

(Reprint No. 1)

South Australia

LOCAL GOVERNMENT (IMPLEMENTATION) REGULATIONS 1999

These regulations are reprinted pursuant to the Subordinate Legislation Act 1978 and incorporate all amendments in force as at 25 May 2000.

**REGULATIONS UNDER THE LOCAL GOVERNMENT
(IMPLEMENTATION) ACT 1999**

LOCAL GOVERNMENT (IMPLEMENTATION) REGULATIONS 1999

being

No. 257 of 1999: *Gaz.* 9 December 1999, p. 3297¹

as varied by

No. 42 of 2000: *Gaz.* 25 May 2000, p. 2675²

¹ Came into operation on 1 January 2000: reg. 2.

² Came into operation on 1 January 2000: reg. 2.

NOTE:

- Asterisks indicate repeal or deletion of text.
- For the legislative history of the regulations see Appendix.

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LEGISLATIVE HISTORY**

Citation

1. These regulations may be cited as the *Local Government (Implementation) Regulations 1999*.

Commencement

2. These regulations will come into operation on 1 January 2000.

Preliminary

3. (1) In these regulations—

"**principal Act**" means the *Local Government (Implementation) Act 1999*;

"**public place**" has the meaning given by the 1999 Act.

(2) These regulations make saving and transitional provisions pursuant to the principal Act.

Committees

4. A council must, with respect to a committee—

(a) established as a council committee under the 1934 Act and continued as a committee under the 1999 Act (*see* section 12(1) of the principal Act); or

(b) established as a controlling authority under section 199 of the 1934 Act and continued in existence as a committee under the 1999 Act (*see* section 24 of the principal Act),

determine reporting and other accountability requirements that are to apply in relation to the committee under the 1999 Act by 1 September 2000.

Single council subsidiaries

5. If—

(a) a controlling authority established by a council under section 199 of the 1934 Act and in existence before 1 January 2000 continues in existence as a committee of the council under the 1999 Act; and

(b) the council after the commencement of these regulations but before 1 September 2000 obtains the approval of the Minister under section 42 of the 1999 Act to constitute a subsidiary of the council as a successor of the committee of the council,

then—

(c) subject to any variation proposed by the council, the rules of the controlling authority as they existed on 31 December 1999 will be taken to be the charter of the subsidiary; and

(d) any non-compliance concerning the charter of the subsidiary with Schedule 2 of the 1999 Act may be disregarded until 1 January 2002; and

(e) subject to any other appointment made by the council, the persons constituting the membership of the committee immediately before obtaining the approval of the Minister under section 42 of the 1999 Act will be taken to constitute the first board of management of the subsidiary.

Regional subsidiaries

6. An application for the approval of the Minister to amend the rules of a controlling authority under section 200 of the 1934 Act received (but not finally dealt with) by the Minister before 1 January 2000 will continue to be dealt with under the 1934 Act but any amendment, if or when approved, will then take effect as if it were an amendment to the charter of the relevant regional subsidiary under the 1999 Act (*see* section 25 of the principal Act).

Meetings

7. (1) Subject to the 1999 Act, the procedure to be observed at a meeting of a council will, until the relevant day, be—

- (a) the procedure prescribed by the *Local Government (Proceedings of Councils) Regulations 1984* immediately before 1 January 2000; or
- (b) insofar as the procedure is not prescribed by those regulations—as determined by the council.

(2) Subject to the 1999 Act, the procedure to be observed at a meeting of a council committee, other than a committee to which subregulation (3) applies, will, until the relevant day, be—

- (a) the procedure prescribed by the *Local Government (Proceedings of Councils) Regulations 1984* immediately before 1 January 2000; or
- (b) insofar as the procedure is not prescribed by those regulations—as determined by the council; or
- (c) insofar as the procedure is not prescribed by regulation or determined by the council—as determined by the council committee itself.

(3) A council committee which, immediately before the commencement of these regulations, existed as a controlling authority established by a council under section 199 of the 1934 Act may, until 1 September 2000 and subject to any determination of the council, continue to observe the practices and procedures that applied in relation to its meetings immediately before 1 January 2000 (and despite the provisions of the 1999 Act).

(4) If the charter of a regional subsidiary to which section 25(1) of the principal Act applies contains a provision with respect to the proceedings of the subsidiary that is inconsistent with Schedule 2 of the 1999 Act, then the provision of the charter may prevail until 1 September 2000.

(5) In these regulations—

"**relevant day**" means the day on which the *Local Government (Proceedings of Councils) Regulations 1984* are expressly revoked by regulations made under the 1999 Act.

Code of practice

8. An alteration made by a council to its code of practice under section 65AAA of the 1934 Act solely to update references to the 1999 Act (being the code of practice applying under section 92 of the 1999 Act by virtue of section 16 of the principal Act)—

- (a) will not be taken to constitute a review of the code under section 92(2) of the 1999 Act; and
- (b) will not be subject to the operation of section 92(5) of the 1999 Act.

Term of appointment of auditors

9. (1) An appointment of an auditor for a fixed term in existence immediately before 1 January 2000 is not affected by section 128(6) of the 1999 Act.

(2) An appointment of an auditor for an indeterminate term in existence immediately before 1 January 2000 will cease to have effect on the completion of the audit for the 1999/2000 financial year.

Rates

10. (1) Chapter 10 Part 1 Division 5 of the 1999 Act will not apply to a rate declared under the 1934 Act.

(2) Section 179(1) of the 1999 Act will not, with respect to the 1999/2000 financial year, apply to land that becomes rateable after the rate is declared.

(3) If an instalment of rates declared under the 1934 Act is not paid on or before the date on which it falls due, the provisions of the 1934 Act will continue to apply with respect to the calculation and imposition of fines and interest subject to the qualification that interest on any such outstanding instalment of rates will, after 30 June 2000, be calculated and imposed in accordance with section 181(8)(c) of the 1999 Act.

(4) A council is not required to comply with the requirements of any regulation made under section 180(2) of the 1999 Act in relation to any rate or charge declared or imposed for the 1999/2000 or 2000/2001 financial years.

Local government land

11. (1) Any process commenced under section 459a of the 1934 Act that has not been finally dealt with under that section before 1 January 2000 may be continued and completed under the 1934 Act (and if Ministerial consent is obtained under that section then the land will, if or when it is sold or otherwise disposed of, cease to be a reserve or a portion of a reserve and will be freed from any trusts relating to it).

(2) Subject to subregulation (3), the following local government land will not, on the commencement of section 193 of the 1999 Act, be taken to be classified as community land:

- (a) land which is to be transferred or conveyed to another party pursuant to an agreement entered into by the relevant council before 1 January 2000; or
- (b) land which is subject to an option under which another party is entitled to acquire (or reacquire) an interest in the land pursuant to an agreement entered into by the relevant council before 1 January 2000; or
- (c) land which is listed for sale on the open market immediately before 1 January 2000; or
- (d) land which has, before 1 January 2000, been the subject of a public call for expressions of interest about the future use of the land where it is contemplated that the land could be sold or leased by the council; or
- (e) land which is to be transferred or conveyed to another party pursuant to an arrangement the essential terms and conditions of which were approved by the relevant council before 1 January 2000 (and, for the purposes of this paragraph, disregarding any subsequent variation that may be made to those terms or conditions unless the variation is substantial).

(3) If—

- (a) an agreement to which subregulation (2)(a) or (b) applies is cancelled, rescinded or otherwise discharged (otherwise than by performance); or
- (b) land to which subregulation (2)(c) applies is withdrawn from the open market; or
- (c) land to which subregulation (2)(d) applies is not sold or leased by the council by 31 December 2000; or
- (d) an arrangement to which subregulation (2)(e) applies is cancelled, or an essential term or condition of any such arrangement is not met or is substantially varied,

then the land will become subject to the operation of section 193 of the 1999 Act.

(4) A council is not required to comply with the requirements of section 202(2) of the 1999 Act with respect to a lease or licence if—

- (a) the council decided to enter into the lease or licence before the commencement of these regulations; or
- (b) in the case of a lease, the entering into of the lease was approved at a meeting of electors in accordance with the provisions of the 1934 Act before the commencement of these regulations; or
- (c) the lease or licence is granted before 1 July 2000 and is the extension or renewal of, or is otherwise being granted in place of, a lease or licence in existence before the commencement of these regulations; or
- (d) the lease or licence is required for an event occurring before 1 July 2000 where the date on which the event is to be held is known before the commencement of these regulations; or
- (e) —
 - (i) the lease or licence is for the purposes of a short-term event; and
 - (ii) the term of the lease or licence is limited to the duration of the event and any period required before the event for setting up or preparing for the event or after the event for dismantling the event or taking action to address the impact of the event; and
 - (iii) the council has not adopted a management plan on account of the operation of section 196(7) of the Act.

(5) The enactment of section 202 of the 1999 Act does not affect the operation of section 592 of the 1934 Act (and a council may grant rights under that section of the 1934 Act as if the 1999 Act had not been enacted).

(6) In this regulation—

"short-term event" means an event to be held over or during a period not exceeding three consecutive days.

Registers

12. (1) A council is not required to have a register under section 207 of the 1999 Act until 1 January 2003.

(2) A council is not required to have a register under section 231 of the 1999 Act until 1 January 2002.

By-laws

13. (1) A council may make by-laws for all or any of the following purposes:

- (a) for preventing the storage or keeping of bonedust or artificial or other manure, so as to be a nuisance or injurious to health;
- (b) 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;
- (c) for preventing obstruction of any street or road, or any footway, water-channel, or watercourse in a street or road;
- (d) 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;
- (e) for regulating, controlling or prohibiting the use or occupation by any person of any reserve, land or property which is under the control of the council and the removal of stone, gravel, sand or timber therefrom, and 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.

(2) Unless revoked by a council on or after 1 January 2000, a by-law made by a council under the 1934 Act for any of the following purposes and in force immediately before 1 January 2000 will continue in force until 31 December 2000:

- (a) 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;
- (b) 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);
- (c) for regulating, controlling or prohibiting the use within a municipality or a township within a district of any caravan or other vehicle as a place of habitation;
- (d) for preventing the keeping or storage within the area or any part of it, or within a specified distance of any place of habitation, of any animal or thing which is injurious to health, dangerous, or offensive, and for preventing the storage of flammable material within a specified distance of any building;
- (e) for preventing the keeping of animals or birds of any kind within a municipality or a township within a district so as to be a nuisance or injurious to health;

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- (f) 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;
 - (g) for prohibiting the erection of dangerous fences or fences with barbed wire abutting on public streets, roads and places;
 - (h) 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;
 - (i) for regulating the height of fences, hedges and hoardings erected within six metres of the intersection or junction of any street or road, for authorising 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 authorising the council to carry out any work necessary on default of any such occupier and for recovering its cost from the occupier;
 - (j) 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, road or footway without a licence from the council 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;
 - (k) for compelling verandahs and balconies over streets and roads to be kept clean and watertight;
 - (l) 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;
 - (m) for regulating, restricting or prohibiting the effluxion of water onto, into or under any public street or road;
 - (n) for regulating the construction of drains across footways and drains for the drainage of water from roofs;
 - (o) for preventing trees and shrubs overreaching or overhanging streets, road or footways;
 - (p) for requiring occupiers of premises to provide garbage bins for household rubbish, for regulating the kinds of garbage bins to be so supplied, for requiring garbage bins to be properly maintained by such occupiers, and for fixing the places in which such bins must be placed for the collection of garbage;
 - (q) for regulating the removal and disposal of sewage, filth, offal and refuse, and for appointing proper places for its deposit.
- (3) Unless or until revoked by the council, the following by-laws are preserved:
- (a) By-law No. 3—Council Reserves, made by the District Council of Tumby Bay and published in the *Gazette* on 10 August 1995;
 - (b) By-law No. 2—Streets and Public Places, made by the Corporation of the City of Adelaide and published in the *Gazette* on 18 December 1997;

(c) By-law No. 8—Aqueous Waste, made by the City of Port Adelaide Enfield and published in the *Gazette* on 7 January 1999.

(4) A by-law to which this regulation applies will have effect as if made under the 1999 Act.

Register of interests—officers

14. (1) A return submitted to a council in accordance with regulations made under section 70b of the 1934 Act by a person to whom Division 2 of Part 4 of Chapter 7 of the 1999 Act applies will be taken to be a valid return for the purposes of section 113 or 114, and section 115, of the 1999 Act, and to form part of the Register of Interests required under section 116 of the 1999 Act.

(2) Subregulation (1) does not affect a requirement to submit an ordinary return under the 1999 Act within 60 days after 30 June 2000.

Disputes between councils

15. Any proceeding commenced under section 721 of the 1934 Act that has not been finally determined before the commencement of these regulations will be continued and completed as if the principal Act had not been enacted.

Campaign returns

16. For the purposes of a campaign donations return under Part 14 of the 1999 Electoral Act in respect of the council elections to be held in May 2000, if the disclosure period under section 81 of that Act for a person would, but for this regulation, be a period commencing before 1 January 2000, then the commencement of that disclosure period will be 1 January 2000.

APPENDIX

LEGISLATIVE HISTORY

Regulation 11(1):	varied by 42, 2000, reg. 3(a)
Regulation 11(2):	varied by 42, 2000, reg. 3(b)
Regulation 11(3):	varied by 42, 2000, reg. 3(c)
Regulation 11(4):	varied by 42, 2000, reg. 3(d)
Regulation 11(6):	inserted by 42, 2000, reg. 3(e)