section 530c:	amended by 12, 1976, s. 61; 32, 1978, s. 66; 70, 1978, s. 13; 103, 1983, s. 9; 13, 1985, s. 31; 37, 1987, s. 36; substituted by 33, 1988, s. 21
Section 530c(1):	substituted by 43, 1992, s. 20(a)
Section 530c(2):	repealed by 43, 1992, s. 20(a)
Section 530c(3):	amended by 43, 1992, s. 20(b)
Section 530c(5):	amended by 43, 1992, s. 20(c)
Section 530c(10) - (12):	inserted by 43, 1992, s. 20(d)
Sections 533 and 534:	repealed by 33, 1988, s. 22
Section 536(1) and (2):	amended by 32, 1978, s. 91 (Sched.)
Section 536a:	amended by 32, 1978, s. 67; repealed by 37, 1987, s. 37
Section 536b:	inserted by 88, 1980, s. 46; repealed by 37, 1987, s. 37
Section 537:	amended by 37, 1987, s. 38; repealed by 33, 1988, s. 23
Sections 538 - 540:	repealed by 37, 1987, s. 39
Section 540a(1):	amended by 32, 1978, s. 91 (Sched.)
Section 540a(4):	repealed by 37, 1987, s. 40
Section 541:	amended by 12, 1976, s. 62; 32, 1978, s. 91 (Sched.); repealed by 34, 1984, s. 21
Division II of Part XXVI comprising ss. 542 - 550c and heading amended by 12, 1976, ss. 63 - 65; 32, 1978, s. 91 (Sched.); 88, 1980, s. 47; 34, 1984, s. 22; repealed by 37, 1987, s. 41	
Part XXVII comprising ss. 551 - 555a and heading amended by 32, 1978, s. 91 (Sched.); repealed by 17, 1980, s. 4	
Part XXVIII comprising ss. 569 - 573 and heading repealed by 34, 1984, s. 23	
Part XXIX comprising ss. 574 - 584 and heading amended by 32, 1978, s. 91 (Sched.); repealed by 12, 1986, s. 29	
Section 586(4):	amended by 32, 1978, s. 91 (Sched.)
Section 593:	amended by 32, 1978, s. 91 (Sched.)
Section 595(1):	amended by 32, 1978, s. 91 (Sched.); 37, 1987, s. 42

Section 595(4):	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as it is now obsolete
Section 596:	amended by 37, 1987, s. 43
Section 598(3):	amended by 13, 1985, s. 32(a)
Section 598(4):	amended by 32, 1978, s. 91 (Sched.)
Section 598(5):	amended by 32, 1978, s. 91 (Sched.); 13, 1985, s. 32(b)
Section 599(1):	amended by 13, 1985, s. 33
Section 600(2):	amended by 32, 1978, s. 91 (Sched.)
Section 602(1):	amended by 32, 1978, ss. 68, 91 (Sched.); 13, 1985, s. 34; redesignated as s. 602 in pursuance of the <i>Acts Republication Act, 1967</i>
Section 603(1):	amended by 32, 1978, s. 91 (Sched.); 13, 1985, s. 35(a)
Section 603(3):	amended by 32, 1978, s. 91 (Sched.); 13, 1985, s. 35(b)
Section 603(3a):	inserted by 32, 1978, s. 69(a)
Section 603(5):	inserted by 32, 1978, s. 69(b)
Section 604(1):	amended by 13, 1985, s. 36(a)
Section 604(2):	amended by 13, 1985, s. 36(b)
Section 604(4) and (5):	amended by 32, 1978, s. 91 (Sched.)
Section 605(1):	amended by 13, 1985, s. 37
Section 606(1):	amended by 13, 1985, s. 38(a)
Section 606(2):	amended by 13, 1985, s. 38(b)
Section 607(2):	amended by 32, 1978, s. 91 (Sched.)
Section 608(2):	amended by 32, 1978, s. 91 (Sched.)
Section 609(3):	amended by 32, 1978, s. 91 (Sched.)
Section 610(3):	amended by 32, 1978, s. 91 (Sched.)
Section 610(4):	amended by 13, 1985, s. 39(a)
Section 610(5):	amended by 13, 1985, s. 39(b)
Section 611(1):	amended by 32, 1978, s. 91 (Sched.)
Section 611(3):	amended by 13, 1985, s. 40
Section 613:	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as it is now obsolete
Section 614:	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as its function is now exhausted
Section 615:	amended by 32, 1978, s. 91 (Sched.); 13, 1985, s. 41
Section 616(1):	amended by 13, 1985, s. 42(a)
Section 616(3):	amended by 13, 1985, s. 42(b)
Section 618(1):	redesignated as s. 618 in pursuance of the <i>Acts Republication Act, 1967</i>
Section 621:	amended by 32, 1978, s. 91 (Sched.)
Section 622(2):	amended by 32, 1978, s. 91 (Sched.)
Section 624(1):	amended by 32, 1978, s. 91 (Sched.)
Section 627:	amended by 32, 1978, s. 91 (Sched.)
Section 628(2):	amended by 12, 1986, s. 30
Section 629(2):	amended by 32, 1978, s. 91 (Sched.)
Section 630:	repealed by 33, 1988, s. 24
Section 632:	amended by 32, 1978, s. 91 (Sched.)
	Part XXXV comprising ss. 633 - 643 and headings amended by 12, 1976, ss. 66, 67; 32, 1978, s. 91 (Sched); repealed and ss. 633 - 642 and headings inserted in its place by 104, 1983, s. 6
Section 633:	amended by 7, 1991, s. 4
Section 641(5):	amended by 73, 1994, Sched. 2
Section 646(1):	amended by 33, 1988, s. 25(a)
Section 646(2):	substituted by 33, 1988, s. 25(b)
	Part XXXVII comprising ss. 647 - 660 and heading amended by 32, 1978, s. 91 (Sched.); repealed by 13, 1985, s. 43
Section 661:	repealed by 58, 1984, s. 23
Sections 664 and 664a:	repealed by 33, 1988, s. 26
Section 665(1):	substituted by 88, 1980, s. 48
Section 665(1a):	inserted by 88, 1980, s. 48



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Section 665(4):	amended by 58, 1984, s. 47(c)
Section 666:	repealed by 12, 1976, s. 68
Section 666a:	repealed by 33, 1988, s. 27
Section 666b(1):	amended by 32, 1978, s. 70; substituted by 54, 1993, s. 9(f)
Section 666b(2) and (3):	substituted by 54, 1993, s. 9(f)
Section 666c:	repealed by 33, 1988, s. 28
Division I of Part XXXIX comprising ss. 667 - 686b and heading repealed and ss. 667 - 681 and heading inserted in its place by 32, 1978, s. 71	
Section 667(1):	redesignated as s. 667 in pursuance of the <i>Acts Republication Act, 1967</i> ; redesignated as s. 667(1) by 30, 1994, Sched. 4 cl. 2(a)(v)
Section 667(1) 1:	repealed by 58, 1984, s. 24(a)
Section 667(1) 2 I and II:	repealed by 13, 1985, s. 44(a)
Section 667(1) 3:	amended by 34, 1984, s. 24(a), (b)
Section 667(1) 4:	amended by 34, 1984, s. 24(d)
Section 667(1) 4 II - V:	repealed by 34, 1984, s. 24(c)
Section 667(1) 4 IX:	repealed by 17, 1980, s. 5; inserted by 43, 1992, s. 21(a); amended by 48, 1994, Sched. 2 cl. 1
Section 667(1) 4 X - XV:	repealed by 17, 1980, s. 5
Section 667(1) 4 XVI:	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as it is now obsolete
Section 667(1) 4 XXIX:	amended by 13, 1985, s. 44(c)
Section 667(1) 4 XLI - XLIII:	repealed by 12, 1986, s. 31(a)
Section 667(1) 5 VIII:	inserted by 43, 1992, s. 21(b); repealed by 15, 1995, Sched. 2
Section 667(1) 7:	amended by 33, 1978, s. 6(a), (b)
Section 667(1) 7 III:	repealed by 12, 1986, s. 31(b)
Section 667(1) 7 XII - XIV:	repealed by 33, 1978, s. 6(c)
Section 667(1) 7 XXVI:	amended by 30, 1994, Sched. 4 cl. 2(a)(iii)
Section 667(1) 8:	amended by 109, 1978, s. 37(1)(c), (d); 58, 1984, s. 24(b)
Section 667(1) 8 XXII:	repealed by 50, 1979, s. 7
Section 667(1) 8 XXXV - XXXVII:	repealed by 12, 1986, s. 31(c)
Section 667(1) 9 XIII:	repealed by 30, 1994, Sched. 4 cl. 2(a)(iv)
Section 667(2):	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as its function is now exhausted; inserted by 30, 1994, Sched. 4 cl. 2(a)(v)
Section 668:	amended by 34, 1984, s. 25; 58, 1984, s. 47(c); 13, 1985, s. 45; 12, 1986, s. 32; 37, 1987, s. 44; substituted by 29, 1992, s. 22
Section 669:	substituted by 34, 1984, s. 26; 29, 1992, s. 22
Section 670:	repealed by 34, 1984, s. 26; inserted by 29, 1992, s. 22
Section 671:	amended by 109, 1978, s. 37(1)(e); repealed by 34, 1984, s. 26; inserted by 29, 1992, s. 22
Section 672:	repealed by 34, 1984, s. 26; inserted by 29, 1992, s. 22
Section 672(1):	amended by 108, 1995, s. 20
Section 672a:	inserted by 50, 1979, s. 8
Sections 675 and 676:	repealed by 29, 1992, s. 23
Section 678:	repealed by 29, 1992, s. 24
Section 679:	amended by 33, 1978, s. 7; 50, 1979, s. 9; 13, 1985, s. 46; 12, 1986, s. 33; repealed by 29, 1992, s. 24
Section 680:	repealed by 33, 1988, s. 29
Section 681(1):	substituted by 58, 1984, s. 25(a)
Section 681(4):	amended by 58, 1984, s. 25(b)
Division II of Part XXXIX comprising ss. 687 - 690 and heading repealed and ss. 682 - 684 and heading inserted in its place by 32, 1978, s. 71	
Section 682(1):	amended by 37, 1987, s. 45
Section 682(4):	amended by 12, 1986, s. 34(a)
Section 682(5):	repealed by 12, 1986, s. 34(b)
Section 685:	inserted by 29, 1992, s. 25

Section 691(1):	amended by 27, 1983, s. 20; 58, 1984, ss. 26, 47(e); 12, 1986, s. 35; 33, 1988, s. 30(a); 85, 1992, s. 15(a)-(d)
Section 691(1)(g):	repealed by 58, 1984, s. 26
Section 691(1a):	inserted by 33, 1988, s. 30(b)
Section 691(2) and (3):	substituted by 85, 1992, s. 15(e)
Section 692(2):	amended by 33, 1988, s. 31(a), (b)
Section 692(2a):	inserted by 33, 1988, s. 31(c)
Section 692(3):	amended by 33, 1988, s. 31(d)
Section 692(4):	inserted by 33, 1988, s. 31(e)
Section 693:	amended by 12, 1976, s. 69; 69, 1990, s. 22
Section 694(3):	amended by 33, 1988, s. 32
Sections 695 - 699:	amended by 58, 1984, s. 47(c)
Section 704a:	repealed by 43, 1992, s. 22
Section 708:	amended by 33, 1988, s. 33
Section 709:	amended by 32, 1978, s. 72; 33, 1988, s. 34
Section 710(1):	amended by 77, 1976, s. 62
Section 710(2):	amended by 33, 1988, s. 35
Section 710(4):	repealed by 32, 1978, s. 73
Section 712(1):	amended by 34, 1984, s. 27
Section 713(1):	substituted by 32, 1978, s. 74
Section 714(1):	amended by 33, 1988, s. 36(a)
Section 714(2):	amended by 33, 1988, s. 36(b)
Section 716:	repealed by 59, 1994, Sched. 2
Section 717:	amended and redesignated as s. 717(1) by 33, 1988, s. 37(a)-(d)
Section 717(2):	inserted by 33, 1988, s. 37(d)
Section 718:	repealed by 58, 1984, s. 27
Section 721(1):	amended by 88, 1980, s. 49(a); 66, 1997, s. 15(a)
Section 721(1a) and (1b):	inserted by 66, 1997, s. 15(b)
Section 721(2):	amended by 88, 1980, s. 49(b); 66, 1997, s. 15(c)-(e)
Section 721(2a) - (2c):	inserted by 66, 1997, s. 15(f)
Section 721(3):	amended by 88, 1980, s. 49(c); 66, 1997, s. 15(g)
Section 724:	repealed by 58, 1984, s. 28
Section 725(1):	amended by 77, 1976, s. 62a; 103, 1983, s. 10(a)
Section 725(2):	amended by 103, 1983, s. 10(b)
Section 726:	repealed by 34, 1984, s. 28
Sections 727 and 728:	repealed by 33, 1988, s. 38
Section 730:	amended by 58, 1984, s. 47(c)
Section 732:	substituted by 33, 1988, s. 39
Section 733:	amended by 58, 1984, s. 29
Sections 734 and 735:	amended by 58, 1984, s. 47(c)
Section 736:	repealed by 58, 1984, s. 30
Section 737:	repealed by 58, 1984, s. 31
Section 738:	amended by 58, 1984, s. 47(c)
Section 739(1):	amended by 58, 1984, s. 47(c)
Section 739(2):	amended by 27, 1983, s. 21; 58, 1984, s. 47(c)
Section 740:	amended by 27, 1983, s. 22
Section 741:	repealed by 58, 1984, s. 32
Section 742:	amended by 58, 1984, s. 47(c)
Section 743(1):	amended by 32, 1978, s. 75; redesignated as s. 743 in pursuance of the <i>Acts Republication Act, 1967</i> ; amended by 43, 1992, s. 23
Section 743a:	substituted by 69, 1990, s. 23
Section 744:	substituted by 58, 1984, s. 33
Section 745:	amended by 58, 1984, ss. 34, 47(c)
Part XLIA comprising ss. 748a - 748d and heading inserted by 12, 1976, s. 70	
Section 748a(1):	amended by 34, 1996, s. 4 (Sched. cl. 23); 66, 1997, s. 16
Section 748b(1):	amended by 66, 1997, s. 17
Section 748ba:	inserted by 32, 1978, s. 76
Section 748d:	amended by 12, 1986, s. 36; repealed by 69, 1990, s. 24

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Section 749:	amended by 32, 1978, s. 91 (Sched.)
Section 749 I:	deleted in pursuance of the <i>Acts Republication Act, 1967</i>
Section 749 II:	deleted in pursuance of the <i>Acts Republication Act, 1967</i>
Section 750:	amended by 32, 1978, s. 91 (Sched.); 58, 1984, s. 47(c)
Section 751:	amended by 32, 1978, s. 91 (Sched.)
Section 752:	amended by 32, 1978, s. 91 (Sched.); repealed by 12, 1986, s. 37
Section 753:	amended by 32, 1978, s. 91 (Sched.); repealed by 58, 1984, s. 35
Sections 755 and 755a:	amended by 32, 1978, s. 91 (Sched.); repealed by 58, 1984, s. 35
Section 755b:	substituted by 61, 1981, s. 4; repealed by 58, 1984, s. 35
Sections 756 - 758:	repealed by 58, 1984, s. 36
Sections 759 - 762:	amended by 32, 1978, s. 91 (Sched.); repealed by 58, 1984, s. 36
Section 763:	amended by 77, 1976, s. 63; 32, 1978, s. 91 (Sched.); repealed by 58, 1984, s. 6
Sections 764 - 766:	repealed by 58, 1984, s. 36
Section 767:	repealed by 77, 1976, s. 64
Section 768:	amended by 77, 1976, s. 65; 32, 1978, s. 91 (Sched.); 58, 1984, s. 37
Section 769:	amended by 32, 1978, s. 91 (Sched.); repealed by 58, 1984, s. 38
Section 769a:	amended by 32, 1978, s. 91 (Sched.)
Section 770:	amended by 32, 1978, s. 91 (Sched.); repealed by 58, 1984, s. 38
Section 772:	amended by 59, 1994, Sched. 2
Section 773:	amended by 32, 1978, s. 91 (Sched.)
Section 774:	amended by 32, 1978, s. 91 (Sched.); 58, 1984, s. 47(c); repealed by 33, 1988, s. 40
Section 775:	amended by 32, 1978, s. 91 (Sched.); repealed by 58, 1984, s. 39
Section 776:	repealed by 58, 1984, s. 40
Section 778:	amended by 32, 1978, s. 91 (Sched.); 13, 1985, s. 47
Section 778a:	amended by 88, 1980, s. 50
Section 779:	amended by 32, 1978, s. 91 (Sched.); 34, 1984, s. 29
Section 779a(2):	amended by 32, 1978, s. 91 (Sched.)
Section 779b(4):	amended by 32, 1978, s. 91 (Sched.)
Section 780:	amended by 32, 1978, s. 91 (Sched.); 34, 1984, s. 30
Section 780a:	amended by 32, 1978, s. 91 (Sched.); substituted by 104, 1983, s. 7
Section 781(2):	amended by 32, 1978, s. 91 (Sched.)
Section 781(4):	amended by 13, 1985, s. 48
Section 781a:	amended by 32, 1978, s. 91 (Sched.)
Section 782(1):	amended by 32, 1978, s. 91 (Sched.); 34, 1996, s. 4 (Sched. cl. 23)
Section 782a(1):	amended by 32, 1978, s. 77(a)
Section 782a(2):	amended by 32, 1978, ss. 77(b), 91 (Sched.)
Section 783:	repealed by 12, 1976, s. 71
Section 784(1):	amended by 32, 1978, s. 91 (Sched.)
Section 785(1):	amended by 32, 1978, s. 91 (Sched.)
Section 786(2):	amended by 32, 1978, s. 91 (Sched.)
Sections 787 and 788:	amended by 32, 1978, s. 91 (Sched.)
Section 789(1):	amended by 32, 1978, s. 91 (Sched.); 13, 1985, s. 49
Section 789a(1):	amended by 69, 1990, s. 25(a)
Section 789a(2):	amended by 32, 1978, s. 91 (Sched.)
Section 789a(3):	repealed by 69, 1990, s. 25(b)
Section 789b:	inserted by 69, 1990, s. 26; substituted by 43, 1992, s. 24; amended by 34, 1996, s. 4 (Sched. cl. 23)
Section 789c:	inserted by 69, 1990, s. 26
Section 789d:	inserted by 69, 1990, s. 26; substituted by 34, 1996, s. 4 (Sched. cl. 23)
Section 789d(6):	inserted by 43, 1992, s. 25
Section 791:	amended by 32, 1978, s. 91 (Sched.)
Section 793(1) and (2):	amended by 59, 1994, Sched. 2
Section 794a:	inserted by 33, 1978, s. 8; amended by 50, 1979, s. 10; 27, 1983, s. 23; 12, 1986, s. 38; 33, 1988, s. 41; 69, 1990, s. 27 substituted by 34, 1996, s. 4 (Sched. cl. 23)
Section 794b:	inserted by 33, 1978, s. 8; amended and redesignated as s. 794a(1) by 89, 1980, s. 8
Section 794b(1):	amended by 58, 1984, s. 47(c)
Section 794b(2):	inserted by 89, 1980, s. 8(b)

Section 794c:	inserted by 50, 1979, s. 11; amended by 69, 1990, s. 28; repealed by 34, 1996, s. 4 (Sched. cl. 23)
	Part XLIII comprising ss. 795 - 832a and heading amended by 77, 1976, ss. 66 - 78; 1, 1977, ss. 15 - 17; 32, 1978, ss. 78 - 81, 91 (Sched.); 88, 1980, ss. 51 - 62; 61, 1981, s. 5; 103, 1983, s. 11; repealed by 58, 1984, s. 41
	Part XLIV comprising ss. 832b - 847 and heading amended by 77, 1976, ss. 79 - 91; 32, 1978, ss. 82 - 85, 91 (Sched.); 88, 1980, ss. 63 - 65; repealed by 58, 1984, s. 41
Section 850:	repealed by 54, 1992, s. 2
Section 854(2):	amended by 88, 1980, s. 66
Section 855(1):	amended by 12, 1986, s. 39
Section 855(5):	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as it is now obsolete
<b>Section 855b:</b>	repealed by 33, 1988, s. 42; <b>inserted by 28, 1998, s. 2</b>
Section 855c:	amended by 29, 1992, s. 26
Heading preceding section 856:	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as its function is now exhausted
Sections 856 and 857:	repealed by 33, 1988, s. 43
Section 858:	amended by 77, 1976, s. 92; 32, 1978, s. 86; 88, 1980, s. 67; 103, 1983, s. 12; 34, 1984, s. 31; 58, 1984, s. 42; repealed by 33, 1988, s. 43
Sections 859 - 862:	repealed by 33, 1988, s. 43
Section 863:	amended by 58, 1984, s. 47(a); repealed by 33, 1988, s. 43
Section 866(1):	amended by 32, 1978, s. 91 (Sched.)
Section 866(2):	amended by 88, 1980, s. 68
Section 868:	amended by 32, 1978, s. 91 (Sched.)
Section 871aa:	inserted by 37, 1995, Sched. 2
Section 871e(3a):	inserted by 32, 1978, s. 87(a)
Section 871e(13):	inserted by 32, 1978, s. 87(b)
Section 871f(5):	substituted by 30, 1994, Sched. 4 cl. 2(a)(vi)
Section 871g(2):	amended by 30, 1994, Sched. 4 cl. 2(a)(vii)
Section 871g(3):	amended by 96, 1996, Sched. 1 cl. 2(i)
Section 871i(1):	amended by 30, 1994, Sched. 4 cl. 2(a)(viii)
Section 871i(2):	amended by 30, 1994, Sched. 4 cl. 2(a)(ix)
Section 871j:	amended by 77, 1976, s. 93; 103, 1983, s. 13; repealed by 33, 1988, s. 44
Sections 871k - 871l:	repealed by 33, 1988, s. 44
Section 871m:	amended by 58, 1984, s. 47(c); repealed by 33, 1988, s. 44
Section 871n:	amended by 77, 1976, s. 94; repealed by 33, 1988, s. 44
Sections 871o - 871r:	repealed by 33, 1988, s. 44
Section 871s:	amended by 33, 1988, s. 45
	Part XLVA comprising ss. 871ta - 871xc and heading amended by 17, 1980, s. 6; repealed by 34, 1984, s. 32
Section 874(1):	amended by 58, 1984, s. 47(c); substituted by 33, 1988, s. 46
Section 874(1a):	inserted by 33, 1988, s. 46
Section 874(2):	amended by 33, 1978, s. 9; 29, 1992, s. 27
Section 875:	amended by 12, 1976, s. 72; 32, 1978, s. 88; 88, 1980, s. 69; 58, 1984, s. 47(c); repealed by 33, 1988, s. 47
Section 877:	amended by 17, 1980, s. 7; repealed by 12, 1986, s. 40; inserted by 33, 1988, s. 48
Section 877a:	inserted by 33, 1988, s. 48
Section 879a:	inserted by 58, 1984, s. 43
Section 880b:	inserted by 33, 1988, s. 49
Section 881:	amended by 88, 1980, s. 70
Section 882:	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as it is now obsolete
Section 883:	repealed by 12, 1986, s. 40; inserted by 55, 1986, s. 3

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Section 883(3)(c):	repealed by 12, 1987, s. 4
Section 885:	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as it is now obsolete
Section 886:	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as it is now obsolete
Sections 886a and 886b:	repealed by 12, 1986, s. 41
Section 886ba:	inserted by 112, 1981, s. 2
Section 886ba(1):	definition of "caveat" deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as it is now obsolete definition of "the trusts" deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as it is now obsolete
Section 886ba(2):	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as it is now obsolete
Section 886ba(3):	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as it is now obsolete
Section 886ba(4):	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as it is now obsolete
Section 886c(2):	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as it is now obsolete
Section 886d:	inserted by 9, 1982, s. 3
Section 886d(2):	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as it is now obsolete
Section 886d(4):	amended by 33, 1988, s. 50; substituted by 69, 1990, s. 29
Section 886d(5):	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as it is now obsolete
Section 886d(6):	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as it is now obsolete
Section 889:	amended by 12, 1976, s. 73; 77, 1976, s. 95; repealed by 34, 1984, s. 33; inserted by 33, 1988, s. 51
Section 890:	inserted by 69, 1990, s. 30
	Part XLVII comprising s. 894 and heading repealed by 12, 1986, s. 42
	Part XLVIII comprising ss. 907 - 908 and heading repealed by 12, 1986, s. 43
First Schedule:	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as its function is now exhausted
Second Schedule:	amended by 77, 1976, s. 96; repealed by 58, 1984, s. 44
Fifth Schedule:	amended by 77, 1976, s. 97; 88, 1980, s. 71; 27, 1983, s. 24; repealed by 58, 1984, s. 44
Sixth Schedule:	repealed by 58, 1984, s. 44
Seventh Schedule:	amended by 58, 1984, s. 47(d); repealed by 33, 1988, s. 52
Ninth and Tenth Schedules:	repealed by 32, 1978, s. 89
Eleventh Schedule:	amended by 58, 1984, s. 47(b); repealed by 33, 1988, s. 52
Thirteenth Schedule:	amended by 58, 1984, s. 47(b); repealed by 33, 1988, s. 52
Fourteenth Schedule:	amended by 88, 1980, s. 72
Form No. 5:	repealed by 9, 1990, s. 42 (Sched.)
Sixteenth Schedule:	repealed by 109, 1978, s. 37(1)(f)
Seventeenth Schedule:	repealed by 12, 1986, s. 44
Eighteenth Schedule:	amended by 88, 1980, s. 73; repealed by 58, 1984, s. 45
Nineteenth Schedule:	amended by 77, 1976, s. 98; repealed by 58, 1984, s. 45
Twentieth Schedule:	repealed by 33, 1988, s. 52
Twenty-second Schedule:	amended by 58, 1984, s. 47(d); repealed by 33, 1988, s. 52
Twenty-third Schedule:	amended by 32, 1978, s. 90; repealed by 58, 1984, s. 46
Twenty-fourth Schedule:	repealed by 34, 1984, s. 34