South Australia

Local Government Act 1999

An Act to provide for local government; and for other purposes.

Contents

Chapter 1—Preliminary

1 Short title
3 Objects
4 Interpretation
5 Business purposes

Chapter 2—The system of local government

6 Principal role of a council
7 Functions of a council
8 Objectives of a council

Chapter 3—Constitution of councils

Part 1—Creation, structuring and restructuring of councils

Division 1—Powers of the Governor

9 Governor may act by proclamation
10 Matters that may be included in a proclamation
11 General provisions relating to proclamations

Division 2—Powers of councils and representation reviews

12 Composition and wards
13 Status of a council or change of various names

Part 2—The Boundary Adjustment Facilitation Panel and reform proposals

Division 1—The Boundary Adjustment Facilitation Panel

14 The Panel
15 Composition of Panel
16 Conditions of membership
17 Fees and expenses
18 Protection of information etc
19 Validity of acts
20 Proceedings
21 Staffing arrangements

Division 2—Functions and powers of Panel

22 Functions of Panel
23 Powers of Panel
24 Committees
25 Delegation

Division 3—Principles

26 Principles

Division 4—Council initiated proposals

27 Council initiated proposals

Division 5—Public initiated submissions

28 Public initiated submissions

Division 6—Reports to the Minister; submissions of proposals to the Governor

29 Reference of proposals to Minister and Governor

Division 7—Related matters

30 Report if proposal rejected
31 Report if proposal submitted to poll
32 Provision of reports to councils

Part 3—General provisions

33 Ward quotas
34 Error or deficiency in an address, recommendation, notice or proclamation

Chapter 4—The council as a body corporate

Part 1—Fundamental features

Division 1—Council to be a body corporate

35 Corporate status
36 General powers and capacities
37 Provision relating to contracts and transactions
38 The common seal
39 Protection of members
40 Saving provision

Division 2—Committees

41 Committees

Division 3—Subsidiaries

42 Ability of council to establish a subsidiary
43 Ability of councils to establish a regional subsidiary

Division 4—Delegations

44 Delegations

Division 5—Principal office

45 Principal office

Part 2—Commercial activities and restrictions

46 Commercial activities
47 Interests in companies

Part 3—Prudential requirements for certain activities

48 Prudential requirements for certain activities

Part 4—Contracts and tenders policies

49 Contracts and tenders policies

Part 5—Public consultation policies

50 Public consultation policies

Chapter 5—Members of council

Part 1—Membership

51 Principal member of council
52 Councillors

Part 2—Term of office and related issues

Division 1—General issues

53 Term of office
54 Casual vacancies
55 Specific requirements if member disqualified

Division 2—Special provisions if majority of members resign on specified grounds

56 General election to be held in special case
57 Restriction on activities during the relevant period

Part 3—Role of members

58 Specific roles of principal member
59 Roles of members of councils
60 Declaration to be made by members of councils
61 Access to information by members of councils

Part 4—Conduct and disclosure of interests

Division 1—General duties and code of conduct

62 General duties
63 Code of conduct

Division 2—Register of interests

64 Interpretation
65 Lodging of primary returns
66 Lodging of ordinary returns

67 Form and content of returns
68 Register of Interests
69 Provision of false information
70 Inspection of Register
71 Restrictions on publication
72 Application of Division to members of committees and subsidiaries

Division 3—Conflict of interest

73 Conflict of interest
74 Members to disclose interests
75 Application of Division to members of committees and subsidiaries

Part 5—Allowances and benefits

76 Allowances
77 Reimbursement of expenses
78 Provision of facilities and support
79 Register of allowances and benefits
80 Insurance of members

Part 6—Training and development

80A Training and development

Chapter 6—Meetings

Part 1—Council meetings

81 Frequency and timing of ordinary meetings
82 Calling of special meetings
83 Notice of ordinary or special meetings
84 Public notice of council meetings
85 Quorum
86 Procedure at meetings

Part 2—Committee meetings

87 Calling and timing of committee meetings
88 Public notice of committee meetings
89 Proceedings of council committees

Part 3—Public access to council and committee meetings

90 Meetings to be held in public except in special circumstances

Part 4—Minutes of council and committee meetings and release of documents

91 Minutes and release of documents

Part 5—Code of practice

92 Access to meetings and documents—code of practice

Part 6—Meetings of electors

93 Meetings of electors

Part 7—Related matters

93A Audits by Ombudsman
94 Investigation by Ombudsman
94A Meeting information on website
95 Obstructing meetings

Chapter 7—Council staff

Part 1—Chief executive officer

96 Council to have a chief executive officer
97 Vacancy in office
98 Appointment procedures
99 Role of chief executive officer
100 Council may have a deputy chief executive officer
101 Delegation by chief executive officer
102 Person to act in absence of chief executive officer

Part 2—Appointment of other staff

103 Appointment etc by chief executive officer
104 Remuneration etc of other employees
105 Register of remuneration, salaries and benefits
106 Certain periods of service to be regarded continuous

Part 3—Human resource management principles

107 General principles of human resource management

Part 4—Conduct of employees

Division 1—General duty and code of conduct

108 Interpretation
109 General duty
110 Code of conduct

Division 2—Register of interests

111 Application of Division
112 Interpretation
113 Lodging of primary returns
114 Lodging of ordinary returns
115 Form and content of returns
116 Register of Interests
117 Provision of false information
118 Inspection of Register
119 Restrictions on disclosure

Division 3—Conflict of interest

120 Conflict of interest

Division 4—Protection from personal liability

121 Protection from personal liability

Chapter 8—Administrative and financial accountability

Part 1—Strategic management plans

122 Strategic management plans

Part 2—Annual business plans and budgets

123 Annual business plans and budgets

Part 3—Accounts, financial statements and audit

Division 1—Accounts

124 Accounting records to be kept

Division 2—Internal control and audit committee

125 Internal control policies
126 Audit committee

Division 3—Financial statements

127 Financial statements

Division 4—Audit

128 The auditor
129 Conduct of audit
130 CEO to assist auditor

Division 5—Other investigations

130A Other investigations

Part 4—Annual reports

131 Annual report to be prepared and adopted

Part 5—Access to documents

132 Access to documents

Part 6—Related administrative standards

132A Related administrative standards

Chapter 9—Finances

Part 1—Sources of funds

133 Sources of funds

Part 2—Financial arrangements

134 Borrowing and related financial arrangements
135 Ability of a council to give security
136 State Government not liable for debts of a council

Part 3—Expenditure of funds

137 Expenditure of funds

138 Council not obliged to expend rate revenue in a particular financial year

Part 4—Investment

139 Investment powers
140 Review of investments

Part 5—Miscellaneous

141 Gifts to a council
142 Duty to insure against liability
143 Writing off bad debts
144 Recovery of amounts due to council
145 Payment of fees etc to council

Chapter 10—Rates and charges

Part 1—Rates and charges on land

Division 1—Preliminary

146 Rates and charges that a council may impose
147 Rateability of land
148 Land against which rates may be assessed
149 Contiguous land

Division 2—Basis of rating

150 General principles
151 Basis of rating

Division 3—Specific characteristics of rates and charges

152 General rates
153 Declaration of general rate (including differential general rates)
154 Separate rates
155 Service rates and service charges

Division 4—Differential rating and special adjustments

156 Basis of differential rates
157 Notice of differentiating factors
158 Minimum rates and special adjustments for specified values

Division 5—Rebates of rates

159 Preliminary
160 Rebate of rates—health services
161 Rebate of rates—community services
162 Rebate of rates—religious purposes
163 Rebate of rates—public cemeteries
164 Rebate of rates—Royal Zoological Society of SA
165 Rebate of rates—educational purposes
166 Discretionary rebates of rates

Division 6—Valuation of land for the purpose of rating

167 Valuation of land for the purposes of rating
168 Valuation of land

169 Objections to valuations made by council

Division 7—Issues associated with the declaration of rates

170 Notice of declaration of rates

Division 8—The assessment record

172 Chief executive officer to keep assessment record
173 Alterations to assessment record
174 Inspection of assessment record
175 Duty of Registrar-General to supply information

Division 9—Imposition and recovery of rates and charges

176 Preliminary
177 Rates are charges against land
178 Liability for rates
179 Liability for rates if land is not rateable for the whole of the financial year
180 Service of rate notice
181 Payment of rates—general principles
182 Remission and postponement of payment
182A Postponement of rates—Seniors
183 Application of money in respect of rates
184 Sale of land for non-payment of rates
185 Procedure where council cannot sell land

Division 10—Miscellaneous

186 Recovery of rates not affected by an objection, review or appeal
187 Certificate of liabilities
187A Administrative audits by Ombudsman
187B Investigation by Ombudsman

Part 2—Fees and charges

188 Fees and charges

Chapter 11—Land

Part 1—Local government land

Division 1—Preliminary

189 Crown as owner of land

Division 2—Acquisition of land

190 Acquisition of land by agreement
191 Compulsory acquisition of land
192 Assumption of care, control and management of land

Division 3—Community land

193 Classification
194 Revocation of classification of land as community land
195 Effect of revocation of classification

Division 4—Management plans

196 Management plans
197 Public consultation on proposed management plan
198 Amendment or revocation of management plan
199 Effect of management plan

Division 5—Business use of community land

200 Use of community land for business purposes

Division 6—Disposal and alienation of local government land

201 Sale or disposal of local government land
202 Alienation of community land by lease or licence

Division 8—Register of community land

207 Register

Part 2—Roads

Division 1—Ownership of roads

208 Ownership of public roads
209 Ownership of fixtures and equipment installed on public roads
210 Conversion of private road to public road

Division 2—Highways

211 Highways

Division 3—Power to carry out roadwork

212 Power to carry out roadwork
213 Recovery of cost of roadwork
214 Contribution between councils where road is on boundary between council areas
215 Special provisions for certain kinds of roadwork

Division 4—Power to require others to carry out work

216 Power to order owner of private road to carry out specified roadwork
217 Power to order owner of infrastructure on road to carry out specified maintenance or repair work
218 Power to require owner of adjoining land to carry out specified work

Division 5—Names and numbers

219 Power to assign a name, or change the name, of a road or public place
220 Numbering of premises and allotments

Division 6—Control of work on roads

221 Alteration of road
222 Permits for business purposes
223 Public consultation
224 Conditions of authorisation or permit
225 Cancellation of authorisation or permit

Division 7—Moveable signs

226 Moveable signs
227 Removal of moveable sign

Division 8—General provisions regulating authorised work

228 How work is to be carried out
229 Road to be made good

Division 9—Survey marks

230 Survey marks

Division 10—Register

231 Register

Division 11—Miscellaneous

232 Trees
233 Damage
234 Council's power to remove objects etc from roads

Part 3—Anti-pollution measures

235 Deposit of rubbish etc
236 Abandonment of vehicles and farm implements
237 Removal of vehicles

Part 4—Specific by-law provisions

238 Power to control access and use of land
239 By-laws about use of roads
240 Posting of bills etc

Part 5—Other matters

241 Native title
242 Time limits for dealing with certain applications
243 Registrar-General to issue certificate of title
244 Liability for injury, damage or loss on community land
245 Liability for injury, damage or loss caused by certain trees
245A Council may require bond or other security in certain circumstances

Chapter 12—Regulatory functions

Part 1—By-laws

246 Power to make by-laws
247 Principles applying to by-laws
248 Rules relating to by-laws
249 Passing by-laws
250 Model by-laws
251 Expiry of by-laws
252 Register of by-laws and certified copies
253 Revocation of by-law does not affect certain resolutions

Part 2—Orders

Division 1—Power to make orders

254 Power to make orders

Division 2—Associated matters

255 Procedures to be followed
256 Rights of review
257 Action on non-compliance
258 Non-compliance with an order an offence

Division 3—Policies

259 Councils to develop policies

Part 3—Authorised persons

260 Appointment of authorised persons
261 Powers under this Act
262 Power of enforcement

Chapter 13—Review of local government acts, decisions and operations

Part 1—Conduct of members

263 Grounds of complaint
264 Complaints
265 Hearing by District Court
266 Constitution of District Court
267 Outcome of proceedings
268 Application to committees and subsidiaries
269 Report on operation of Part

Part 2—Internal review of council actions

270 Council to establish grievance procedures
271 Mediation, conciliation and neutral evaluation

Part 3—Reviews initiated by Minister

Division 1—Councils

272 Investigation of a council
273 Action on a report

Division 2—Subsidiaries

274 Investigation of a subsidiary
275 Action on a report

Part 4—Special jurisdiction

276 Special jurisdiction

Chapter 14—Miscellaneous

Part 1—Ministerial delegations and approvals

277 Delegation by the Minister
278 Approval by Minister does not give rise to liability

Part 2—Service of documents and proceedings

279 Service of documents by councils etc
280 Service of documents on councils
281 Recovery of amounts from lessees or licensees
282 Ability of occupiers to carry out works

Part 3—Evidence

283 Evidence of proclamations
284 Evidence of appointments and elections
285 Evidence of resolutions etc
286 Evidence of making of a rate
287 Evidence of assessment record
288 Evidence of Government assessment
289 Evidence of registers
290 Evidence of by-law
291 Evidence of boundaries
292 Evidence of constitution of council, appointment of officers etc
293 Evidence of costs incurred by council

Part 4—Other matters

294 Power to enter and occupy land in connection with an activity
296 Reclamation of land
297 Property in rubbish
298 Power of council to act in emergency
299 Vegetation clearance
300 Costs of advertisements
301 River, stream or watercourse forming a common boundary
302 Application to Crown
302A Local government sector employees
302B Whistleblowing
303 Regulations

Schedule 1—Provisions relating to organisations that provide services to the local government sector

Part 1—Local Government Association

1 The Local Government Association of South Australia
2 Local government indemnity schemes

Part 2—Local Government Superannuation Scheme

3 Local Government Superannuation Scheme

Schedule 1A—Implementation of Stormwater Management Agreement

Division 1—Preliminary

1 Interpretation
2 Approval of Stormwater Management Agreement and statement of objects
3 Interaction with other Acts

Division 2—Stormwater Management Authority

4 Establishment of Stormwater Management Authority
5 Functions of Authority
6 Board of Authority
7 Terms and conditions of office
8 Remuneration
9 Validity of acts
10 Proceedings of board
11 Delegation
12 Use of facilities

Division 3—Stormwater management plans

13 Preparation of stormwater management plans by councils
14 Authority may require preparation of stormwater management plan
15 Approval of stormwater management plans

Division 4—Orders

16 Authority may issue order

Division 5—Stormwater Management Fund

17 Establishment of Stormwater Management Fund
18 Payments out of Fund
19 Accounts and audit
20 Annual reports

Division 6—Miscellaneous

21 Special powers in relation to land
22 Entry and occupation of land other than council land
23 Vesting of infrastructure etc
24 Immunity from liability
25 Assessment of reasonable costs and expenses
26 Evidentiary
27 Regulations

Schedule 2—Provisions applicable to subsidiaries

Part 1—Subsidiaries established by one council

1 Application for Ministerial approval
2 Corporate status
3 Charter of subsidiary
4 Appointment of board of management
5 Proceedings of board of management
6 Specific functions of board of management
7 Board members' duty of care etc
8 Business plans
9 Budget

10 Subsidiary subject to direction by council
11 Provision of information
12 Reporting
13 Internal audit
14 Liabilities
15 Principles of competitive neutrality
16 Winding-up

Part 2—Regional subsidiaries established by two or more councils

17 Application for Ministerial approval
18 Corporate status
19 Preparation of charter
20 Appointment of board of management
21 Proceedings of board of management
22 Specific functions of board of management
23 Board members' duty of care etc
24 Business plans
25 Budget
26 Subsidiary subject to direction by councils
27 Provision of information
28 Reporting
29 Council becoming or ceasing as a constituent council
30 Internal audit
31 Liabilities
32 Principles of competitive neutrality
33 Winding-up

Part 3—Common matters

34 Board members' duties of honesty
35 Disclosure
36 Power of delegation
37 Common seal and execution of documents
38 Protection from liability
39 Interests in companies
40 Saving provision

Schedule 3—Register of Interests—Form of returns

1 Interpretation
2 Contents of return

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

Schedule 5—Documents to be made available by councils

Schedule 6—Charges over land

1 Preliminary
2 Notice of charge to Registrar-General
3 Effect of charge
4 Discharge of charge

Schedule 7—Selection of assessors for proceedings in the District Court

Schedule 8—Provisions relating to specific land

6 Beaumont Common
7 Glenelg amusement park
8 Klemzig Memorial Garden
9 Levi Park
10 Reynella Oval
11 Lochiel Park Lands
12 Frew Park

Legislative history

The Parliament of South Australia enacts as follows:

Chapter 1—Preliminary

1—Short title

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

3—Objects

The objects of this Act are—

(a) to promote the continuance of a system of local government in South Australia under which elected local government bodies are constituted for the better governance of the State in a manner that is consistent with the provisions of Part 2A of the *Constitution Act 1934*; and

(b) to encourage the participation of local communities in the affairs of local government and to provide local communities, through their councils, with sufficient autonomy to manage the local affairs of their area; and

(c) to provide a legislative framework for an effective, efficient and accountable system of local government in South Australia; and

(d) to ensure the accountability of councils to the community; and

(e) to improve the capacity of the local government system to plan for, develop and manage local areas and to enhance the capacity of councils to act within their local areas as participants in the Australian system of representative government; and

(f) to encourage local government to provide appropriate services and facilities to meet the present and future needs of local communities; and

(g) to encourage local government to manage the natural and built environment in an ecologically sustainable manner; and

(h) to define the powers of local government and the roles of council members and officials.

4—Interpretation

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

absolute majority of the members of a council means a majority of the whole number of the members;

accounting records means all records and documents relevant to any receipt or payment of money and includes the working papers and other documents necessary to explain the methods and calculations by which statements and accounts are made up;

Adelaide City Council means The Corporation of the City of Adelaide;

agenda means a list of items of business to be considered at a meeting;

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

area means the area for which a council is constituted;

Australian Parliament means the Parliament of the State, the Commonwealth or another State, or a Legislative Assembly of a Territory of the Commonwealth;

authorised person means a person appointed by a council as an authorised person under Chapter 12 Part 3;

board member means, according to the context—

(a) a member of the board of management of a subsidiary established by a single council under this Act; or

(b) a member of the board of management of a regional subsidiary established by two or more councils under this Act;

business day means a day that is not a Saturday, Sunday or public holiday;

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

cash advance debenture rate, for a particular financial year, means the cash advance debenture rate used by the Local Government Finance Authority of South Australia at the commencement of that financial year;

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

commercial project means a commercial activity or enterprise;

community land means local government land classified as community land under Chapter 11;

company means a company incorporated under the *Corporations Act 2001* of the Commonwealth;

constituent council of a regional subsidiary means a council that has participated in the establishment of the subsidiary under this Act, or that has become a constituent council under Schedule 2;

council means a council constituted under this Act;

council committee means a committee of a council established under this Act and includes a subcommittee;

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

council subsidiary means a subsidiary established under Schedule 2;

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

day therapy centre means a place that provides day therapy to older persons to enable them to maintain or regain a level of independence and to continue to live in their own homes, or to enable carers to have some respite;

District Court means the Administrative and Disciplinary Division of the District Court of South Australia;

domestic partner means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

elector—see *Local Government (Elections) Act 1999*;

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

farm land means land used wholly or mainly for the business of primary production;

general election, in relation to a council, means a general election of members of the council (whether held under section 5 of the *Local Government (Elections) Act 1999* or pursuant to a proclamation or notice under this Act);

highway means—

(a) a main road or a controlled-access road within the meaning of the *Highways Act 1926*; or

(b) a road vested in the name of the Commissioner of Highways or the Minister to whom the administration of the *Highways Act 1926* is committed; or

(c) a road that is subject to a notice under section 26 of the *Highways Act 1926*; or

(d) land (other than land vested in a council) declared to be a public road under Part 3A of the *Highways Act 1926*;

independent living units means—

(a) units in a complex of residential units that are primarily occupied by retired persons and their spouses or domestic partners; or

(b) units in a retirement village under the *Retirement Villages Act 1987* where a note of the use of the land as a retirement village is endorsed on the relevant certificates of title;

land means, according to the context—

(a) land as a physical entity, including—

(i) any building or structure on, or improvement to, land; or

(ii) land covered by water and, in such a case, the overlying water; or

(iii) a strata lot under the *Community Titles Act 1996* or a unit under the *Strata Titles Act 1988*; or

(b) a legal estate or interest in, or right in respect of, land;

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

lease includes a tenancy agreement;

lessee includes a tenant;

LGA means the Local Government Association of South Australia;

litter includes bottles, cans, cartons, packages, paper, glass and food stuffs;

local government land means land owned by a council or under a council's care, control and management;

member of a council means the principal member or a councillor of the council;

moveable sign means a moveable advertisement or sign;

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

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;

owner of land means—

(a) if the land is unalienated Crown land—the Crown; or

(b) if the land has been granted in fee simple (and is not unalienated Crown land)—

(i) the holder of an estate in fee simple, or a life estate, in the land; or

(ii) the holder of a leasehold estate in the land who is not in occupation of the land; or

(iii) a mortgagee in possession of the land (or a receiver appointed by such a mortgagee); or

(c) if the land is held from the Crown under a lease, licence or agreement to purchase—the lessee, licensee or purchaser; or

(d) a person who holds native title in the land; or

(e) a 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; or

(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;

Panel means the Boundary Adjustment Facilitation Panel;

park means community land reserved or delineated as a park or designated by a council as a park;

periodic election means an election to fill offices of a council held pursuant to section 5 of the *Local Government (Elections) Act 1999*;

principal member, of a council—see Chapter 5 Part 1;

private road means a road in private ownership;

project includes—

(a) any form of activity or enterprise;

(b) the provision of facilities or services;

(c) any form of scheme, work or undertaking;

public consultation policies—see Chapter 4 Part 5;

public notice means notice published in the Gazette and in a newspaper circulating generally throughout the State;

public place means a place (including a place on private land) to which the public has access, but does not include any part of a community parcel divided by a plan of community division under the *Community Titles Act 1996*;

public road means—

(a) any road or land that was, immediately before the commencement of this Act, a public street or road under the repealed Act; or

(b) any road—

(i) that is vested in a council under this or another Act; or

(ii) that is placed under a council's care, control and management as a public road after the commencement of this Act,

but not including an alley, laneway, walkway or other similar thoroughfare vested in a council; or

(c) any road or land owned by a council, or transferred or surrendered to a council, and which, subject to this Act, is declared by the council to be a public road; or

(d) any land shown as a street or road on a plan of division deposited in the Lands Titles Registration Office or the General Registry Office and which is declared by the council to be a public road; or

(e) any land transferred or surrendered to the Crown for use as a public road that was, immediately before the transfer, held by a person in fee simple or under a lease granted by the Crown,

(and includes any such road that is within the boundaries of a public square);

quarter means any period of three months commencing on 1 January, 1 April, 1 July or 1 October;

rateable land or ***rateable property*** means land that is rateable under Chapter 10;

ratepayer means a person who appears in the assessment record as the owner or occupier of rateable property;

regional subsidiary means a subsidiary of two or more councils;

regulatory activity means an activity which involves the making or enforcement of by-laws, orders, standards or other controls under this or another Act;

relative of a person means—

(a) the spouse or domestic partner; or

(b) a parent or remoter lineal ancestor; or

(c) a son, daughter or remoter descendant; or

(d) a brother or sister;

remuneration means salary, allowances and other monetary benefits paid or payable to an employee of a council;

repealed Act means the *Local Government Act 1934*;

reserve means community land reserved or dedicated as a reserve or designated by the council as a reserve;

road means a public or private street, road or thoroughfare to which public access is available on a continuous or substantially continuous basis to vehicles or pedestrians or both and includes—

(a) a bridge, viaduct or subway; or

(b) an alley, laneway or walkway;

roadwork means—

(a) the construction of a road; or

(b) the maintenance or repair of a road; or

(c) the alteration of a road; or

(d) the construction of drains and other structures for the drainage of water from a road; or

(e) the installation of fences, railings, barriers or gates; or

(f) the installation of traffic control devices, traffic islands or parking bays; or

(g) the improvement of a road including (for example)—

(i) landscaping and beautification; or

(ii) installation of road lighting; or

(h) the installation of amenities or equipment on or adjacent to a road for the use, enjoyment or protection of the public; or

(i) the installation of signs on or adjacent to a road for the use or benefit of the public;

rubbish includes litter and waste matter;

senior executive officer means an employee of a council—

(a) who reports directly to the chief executive officer; and

(b) —

(i) whose total remuneration equals or exceeds $100 000 per annum; or

(ii) whose position is identified in the organisational structure of the staff of the council as a senior executive officer's position for the purposes of this Act;

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

spouse—a person is the spouse of another if they are legally married;

strategic management plans—see Chapter 8 Part 1;

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;

subsidiary of a council means—

(a) a subsidiary of the council; or

(b) a regional subsidiary for which the council is a constituent council;

supported accommodation means—

(a) residential care facilities that are approved for Commonwealth funding under the *Aged Care Act 1997* (Cwlth); or

(b) accommodation for persons with mental health difficulties, intellectual or physical difficulties, or other difficulties, who require support in order to live an independent life; or

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

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 in the Gazette;

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

(c) land subject to an agreement to purchase;

valuation means a determination or assessment of value;

vehicle includes motor cycle and bicycle;

waste matter includes any discarded object or material (whether or not it has any apparent value).

(2) For the purposes of this Act, a reference to the conclusion of council elections is a reference—

(a) in the case of periodic elections—

(i) if 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 last business day before the second Saturday of November of the year of the elections; or

(ii) in any other case—to the time at which the last result of the periodic elections is certified by the returning officer under the *Local Government (Elections) Act 1999*;

(b) in the case of elections held on a day appointed by proclamation or notice—

(i) if 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 day fixed as polling day for the elections; or

(ii) in any other case—to the time at which the last result of the elections is certified by the returning officer under the *Local Government (Elections) Act 1999*;

(c) in the case of a supplementary election—

(i) if 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 the *Local Government (Elections) Act 1999*; or

(ii) in any other case—to the time at which the result of the election is certified by the returning officer under the *Local Government (Elections) Act 1999*.

(3) If—

(a) a person is authorised 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) a 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 authorises 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.

(4) Subsection (3) operates subject to any other section that makes express provision for another person to act in the relevant office or position.

5—Business purposes

For the purposes of this Act, land may be used for a business purpose even if it is not intended to make a profit.

Chapter 2—The system of local government

Note—

Schedule 1 contains provisions relating to organisations that provide services to the local government sector.

6—Principal role of a council

A council is, under the system of local government established by this Act, established to provide for the government and management of its area at the local level and, in particular—

(a) to act as a representative, informed and responsible decision-maker in the interests of its community; and

(b) to provide and co-ordinate various public services and facilities and to develop its community and resources in a socially just and ecologically sustainable manner; and

(c) to encourage and develop initiatives within its community for improving the quality of life of the community; and

(d) to represent the interests of its community to the wider community; and

(e) to exercise, perform and discharge the powers, functions and duties of local government under this and other Acts in relation to the area for which it is constituted.

7—Functions of a council

The functions of a council include—

(a) to plan at the local and regional level for the development and future requirements of its area;

(b) to provide services and facilities that benefit its area, its ratepayers and residents, and visitors to its area (including general public services or facilities (including electricity, gas and water services, and waste collection, control or disposal services or facilities), health, welfare or community services or facilities, and cultural or recreational services or facilities);

(c) to provide for the welfare, well-being and interests of individuals and groups within its community;

(d) to take measures to protect its area from natural and other hazards and to mitigate the effects of such hazards;

(e) to manage, develop, protect, restore, enhance and conserve the environment in an ecologically sustainable manner, and to improve amenity;

(f) to provide infrastructure for its community and for development within its area (including infrastructure that helps to protect any part of the local or broader community from any hazard or other event, or that assists in the management of any area);

(g) to promote its area and to provide an attractive climate and locations for the development of business, commerce, industry and tourism;

(h) to establish or support organisations or programs that benefit people in its area or local government generally;

(i) to manage and, if appropriate, develop, public areas vested in, or occupied by, the council;

(j) to manage, improve and develop resources available to the council;

(k) to undertake other functions and activities conferred by or under an Act.

8—Objectives of a council

A council must, in the performance of its roles and functions—

(a) provide open, responsive and accountable government;

(b) be responsive to the needs, interests and aspirations of individuals and groups within its community;

(c) participate with other councils, and with State and national governments, in setting public policy and achieving regional, State and national objectives;

(d) give due weight, in all its plans, policies and activities, to regional, State and national objectives and strategies concerning the economic, social, physical and environmental development and management of the community;

(e) seek to co-ordinate with State and national government in the planning and delivery of services in which those governments have an interest;

(f) seek to facilitate sustainable development and the protection of the environment and to ensure a proper balance within its community between economic, social, environmental and cultural considerations;

(g) manage its operations and affairs in a manner that emphasises the importance of service to the community;

(h) seek to ensure that council resources are used fairly, effectively and efficiently;

(i) seek to provide services, facilities and programs that are adequate and appropriate and seek to ensure equitable access to its services, facilities and programs.

Chapter 3—Constitution of councils

Part 1—Creation, structuring and restructuring of councils

Division 1—Powers of the Governor

9—Governor may act by proclamation

The Governor may, by proclamation, do one or more of the following:

(a) constitute a new council;

(b) amalgamate two or more councils to form a single council or two or more councils (being a lesser number than the number of councils subject to amalgamation);

(c) define the area of a council;

(d) alter the boundaries of a council;

(e) give a name to, or alter the name of—

(i) a council;

(ii) the area of a council;

(f) constitute a council as a municipal council or a district council, or change a municipal council to a district council or a district council to a municipal council;

(g) divide, or redivide, the area of a council into wards, alter the division of the area of a council into wards, or abolish the division of the area of a council into wards;

(h) give a name to, or alter the name of, a ward;

(i) determine the composition of a council (for example, by making provision about the principal member of a council and about the number of councillors for a council and, if a council has wards, the number of councillors to represent each ward), or alter the composition of a council;

(j) abolish a council.

10—Matters that may be included in a proclamation

(1) If the Governor by proclamation under this Part constitutes a new council, or amalgamates two or more councils to form a single council or two or more councils, the Governor may, by the same or a subsequent proclamation or proclamations, in respect of a council that is being formed—

(a) —

(i) appoint the first members of the council and, if so determined, make provision for the first election of members of the council; or

(ii) make provision for the election of the first members of the council;

(b) provide for an alteration to the composition of the council from a date specified in the proclamation;

(c) determine the method or methods of assessing rateable property within the area of the council;

(d) 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;

(e) make provision for the by-laws that are to apply in the area (or part of the area) of the council;

(f) make provision for the appointment or selection of the first chief executive officer of the council and, as appropriate, of other officers of the council;

(g) make, subject to the provisions of a relevant Act, award or industrial agreement, provision to protect the various rights and interests of staff.

(2) If the Governor by proclamation under subsection (1) 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 periodic elections for the council.

(3) If two or more councils are being amalgamated, the Governor may also, by proclamation, make provision for the preparation of final financial statements for the councils that are being amalgamated, and for other matters that should be finalised or resolved in connection with the amalgamation.

(4) If two or more councils are amalgamated under this Part so as to form a single council, the assets, rights and liabilities of the councils subject to the amalgamation are, subject to any other provision made by proclamation, on the amalgamation, vested in or attached to the council formed by the amalgamation.

(5) If three or more councils are amalgamated under this Part 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.

(6) If the Governor by proclamation under this Part alters the boundaries of two or more councils, the Governor may, by the same or a subsequent proclamation or proclamations—

(a) 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;

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

(c) make provision for the transfer, apportionment, settlement or adjustment of property, assets, income, rights, liabilities or expenses as between the relevant councils.

(7) If the Governor by proclamation under this Part provides for new or additional offices in the membership of a council, the Governor may, by the same or a subsequent proclamation or proclamations, appoint the first persons to fill those offices.

(8) If the Governor by proclamation under this Part abolishes a council, the Governor may, by the same or a subsequent proclamation or proclamations—

(a) declare that the property, 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;

(b) make, subject to the provisions of a relevant Act, award or enterprise agreement, provision to protect the various rights and interests of staff of the council being abolished.

(9) If the Governor does not make a declaration under subsection (8)(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.

11—General provisions relating to proclamations

(1) The Governor cannot make a proclamation under a preceding section of this Division except—

(a) in pursuance of an address from both Houses of Parliament; or

(b) in pursuance of a proposal recommended by the Panel under Part 2; or

(c) in pursuance of a proposal recommended by the Minister under Part 2.

(2) The Governor may also, by proclamation—

(a) make provision for related or ancillary matters necessary, desirable or expedient in view of the circumstances of a 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).

(3) 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.

Division 2—Powers of councils and representation reviews

12—Composition and wards

(1) A council may, by notice in the Gazette after complying with the requirements of this section—

(a) alter the composition of the council;

(b) divide, or redivide, the area of the council into wards, alter the division of the area of the council into wards, or abolish the division of the area of a council into wards.

(2) A notice under this section may also—

(a) change the council from a municipal council to a district council, or change the council from a district council to a municipal council;

(b) alter the name of—

(i) the council;

(ii) the area of the council;

(c) give a name to, or alter the name of, a ward,

(without the need to comply with section 13).

(3) A council must, before it publishes a notice, conduct and complete a review under this section for the purpose of determining whether its community would benefit from an alteration to its composition or ward structure.

(4) 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—but a council must ensure that all aspects of the composition of the council, and the issue of the division, or potential division, of the area of the council into wards, are comprehensively reviewed under this section at least once in every 8 years.

(4a) The first comprehensive review to be carried out by a council under subsection (4) must be completed within a period specified by the Electoral Commissioner by written notice to the council after consultation with the council.

(5) A council must, in order to commence a review, initiate the preparation of a paper (a ***representation options paper***) by a person who, in the opinion of the council, is qualified to address the representation and governance issues that may arise with respect to the matters under review.

(6) The representation options paper must examine the advantages and disadvantages of the various options that are available to the council under subsection (1) (insofar as the various features of the composition and structure of the council are under review) and, in particular (to the extent that may be relevant)—

(a) if the council is constituted of more than 12 members—examine the question of whether the number of members should be reduced; and

(b) if the area of the council is divided into wards—examine the question of whether the division of the area into wards should be abolished,

(and may examine such other relevant issues as the council or the person preparing the paper thinks fit).

(7) The council must—

(a) by public notice—

(i) inform the public of the preparation of the representation options paper; and

(ii) invite interested persons to make written submissions to the council on the subject of the review within a period specified by the council (being a period of at least 6 weeks); and

(b) publish a copy of the notice in a newspaper circulating within its area.

(8) The council must ensure that copies of the representation options paper are available for inspection (without charge) and purchase (on payment of a fee fixed by the council) at the principal office of the council during the period that applies under subsection (7)(a)(ii).

(8a) The council must, at the conclusion of the public consultation undertaken under subsection (7)(a), prepare a report that—

(a) provides information on the public consultation and the council's response to the issues arising from the submissions made as part of that process; and

(b) sets out—

(i) any proposal that the council considers should be carried into effect under this section; and

(ii) in respect of any such proposal—an analysis of how the proposal relates to the principles under section 26(1)(c) and the matters referred to in section 33 (to the extent that may be relevant); and

(c) insofar as a decision of the council is not to adopt any change under consideration as part of the representation options paper or the public consultation process—sets out the reasons for the council's decision.

(9) 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 preparation of the report and its availability; and

(ii) invite interested persons to make written submissions to the council on the report within a period specified by the council (being a period of at least 3 weeks); and

(c) publish a copy of the notice in a newspaper circulating within its area.

(10) The council must give any person who makes written submissions in response to an invitation under subsection (9) an opportunity to appear personally or by representative before the council or a council committee and to be heard on those submissions.

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

(11a) If the report proposes that the composition of the council be altered so that—

(a) the council will have a chairperson rather than a mayor; or

(b) the council will have a mayor rather than a chairperson,

then the proposal cannot proceed unless or until a poll has been conducted on the matter and the requirements of subsection (11c) have been satisfied.

(11b) The council may, with respect to a proposal within the ambit of subsection (11a)—

(a) insofar as may be relevant in the particular circumstances, separate the proposal (and any related proposal) from any other proposal contained in the report (and then it will be taken that the council is reporting separately on this proposal (and any related proposal));

(b) determine to conduct the relevant poll—

(i) in conjunction with the next general election for the council (so that the proposal (and any related proposal) will then, if approved at the poll, take effect from polling day for the following general election); or

(ii) at some other time (so that the proposal (and any related proposal) will then, if approved at the poll, take effect in the manner contemplated by subsection (18)).

(11c) The following provisions apply to a poll required under subsection (11a):

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

(b) the council must—

(i) prepare a summary of the issues surrounding the proposal to assist persons who may vote at the poll; and

(ii) obtain a certificate from the Electoral Commissioner that he or she is satisfied that the council has taken reasonable steps to ensure that the summary presents the arguments for and against the proposal in a fair and comprehensive manner; and

(iii) after obtaining the certificate of the Electoral Commissioner, ensure that copies of the summary are made available for public inspection at the principal office of the council, are available for inspection on the Internet, and are published or distributed in any other way that the Electoral Commissioner may direct;

(c) the proposal cannot proceed unless—

(i) the number of persons who return ballot papers at the poll is at least equal to the prescribed level of voter participation; and

(ii) the majority of those persons who validly cast a vote at the poll vote in favour of the proposal.

(11d) For the purposes of subsection (11c)(c), the ***prescribed level of voter participation*** is a number represented by multiplying the total number of persons entitled to cast a vote at the poll by half of the turnout percentage for the council, where the ***turnout percentage*** is—

(a) the number of persons who returned ballot papers in the contested elections for the council held at the last periodic elections, expressed as a percentage of the total number of persons entitled to vote at those elections (viewing all elections for the council as being the one election for the purposes of this provision), as determined by the Electoral Commissioner and published in such manner as the Electoral Commissioner thinks fit; or

(b) if no contested elections for the council were held at the last periodic elections, a percentage determined by the Electoral Commissioner for the purposes of the application of this section to the relevant council, after taking into account the turnout percentages of other councils of a similar size and type, as published in such manner as the Electoral Commissioner thinks fit.

(12) The council must then, taking into account the operation of the preceding subsection, refer the report to the Electoral Commissioner.

(12a) The report must be accompanied by copies of any written submissions received under subsection (9) that relate to the subject-matter of the proposal.

(13) On receipt of a report, the Electoral Commissioner must determine whether the requirements of this section have been satisfied and then—

(a) if of the opinion that the requirements have been satisfied—give an appropriate certificate; or

(b) if of the opinion that the requirements have not been satisfied—refer the matter back to the council together with a written explanation of the reasons for not giving a certificate under this subsection.

(14) The validity of a determination of the Electoral Commissioner under subsection (13) cannot be called into question.

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

(a) the Electoral Commissioner must specify in the certificate a day by which an appropriate notice (or notices) for the purposes of this section 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.

(16) If the matter is referred back to the council under subsection (13)(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.

(17) However, a council must, if it makes an alteration to its report under subsection (16)(a), comply with the requirements of subsections (9) and (10) (as if the report (as altered) constituted a new report), unless the council determines that the alteration is of a minor nature only.

(18) A proposal under this section takes effect as follows:

(a) if the day of publication of the relevant notice under subsection (15) occurs before 1 January of the year in which a periodic election is next due to be held then, unless paragraph (c) applies, the proposal will take effect as from polling day for that periodic election;

(b) if the day of publication of the relevant notice under subsection (15) occurs on or after 1 January of a year in which a periodic election is due to be held (and before polling day for that periodic election) then, unless paragraph (c) applies, the proposal will take effect as from polling day for the periodic election next following the periodic election held in the year of publication;

(c) if a general election (not being a periodic election) is held after the expiration of 7 months from the day of publication of the relevant notice under subsection (15) (and before polling day for the next periodic election after publication) then the proposal will take effect from polling day for that general election.

(18a) Subsection (18) has effect subject to the operation of subsection (11b)(b)(i).

(19) If a council—

(a) subject to subsection (22), fails to undertake a review in accordance with the requirements of this section; or

(b) fails to take appropriate action if a matter is referred back to the council by the Electoral Commissioner under subsection (13)(b); or

(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.

Maximum penalty: $2 500.

(20) On the referral of a matter under subsection (19), the Electoral Commissioner may take such action as, in the circumstances of the particular case, appears appropriate to the Electoral Commissioner and may then, by notice in the Gazette, give effect to a proposal that could have been carried into effect by the council under this section.

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

(22) The Panel may exempt a council from the requirement to hold a review under this section on the basis that relevant issues have already been addressed by a proposal under this Chapter.

(23) An exemption under subsection (22) may be granted on conditions determined by the Panel, including a condition that the council carry out a review under this section by a date specified by the Panel.

(24) If—

(a) the area of a council is divided into wards; and

(b) the Electoral Commissioner notifies the council in writing that the number of electors represented by a councillor for a ward varies from the ward quota by more than 20 per cent,

then the council must undertake a review under this section within a period specified by the Electoral Commissioner.

(25) For the purposes of subsection (24)—

(a) if two or more councillors represent a ward, the number of electors represented by each councillor will be taken to be the number of electors for the ward (as at a date determined by the Electoral Commissioner) divided by the number of councillors who represent the ward (ignoring any fractions resulting from the division); and

(b) the ward quota is the number of electors for the area (as at a date determined by the Electoral Commissioner) divided by the number of councillors for the area of the council who represent wards (ignoring any fractions resulting from the division).

13—Status of a council or change of various names

(1) A council may, by notice in the Gazette, after complying with the requirements of this section—

(a) change the council from a municipal council to a district council, or change the council from a district council to a municipal council;

(b) alter the name of—

(i) the council;

(ii) the area of the council;

(c) alter the name of a ward.

(2) A council must, before it publishes a notice, comply 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 a period specified by the council (being a period of at least 6 weeks);

(ba) publish a copy of the notice in a newspaper circulating within its area;

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

(3) A notice published by a council under this section has effect 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.

Part 2—The Boundary Adjustment Facilitation Panel and reform proposals

Division 1—The Boundary Adjustment Facilitation Panel

14—The Panel

(1) The *Boundary Adjustment Facilitation Panel* continues in existence.

(2) The Panel is a body corporate.

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

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

(5) The Panel must, on or before 30 September in every year, forward to the Minister a report on the work of the Panel for the financial year ending on the preceding 30 June.

(6) The Minister must, within six sitting days after receiving a report under subsection (5), have copies of the report laid before both Houses of Parliament.

15—Composition of Panel

(1) The Panel will be constituted in relation to the conduct of any business of the following members appointed by the Governor:

(a) two persons nominated by the Minister; and

(b) two persons selected from a panel of four persons nominated by the LGA.

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

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

16—Conditions of membership

(1) A member of the Panel is appointed on terms (including as to term of office) and conditions determined by the Governor (and, at the expiration of a term of office, is eligible for reappointment).

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

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

(b) for misconduct; or

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

(d) if the Panel has, in the opinion of the Governor, failed to function effectively and the Panel's membership should therefore (in the Governor's opinion) be reconstituted for that reason.

(3) The office of a member of the Panel 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 punishable by imprisonment; or

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

(4) Subsection (3)(d) does not take effect until the period for appealing against the conviction has expired or, if there is an appeal, until the appeal is determined.

(5) A member of the Panel is disqualified from acting as such, or continuing to act as such, in a matter before the Panel 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.

(6) 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.

(7) If a casual vacancy occurs in the office of a member of the Panel, the Minister 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 LGA will be selected from a panel of two persons nominated by that body).

17—Fees and expenses

A member of the Panel is entitled to receive fees and expenses determined by the Governor.

18—Protection of information etc

(1) A member or former member of the Panel 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 Panel.

Maximum penalty: $20 000 or imprisonment for 4 years.

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

Maximum penalty: $20 000 or imprisonment for 4 years.

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

(a) the member knows to be commercially sensitive; or

(b) the Panel classifies as confidential information.

Maximum penalty: $20 000 or imprisonment for 4 years.

19—Validity of acts

(1) An act or proceeding of the Panel is not invalid by reason only of a defect in the appointment of a member, or a vacancy in an office under this Part.

20—Proceedings

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

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

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

(4) Each member present at a meeting of the Panel is entitled to one vote on a matter arising for decision by the Panel, 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 Panel should be open to the public unless the Panel is considering a matter that, in the opinion of the Panel, should be dealt with on a confidential basis.

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

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

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

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

21—Staffing arrangements

(1) The Minister will determine the staffing arrangements for the Panel after consultation with the member appointed to chair the Panel.

(2) However, if there is an agreement between the Minister and the LGA about sharing the costs of the Panel, the staffing arrangements will be determined by the Minister in the manner contemplated by the agreement after consultation with the member appointed to chair the Panel.

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

(4) The Panel 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.

Division 2—Functions and powers of Panel

22—Functions of Panel

The functions of the Panel include—

(a) to consider proposals for the making of proclamations under this Chapter submitted to the Panel, and to make recommendations to the Minister on the basis of those proposals; and

(b) to assist councils and members of the public in the formulation, development and implementation of proposals and submissions under this Chapter; and

(c) to conduct inquiries on matters referred to the Panel by electors (or potential electors) and, if appropriate, to formulate proposals for the making of proclamations under this Chapter; and

(d) to prepare and publish guidelines, consistent with the provisions of this Chapter and the objects of this Act, relevant to the formulation, development or implementation of proposals under this Chapter; and

(e) to provide advice to the Minister on matters referred to the Panel by the Minister under this Chapter; and

(f) to take on other tasks incidental to a function referred to in a preceding paragraph.

23—Powers of Panel

(1) The Panel may, in the performance of its functions—

(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 the Panel thinks fit.

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

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

(4) The Panel may, for the purposes of its functions—

(a) by summons issued by the Panel, 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 Panel books, papers or other records;

(e) retain books, papers or other records produced under paragraph (d) for reasonable periods determined by the Panel 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).

Maximum 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 Panel personally or by representative.

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

24—Committees

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

(2) A committee may, but need not, consist of a member or members of the Panel.

(3) The Panel must consult with the Minister and the LGA—

(a) before it establishes a committee under this section; and

(b) before it appoints a person who is not a member of the Panel to a committee established under this section.

(4) Subject to direction by the Panel, a committee may determine its own procedures.

(5) 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.

(6) The appointment of a committee does not limit the powers of the Panel in a matter.

25—Delegation

(1) The Panel 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 Panel from acting in a matter.

Division 3—Principles

26—Principles

(1) The Panel should, in arriving at recommendations for the purposes of this Chapter (but taking into account the nature of the proposal under consideration), have regard to—

(a) the objects of this Act; and

(b) the roles, functions and objectives of councils under this Act; and

(c) the following principles:

(i) the resources available to local communities should be used as economically as possible while recognising the desirability of avoiding significant divisions within a community;

(ii) proposed changes should, wherever practicable, benefit ratepayers;

(iii) a council should have a sufficient resource base to fulfil its functions fairly, effectively and efficiently;

(iv) a council should offer its community a reasonable range of services delivered on an efficient, flexible, equitable and responsive basis;

(v) 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;

(vi) a council should be in a position to facilitate sustainable development, the protection of the environment and the integration of land use schemes;

(vii) 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;

(viii) a council area should incorporate or promote an accessible centre (or centres) for local administration and services;

(ix) the importance within the scheme of local government to ensure that local communities within large council areas can participate effectively in decisions about local matters;

(x) 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;

(xi) residents should receive adequate and fair representation within the local government system, while over-representation in comparison with councils of a similar size and type should be avoided (at least in the longer term);

(xii) the importance within the scheme of local government that a council be able to co-operate with other councils and provide an effective form of government to the community;

(xiii) a scheme that provides for the integration or sharing of staff and resources between two or more councils may offer a community or communities a viable and appropriate alternative to structural change options; and

(d) the extent and frequency of previous changes affecting the council or councils under this Chapter or the repealed Act.

(2) The Panel should, so far as is relevant, give preference to structural changes that enhance the capacity of local government to play a significant role in the future of an area or region from a strategic perspective.

Division 4—Council initiated proposals

27—Council initiated proposals

(1) Councils may submit to the Panel proposals for the making of proclamations under this Chapter.

(2) A proposal submitted to the Panel 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 Panel 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) comply with requirements published by the Panel.

(3) On the submission of a proposal to the Panel, the Panel must cause public notice to be given setting out the substance of the proposal and publish a copy of the notice in a newspaper circulating within the area or areas of the council or councils.

(4) The Panel may inquire into the proposal as the Panel thinks fit.

(5) The Panel must be satisfied that there has been a reasonable amount of community consultation on the proposal.

(6) The Panel 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 the Panel thinks warrants consideration.

(7) The Panel 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) However, the Panel must not make an amendment, or substitute an alternative proposal, unless—

(a) further consultation has been conducted to the satisfaction of the Panel; or

(b) the Panel determines—

(i) that there has already been adequate consultation on the matter; or

(ii) that the amendment, or the alternative proposal, is only of minor significance, or that the final proposal differs from the original proposal in minor respects only.

(9) The Panel must then prepare a report to the Minister on the proposal.[1]

Note—

1 Division 6 sets out what happens after this report is prepared.

Division 5—Public initiated submissions

28—Public initiated submissions

(1) In this section—

eligible elector, in relation to a proposal, is—

(a) in the case of a proposal to alter the boundaries of two or more councils to incorporate land within the area of a council into the area of another council (a ***receiving council***)—an elector in respect of a place of residence or rateable property within the area of a receiving council, or within the area that would be so incorporated;

(b) in the case of a proposal that relates to the composition of a council or the issue of wards within the area of a council—an elector in respect of a place of residence or rateable property within the area of the council;

(c) in the case of a proposal to incorporate within the area of a council a part of the State that is not within the area of a council—a person, body corporate or group who or which would, if the proposal were to proceed, be an elector in respect of a place of residence or rateable property within the area that would be so incorporated.

(2) A group of at least 20 eligible electors may submit to a council a submission that the council consider a proposal—

(a) to alter the boundaries of the council;

(b) to alter the composition of the council or the representative structure of the council (including by the creation, alteration or abolition of wards);

(c) to incorporate within the area of the council a part of the State that is not within the area of a council.

(3) However, if the council has, within the 2 years immediately preceding the making of the submission, been newly constituted (including through an amalgamation) or otherwise subject to change through the implementation of a structural reform proposal, a submission cannot be made under subsection (2) unless—

(a) the submission is being made with a view to addressing a matter recommended by the Panel that the council has failed to implement; or

(b) the submission is to alter the boundaries of the council and the alteration would not, if it were to be brought into effect—

(i) alter a boundary that has been established (including through an amalgamation) within the preceding 2 years; or

(ii) alter the same part of a boundary that has already been altered within the preceding 2 years.

(4) A submission under subsection (2) must—

(a) set out in general terms the grounds on which the submission is made and the issues that, in the opinion of the person or persons making the submission, should be considered in an assessment of the matter; and

(b) nominate five persons who are willing to represent the interests of persons who would be directly affected by any proposal based on the matters raised in the submission; and

(c) comply with guidelines published by the Panel.

(5) The eligible electors making the submission must furnish a copy of a submission under subsection (2) to the Panel in accordance with guidelines published by the Panel.

(6) On the receipt of a submission under subsection (2), a council must consider the issues determined by the council to be relevant to the matter and then decide whether or not it is willing to—

(a) conduct a review in relation to the matter under Division 2 of Part 1; or

(b) formulate (or participate in the formulation of) a proposal in relation to the matter under Division 4 of this Part.

(7) The council must give the eligible electors and the Panel written notice of its decision under subsection (6) in accordance with guidelines published by the Panel (which may include a time-frame within which a decision should be made under that subsection).

(8) A group of eligible electors who, after making a submission under subsection (2), are dissatisfied with—

(a) a decision of a council under subsection (6); or

(b) any aspect of a review or proposal referred to in that subsection,

may submit the submission, or a submission in substantially the same terms, to the Panel.

(9) A submission under subsection (8) must—

(a) set out in general terms the grounds on which the submission is made; and

(b) nominate five persons who are willing to represent the interests of persons who would be directly affected by any proposal based on the matters raised in the submission; and

(c) comply with guidelines published by the Panel.

(10) On the receipt of a submission under subsection (8), the Panel must examine and consider those issues determined by the Panel to be relevant to the matter—including the actions of any relevant council in response to a submission under subsection (2), whether in its opinion action under this Chapter is the most appropriate response to the issues raised by the submission, and whether there is likely to be sufficient support from electors or potential electors to justify the formulation and consideration of a proposal by the Panel under this Chapter—and then decide whether or not it appears appropriate to proceed with a proposal itself on the basis of the submission.

Examination of relevant issues should include consultation with the relevant council or councils and, if the Panel thinks fit, public consultation.

(11) If the Panel decides not to proceed with a proposal under subsection (10), the Panel must provide a report on the matter—

(a) to the persons who made the submission; and

(b) to the Minister; and

(c) to any relevant council.

(12) If the Panel decides to proceed with a proposal under subsection (10), the Panel may formulate a proposal and must then—

(a) by public notice—

(i) inform the public of the substance of the proposal; and

(ii) invite interested persons to make written submissions on the proposal within a period specified by the Panel (being a period of at least 6 weeks); and

(b) publish a copy of the notice in a newspaper circulating within the area or areas of the relevant council or councils.

(13) The Panel must then, after the expiration of the time allowed for submissions, hold a hearing in relation to the proposal unless satisfied that there has already been adequate consultation on the matter or that a hearing is otherwise not warranted in the circumstances of the particular case.

(14) At a hearing held pursuant to subsection (13)—

(a) a person who made written submissions is entitled to appear personally or by representative and to be heard on those submissions; and

(b) the Panel may hear and consider other evidence and submissions as the Panel thinks fit.

(15) The Panel must consult with any council affected by a proposal.

(16) The Panel may conduct other inquiries and consultation as the Panel thinks fit.

(17) The Panel 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.

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

(a) the Panel has conducted further consultation as the Panel thinks fit; or

(b) the Panel determines—

(i) that there has already been adequate consultation on the matter; or

(ii) that the amendment, or the alternative proposal, is of only minor significance, or that the final proposal differs from the original proposal in minor respects only.

(19) The Panel must ascertain whether a council affected by a proposal under subsection (17) accepts or rejects the terms of the proposal (and unless a council resolves to accept a proposal within one month after the Panel 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).

(20) If a council accepts the terms of a proposal subject to the proposal being amended (or further amended), or rejects the terms of the proposal, the Panel must reconsider the proposal and may then determine—

(a) that the proposal should still proceed; or

(b) that the proposal should be amended (and the Panel may then proceed to make the amendment); or

(c) that the proposal should lapse.

(21) The Panel must, after complying with the preceding subsections, cause public notice of the proposal to be given in the prescribed form and publish a copy of the notice in a newspaper circulating within the area or areas of the relevant council or councils.

(22) If, within the period of eight weeks immediately following the giving of public notice under subsection (21), in respect of a structural reform proposal—

(a) in the case of a proposal to alter the boundaries of two or more councils to incorporate land within the area of a council (a ***relinquishing council***) into the area of another council (a ***receiving council***)—

(i) 10 per cent or more of electors in respect of places of residence or rateable property within the area of a relinquishing council; or

(ii) 10 per cent or more of electors in respect of places of residence or rateable property within the area of a receiving council; or

(iii) 10 per cent or more of electors in respect of places of residence or rateable property within the area that is to be so incorporated;

(b) in any other case—10 per cent of eligible electors in relation to the proposal,

notify the Panel in accordance with the terms of notice that they desire a poll to be conducted on the proposal, the proposal cannot proceed unless or until a poll has been conducted on the matter.

For the purposes of this subsection—

(a) a body corporate that is an elector may act through an officer of the body corporate; and

(b) a group that is an elector may act through a member of the group, or an officer of a body corporate that is a member of the group.

(23) The following provisions apply to a poll:

(a) the *Local Government (Elections) Act 1999* 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) in the case of a proposal to alter the boundaries of two or more councils to incorporate land within the area of a council into the area of another council—an elector (or, in the case of a body corporate or a group of persons, a nominee of an elector) for the area of any council affected by the proposal;

(ii) in any other case—an eligible elector (or, in the case of a body corporate or a group of persons, a nominee of an eligible elector);

(c) the Panel will, after consultation with the relevant council or 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 Panel to ascertain the overall result of the poll and, in a case where subsection (22)(a) applies, voting according to—

(i) the area of the relinquishing council, or of each relinquishing council (as the case may be), excluding the area that is to be incorporated into the area of another council; and

(ii) the area of the receiving council, or of each receiving council; and

(iii) the area that is to be incorporated into the area of another council;

(e) the council or councils for the relevant area or areas must conduct the poll (at its or their expense);

(f) the Panel 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 Panel must consult with the relevant council or councils about the summary and must, at the request of a council, include a statement (in a form agreed between the Panel and the council) as to whether the council accepts or rejects the terms of the proposal; and

(ii) the Panel must not release the summary until the Electoral Commissioner has certified that he or she is satisfied that the Panel 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 Panel 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 Panel;

(h) the Panel 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

(iv) the publication of results; and

(v) other issues relevant to the conduct of the poll;

(i) if—

(i) in the case where subsection (22)(a) applies—

(A) 40 per cent or more of the combined total of electors in respect of places of residence or rateable property within the area of the receiving council and electors in respect of places of residence or rateable property within the area that is to be incorporated into the area of the receiving council cast a vote at the poll (either personally or, in the case of a body corporate or group, through a nominee); and

(B) a majority of those persons so voting vote against the proposal; or

(ii) in any other case—

(A) 40 per cent or more of the persons entitled to vote cast a vote at the poll (either personally or, in the case of a body corporate or group, through a nominee); and

(B) a majority of those persons so voting vote against the proposal,

the result is binding and the proposal cannot proceed;

(j) if paragraph (i) does not apply, the Panel must nevertheless reconsider the proposal in view of the outcome of the poll (including the outcome of the poll in distinct areas) and may, if the Panel thinks fit, amend the proposal, or substitute an alternative proposal, or resolve that the proposal should lapse.

(24) However, if—

(a) the Panel—

(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 Panel does not, at that time, determine that the amendment, or the alternative proposal, is of only minor significance, or that the final proposal differs from the original proposal in minor respects only,

then the amended or substituted proposal will be taken to be a new proposal under this section.

(25) The Panel must, after complying with the above requirements, prepare a report to the Minister on the matter.[1]

Note—

1 Division 6 sets out what happens after this report is prepared.

Division 6—Reports to the Minister; submissions of proposals to the Governor

29—Reference of proposals to Minister and Governor

(1) On the receipt of a report of the Panel under Division 4 or 5, the Minister may—

(a) accept the report; or

(b) refer the report back to the Panel with a request to consider the matters, and to take steps, specified by the Minister; or

(c) if the report relates to a proposal under Division 4 and the Panel 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 Panel may, after complying with the Minister's request and taking other steps as the Panel considers appropriate, amend or confirm the report, including any proposal recommended in the report, subject to the qualification that the Panel 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 Panel about the matter (and obtain any report from the Panel that the Minister thinks fit).

(4) The Minister may then—

(a) on the basis of the report of the Panel (but subject to the result of a binding poll under Division 5), forward to the Governor a proposal recommended by the Panel for the making of a proclamation under this Chapter; 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 any report or comments prepared or provided by the Panel 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 Chapter; or

(c) determine that a particular proposal should not further proceed under this Chapter.

(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 Chapter.

(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 Division 4 or 5.

Division 7—Related matters

30—Report if proposal rejected

If—

(a) a proposal recommended by the Panel does not proceed to a proclamation after completion of all relevant procedures under this Part; or

(b) the Panel has not recommended a proposal submitted by two or more councils under Division 4 and an alternative proposal agreed between the councils and the Minister under Division 6 does not proceed to a proclamation after the 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.

31—Report if proposal submitted to poll

If a proposal is submitted to a poll under Division 5, the Minister must, after the completion of the poll and after receiving advice from the Panel, prepare a report on—

(a) the outcome of the poll (including details of the outcome in relation to each relevant council area); and

(b) the action that the Panel 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.

32—Provision of reports to councils

(1) The Panel must, at the time that the Panel provides a report to the Minister under Division 4 or 5, send a copy of the report to—

(a) each council affected by a proposal to which the report relates; and

(b) in the case of a report under Division 5—the persons nominated in a submission under that Division to represent the interests of persons directly affected by the proposal.

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

Part 3—General provisions

33—Ward quotas

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

(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 need to ensure adequate and fair representation while at the same time avoiding over-representation in comparison to other councils of a similar size and type (at least in the longer term).

(2) 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.

(2a) For the purposes of subsection (2)—

(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 resulting 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 who represent wards (assuming that the proposal were in operation and ignoring any fractions resulting 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 Chapter.

(3) The 10 per cent tolerance referred to in subsection (2) 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 periodic elections, be exceeded by more than 10 per cent (the relevant date in this case being the date of the next periodic elections).

(4) If under the repealed Act a proposal relating to the formation or alteration of wards did not comply with the corresponding provisions to subsections (2) and (3) and the relevant proposal proceeded (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 Part 1 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 took effect or, if an earlier date has been fixed by proclamation, on or before that date.

34—Error or deficiency in an address, recommendation, notice or proclamation

(1) If, in the opinion of the Governor, there is an error or deficiency in an address from both Houses of Parliament, in a recommendation of the Minister, or in a report of the Panel, 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 this Chapter on the basis of the address or report.

(3) If, in the opinion of the Governor, there is an error or deficiency in a proclamation under this Chapter, 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 Chapter 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.

Chapter 4—The council as a body corporate

Part 1—Fundamental features

Division 1—Council to be a body corporate

35—Corporate status

(1) A council is a body corporate with perpetual succession and a common seal.

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

(3) A council consists of the members appointed or elected to the council in accordance with this Act or the *Local Government (Elections) Act 1999*.

36—General powers and capacities

(1) A council—

(a) has the legal capacity of a natural person and, in particular—

(i) may enter into any kind of contract or arrangement; and

(ii) may sue and be sued; and

(iii) may act in conjunction with another council or authority, or a person; and

(b) has the other powers and capacities conferred by or under this or another Act; and

(c) has the power to do anything necessary, expedient or incidental to performing or discharging its functions or duties or to achieving its objectives.

(2) A council may act outside its area—

(a) to the extent considered by the council to be necessary or expedient to the performance of its functions; or

(b) in order to provide services to an unincorporated area of the State.

(3) A council should, in the arrangement of its affairs, take reasonable steps to separate its regulatory activities from its other activities.

(4) A council must not do anything inconsistent with a law of the State or Commonwealth.

37—Provision relating to contracts and transactions

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 authorised by the council to enter into the contract on its behalf.

38—The common seal

(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 principal member 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 principal member 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.

39—Protection of members

(1) No civil liability attaches to a member of a council for an honest act or omission in the exercise, performance or discharge, or purported exercise, performance or discharge, of the member's or council's powers, functions or duties under this or other Acts.

(2) A liability that would, but for this section, attach to a member of a council attaches instead to the council.

40—Saving provision

No act or proceeding of a council is invalid by reason of—

(a) a vacancy or vacancies in the membership of the council; or

(b) a defect in the election or appointment of a member or members of the council; or

(c) the fact that the election of a member or members of the council is subsequently declared void by a court of competent jurisdiction.

Division 2—Committees

41—Committees

(1) A council may establish committees.

(2) A committee may, according to a determination of the council (and subject to the operation of this Act), be established—

(a) to assist the council in the performance of its functions;

Examples—

1 To carry out a project on behalf of the council.

2 To manage or administer property, facilities or activities on behalf of the council.

3 To oversee works on behalf of the council.

(b) to inquire into and report to the council on matters within the ambit of the council's responsibilities;

(c) to provide advice to the council;

(d) to exercise, perform or discharge delegated powers, functions or duties.

(3) The membership of a committee will be determined by the council and may consist of, or include, persons who are not members of the council.

(4) The council must appoint a person as the presiding member of a committee, or make provision for the appointment of a presiding member.

(5) A member of a committee holds office at the pleasure of the council.

(6) The council may appoint the principal member of the council as an *ex officio* member of a committee (but in such a case the principal member will not be taken to be included in the membership of the committee unless actually present at a meeting of the committee).

(7) A committee may establish a subcommittee to assist it in a matter.

(8) A council must, when establishing a committee, determine the reporting and other accountability requirements that are to apply in relation to the committee.

(9) A committee that is performing a regulatory activity of the council must report to the council on its activities at least quarterly.

(10) The establishment of a committee does not derogate from the power of the council to act in a matter.

(11) No act or proceeding of a council committee is invalid by reason of—

(a) a vacancy or vacancies in the membership of the committee; or

(b) a defect in the election or appointment of a member or members of the committee; or

(c) the fact that the election of a member or members of the committee is subsequently declared void by a court of competent jurisdiction.

(12) No civil liability attaches to a member of a committee for an honest act or omission in the exercise, performance or discharge, or purported exercise, performance or discharge, of the member's or committee's powers, functions or duties.

(13) A liability that would, but for subsection (12), attach to a member of a committee attaches instead to the council.

Division 3—Subsidiaries

42—Ability of council to establish a subsidiary

(1) A council may establish a subsidiary—

(a) to provide a specified service or services; or

(b) to manage or administer property, facilities or activities on behalf of the council; or

(c) to perform a function of the council under this or another Act.

(2) A council cannot establish a subsidiary under this section if the primary purpose of the subsidiary would be to perform a regulatory activity of the council.

(3) The establishment of a subsidiary under this section is subject to obtaining the approval of the Minister to the conferral of corporate status under this Act.

(4) The establishment of a subsidiary does not derogate from the power of the council to act in a matter.

Note—

Schedule 2 contains other provisions relevant to a subsidiary established by a council under this section.

43—Ability of councils to establish a regional subsidiary

(1) Two or more councils (the ***constituent councils***) may establish a regional subsidiary—

(a) to provide a specified service or services or to carry out a specified activity or activities; or

(b) to perform a function of the councils under this or another Act.

(2) If a regional subsidiary is established to perform a regulatory activity of the constituent councils, the subsidiary cannot also perform a significant and related service activity.

Note—

A service activity is related to a regulatory activity if the service is one that is regulated under the regulatory activity.

(3) The establishment of a regional subsidiary under this section is subject to obtaining the approval of the Minister to the conferral of corporate status under this Act.

(4) The establishment of a regional subsidiary does not derogate from the power of a constituent council to act in a matter.

Note—

Schedule 2 contains other provisions relevant to a regional subsidiary established by two or more councils under this section.

Division 4—Delegations

44—Delegations

(1) A council may delegate a power or function vested or conferred under this or another Act.

(2) A delegation may be made—

(a) to a council committee; or

(b) to a subsidiary of the council; or

(c) to an employee of the council; or

(d) to the employee of the council for the time being occupying a particular office or position; or

(e) to an authorised person.

(3) However, a council may not delegate—

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

(b) power to declare rates or a charge with the character of a rate;

(c) power to borrow money or to obtain other forms of financial accommodation;

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

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

(e) power to approve expenditure of money on works, services or operations of the council not contained in a budget adopted by the council;

(f) power to determine annual allowances under Chapter 5;

(g) power to approve payment or reimbursement of expenses that may be paid at the discretion of the council and for which the council has not adopted a formal policy or made specific financial provision;

(h) power to establish a subsidiary, or to participate in the establishment of a regional subsidiary;

(i) 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 another Act;

(j) power to fix, vary or revoke a fee under section 188(1)(d) to (h);

(k) a power or function excluded from delegation by the regulations.

(4) A delegation—

(a) is subject to conditions and limitations determined by the council or specified by the regulations; and

(b) if made to the chief executive officer authorises the subdelegation of the delegated power or function unless the council directs otherwise and if made to anyone else authorises the subdelegation of the delegated power or function with the approval of the council; and

(c) is revocable at will and does not prevent the council from acting in a matter.

(5) If a power or function is delegated to an employee of the council, the employee is responsible to the chief executive officer for the efficient and effective exercise or performance of that power or function.

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

(7) A person is entitled to inspect (without charge) the record of delegations under subsection (6) at the principal office of the council during ordinary office hours.

(8) A person is entitled, on payment of a fee fixed by the council, to an extract from the record of delegations under subsection (6).

(9) This section does not limit or affect a power of delegation under another Act.

Division 5—Principal office

45—Principal office

(1) A council must nominate a place as its principal office for the purposes of this Act.

(2) Subject to subsection (3), the principal office of a council must be open to the public for the transaction of business during hours determined by the council.

(3) A council should consult with its local community in accordance with its public consultation policy about the manner, places and times at which its offices will be open to the public for the transaction of business, and about any significant changes to these arrangements.

Part 2—Commercial activities and restrictions

46—Commercial activities

(1) A council may in the performance of its functions and subject to this Act engage in a commercial activity or enterprise (a ***commercial project***).

(2) A council may, in connection with a commercial project—

(a) establish a business;

(b) participate in a joint venture, trust, partnership or other similar body.

47—Interests in companies

(1) A council must not—

(a) participate in the formation of a company; or

(b) acquire shares in a company.

(2) However, subsection (1) does not—

(a) limit the investment of money under this Act; or

(b) limit the ability of a council to participate in the formation of, or to become a member of, a company limited by guarantee established as a national association to promote and advance the interests of an industry in which local government has an interest.

Part 3—Prudential requirements for certain activities

48—Prudential requirements for certain activities

(1) A council must obtain and consider a report that addresses the prudential issues set out in subsection (2) before the council—

(a) engages in a commercial project (including through a subsidiary or participation in a joint venture, trust, partnership or other similar body) where the expected recurrent or capital expenditure of the project exceeds an amount set by the council for the purposes of this section; or

(b) engages in any project (whether commercial or otherwise and including through a subsidiary or participation in a joint venture, trust, partnership or other similar body)—

(i) where the expected expenditure of the council over the ensuing five years is likely to exceed 20 per cent of the council's average annual operating expenses over the previous five financial years (as shown in the council's financial statements); or

(ii) where the expected capital cost of the project over the ensuing five years is likely to exceed $4 000 000.

(2) The following are prudential issues for the purposes of subsection (1):

(a) the relationship between the project and relevant strategic management plans;

(b) the objectives of the Development Plan in the area where the project is to occur;

(c) the expected contribution of the project to the economic development of the local area, the impact that the project may have on businesses carried on in the proximity and, if appropriate, how the project should be established in a way that ensures fair competition in the market place;

(d) the level of consultation with the local community, including contact with persons who may be affected by the project and the representations that have been made by them, and the means by which the community can influence or contribute to the project or its outcomes;

(e) if the project is intended to produce revenue, revenue projections and potential financial risks;

(f) the recurrent and whole-of-life costs associated with the project including any costs arising out of proposed financial arrangements;

(g) the financial viability of the project, and the short and longer term estimated net effect of the project on the financial position of the council;

(h) any risks associated with the project, and the steps that can be taken to manage, reduce or eliminate those risks (including by the provision of periodic reports to the chief executive officer and to the council);

(i) the most appropriate mechanisms or arrangements for carrying out the project.

(3) A report is not required under subsection (1) in relation to—

(a) road construction or maintenance; or

(b) drainage works.

(4) A report under subsection (1) must be prepared by a person whom the council reasonably believes to be qualified to address the prudential issues set out in subsection (2).

(5) A report under subsection (1) must be available for public inspection at the principal office of the council once the council has made a decision on the relevant project (and may be available at an earlier time unless the council orders that the report be kept confidential until that time).

(6) However, a council may take steps to prevent the disclosure of specific information in order to protect its commercial value or to avoid disclosing the financial affairs of a person (other than the council).

(7) The provisions of this section extend to subsidiaries as if a subsidiary were a council subject to any modifications, exclusions or additions prescribed by the regulations.

Part 4—Contracts and tenders policies

49—Contracts and tenders policies

(1) A council must prepare and adopt policies on contracts and tenders, including policies on the following:

(a) the contracting out of services; and

(b) competitive tendering and the use of other measures to ensure that services are delivered cost-effectively; and

(c) the use of local goods and services; and

(d) the sale or disposal of land or other assets.

(2) The policies must—

(a) identify circumstances where the council will call for tenders for the supply of goods, the provision of services or the carrying out of works, or the sale or disposal of land or other assets; and

(b) provide a fair and transparent process for calling tenders and entering into contracts in those circumstances; and

(c) provide for the recording of reasons for entering into contracts other than those resulting from a tender process.

(3) A council may at any time alter a policy under this section, or substitute a new policy or policies (but not so as to affect any process that has already commenced).

(4) A person is entitled to inspect (without charge) a policy of a council under this section at the principal office of the council during ordinary office hours.

(5) A person is entitled, on payment of a fee fixed by the council, to a copy of a policy under this section.

Part 5—Public consultation policies

50—Public consultation policies

(1) For the purposes of this Act, a council must prepare and adopt a public consultation policy.

(2) A public consultation policy—

(a) must set out steps that the council will follow in cases where this Act requires that a council must follow its public consultation policy; and

(b) may set out steps that the council will follow in other cases involving council decision-making.

(3) The steps referred to in subsection (2)—

(a) in a case referred to in subsection (2)(a)—must provide interested persons with a reasonable opportunity to make submissions in the relevant circumstances; and

(b) may vary according to the classes of decisions that are within the scope of the policy.

(4) However, a public consultation policy for a case referred to in subsection (2)(a) must at least provide for—

(a) the publication in a newspaper circulating within the area of the council a notice describing the matter under consideration and inviting interested persons to make submissions in relation to the matter within a period (which must be at least 21 days) stated in the notice; and

(b) the consideration by the council of any submissions made in response to an invitation under paragraph (a).

(5) A council may from time to time alter its public consultation policy, or substitute a new policy.

(6) However, before a council—

(a) adopts a public consultation policy; or

(b) alters, or substitutes, a public consultation policy,

the council must—

(c) prepare a document that sets out its proposal in relation to the matter; and

(d) publish in a newspaper circulating generally throughout the State and in a newspaper circulating within the area of the council a notice of the proposal inviting interested persons to make submissions on the proposal within a period (which must be at least one month) stated in the notice; and

(e) consider any submissions made in response to an invitation under paragraph (d).

(7) A council is not required to comply with subsection (6) in relation to the alteration of a public consultation policy if the council determines that the alteration is of only minor significance that would attract little (or no) community interest.

(8) A person is entitled to inspect (without charge) a public consultation policy of a council at the principal office of the council during ordinary office hours.

(9) A person is entitled, on payment of a fee fixed by the council, to a copy of a public consultation policy.

Chapter 5—Members of council

Part 1—Membership

51—Principal member of council

(1) A council may be constituted—

(a) on the basis that the principal member is to be appointed[1] or elected as a representative of the area as a whole (in which case the principal member is to be called a mayor); or

(b) on the basis that the principal member is to be chosen by the members of the council from amongst their own number (in which case the principal member may be called chairperson (the title used in this Act), or have another title, as the council decides).

(2) The term of office of a chairperson must not exceed 4 years.

(3) If a council has a mayor, there may also be, if the council so resolves, a deputy mayor and if a council has a chairperson, there may also be, if the council so resolves, a deputy chairperson.

(4) If there is to be a deputy mayor or deputy chairperson, he or she will be chosen by the members of the council from amongst their own number and will hold office for a term determined by the council.

The term must not exceed 4 years.

(5) On the expiration of a term of office, a chairperson, deputy mayor or deputy chairperson is eligible to be chosen for a further term.

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

(7) If the mayor or chairperson is absent from official duties and there is no deputy mayor or deputy chairperson, or the deputy mayor or deputy chairperson is not available to act in the office of mayor or chairperson, a member chosen by the council may act in the office of mayor or chairperson during the relevant period.

(8) If 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 candidate or candidates will be excluded.

(9) The mayor of the City of Adelaide is entitled to the rank and title of Lord Mayor.

(10) In the event of a casual vacancy in the office of mayor, subsections (6) and (7) operate subject to any appointment made by the council under section 54(8).

Note—

1 An appointment may occur under section 10 of this Act or section 8 of the *Local Government (Elections) Act 1999*.

52—Councillors

(1) The members of a council, other than the principal member, will be known as councillors.

(2) A councillor will (depending on how the council is constituted)—

(a) be appointed[1], or elected by the electors for the area, as a representative of the area as a whole (whether or not the area is divided into wards); or

(b) if the area is divided into wards—be appointed[1], or elected by the electors of a particular ward, as a representative of the ward.

Note—

1 An appointment may occur under section 10 of this Act or section 8 of the *Local Government (Elections) Act 1999*.

Part 2—Term of office and related issues

Division 1—General issues

53—Term of office

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.

54—Casual vacancies

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

(a) dies; or

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

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

(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 having been held three months or more before the last); or

(e) becomes a member of an Australian Parliament; or

(f) is declared bankrupt or applies for the benefit of a law for the relief of insolvent debtors; or

(g) fails to submit a return under Division 2 of Part 4 of this Chapter before the expiration of one month from the end of the period allowed under that Division for the submission of the return; or

(h) fails to submit a return under Part 14 of the *Local Government (Elections) Act 1999* before the expiration of one month from the end of the period allowed under that Act for the submission of the return; or

(i) is convicted of an indictable offence punishable by imprisonment; or

(j) becomes an employee of the council; or

(k) is disqualified from office by a court order under this Act.

(2) If 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.

(2a) Subsection (2) does not apply if—

(a) the member is standing for election to a casual vacancy in the office of mayor but is unsuccessful; or

(b) —

(i) the member is standing for election to a casual vacancy in another office but is unsuccessful; and

(ii) the conclusion of the election falls—

(A) on or after 1 January of the year in which a periodic election is due to be held (and before polling day for that periodic election); or

(B) within 7 months before polling day for a general election (other than a periodic election) (the date of that polling day being known at that time).

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

(4) If a member's office becomes vacant because of the member's failure to submit a return under Division 2 of Part 4 of this Chapter or Part 14 of the *Local Government (Elections) Act 1999*—

(a) the District Court may, on 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; and

(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.

(5) If a member's office becomes vacant because the member has been convicted of an offence under subsection (1)(i), proceedings for a supplementary election to fill the vacancy (if required) 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) If 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 if 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.

(8) If a casual vacancy occurs in the office of mayor—

(a) on or after 1 January of a year in which a periodic election is due to be held (and before polling day for that periodic election); or

(b) within 7 months before polling day for a general election (other than a periodic election) (the date of that polling day being known at that time),

a member chosen by the council may act in the office of mayor until the conclusion of the election.

(9) The member chosen under subsection (8) may, but need not, be the deputy mayor (if any).

(10) If a person is to be chosen under subsection (8) and the votes for 2 or more candidates are equal, lots must be drawn to determine which candidate or candidates will be excluded.

55—Specific requirements if member disqualified

If a person—

(a) at the time of election or appointment to the office of a member of a council is disqualified to hold that office (see section 62 or 267 of this Act or section 17 of the *Local Government (Elections) Act 1999*); or

(b) holds office as a member of a council and becomes disqualified to hold that office (see section 54, 62 or 267 of this Act),

the person—

(c) must immediately on becoming aware of the election or appointment, or of the existence of the disqualification (whichever is the later), deliver to the chief executive officer of the council a notice stating the fact of the disqualification (stating the grounds of disqualification); and

(d) must not act in the office after becoming aware of the disqualification.

Maximum penalty: $ 5 000.

Division 2—Special provisions if majority of members resign on specified grounds

56—General election to be held in special case

(1) If—

(a) the membership of a council falls below the prescribed number (a ***prescribed occurrence***); and

(b) the prescribed occurrence occurs—

(i) before 1 January of the year in which a periodic election is next due to be held; or

(ii) more than 7 months before polling day for a general election (other than a periodic election) (the date of that polling day being known at the time of the occurrence); and

(c) the reason for the prescribed occurrence is that a number of members of the council equal to, or exceeding, the prescribed number have resigned on the express ground (stated in the notice or notices of resignation to the chief executive officer) that they consider that relations within the membership of the council are such that the council can no longer continue to conduct its affairs in an appropriate manner and that accordingly action should be taken under this Division,

the chief executive officer of the council must, by notice in the Gazette, declare that the council is a council to which this Division applies.

(2) If a declaration is made under subsection (1), a general election must be held for the council as soon as practicable after the date of the declaration on a day fixed as polling day by the chief executive officer in the notice under subsection (1).[1]

(3) In this section—

prescribed number of members of a council is a number ascertained by dividing the total number of members that constitute the council (assuming no vacancies) by two, ignoring any fraction resulting from the division, and adding one.

Note—

1 The term of office of any remaining members of the council will expire at the conclusion of this general election—see Division 1.

57—Restriction on activities during the relevant period

(1) In this section—

asset means anything that must be treated as an asset for the purposes of the financial statements of a council;

lease includes an agreement for lease, but does not include a lease entered into as a result of the exercise of a right or option to renew a lease entered into before the commencement of the relevant period;

relevant period in relation to a council means a period commencing on the date of a declaration under this section that relates to the council and ending on the day on which general elections for the council held pursuant to that section conclude.

(2) This section applies to a council that is the subject of a declaration under section 56.

(3) Subject to this section, if during a relevant period the council to which the period relates—

(a) enters into a contract for the appointment of a chief executive officer; or

(b) enters into a contract—

(i) the terms of which require (either unconditionally or subject to conditions) the council to make a payment exceeding $100 000, or payments exceeding $100 000 in total; or

(ii) the terms of which entitle the council to receive a payment exceeding $100 000, or payments exceeding $100 000, on account of the disposal by the council of an asset of the council; or

(c) enters into a lease under which the rent payable by the lessee in any period exceeds $100 000,

without the approval of the Minister, the contract or lease is liable to be voided by the Minister.

(4) However, subsection (3) does not apply to—

(a) a contract or lease entered into by the council to give effect to any expenditure or revenue measure contained in a budget adopted by the council before the commencement of the relevant period; or

(b) a contract or lease of a kind excluded from the operation of that subsection by the Minister (on conditions, if any, determined by the Minister).

(5) An approval granted by the Minister for the purposes of this section has no effect unless the council had, before submitting the relevant contract or lease to the Minister for approval, resolved that it would, subject to the approval of the Minister, enter into the contract or lease.

(6) If—

(a) the Minister voids a contract or lease under this section; and

(b) the Minister or the council incurs a liability by reason of or in relation to the contract or lease,

the Minister or the council (as the case may be) may recover the whole of the amount of the liability as a debt from the persons who were members of the council at the time that the contract was made or lease was entered into or made, or from any of them, or from any one of them.

Part 3—Role of members

58—Specific roles of principal member

(1) The role of the principal member of a council is—

(a) to preside at meetings of the council;

(b) if requested, to provide advice to the chief executive officer between council meetings on the implementation of a decision of the council;

(c) to act as the principal spokesperson of the council;

(d) to exercise other functions of the council as the council determines;

(e) to carry out the civic and ceremonial duties of the office of principal member.

(2) Subsection (1)(c) does not apply in circumstances where a council has appointed another member to act as its principal spokesperson.

59—Roles of members of councils

(1) The role of a member of a council is—

(a) as a member of the governing body of the council—

(i) to participate in the deliberations and civic activities of the council;

(ii) to keep the council's objectives and policies under review to ensure that they are appropriate and effective;

(iii) to keep the council's resource allocation, expenditure and activities, and the efficiency and effectiveness of its service delivery, under review;

(b) as a person elected to the council—to represent the interests of residents and ratepayers, to provide community leadership and guidance, and to facilitate communication between the community and the council.

(2) A member of a council may, with the principal member's authorisation, act in place of, or represent, the principal member.

(3) A member of a council has no direct authority over an employee of the council with respect to the way in which the employee performs his or her duties.

60—Declaration to be made by members of councils

A member of a council 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 abilities.

61—Access to information by members of councils

(1) A member of a council is entitled at any reasonable time, in connection with the performance or discharge of the functions or duties of the member (whether under this or another Act), without charge, to have access to any relevant council document, including (but not limited to)—

(a) a copy of a written contract entered into by the council, or a copy of a document relating to a contract that is proposed to be entered into by the council;

(b) accounting records kept by the council;

(c) financial statements and other documents prepared by the council under Chapter 8.

(2) A request for access to a document under subsection (1) should be directed to the chief executive officer, or another officer specified by the chief executive officer for the purposes of this section.

(3) The chief executive officer or another officer providing access to a document under subsection (1) may indicate to the member that information contained in the document is, or should be considered as, confidential.

Part 4—Conduct and disclosure of interests

Division 1—General duties and code of conduct

62—General duties

(1) A member of a council must at all times act honestly in the performance and discharge of official functions and duties.

(2) A member of a council must at all times act with reasonable care and diligence in the performance and discharge of official functions and duties.

(3) A member or former member of a council must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as a member of the council to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the council.

Maximum penalty: $10 000 or imprisonment for two years.

(4) A member of a council must not, whether within or outside the State, make improper use of his or her position as a member of the council to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the council.

Maximum penalty: $10 000 or imprisonment for two years.

(5) If a person is convicted of an offence against this section, the court by which the person is convicted may, if it thinks that action under this subsection is warranted, in addition to (or in substitution of) any penalty that may be imposed under a preceding subsection, by order do one or more of the following:

(a) require the person to attend a specified course of training or instruction, or to take other steps;

(b) suspend the person from any office under this Act for a period not exceeding two months;

(c) disqualify the person from any office under this Act;

(d) disqualify the person from becoming a member of a council, a committee of a council or a subsidiary of a council for a period not exceeding five years.

(6) If a person is disqualified under subsection (5)(c), the office immediately becomes vacant but proceedings for a supplementary election to fill the vacancy (if required) must not be commenced until the period for appealing against the conviction of an offence against this section has expired or, if there is an appeal, until the appeal has been determined.

(7) The provisions of this section extend—

(a) to committees and to members of committees established by councils as if—

(i) a committee were a council; and

(ii) a member of a committee were a member of a council; and

(b) to subsidiaries and to board members of subsidiaries as if—

(i) a subsidiary were a council; and

(ii) a board member of a subsidiary were a member of a council.

63—Code of conduct

(1) A council must prepare and adopt a code of conduct to be observed by the members of the council.

(2) A council must, within 12 months after each general election of the council, complete (and, as appropriate, implement) a review of its code of conduct under this section.

(3) A council may at any time alter its code of conduct, or substitute a new code of conduct.

(3a) A code of conduct must be consistent with any principle or requirement prescribed by the regulations and include any mandatory provision prescribed by the regulations.

(4) A person is entitled to inspect (without charge) the code of conduct of a council at the principal office of the council during ordinary office hours.

(5) A person is entitled, on payment of a fee fixed by the council, to a copy of the code of conduct of a council.

Division 2—Register of interests

64—Interpretation

In this Division—

Register means a Register of Interests kept for the purposes of this Division;

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 30 June next following; and

(b) in the case of any other member—the period of 12 months expiring on 30 June on or within 60 days after which the ordinary return is required to be submitted.

65—Lodging of primary returns

Each 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 six weeks after election or appointment, submit to the chief executive officer a primary return in accordance with Schedule 3.

66—Lodging of ordinary returns

Each member of a council must, on or within 60 days after 30 June in each year, submit to the chief executive officer an ordinary return in accordance with Schedule 3.

67—Form and content of returns

A member of a council who has submitted a return under this Division may at any time notify the chief executive officer of a change or variation in the information appearing on the Register in respect of the member or a person related to the member within the meaning of Schedule 3.

68—Register of Interests

(1) The chief executive officer must maintain a Register of Interests and must cause to be entered in the Register all information furnished pursuant to this Division and Schedule 3.

(2) If a member of a council fails to submit a return to the chief executive officer within the time allowed under this Division, the chief executive officer must as soon as practicable notify the member of that fact and include specific information about the consequences under Division 1 of Part 2 of this Chapter if a return is not submitted in accordance with the requirements of this Division.

(3) A notification under subsection (2) must be given by letter sent to the member by registered mail.

69—Provision of false information

A member of a council who submits a return under this Division and Schedule 3 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.

Maximum penalty: $10 000.

70—Inspection of Register

(1) A person is entitled to inspect (without charge) the Register at the principal office of the council during ordinary office hours.

(2) A person is entitled, on payment of a fee fixed by the council, to a copy of the Register.

(3) However, an application to inspect the Register or to obtain a copy of the Register (other than by a member of the council) must be made in writing to the chief executive officer.

(4) A member of the council is entitled at any reasonable time to inspect an application made under subsection (3).

71—Restrictions on publication

(1) A person must not—

(a) publish information derived from a Register unless the information constitutes a fair and accurate summary of the information contained in the Register and is published in the public interest; or

(b) comment on the facts set forth in a Register unless the comment is fair and published in the public interest and without malice.

(2) If information or comment is published by a person in contravention of subsection (1), the person, and any person who authorised the publication of the information or comment, is guilty of an offence.

Maximum penalty: $10 000.

72—Application of Division to members of committees and subsidiaries

(1) The provisions of this Division extend to members of a council committee if the council so resolves.

(2) The charter of a subsidiary may provide that the provisions of this Division extend to board members of a subsidiary established by a council or councils as if—

(a) the subsidiary were a council; and

(b) a board member of the subsidiary were a member of a council.

(3) If the provisions of this Division apply in relation to a regional subsidiary—

(a) a board member must submit a primary return, and ordinary returns, to the chief executive officer of each constituent council; and

(b) the subsidiary must, in consultation with the chief executive officers of the constituent councils, ensure that a Register of Interests relating to its board members (made up of the information required to be included in returns under this Division) is maintained at the principal office of the subsidiary, or at a council office nominated by the subsidiary, and is available for public inspection during ordinary office hours.

(4) A person is entitled, on payment of a fee fixed by the subsidiary's constituent councils, to a copy of the Register maintained under subsection (3).

(5) A member of a council who has submitted the appropriate returns under a preceding provision of this Division is not required to submit additional returns under this section.

Division 3—Conflict of interest

73—Conflict of interest

(1) A member of a council has an interest in a matter before the council 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; or

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

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

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

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

(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 a relative 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 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) an 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.

74—Members to disclose interests

(1) A member of a council who has an interest in a matter before the council must disclose the interest to the council.

(2) A member in making a disclosure under subsection (1) must provide full and accurate details of the relevant interest.

(3) A disclosure made under subsection (1) must be recorded in the minutes of the council (including details of the relevant interest).

(4) A member of a council who has an interest in a matter before the council must not—

(a) propose or second a motion relating to the matter; or

(b) take part in discussion by the council relating to that matter; or

(c) 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

(d) vote in relation to that matter.

(4a) The following qualifications apply:

(a) subsections (1) and (4) do not apply—

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

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

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

(b) a member of a council who has disclosed an interest under subsection (1) may, by permission of the council, attend during proceedings of the council on the relevant matter in order to ask or answer questions, provided that the meeting is open to the public, the member withdraws from the room after asking or answering the questions, and the member does not in any other way take part in any debate or vote on the matter;

(d) a member does not contravene this section if the interest was unknown to the member at the relevant time.

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

(a) the member or a person closely associated with the member is a member of, or director or member of the governing body of, a non-profit association;

(b) the member or a person closely associated with the member is a member of a body (whether incorporated or unincorporated) comprised of or including, or having a governing body comprised of or including, a person or persons appointed or nominated by the council.

(5) The fact that a member or members of a council 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, if 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 District Court may, on the application of the council, the Minister or a person affected by the resolution or decision, annul the resolution or decision and make such ancillary or consequential orders as it thinks fit.

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

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

(a) the Ombudsman may exercise the powers of the Ombudsman under the *Ombudsman Act 1972* as if carrying out an investigation under that Act, subject to such modifications as may be necessary, or as may be prescribed; and

(b) at the conclusion of the investigation, the Ombudsman may prepare a report on any aspect of the investigation and may publish the report, a part of the report, or a summary of the report, in such manner as the Ombudsman thinks fit.

(6) 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 LGA.

75—Application of Division to members of committees and subsidiaries

(1) The provisions of this Division extend to committees and to members of committees established by councils as if—

(a) a committee were a council; and

(b) a member of a committee were a member of a council.

(2) The provisions of this Division extend to subsidiaries and to board members of subsidiaries as if—

(a) a subsidiary were a council; and

(b) a board member of a subsidiary were a member of a council.

Part 5—Allowances and benefits

76—Allowances

(1) Subject to this section, a member of a council is entitled to the allowance determined by the Remuneration Tribunal in relation to the member's office and indexed in accordance with this section.

(2) The Remuneration Tribunal must make determinations under this section on a 4 yearly basis before the designated day in relation to each set of periodic elections held under the *Local Government (Elections) Act 1999*.

(3) The Remuneration Tribunal must, in making a determination under this section, have regard to the following:

(a) the role of members of council as members of the council's governing body and as representatives of their area;

(b) the size, population and revenue of the council, and any relevant economic, social, demographic and regional factors in the council area;

(c) the fact that an allowance under this section is not intended to amount to a salary for a member;

(d) the fact that an allowance under this section should reflect the nature of a member's office;

(e) the provisions of this Act providing for the reimbursement of expenses of members.

(4) For the purposes of the proceedings before the Remuneration Tribunal but without derogating from the operation of subsection (3), the allowances to be determined under this section will be taken to be in the nature of a fee under the definition of ***remuneration*** in the *Remuneration Act 1990*.

(5) Without limiting section 10 of the *Remuneration Act 1990*, the Remuneration Tribunal must—

(a) allow persons who are entitled to be enrolled on the voters roll for an area a reasonable opportunity to make submissions orally or in writing to the Tribunal in relation to a determination under this section that relates to the members of the council for that area; and

(b) allow the LGA a reasonable opportunity to make submissions orally or in writing to the Tribunal in relation to any determination under this section.

(6) Nothing in subsection (5) requires the Remuneration Tribunal, for the purposes of making all determinations required under this section in any 4 year period, to hold more than 1 hearing to receive any oral submissions that persons may care to make (and the Tribunal is not required to hold any hearing if it appears to the Tribunal that no one is seeking to make oral submissions).

(7) The rates of allowances may vary from office to office, and from council to council.

(8) An allowance determined under this section will, in relation to the members of a particular council, take effect from the first ordinary meeting of the council held after the conclusion of the relevant periodic election.

(9) An allowance determined under this section is to be adjusted on the first, second and third anniversaries of the relevant periodic elections to reflect changes in the Consumer Price Index under a scheme prescribed by the regulations.

(10) Sections 17 and 19 of the *Remuneration Act 1990* do not apply in relation to a determination under this section.

(11) 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.

(12) An allowance under this section is to be paid in accordance with any requirement set out in the regulations (unless the member declines to accept payment of an allowance).

(13) Despite any other Act or law, the reasonable costs of the Remuneration Tribunal in making a determination under this section are to be paid by the LGA under an arrangement established by the Minister from time to time after consultation with the President of the LGA and the President of the Tribunal.

(14) Regulations made for the purposes of this section may make different provision according to the offices or classes of council to which they are expressed to apply.

(15) In this section—

Consumer Price Index means the Consumer Price Index (All groups index for Adelaide) published by the Australian Bureau of Statistics;

designated day, in relation to particular periodic elections, means the day that is 14 days before the day on which nominations close for those elections.

77—Reimbursement of expenses

(1) A member of a council is entitled to receive from the council—

(a) reimbursement of expenses of a kind prescribed for the purposes of this paragraph incurred in performing or discharging official functions and duties; and

(b) reimbursement of expenses of a kind prescribed for the purposes of this paragraph, and approved by the council (either specifically or under a policy established by the council for the purposes of this section), incurred in performing or discharging official functions and duties.

(2) A policy under subsection (1)(b) lapses at a general election of the council.

(3) A person is entitled to inspect (without charge) a policy of a council under subsection (1)(b) at the principal office of the council during ordinary office hours.

(4) A person is entitled, on payment of a fee fixed by the council, to a copy of a policy under subsection (1)(b).

78—Provision of facilities and support

(1) A council may provide facilities and other forms of support to its members to assist the members in performing or discharging official functions and duties.

(2) The provision of facilities and services under this section is at the discretion of the council subject to complying with the following requirements:

(a) the council must specifically resolve that the provision of the facilities or services is necessary or expedient to the performance or discharge of official functions or duties;

(b) facilities and services must be available to members on a uniform basis (other than facilities or services specifically provided for the benefit of the principal member);

(c) any property provided to a member remains the council's.

(3) A member of a council must not use a facility or service provided by the council under this section for a purpose unrelated to the performance or discharge of official functions or duties (unless the use has been approved by the council and the member has agreed to reimburse the council for any additional costs or expenses associated with this use).

79—Register of allowances and benefits

(1) The chief executive officer of a council must ensure that a record (the ***Register of Allowances and Benefits***) 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 expenses reimbursed by the council under section 77(1)(b); and

(c) details of other benefits 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, in accordance with principles prescribed by the regulations, in respect of—

(a) changes in the allowance or a benefit payable to, or provided for the benefit of, members; or

(b) the provision of a reimbursement (other than a reimbursement under section 77(1)(a)) or benefit not previously recorded in the Register.

(3) A person is entitled to inspect (without charge) the Register at the principal office of the council during ordinary office hours.

(4) A person is entitled, on payment of a fee fixed by the council, to an extract from the Register.

80—Insurance of members

A council must take out a policy of insurance insuring every member of the council, and a spouse, domestic partner or another person who may be accompanying a member of the council, against risks associated with the performance or discharge of official functions or duties by members.

Part 6—Training and development

80A—Training and development

(1) A council must prepare and adopt a training and development policy for its members.

(2) The policy must be aimed at assisting members in the performance and discharge of their functions and duties.

(3) A council may from time to time alter its policy, or substitute a new policy.

(4) A person is entitled to inspect (without charge) a policy under this section at the principal office of the council during ordinary office hours.

(5) A person is entitled, on payment of a fee fixed by the council, to a copy of a policy under this section.

Chapter 6—Meetings

Part 1—Council meetings

81—Frequency and timing of ordinary meetings

(1) Subject to this section, ordinary meetings of a council will be held at times and places appointed by a resolution of the council.

(2) There must be at least one ordinary meeting in each month.

(3) If a time and place has not been appointed for the holding of an ordinary meeting during a month, the chief executive officer must appoint the time and place at which the ordinary meeting for the month is to be held.

(4) The chief executive officer must also appoint the time and place at which the first ordinary meeting of a council will be held—

(a) after the council is constituted under Chapter 3; or

(b) after a general election of the council.

(5) Ordinary meetings of a council may not be held on Sundays, or on public holidays.

(6) In the case of a municipal council, ordinary meetings of the 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.

(7) A resolution under subsection (6) does not operate in relation to a meeting held after the conclusion of the general election next held following the making of the resolution.

82—Calling of special meetings

(1) The chief executive officer must, at the request of—

(a) the principal member of the council; or

(b) at least three members of the council; or

(c) a council committee at which at least three members of the council vote in favour of the making of the request,

call a special meeting of the council.

(2) The chief executive officer must be provided with an agenda for the special meeting at the time that a request is made under subsection (1) (and if an agenda is not provided then the request has no effect).

(3) Special meetings may be held at any time.

83—Notice of ordinary or special meetings

(1) In the case of an ordinary meeting, the chief executive officer must give each member of the council notice of the meeting at least three clear days before the date of the meeting.

(2) In the case of a special meeting, the chief executive officer must give each member of the council notice of the meeting at least four hours before the commencement of the meeting.

(3) Notice of a meeting of the council must—

(a) be in writing; and

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

(c) be signed by the chief executive officer; and

(d) contain, or be accompanied by, the agenda for the meeting.

(4) The chief executive officer must, insofar 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 (so far as this is practicable).

(5) The chief executive officer may indicate on a document or report provided to members of the council under subsection (4) (or on a separate notice) any information or matter contained in or arising from a document or report that may, if the council so determines, be considered in confidence under Part 3, provided that the chief executive officer at the same time specifies the basis on which an order could be made under that Part.

(6) Notice may be given to a member of a council under this section—

(a) personally; or

(b) by delivering the notice (whether by post or otherwise) to the usual place of residence of the member or to another place authorised in writing by the member; or

(c) by leaving the notice for the member at an appropriate place at the principal office of the council, if authorised in writing by the member to do so; or

(d) by a means authorised in writing by the member as being an available means of giving notice (eg facsimile transmission).

(7) A notice that is not given in accordance with subsection (6) is taken to have been validly given if the chief executive officer considers it impracticable to give the notice in accordance with that subsection and takes action the chief executive officer considers reasonably practicable in the circumstances to bring the notice to the attention of the member.

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

(9) The fact that a notice of a meeting has not been given to a member of a council in accordance with this section does not, of itself, invalidate the holding of the meeting or a resolution or decision passed or made at the meeting but the District Court may, on the application of the Minister, annul a resolution or decision passed or made at the meeting and make such ancillary or consequential orders as it thinks fit if satisfied that such action is warranted in the circumstances of the particular case.

84—Public notice of council meetings

(1) The chief executive officer must give notice to the public of the times and places of meetings of the council.

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

(a) in the case of an ordinary meeting—at least three clear days before the date of the meeting; or

(b) in the case of a special meeting—as soon as practicable after the time that notice of the meeting is given to members of the council.

(2a) The chief executive officer may also give notice to the public of the time and place of a meeting of the council in such other manner as the chief executive officer considers appropriate after taking into account—

(a) the characteristics of the council's community and area; and

(b) the best ways to bring notice of a meeting of the council to the public's attention; and

(c) such other matters as the chief executive officer thinks fit.

(3) A person is entitled, on payment of a fee fixed by the council, to obtain a copy of a notice and agenda on display under subsection (2).

(4) The notice and agenda must be kept on public display under subsection (2) until the completion of the relevant meeting.

(5) The chief executive officer must also ensure that a reasonable number of copies of any document or report supplied to members of the council for consideration at a meeting of the council are available for inspection by members of the public—

(a) in the case of a document or report supplied to members of the council before the meeting—at the principal office of the council as soon as practicable after the time when the document or report is supplied to members of the council; or

(b) in the case of a document or report supplied to members of the council at the meeting—at the meeting as soon as practicable after the time when the document or report is supplied to members of the council.

(6) However, subsection (5) does not apply to a document or report—

(a) that is subject to the operation of section 83(5); or

(b) that relates to a matter dealt with by the council on a confidential basis under Part 3.

85—Quorum

(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.

The ***prescribed number*** of members of a council is a number ascertained by dividing the total number of members of the council for the time being in office by 2, ignoring any fraction resulting from the division, and adding one.

(2) If a quorum is lost because a member cannot participate in a particular matter pursuant to Chapter 5 Part 4 Division 3, the matter must be adjourned (so that the remainder of the meeting may proceed).

(3) If a quorum cannot be obtained for consideration of a particular matter because of the operation of Chapter 5 Part 4 Division 3, the council may proceed to consider the matter without a quorum with the approval of the Minister.

86—Procedure at meetings

(1) The principal member of a council will preside at a meeting of the council.

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

(3) If—

(a) a person is to be chosen to be the principal member of a council at a meeting of the council; or

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

the chief executive officer will preside until the matter is decided.

(4) 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.

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

(6) The mayor of a council, or 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.

(7) The chairperson of a council, or other member presiding in the absence of the chairperson, 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.

(8) Subject to this Act, the procedure to be observed at a meeting of a council will be—

(a) as prescribed by regulation;

(b) insofar as the procedure is not prescribed by regulation—as determined by the council.

(9) A meeting of a council may be adjourned from time to time and from place to place.

Part 2—Committee meetings

87—Calling and timing of committee meetings

(1) Ordinary meetings of a council committee will be held at times and places appointed by the council or, subject to a decision of the council, the council committee.

(2) A council or council committee must, in appointing a time for the holding of an ordinary meeting of a council committee, take into account—

(a) the availability and convenience of members of the committee; and

(b) the nature and purpose of the committee.

(3) A resolution appointing a time for the holding of an ordinary meeting of a council committee does not operate after the conclusion of the general election next following the making of the resolution.

(4) The chief executive officer must ensure that each member of a council committee is given notice of an ordinary meeting of the committee at least three clear days before the date of the meeting.

(5) The chief executive officer must, at the request of—

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

(b) at least two members of a council committee,

call a special meeting of a council committee.

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

(7) The chief executive officer must ensure that each member of a council committee is given notice of a special meeting of the committee at least four hours before the commencement of the meeting.

(8) Notice of a meeting of a council committee must—

(a) be in writing; and

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

(c) contain, or be accompanied by, the agenda for the meeting.

(9) The chief executive officer must, insofar 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) ensure that each member of the committee at the time that notice of a meeting is given is supplied with a copy of any documents or reports that are to be considered at the meeting (so far as this is practicable).

(10) The chief executive officer may indicate on a document or report provided to members of the committee under subsection (9) (or on a separate notice) any information or matter contained in or arising from a document or report that may, if the committee so determines, be considered in confidence under Part 3, provided that the chief executive officer at the same time specifies the basis on which an order could be made under that Part.

(11) Notice may be given to a member of a committee under this section—

(a) personally; or

(b) by delivering the notice (whether by post or otherwise) to the usual place of residence of the member or to another place authorised in writing by the member; or

(c) by leaving the notice for the member at an appropriate place at the principal office of the council, if authorised in writing by the member to do so; or

(d) by a means authorised in writing by the member as being an available means of giving notice (eg facsimile transmission).

(12) A notice that is not given in accordance with subsection (11) is taken to have been validly given if the chief executive officer considers it impracticable to give the notice in accordance with that subsection and takes action the chief executive officer considers reasonably practicable in the circumstances to bring the notice to the attention of the member of the committee.

(13) The chief executive officer must ensure that a record of all notices of meetings given under this section is maintained.

(14) The fact that a notice of a meeting has not been given to a member of a committee in accordance with this section does not, of itself, invalidate the holding of the meeting or a resolution or decision passed or made at the meeting but the District Court may, on the application of the Minister, annul a resolution or decision passed or made at the meeting and make such ancillary or consequential orders as it thinks if satisfied that such action is warranted in the circumstances of the particular case.

(15) The regulations may modify the application of this section for council committees that are not performing regulatory activities of councils.

88—Public notice of committee meetings

(1) The chief executive officer must ensure that notice is given to the public of the times and places of meetings of a council committee.

(2) Notice under subsection (1) is given by causing a copy of the notice and agenda for a meeting to be placed on public display at the principal office of the council as soon as practicable after the time that notice of the meeting is given to members of the committee.

(2a) The chief executive officer may also give notice to the public of the time and place of a meeting of a council committee in such other manner as the chief executive officer considers appropriate after taking into account—

(a) the work of the committee and the characteristics of the council's community and area; and

(b) the best ways to bring notice of a meeting of the committee to the public's attention; and

(c) such other matters as the chief executive officer thinks fit.

(3) A person is entitled, on payment of a fee fixed by the council, to obtain a copy of a notice and agenda on display under subsection (2).

(4) The notice and agenda must be kept on public display under subsection (2) until the completion of the relevant meeting.

(5) The chief executive officer must also ensure that a reasonable number of copies of any document or report supplied to members of a council committee for consideration at a meeting of the committee are available for inspection by members of the public at the principal office of the council as soon as practicable after the time when the document or report is supplied to members of the committee.

(6) However, subsection (5) does not apply to a document or record—

(a) that is subject to the operation of section 87(10); or

(b) that relates to a matter dealt with by the council or council committee on a confidential basis under Part 3.

(7) The regulations may modify the application of this section for council committees that are not performing regulatory activities of councils.

89—Proceedings of council committees

(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.

(2) A meeting of a council committee may be adjourned from time to time and from place to place.

Part 3—Public access to council and committee meetings

90—Meetings to be held in public except in special circumstances

(1) Subject to this section, a meeting of a council or 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 to the extent (and only to the extent) that the council or council committee considers it to be necessary and appropriate to act in a meeting closed to the public in order to receive, discuss or consider in confidence any information or matter listed in subsection (3) (after taking into account any relevant consideration under that subsection).

(3) The following information and matters are listed for the purposes of subsection (2):

(a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);

(b) information the disclosure of which—

(i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and

(ii) would, on balance, be contrary to the public interest;

(c) information the disclosure of which would reveal a trade secret;

(d) commercial information of a confidential nature (not being a trade secret) the disclosure of which—

(i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and

(ii) would, on balance, be contrary to the public interest;

(e) matters affecting the security of the council, members or employees of the council, or council property, or the safety of any person;

(f) information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;

(g) matters that must be considered in confidence in order to ensure that the council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;

(h) legal advice;

(i) information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, involving the council or an employee of the council;

(j) information the disclosure of which—

(i) would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the council, or a person engaged by the council); and

(ii) would, on balance, be contrary to the public interest;

(k) tenders for the supply of goods, the provision of services or the carrying out of works;

(m) information relating to a proposed amendment to a Development Plan under the *Development Act 1993* before a Development Plan Amendment proposal relating to the amendment is released for public consultation under that Act;

(n) information relevant to the review of a determination of a council under the *Freedom of Information Act 1991*.

(4) In considering whether an order should be made under subsection (2), it is irrelevant that discussion of a matter in public may—

(a) cause embarrassment to the council or council committee concerned, or to members or employees of the council; or

(b) cause a loss of confidence in the council or council committee.

(5) 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 employee of the council or a member of the police force to use reasonable force to remove him or her from the room.

(6) Subsection (5) 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.

(7) If 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.

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

(8) The duty to hold a meeting of a council or council committee at a place open to the public does not in itself make unlawful informal gatherings or discussion involving—

(a) members of the council or council committee; or

(b) members of the council or council committee and staff,

provided that a matter which would ordinarily form part of the agenda for a formal meeting of a council or council committee is not dealt with in such a way as to obtain, or effectively obtain, a decision on the matter outside a formally constituted meeting of the council or council committee.

Examples—

The following are examples of informal gatherings or discussions that might be held under subsection (8):

(a) planning sessions associated with the development of policies or strategies;

(b) briefing or training sessions;

(c) workshops;

(d) social gatherings to encourage informal communication between members or between members and staff.

(9) In this section—

personal affairs of a person includes—

(a) that person's—

(i) financial affairs;

(ii) criminal records;

(iii) marital or other personal relationships;

(iv) personal qualities, attributes or health status;

(b) that person's employment records, employment performance or suitability for a particular position, or other personnel matters relating to the person,

but does not include the personal affairs of a body corporate.

Part 4—Minutes of council and committee meetings and release of documents

91—Minutes and release of documents

(1) The chief executive officer must ensure that minutes are kept of the proceedings at every meeting of the council or a council committee.

(2) If the chief executive officer is excluded from a meeting pursuant to Part 3, the person presiding at the meeting must ensure that minutes are kept.

(3) Each member of the council must, within five days after a meeting of the council or a council committee, be supplied with a copy of all minutes of the proceedings of the meeting kept under this section.

(4) 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 display for a period of one month.

(5) A person is entitled to inspect, without payment of a fee, at the principal office of the council—

(a) minutes kept under this section; and

(b) reports to the council or a council committee received at a meeting of the council or committee; and

(c) recommendations presented to the council in writing and adopted by resolution of the council; and

(d) budgetary or other financial statements adopted by the council.

(6) A person is entitled, on payment of a fee fixed by the council, to a copy of any documents available for inspection under subsection (5).

(7) However, subsections (4), (5) and (6) do not apply to a document or part of a document if—

(a) the document or part relates to a matter dealt with by the council or council committee on a confidential basis under Part 3; and

(b) the council or council committee orders that the document or part be kept confidential.

(8) A council must not make an order under subsection (7)—

(a) to prevent the disclosure of the remuneration or conditions of service of an 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

(ba) to prevent the disclosure of the amount or amounts payable by the council under a contract for the supply of goods or the provision of services (including the carrying out of works) to, or for the benefit of, the council after the contract has been entered into by all parties to the contract; 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.

(9) If an order is made under subsection (7)—

(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, in any event, any order that operates for a period exceeding 12 months must be reviewed at least once in every year; 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 it 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 employee of the council the power to revoke the order.

(10) No action for defamation lies against the council in respect of—

(a) the accurate publication under this section of any information, statement or document (in whatever form); or

(b) the accurate publication under this section of a transcript, recording or other record of a meeting of a council or a council committee.

(11) A document purporting to be minutes of proceedings at a meeting of a council, or a council committee, 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.

Part 5—Code of practice

92—Access to meetings and documents—code of practice

(1) A council must prepare and adopt a code of practice relating to the principles, policies, procedures and practices that the council will apply for the purposes of the operation of Parts 3 and 4.

(2) A council must, within 12 months after the conclusion of each periodic election, 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 include any mandatory provision prescribed by the regulations.

(5) Before a council adopts, alters or substitutes a code of practice under this section it must—

(a) make copies of the proposed code, alterations or substitute code (as the case may be) available for inspection or purchase at the council's principal office; and

(b) follow the relevant steps set out in its public consultation policy.

(6) A person is entitled to inspect (without charge) the code of practice of a council at the principal office of the council during ordinary office hours.

(7) A person is entitled, on payment of a fee fixed by the council, to a copy of the code of practice.

Part 6—Meetings of electors

93—Meetings of electors

(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—

(i) any person who is enrolled on the voters roll for the area as an elector; and

(ii) a nominee of a body corporate or group which has its name on the voters roll for the area;

(b) in the case of a meeting of electors of a part of an area—

(i) any person who is enrolled on the voters roll for the area as an elector—

(A) in respect of a place of residence within that part of the area; or

(B) in respect of rateable property within that part of the area; or

(ii) a nominee of a body corporate which is a ratepayer, or of a group of persons who are ratepayers, in respect of rateable property within that part of the area.

(4) A meeting of electors under this section cannot proceed unless at least one member of the council is present at the meeting.

(5) If the principal member of the council is present and available to preside at a meeting of electors held under this section, he or she must preside at the meeting.

(6) If the principal member 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 chairperson available to preside at the meeting—the deputy must preside;

(b) if there is no deputy 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 persons present and lawfully voting 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 persons present and lawfully voting at the meeting.

(8) A person present at the meeting who is entitled to vote on a question arising for decision at the meeting in his or her own capacity as an elector may also, if the person is a nominee of a body corporate or a group of persons who are ratepayers, vote in that capacity as a nominee.

(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 chief executive officer of the council must ensure that minutes are kept of the proceedings at a meeting of electors.

(11) Each member of the council must, within five days after a meeting of electors, be supplied with a copy of the minutes of the proceedings.

(12) The member presiding at a meeting of electors must transmit a resolution passed at a meeting held under this section to the council.

(13) A meeting of electors may be adjourned from time to time and from place to place.

(14) The procedure to be observed to make a nomination for the purposes of subsection (3)(a)(ii) or (b)(ii) will be as determined by the council.

(15) 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.

Part 7—Related matters

93A—Audits by Ombudsman

(1) The Ombudsman may, if the Ombudsman considers it to be in the public interest to do so, conduct a review of the practices and procedures (or of any aspect of the practices or procedures) of one or more councils or council committees under Part 3 or Part 4.

(2) The Ombudsman may, in carrying out a review under this section, exercise the powers of the Ombudsman under the *Ombudsman Act 1972* as if carrying out an investigation under that Act, subject to such modifications as may be necessary, or as may be prescribed.

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

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

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

(a) the Minister; and

(b) any council that was under review, or that has (or had) a council committee that was under review,

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

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

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

94—Investigation by Ombudsman

(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 Part 3 or unreasonably prevented access to documents under Part 4.

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

(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 Part 3 or unreasonably prevented access to documents under Part 4, 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) The Minister must, before taking action under subsection (5), give the council a reasonable opportunity to make submissions to the Minister in relation to the matter.

(7) A council must comply with a direction under subsection (5).

(7a) The Minister may also publish the report, a part of the report, or a summary of the report, in such manner as the Minister thinks fit.

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

94A—Meeting information on website

The chief executive officer of a council must, so far as is reasonably practicable, make available for inspection on the Internet an up-to-date schedule of the dates, times and places set for meetings of the council and council committees.

95—Obstructing meetings

A person who intentionally obstructs or hinders proceedings at a meeting of a council or council committee, or at a meeting of electors, is guilty of an offence.

Maximum penalty: $1 250.

Chapter 7—Council staff

Part 1—Chief executive officer

96—Council to have a chief executive officer

(1) Each council must have a chief executive officer.

(2) The title of the office under subsection (1) is at the discretion of the council.

97—Vacancy in office

(1) A chief executive officer's appointment may be terminated by the council—

(a) on the ground that the chief executive officer—

(i) has been guilty of misconduct; or

(ii) has been convicted of an indictable offence punishable by imprisonment; or

(iii) has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or

(iv) has, for any other reason, failed to carry out duties of the office satisfactorily or to any performance standards specified by the council or in any contract relating to his or her appointment; or

(v) has breached in any other manner any contract relating to his or her appointment; or

(b) on a ground or in circumstances specified in any contract relating to his or her appointment.

(2) A chief executive officer's appointment is terminated if the chief executive officer—

(a) resigns by notice in writing to the principal member of the council; or

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

(c) is sentenced to imprisonment for an offence.

(3) Neither subsection (1)(a)(ii) nor subsection (2)(c) applies until the period for appealing against the conviction has expired or, if there is an appeal, until the appeal is determined.

98—Appointment procedures

(1) If a vacancy occurs or is about to occur in the office of chief executive officer, the council must take steps to fill the vacancy (or the pending vacancy).

(2) The council must appoint a person to act in the position of chief executive officer until a vacancy is filled.

(3) For the purpose of filling a vacancy, the council must invite applications by advertising in a newspaper circulating throughout the State, and may take other action as the council thinks appropriate.

(4) The council must appoint a selection panel to assess applications for the position of chief executive officer, to recommend readvertisement or other additional steps (if necessary), and to make recommendations to the council on an appointment.

(5) The council makes the appointment to the office of chief executive officer.

(6) This section does not apply in circumstances involving the reappointment of a chief executive officer following the completion of a term of office.

99—Role of chief executive officer

(1) The functions of the chief executive officer include—

(a) to ensure that the policies and lawful decisions of the council are implemented in a timely and efficient manner;

(b) to undertake responsibility for the day-to-day operations and affairs of the council;

(c) to provide advice and reports to the council on the exercise and performance of its powers and functions under this or any other Act;

(d) to co-ordinate proposals for consideration by the council for developing objectives, policies and programs for the area;

(e) to provide information to the council to assist the council to assess performance against its strategic management plans;

(f) to ensure that timely and accurate information about council policies and programs is regularly provided to the council's community, and to ensure that appropriate and prompt responses are given to specific requests for information made to the council;

(g) to ensure that the assets and resources of the council are properly managed and maintained;

(h) to ensure that records required under this or another Act are properly kept and maintained;

(i) to give effect to the principles of human resource management prescribed by this Act and to apply proper management practices;

(j) to exercise, perform or discharge other powers, functions or duties conferred on the chief executive officer by or under this or other Acts, and to perform other functions lawfully directed by the council.

(2) The chief executive officer must consult with the council (to a reasonable degree) when determining, or changing to a significant degree—

(a) the organisational structure for the staff of the council; or

(b) the processes, terms or conditions that are to apply to the appointment of senior executive officers; or

(c) the appraisal scheme that is to apply to senior executive officers.

100—Council may have a deputy chief executive officer

(1) The chief executive officer must, in determining the organisational structure for the council, in consultation with the council, decide whether to have a deputy to the chief executive officer.

(2) The chief executive officer is responsible for appointing a person to an office created under subsection (1).

(3) However, the chief executive officer must obtain the concurrence of the council before the chief executive officer makes an appointment to, or removes a person from, the position of deputy.

(4) The title of the office under subsection (1) is at the discretion of the chief executive officer after consultation with the council.

101—Delegation by chief executive officer

(1) The chief executive officer may delegate (or subdelegate) a power or function vested or conferred in or on the chief executive officer under this Act.

(2) A delegation may be made—

(a) to an employee of the council, or to the employee for the time being occupying a particular office or position; or

(b) to a committee comprising employees of the council; or

(c) to an authorised person.

(3) A delegation—

(a) is subject to conditions and limitations determined by the chief executive officer; and

(b) may constitute the further delegation of a power or function delegated by the council to the chief executive officer, unless the council has directed otherwise; and

(c) is revocable at will and does not prevent the chief executive office from acting personally in a matter.

(4) The chief executive officer must not subdelegate a power or function if its subdelegation is prohibited by the Act or instrument under which it was delegated to the chief executive officer.

(5) This section does not limit or affect a power of delegation under another Act.

102—Person to act in absence of chief executive officer

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 appointed by the chief executive officer after consultation with the council must act in the office;

(c) if a person is not appointed under paragraph (b)—a suitable person must be appointed by the principal member of the council to act in the office (after taking into account the organisational structure of the council);

(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 (after taking into account the organisational structure of the council).

Part 2—Appointment of other staff

103—Appointment etc by chief executive officer

(1) The chief executive officer is responsible for appointing, managing, suspending and dismissing the other employees of the council (on behalf of the council).

(2) The chief executive officer must ensure that an appointment under subsection (1) is consistent with strategic policies and budgets approved by the council.

(3) The chief executive officer must, in acting under subsection (1), comply with any relevant Act, award or industrial agreement.

(4) Suspension of an employee by the chief executive officer does not affect a right to remuneration in respect of the period of suspension.

104—Remuneration etc of other employees

Subject to any relevant Act, award or industrial agreement, the remuneration and other conditions of service of an employee of a council will be as determined by the chief executive officer.

105—Register of remuneration, salaries and benefits

(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—

(a) the title of each position held by an employee of the council; and

(b) in relation to those positions held by employees who are paid according to salary scales set out in an award or industrial agreement—

(i) the classifications of the employees who hold those positions; and

(ii) the salary scales applicable to each classification (indicating in relation to each scale the number of employees who are paid according to that scale); and

(iii) details of other allowances or benefits paid or payable to, or provided for the benefit of, any of those employees as part of a salary package; and

(c) in relation to each position held by an employee who is not paid according to a salary scale set out in an award or industrial agreement referred to above—

(i) the salary payable to the employee who holds that position; and

(ii) details of other allowances and benefits paid or payable to, or provided for the benefit of, the employee as part of a remuneration 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, wage or remuneration, or an allowance or benefit, payable to, or provided for the benefit of, an 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 principal office of the council during ordinary office hours.

(4) A person is entitled, on payment of a fee fixed by the council, to an extract from the Register of Salaries.

(5) A chief executive officer is not required to include in a Register of Salaries details of any reimbursement of expenses incurred by an employee in performing official duties unless that reimbursement occurs by way of the periodic payment of a lump sum that is not calculated so as to provide exact reimbursement of expenses incurred by an employee in performing official duties.

106—Certain periods of service to be regarded continuous

(1) If an employee leaves the service of a council and, within 13 weeks of having done so, enters the service of another council without having commenced 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) If an employee engaged by a council is entitled to the benefit of subsection (1), that council is entitled to receive from the other council a contribution of an amount calculated in accordance with the regulations.

(2a) Payment of the contribution must be made within one month after receipt of a written notice requiring that payment.

(3) On default of payment, the amount of a contribution payable under this section may be recovered as a debt.

(4) A council must at the request of another council supply that other council with details of the service of an employee or former employee of the council.

(5) The amount of a contribution received by a council under this section must be held and applied in accordance with the regulations.

(6) The regulations may—

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

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

(7) In this section—

council includes a subsidiary constituted under this Act.

Part 3—Human resource management principles

107—General principles of human resource management

(1) The chief executive officer must ensure that sound principles of human resource management are applied to employment in the administration of the council, and must take reasonable steps to ensure that those principles are known to all employees.

(2) In particular, the chief executive officer must ensure—

(a) that selection processes are based on an assessment of merit, and are fair and equitable; and

(b) that employees are given reasonable access to training and development, and are afforded equal opportunities to secure promotion and advancement; and

(c) that employees are treated fairly and consistently, and are not subject to arbitrary or capricious decisions; and

(d) that employees have access to suitable processes to deal with grievances concerning working conditions or the decisions of supervisors; and

(e) that employees are given regular reports on their performance; and

(f) that employees are provided with safe and healthy working conditions; and

(g) that an equal employment opportunity program relating to employment with the council is implemented, and reviewed on a regular basis; and

(h) that there is no unlawful discrimination against employees or persons seeking employment in the administration of the council on the ground of sex, sexuality, marital status, pregnancy, race, physical or intellectual impairment, age or any other ground and that there is no other form of unjustifiable discrimination exercised against employees or persons seeking employment.

(3) In this section—

equal employment opportunity program, in relation to a council, means a program 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.

Part 4—Conduct of employees

Division 1—General duty and code of conduct

108—Interpretation

In this Division—

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

registered industrial association means an industrial association or organisation registered under a law of the State or of the Commonwealth.

109—General duty

(1) An employee of a council must at all times act honestly in the performance of official duties.

(2) An employee of a council must at all times act with reasonable care and diligence in the performance of official duties.

110—Code of conduct

(1) A council must prepare and adopt a code of conduct to be observed by the employees of the council.

(2) A council must, within 12 months after each general election of the council, complete (and, as appropriate, implement) a review of its code of conduct under this section.

(3) A council may at any time alter its code of conduct, or substitute a new code of conduct.

(3a) A code of conduct must be consistent with any principle or requirement prescribed by the regulations and include any mandatory provision prescribed by the regulations.

(3b) The Minister should take reasonable steps to consult with any registered association that represents the interests of employees of councils before a regulation is made under subsection (3a).

(4) A code of conduct must not diminish a right or employment condition under an Act, award, industrial agreement or contract of employment.

(5) A council must take reasonable steps to consult with its employees and with any registered industrial association that represents the interests of employees of the council when preparing or revising its code of conduct under this section.

(6) A person is entitled to inspect (without charge) the code of conduct of a council at the principal office of the council during ordinary office hours.

(7) A person is entitled, on payment of a fee fixed by the council, to a copy of the code of conduct of a council.

(8) An employee of the council must comply with the code of conduct.

Division 2—Register of interests

111—Application of Division

This Division applies to—

(a) the chief executive officer of a council; and

(b) any other officer, or any other officer of a class, declared by a council to be subject to the operation of this Division.

112—Interpretation

In this Division—

prescribed officer means an officer within the ambit of a declaration under section 111(b);

Register means a Register of Interests kept for the purposes of this Division;

return period, in relation to an ordinary return of a person, means—

(a) in the case of a person whose last return was a primary return—the period between the date of the primary return and 30 June next following; and

(b) in the case of any other person—the period of 12 months expiring on 30 June on or within 60 days after which the ordinary return is required to be submitted.

113—Lodging of primary returns

Each person to whom this Division applies must, within 30 days after appointment (not being a reappointment), submit a primary return—

(a) in the case of the chief executive officer—to the principal member of the council;

(b) in the case of a prescribed officer—to the chief executive officer.

114—Lodging of ordinary returns

Each person to whom this Division applies must, on or within 60 days after 30 June in each year, submit an ordinary return—

(a) in the case of the chief executive officer—to the principal member of the council;

(b) in the case of a prescribed officer—to the chief executive officer.

115—Form and content of returns

(1) A return must be in the prescribed form and contain the prescribed information.

(2) A person who has submitted a return under this Division may at any time submit a change or variation in the information appearing on the Register in respect of the person or a member of his or her family.

116—Register of Interests

(1) The chief executive officer must maintain a Register of Interests and must cause to be entered in the Register all information furnished pursuant to this Division (including by the chief executive officer).

(2) If a person to whom this Division applies (other than the chief executive officer) fails to submit a return to the chief executive officer within the time allowed by this Division, the chief executive officer must as soon as practicable notify the person, in writing, of that fact.

117—Provision of false information

A person who submits a return under this Division that is to the knowledge of the officer false or misleading in a material particular (whether by reason of information included in or omitted from the return) is guilty of an offence.

Maximum penalty: $10 000.

118—Inspection of Register

The chief executive officer must, at the request of a member of the council, permit the member to inspect the Register.

119—Restrictions on disclosure

(1) A person must not disclose to any other person any information furnished pursuant to this Division unless the disclosure—

(a) is necessary for the purposes of the preparation or use of the Register by the chief executive officer; or

(b) is made at a meeting of the council, a council committee or a subsidiary of the council.

Maximum penalty: $10 000.

(2) Despite any other provision of this Act—

(a) the public must be excluded from attendance at any part of a meeting of the council, a council committee or a subsidiary of the council where information is disclosed under subsection (1)(b); and

(b) any part of the minutes of a meeting of the council, a council committee or a subsidiary of the council which contains information disclosed under subsection (1)(b) is not available for public inspection under this Act.

Division 3—Conflict of interest

120—Conflict of interest

(1) The chief executive officer of a council who has an interest in a matter in relation to which he or she is required or authorised 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 during a council meeting that is open to the public, act in relation to the matter.

Maximum penalty: $5 000.

(2) An employee of a council (other than the chief executive officer) who has an interest in a matter in relation to which he or she is required or authorised to act in the course of official duties—

(a) must disclose the interest to the chief executive officer; and

(b) must not, unless the chief executive officer otherwise determines, act in relation to the matter.

Maximum penalty: $5 000.

(3) It is a defence to a charge for an offence against subsection (1) or (2) to prove that the defendant was, at the time of the alleged offence, unaware of the interest.

(4) If an employee is entitled to act in relation to a matter by virtue of subsection (2)(b) and the employee is providing advice or making recommendations to the council or a council committee on the matter, the employee must also disclose the relevant interest to the council or council committee.

Maximum penalty: $5 000.

(5) An employee has an interest in a matter if the employee, or a person with whom the employee is closely associated, would, if the 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.

(6) A person is closely associated with an employee of a council—

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

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

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

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

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

(f) if that person is a person from whom the 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 a relative of the employee.

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

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

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

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

(b) in a prescribed circumstance.

(8) In this section—

employee of a council includes—

(a) a consultant engaged by the council; and

(b) a person working for the council on a temporary basis;

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 LGA.

(9) For the purposes of subsection (6)(e) and (f), employment with the council is to be disregarded.

Division 4—Protection from personal liability

121—Protection from personal liability

(1) No civil liability attaches to an employee of a council for an honest act or omission in the exercise, performance or discharge, or purported exercise, performance or discharge, of powers, functions or duties under this or other Acts.

(2) A liability that would, but for this section, attach to an employee of a council attaches instead to the council.

Chapter 8—Administrative and financial accountability

Part 1—Strategic management plans

122—Strategic management plans

(1) A council must develop and adopt plans (which may take various forms) for the management of its area, to be called collectively the ***strategic management plans***, which—

(a) identify the council's objectives for the area over a period of at least 4 years (the ***relevant period***), and provide a clear indication of—

(i) the extent to which the council has participated with other councils, and with State and national governments, in setting public policy objectives, and the extent to which the council's objectives are related to regional, State and national objectives; and

(ii) the extent to which the council has given consideration to regional, State and national objectives and strategies which are relevant to the economic, social, physical and environmental development and management of its area; and

(iii) the extent to which the council intends to co-ordinate with State and national governments in the planning and delivery of services in which there is a common interest; and

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

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

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

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

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

(A) real property development; and

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

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

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

(b) identify the principal activities that the council intends to undertake to achieve its objectives; and

(d) state the measures (financial and non-financial) that are to be used to monitor and assess the performance of the council against its objectives over the relevant period; and

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

(g) address issues associated with arranging its affairs so as to separate its regulatory activities from its other activities, so far as this is reasonable to do so; and

(h) make provision for the regular review of the charters, activities and plans of any subsidiary of the council.

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

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

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

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

(2) Strategic management plans—

(a) should—

(i) address the strategic planning issues within the area of the council, with particular reference to (and in a manner consistent with) the Planning Strategy; and

(ii) set out the council's priorities for the implementation of planning policies,

(although these matters may be satisfied by referring to the council's most recent *Strategic Directions Report* under section 30 of the *Development Act 1993*); and

(b) should (as far as practicable) be consistent with the Development Plan or Plans for the council's area, other than where the council proposes to amend the Plan or Plans in accordance with the procedures set out in the *Development Act 1993* and the council obtains an agreement with the Minister to whom the administration of the *Development Act 1993* is committed relating to the implementation of a program to undertake any relevant amendment or amendments; and

(c) should (as far as practicable) be consistent with any relevant statutory policy or plan (not referred to above).

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

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

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

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

(a) undertake a review of—

(i) its long-term financial plan; and

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

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

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

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

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

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

(5) A council may amend its strategic management plans or adopt new plans.

(6) A council must adopt a process or processes to ensure that members of the public are given a reasonable opportunity to be involved in the development and review of its strategic management plans.

(7) A council must ensure that copies of its strategic management plans under this section are available for inspection (without charge) and purchase (on payment of a fee fixed by the council) by the public at the principal office of the council.

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

Part 2—Annual business plans and budgets

123—Annual business plans and budgets

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

(a) an annual business plan; and

(b) a budget.

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

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

(b) include an outline of—

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

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

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

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

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

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

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

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

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

(a) prepare a draft annual business plan; and

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

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

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

(i) to attend—

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

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

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

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

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

(5) The council must ensure that copies of the draft annual business plan are available at the meeting under subsection (4)(a)(i), and for inspection (without charge) and purchase (on payment of a fee fixed by the council) at the principal office of the council at least 21 days before the date of that meeting.

(5a) The council must ensure that provision is made for—

(a) a facility for asking and answering questions; and

(b) the receipt of submissions,

on its website during the public consultation period.

(6) A council may then, after considering—

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

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

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

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

(7) Each budget of a council must—

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

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

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

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

(a) ensure—

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

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

(b) ensure—

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

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

at the principal office of the council.

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

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

(b) a budget.

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

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

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

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

Part 3—Accounts, financial statements and audit

Division 1—Accounts

124—Accounting records to be kept

(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 a form or forms, and in a place or places (within the State), as the council determines.

(3) A member of the council is entitled to inspect the accounting records at any reasonable time.

Division 2—Internal control and audit committee

125—Internal control policies

A council must ensure that appropriate policies, practices and procedures of internal control are implemented and maintained in order to assist the council to carry out its activities in an efficient and orderly manner to achieve its objectives, to ensure adherence to management policies, to safeguard the council's assets, and to secure (as far as possible) the accuracy and reliability of council records.

126—Audit committee

(1) A council must have an audit committee.

(2) The membership of an audit committee—

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

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

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

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

(4) The functions of an audit committee include—

(a) reviewing annual financial statements to ensure that they present fairly the state of affairs of the council; and

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

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

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

(b) liaising with the council's auditor; and

(c) reviewing the adequacy of the accounting, internal control, reporting and other financial management systems and practices of the council on a regular basis.

Division 3—Financial statements

127—Financial statements

(1) A council must prepare for each financial year—

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

(f) other statements or documentation relating to the financial affairs of the council required by the regulations.

(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; and

(b) must comply with standards and principles prescribed by the regulations; and

(c) must include the information required by the regulations.

(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 the persons or bodies prescribed by the regulations on or before the day prescribed by the regulations.

(5) A council must ensure that copies of its audited statements are available for inspection (without charge) and purchase (on payment of a fee fixed by the council) by the public at the principal office of the council.

(6) A member of the council is entitled to inspect financial statements and other documents prepared under this section at any reasonable time.

Division 4—Audit

128—The auditor

(1) A council must have an auditor.

(2) The auditor will be appointed by the council on the recommendation of the council's audit committee.

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

(3) The auditor must be—

(a) a registered company auditor; or

(b) a firm comprising at least one registered company auditor.

(4) A person is not eligible to be the auditor if—

(a) the person is a member of the council; or

(b) the person is a nominated candidate for election as a member of the council.

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

(5) The office of auditor becomes vacant if—

(a) the auditor dies; or

(b) the auditor resigns by written notice to the chief executive officer; or

(c) the auditor is not or ceases to be eligible for appointment as the auditor; or

(d) the auditor accepts remunerated office or employment from the council; or

(e) the term of appointment of the auditor expires and the auditor is not reappointed; or

(f) the auditor is removed from office by the council for reasonable cause.

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

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

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

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

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

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

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

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

(ii) other remuneration;

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

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

129—Conduct of audit

(1) The auditor of a council must undertake an audit of—

(a) the council's financial statements within a reasonable time after the statements are referred to the auditor for the audit (and, in any event, unless there is good reason for a longer period, within 2 months after the referral); and

(b) the controls exercised by the council during the relevant financial year in relation to the receipt, expenditure and investment of money, the acquisition and disposal of property and the incurring of liabilities.

(2) An audit must be carried out in accordance with standards prescribed by the regulations.

(3) The auditor must provide to the council—

(a) an audit opinion with respect to the financial statements; and

(b) an audit opinion as to whether the controls audited under subsection (1)(b) are sufficient to provide reasonable assurance that the financial transactions of the council have been conducted properly and in accordance with law.

(4) The auditor must also provide to the council written advice on particular matters arising from an audit.

(5) The auditor must specifically identify in the advice under subsection (4) any irregularity in the council's accounting practices or the management of the council's financial affairs identified by the auditor during the course of an audit.

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

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

(b) to the council's audit committee.

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

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

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

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

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

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

(6) The auditor must report to the Minister—

(a) a failure by the council or the chief executive officer to rectify within a reasonable time or in a reasonable manner an irregularity identified by the auditor; or

(b) a breach of this or another Act that comes to the attention of the auditor; or

(c) evidence that, in the opinion of the auditor, indicates or suggests a serious financial irregularity; or

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

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

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

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

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

(7) An auditor is not required to report under this section on a minor irregularity or breach.

(8) The Minister may, on the basis of a report under subsection (6), appoint an investigator or investigators to carry out an investigation under Chapter 13 Part 3 Division 1.

The investigator may be the Auditor-General.

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

130—CEO to assist auditor

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

(2) The chief executive officer must, at the request of the auditor of the council, provide to the auditor explanations or information required by the auditor.

(3) A chief executive officer must not, without reasonable excuse, fail to comply with subsection (1) or (2).

Maximum penalty: $10 000.

Division 5—Other investigations

130A—Other investigations

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

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

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

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

(3) An examination under this section—

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

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

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

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

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

Maximum penalty: $10 000.

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

(a) to the principal member of the council (who must ensure that a copy is immediately provided to the chief executive officer, and that copies are provided to the other members of council for their consideration at the relevant meeting under subsection (6) or (7)); and

(b) to the council's audit committee.

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

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

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

(7) The report may be the subject of a special meeting of the council called in accordance with the requirements of this Act (and held before the ordinary meeting of the council that would otherwise apply under subsection (6)).

(8) The report on an examination must be kept confidential until it is received at the relevant meeting of the council held under subsection (6) or (7) or, if the council so resolves at that meeting, until a later date specified by the council (being not later than 60 days after the date of the meeting).

Part 4—Annual reports

131—Annual report to be prepared and adopted

(1) A council must, on or before 30 November in each year, prepare and adopt an annual report relating to the operations of the council for the financial year ending on the preceding 30 June.

(2) The annual report must include the material, and include specific reports on the matters, specified in Schedule 4 as amended from time to time by regulation.

(3) The annual report must comply with any requirement prescribed by the regulations.

(4) A copy of the annual report must be provided by the council to each member of the council.

(5) A copy of the annual report must be submitted by the council—

(a) to the Presiding Members of both Houses of Parliament; and

(b) to the persons or bodies prescribed by the regulations,

on or before a day determined under the regulations.

(6) The Presiding Members of the Houses of Parliament must, within six sitting days after receiving a copy of an annual report under subsection (5), lay the copy before their respective Houses.

(7) A council may provide to the electors for its area an abridged or summary version of its annual report.

(8) A council must ensure that copies of its annual report are available for inspection (without charge) and purchase (on payment of a fee fixed by the council) by the public at the principal office of the council.

Part 5—Access to documents

132—Access to documents

(1) A member of the public is entitled—

(a) to inspect a document referred to in Schedule 5 at the principal office of the council during ordinary office hours without charge; and

(b) to purchase a document referred to in Schedule 5 at the principal office of the council during ordinary office hours for a fee fixed by the council.

(2) A council may make a document available in electronic form for the purposes of subsection (1)(a).

(3) A council must make the following documents available for inspection on the Internet within a reasonable time after they are available at the principal office of the council:

(a) agendas for meetings of the council or council committees;

(b) minutes of meetings of the council or council committees;

(c) codes of conduct or codes of practice adopted by the council under this Act or the *Local Government (Elections) Act 1999*;

(d) the council's contract and tenders policies, public consultation policy and order-making policies;

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

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

(e) a list of fees and charges imposed by the council under this Act;

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

(g) procedures for the review of decisions established by the council under Part 2 of Chapter 13;

(h) the audited financial statements of the council;

(i) the annual report of the council;

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

(4) The Governor may amend Schedule 5 from time to time by regulation.

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

(5) This section does not limit or affect—

(a) the operation of the *Freedom of Information Act 1991* to council documents; or

(b) the operation of any other section of this Act or the *Local Government (Elections) Act 1999*.

Part 6—Related administrative standards

132A—Related administrative standards

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

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

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

Chapter 9—Finances

Part 1—Sources of funds

133—Sources of funds

A council may obtain funds—

(a) as permitted by or under this or another Act; and

(b) as may otherwise be appropriate in order to carry out its functions under this or another Act.

Examples—

The following are examples of ways in which a council may raise funds:

(a) by imposing rates and charges in accordance with this Act;

(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.

Part 2—Financial arrangements

134—Borrowing and related financial arrangements

(1) A council may borrow money and obtain other forms of financial accommodation.

(2) A borrowing may take any form considered appropriate by the council, including through the use of an overdraft or finance lease.

(3) A council may enter into financial arrangements for the purpose of managing, hedging or protecting against movements in interest rates or other costs of borrowing money, including—

(a) interest rate swaps;

(b) forward interest rate agreements;

(c) interest rate options;

(d) other prescribed arrangements.

(4) However, a council must not enter into a financial arrangement under subsection (3) unless or until—

(a) the council has obtained and considered independent and impartial advice about the proposed financial arrangements and the appropriate risk-management policies, controls and systems that should be in place from a person whom the council reasonably believes to be competent to give the advice; and

(b) the council has adopted risk-management policies, controls and systems by a resolution passed by at least a two-thirds majority of the members of the council.

135—Ability of a council to give security

(1) A council may provide various forms of security, including—

(a) guarantees (including guarantees relating to the liabilities of a subsidiary of the council);

(b) debentures charged on the general revenue of the council (including to support a guarantee provided under paragraph (a));

(c) bills of sale, mortgages or other charges (including to support a guarantee provided under paragraph (a)).

(2) If a council proposes to issue debentures on the general revenue of the council—

(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) if 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 an obligation 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; 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; and

(b) give 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 other rights that exist independently of that subsection.

(6) In this section—

debenture includes any form of charge on the general revenue of a council.

136—State Government not liable for debts of a council

(1) The Crown is not responsible for the debts or liabilities of a council, or a subsidiary or other body of a council, and the holder of a security issued by a council under this Act has no claim against the Crown in respect of that security.

(2) This section does not affect a liability or claim that may arise by operation of the law.

Part 3—Expenditure of funds

137—Expenditure of funds

Subject to this or another Act, a council may expend its funds as the council thinks fit in the exercise, performance or discharge of its powers, functions or duties under this or other Acts.

138—Council not obliged to expend rate revenue in a particular financial year

The revenue raised from rates in respect of a particular financial year need not be completely expended in that year.

Part 4—Investment

139—Investment powers

(1) A council may invest money under its control.

(2) A council must, in exercising its power of investment—

(a) exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons; and

(b) avoid investments that are speculative or hazardous in nature.

(3) Without limiting the matters that a council may take into account when exercising its power of investment, a council must, so far as may be appropriate in the circumstances, have regard to—

(a) the purposes of the investment;

(b) the desirability of diversifying council investments;

(c) the nature of and risk associated with existing council investments;

(d) the desirability of maintaining the real value of the capital and income of the investment;

(e) the risk of capital or income loss or depreciation;

(f) the potential for capital appreciation;

(g) the likely income return and the timing of income return;

(h) the length of the term of a proposed investment;

(i) the period for which the investment is likely to be required;

(j) the liquidity and marketability of a proposed investment during, and on the determination of, the term of the investment;

(k) the aggregate value of the assets of the council;

(l) the likelihood of inflation affecting the value of a proposed investment;

(m) the costs of making a proposed investment;

(n) the results of any review of existing council investments.

(4) Without limiting the matters that a council may take into account when exercising its power of investment, but subject to the operation of subsection (3), a council may, so far as may be appropriate in the circumstances, have regard to—

(a) the anticipated community benefit from an investment;

(b) the desirability of attracting additional resources into its local community.

(5) A council may obtain and consider independent and impartial advice about the investment of funds or the management of its investments from a person whom the council reasonably believes to be competent to give the advice.

140—Review of investments

A council must, at least once in each year, review the performance (individually and as a whole) of its investments.

Part 5—Miscellaneous

141—Gifts to a council

(1) A council may accept a 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 for 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) by public notice; and

(b) 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.

142—Duty to insure against liability

(1) A council must take out and maintain insurance to cover its civil liabilities at least to the extent prescribed by the regulations.

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

(3) Membership of the *Local Government Association Mutual Liability Scheme* constitutes insurance for the purposes of this section.

143—Writing off bad debts

(1) A council may 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.

(3) If a council delegates the power to write off debts under this section, the council must set an amount above which the delegation will not apply.

144—Recovery of amounts due to council

(1) If a provision of this or another Act provides that fees, charges, expenses or other amounts may be recovered by a council from a person, or are payable to the council by a person, the fees, charges, expenses or other amounts are recoverable as a debt by action in a court of competent jurisdiction.

(2) If a fee, charge, expense or other amount payable to a council relates to something done in respect of rateable or other property, or is payable by a person as the owner or occupier of rateable or other property within the area of the council, the council may, after giving at least 14 days notice requiring payment of the fee, charge, expense or other amount, recover the fee, charge, expense or other amount as if it were a rate declared on the property at the time of the notice requiring payment.

(3) Subsection (2) does not apply to—

(a) rates, charges, interest or fines recoverable under Chapter 10; or

(b) fees, charges, expenses or other amounts of a prescribed kind.

(4) Unless otherwise provided by another provision of this Act, or by another Act, or by the regulations, a fee, charge, expense or other amount recoverable under subsection (2) as a rate is not a charge on land.

145—Payment of fees etc to council

All fines, penalties and forfeitures recovered in proceedings commenced by a council, an employee of a council, or a subsidiary, (or by a person acting under a delegation from, or on behalf of, a council, an employee of a council, or a subsidiary), before a court for an offence committed within an area against this or another Act, or against a regulation or by-law made under this or another Act, must, except where otherwise provided, be paid to the council of the area.

Chapter 10—Rates and charges

Part 1—Rates and charges on land

Division 1—Preliminary

146—Rates and charges that a council may impose

A council may 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.

147—Rateability of land

(1) All land within the area of a council is rateable, except for land within a specific exemption (see especially subsection (2)).

(2) The following is not rateable:

(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) land (not including domestic or residential premises) occupied by a university established by statute;

(d) land that is exempt from rates or taxes by virtue of the *Recreation Grounds Rates and Taxes Exemption Act 1981*;

(e) land within the area of the District Council of Coober Pedy that is subject to a mining lease under the *Mining Act 1971* or a precious stones tenement under the *Opal Mining Act 1995*;

(f) land occupied or held by the council, except any such land held from a council under a lease or licence;

(g) land occupied by a subsidiary where the land is situated in the area of the council that established the subsidiary or a constituent council (as the case may be);

(ga) land occupied or held by an emergency services organisation under the *Fire and Emergency Services Act 2005*;

(h) land that is exempt from council rates under or by virtue of another Act.

(3) If 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.

(4) If 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 the development lot or lots (if any);

(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).

(5) If 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.

(6) If 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.

(7) Despite subsection (3)(b) and subsection (5), 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.

148—Land against which rates may be assessed

(1) 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.

(2) However, decisions about—

(a) the division of land for the purposes of subsection (1); or

(b) the aggregation of land for the purposes of subsection (1),

must be made fairly and in accordance with principles and practices that apply on a uniform basis across the area of the council.

149—Contiguous land

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 at any point; or

(b) is separated from the other land only by—

(i) a road, street, lane, footway, court, alley, railway or thoroughfare; or

(ii) a watercourse or channel; or

(iii) a reserve or other similar open space.

Division 2—Basis of rating

150—General principles

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

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

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

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

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

151—Basis of rating

(1) Subject to this Act, a rate must be—

(a) a rate based on the value of land subject to the rate;[1] or

(c) a rate based on two components—

(i) one being based on the value of land subject to the rate; and

(ii) the other being a fixed charge; or

(d) a rate based on some other factor or factors specifically allowed under this Act.

(2) The value of land for the purpose of rating is its capital value.

(3) However, 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

(b) the council declared rates in respect of that land on the basis of capital value for the previous three financial years.

(4) Except as authorised by proclamation under Chapter 3, a council must not apply different valuation bases to different parts of its area.

(5) Before a council—

(a) changes the basis of the rating of any land (including by imposing differential rates on land that has not been differentially rated in the preceding financial year, or by no longer imposing differential rates on land that has been differentially rated in the preceding financial year); or

(b) changes the basis on which land is valued for the purposes of rating; or

(c) changes the imposition of rates on land by declaring or imposing a separate rate, service rate or service charge on any land,

the council must—

(d) prepare a report on the proposed change; and

(e) follow the relevant steps set out in its public consultation policy.

(6) A report prepared for the purposes of subsection (5)(d) must address the following:

(a) the reasons for the proposed change;

(b) the relationship of the proposed change to the council's overall rates structure and policies;

(c) in so far as may be reasonably practicable, the likely impact of the proposed change on ratepayers (using such assumptions, rate modelling and levels of detail as the council thinks fit);

(d) issues concerning equity within the community,

and may address other issues considered relevant by the council.

(7) A public consultation policy for the purposes of subsection (5)(e) must at least provide for—

(a) the publication in a newspaper circulating within the area of the council a notice describing the proposed change, informing the public of the preparation of the report required under subsection (5)(d), and inviting interested persons—

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

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

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

(8) The council must ensure that copies of the report required under subsection (5)(d) are available at the meeting held under subsection (7)(a)(i), and for inspection (without charge) and purchase (on payment of a fee fixed by the council) at the principal office of the council at least 21 days before the end of the period for public consultation.

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

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

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

(9) A rate cannot be challenged on a ground based on the contents of a report prepared by a council for the purposes of subsection (5)(d).

(10) A council must not, in relation to any financial year, seek to set fixed charges as a component of general rates under this Part at levels that will raise a combined amount from such charges that exceeds 50% of all revenue raised by the council from general rates under this Part.

(11) A charge is not invalid because fixed charges imposed in relation to any financial year raise more than the amount referred to in subsection (10).

Note—

1 See Division 6 for provisions concerning the valuation of land for the purpose of rating.

Division 3—Specific characteristics of rates and charges

152—General rates

(1) A general rate may—

(a) be a rate based on the value of the land subject to the rate; or

(c) be a rate that consists of two components—

(i) one being based on the value of the land subject to the rate; and

(ii) the other being a fixed charge.

(2) The following provisions apply in relation to a fixed charge under subsection (1)(c):

(a) except as provided by the following paragraphs, a fixed charge must apply equally to each separate piece of rateable land in the area;

(b) a fixed charge cannot be imposed against land that constitutes less than the whole of a single allotment;

(ba) a fixed charge cannot be imposed against—

(i) each site in a caravan park; or

(ii) each site in a residential park within the meaning of the *Residential Parks Act 2007*;

(c) if two or more pieces of contiguous rateable 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;

(d) if two or more pieces of rateable land within the area of the council constitute a single farm enterprise, only one fixed charge may be imposed against the whole of the land.

(3) Subsection (2)(d) only applies if the council is satisfied, on application to the council and by provision of such information or evidence as the council may reasonably require, that the relevant land is within the ambit of the provision.

(4) If the grounds on which land is within the ambit of subsection (2)(d) cease to exist, the person who has the benefit of the provision must immediately inform the council of that fact.

Maximum penalty: $5 000.

(5) In this section—

(a) an allotment is—

(i) the whole of the land comprised in a certificate of title; or

(ii) the whole of land subject to a separate lease or licence, other than a lease or licence of a prescribed class (if any);

(b) a reference to a single farm enterprise is a reference to two or more pieces of rateable land—

(i) which—

(A) are farm land; and

(B) are farmed as a single enterprise; and

(C) are occupied by the same person or persons,

whether or not the pieces of land are contiguous; or

(ii) which—

(A) as to all the pieces except one, are farm land farmed as a single enterprise occupied by the same person or persons; and

(B) as to one piece contiguous with at least one of the other pieces, is the principal place of residence of that person or one of those persons.

153—Declaration of general rate (including differential general rates)

(1) A council may declare—

(a) a general rate on all rateable land within its area for a particular financial year; or

(b) differential general rates on rateable land within its area for a particular financial year.

(2) A council must, in fixing its rates for the purposes of this section, consider issues of consistency and comparability across council areas in the imposition of rates on various sectors of the business and wider community.

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

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

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

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

(5) A council must not—

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

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

154—Separate rates

(1) A council may declare a separate rate on rateable land within a part of the area of the council for the purpose of planning, carrying out, making available, supporting, maintaining or improving an activity 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 visitors to that part of the area.

(2) A separate rate may be based on—

(a) the value of land subject to the rate; or

(b) a proportional measure or other proportional basis related to the relevant land or the area, or to the estimated benefit to the occupiers of the land in the part of the area subject to the rate; or

(c) a fixed charge.

(4) A council may declare a separate rate in respect of a particular activity despite the fact that the activity is not to be directly undertaken or provided by the council.

(5) A separate rate—

(a) may be declared for a specified period (eg the time taken to carry out a capital project);

(b) may be declared for a period exceeding one year.

(6) Except where a separate rate is declared for more than one year, a separate rate must not be declared more than one month before the commencement of the financial year to which the rate relates.

(7) A council may declare differential separate rates.

(8) A council must, at the time that it declares a separate rate, identify the land to which the rate will relate.

(9) If a council declares a separate rate, the council must, in each rate notice sent to each ratepayer who is liable to pay the separate rate, specify—

(a) the purpose or purposes for which the rate is declared; and

(b) the basis on which the rate is declared; and

(c) the amount payable for the particular financial year; and

(d) if relevant, the period for which the rate will apply (according to a determination of the council under subsection (5)).

(10) If a separate rate is declared to raise funds 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 a 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.

155—Service rates and service charges

(1) In this section—

prescribed service means any of the following services:

(a) the treatment or provision of water;

(b) the collection, treatment or disposal (including by recycling) of waste;

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

(c) any other service prescribed by the regulations for the purposes of this definition.

(2) A council may impose—

(a) a service rate, an annual service charge, or a combination of a service rate and an annual service charge, on rateable land within its area to which it provides, or makes available, a prescribed service;

(b) an annual service charge on non-rateable land to which it provides, or makes available, a prescribed service.

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

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

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

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

(4) If a council provides more than one prescribed service of a particular kind in its area, a different service rate or annual 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, annual service charge, or a combination of both exceeding the cost to the council of establishing, operating, maintaining, improving and replacing (including by future capital works and including so as to take into account the depreciation of any assets) the service in its area (being a cost determined taking into account or applying any principle or requirement prescribed by the regulations).

(6) Subject to subsection (7), any amounts held in a reserve established in connection with the operation of subsection (5) must be applied for purposes associated with improving or replacing council assets for the purposes of the relevant prescribed service.

(7) If a prescribed service under subsection (6), is, or is to be, discontinued, any excess of funds held by the council for the purposes of the service (after taking into account any expenses incurred or to be incurred in connection with the prescribed service) may be applied for another purpose specifically identified in the council's annual business plan as being the purpose for which the funds will now be applied.

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

(a) the nature of the service; or

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

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

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

(9) A service charge imposed by a council under this section is recoverable as if it were a rate (even as against non-rateable land).

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

Division 4—Differential rating and special adjustments

156—Basis of differential rates

(1) Differential rates may vary—

(a) according to the use of the land; or

(b) according to the locality of the land; or

(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; or

(iv) the council has changed the basis of valuation used for the purpose of rating,

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 altered or realigned; and

(b) may not be inconsistent with a proclamation under Chapter 3 (insofar as a proclamation under that Chapter provides for the realignment of rating relativities during a specified period); and

(c) may not apply for more than five financial years or, if a proclamation under Chapter 3 so provides, a longer period specified by proclamation.

(3) If 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 a council declares differential rates according to the use of land and thus provides for a distinct residential rate, the residential rate must be applied to land occupied by any of the following:

(a) supported accommodation;

(b) independent living units;

(c) day therapy centres.

(6) 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.

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

(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.

(10) An objection under subsection (9)—

(a) must be in writing; and

(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 60 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 an 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 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 LGA.

(14a) Before a council changes from declaring differential rates in relation to any land on the basis of a differentiating factor under either paragraph (a), (b) or (c) of subsection (1) to a differentiating factor under another of those paragraphs, the council must—

(a) prepare a report on the proposed change; and

(b) follow the relevant steps set out in its public consultation policy.

(14b) A report prepared for the purposes of subsection (14a)(a) must address the following:

(a) the reasons for the proposed change;

(b) the relationship of the proposed change to the council's overall rates structure and policies;

(c) in so far as may be reasonably practicable, the likely impact of the proposed change on rate payers (using such assumptions, rate modelling and levels of detail as the council thinks fit);

(d) issues concerning equity within the community,

and may address other issues considered relevant by the council.

(14d) A public consultation policy for the purposes of subsection (14a) must at least provide for—

(a) the publication in a newspaper circulating within the area of the council a notice describing the proposed change, informing the public of the preparation of the report required under subsection (14a)(a), and inviting interested persons—

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

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

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

(14e) The council must ensure that copies of the report required under subsection (14a)(a) are available at the meeting held under subsection (14d)(a)(i), and for inspection (without charge) and purchase (on payment of a fee fixed by the council) at the principal office of the council at least 21 days before the end of the period for public consultation.

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

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

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

(14f) A rate cannot be challenged on a ground based on the contents of a report prepared by a council for the purposes of subsection (14a)(a).

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

157—Notice of differentiating factors

If a council declares differential rates, the council must, in each rates notice, specify the differentiating factor or combination of factors that governs the calculation of rates on the land to which the account relates.

158—Minimum rates and special adjustments for specified values

(1) A council can do one or both of the following:

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

(b) alter the amount that would otherwise be payable by way of rates in respect of land that falls within a range of values determined by the council.

(2) However—

(a) a minimum amount cannot be imposed against land that constitutes less than the whole of a single allotment; and

(b) a minimum amount cannot be imposed against each supported accommodation unit or independent living unit within a group or complex of units; and

(ba) a minimum amount cannot be imposed against—

(i) each site in a caravan park; or

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

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

(c) if two or more pieces of contiguous rateable land are owned by the same owner and occupied by the same occupier, a minimum amount may only be imposed against the whole of the land and not against individual pieces of it; and

(d) a council may not apply this section so as to affect or alter the rates that would be otherwise payable under this Part in relation to more than 35 per cent of the total number of properties in the area subject to the separate assessment of rates; and

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

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

(3) In subsection (2), an allotment is—

(a) the whole of the land comprised in a certificate of title; or

(b) the whole of land subject to a separate lease or licence, other than a lease or licence of a prescribed class (if any).

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

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

(6) In this section—

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

Division 5—Rebates of rates

159—Preliminary

(1) If grounds exist for a person or body to receive a rebate of rates in pursuance of this Division, the person or body may apply to the council in a manner and form determined by the council (supplying such information as the council may reasonably require).

(2) A person or body must not—

(a) make a false or misleading statement or representation in an application made (or purporting to be made) under this Division; or

(b) provide false or misleading information or evidence in support of an application made (or purporting to be made) under this Division.

Maximum penalty: $5 000.

(3) A council may grant a rebate of rates under this Division if satisfied that it is appropriate to do so (whether on application under this Division or on its own initiative).

(4) If a rebate specifically fixed by this Division is less than 100%, the council may, on its own initiative, increase the rebate.

(6) If—

(a) land is used by a person or body for purposes on which an entitlement to a rebate is based in pursuance of this Division (***Category A purposes***), and for business purposes or other purposes concerned with the production of income (***Category B purposes***); and

(b) it is possible to separate the part of the land used for Category A purposes from the part of the land used for Category B purposes,

the council is not required to grant a rebate of rates on the land used for the Category B purposes but if the council has declared differential rates in its area and thus provided for a distinct residential rate then that residential rate must be applied to the land that does not receive a rebate on account of the operation of this subsection.

(7) If a person or body has the benefit of a rebate of rates under this Division and the grounds on which the rebate has been granted cease to exist, the person or body must immediately inform the council of that fact and (whether or not the council is so informed) the entitlement to a rebate ceases.

(8) If a person or body fails to comply with subsection (7), the person or body is guilty of an offence.

Maximum penalty: $5 000.

(9) A council cannot grant to a person or body a rebate of general rates under this Division without also granting to the person or body a comparable rebate of any other rates that may also apply under this Part.

(10) A council may, for proper cause, determine that an entitlement to a rebate of rates in pursuance of this Division no longer applies.

(11) If an entitlement to a rebate of rates ceases or no longer applies during the course of a financial year, the council is entitled to recover rates, or rates at the increased level (as the case may be), proportionate to the remaining part of the financial year.

160—Rebate of rates—health services

The rates on land being predominantly used for service delivery or administration by a hospital or health centre incorporated under the *South Australian Health Commission Act 1976* will be rebated at 100 per cent.

161—Rebate of rates—community services

(1) The rates on land being predominantly used for service delivery or administration (or both) by a community service organisation will be rebated at 75 per cent (or, at the discretion of the council, at a higher rate).

(2) If—

(a) a community service organisation is entitled to a rebate of rates under subsection (1); and

(b) the council has declared differential rates according to the use of land and thus provided for a distinct residential rate,

then that residential rate must be applied to the land to which the rebate relates.

(3) For the purposes of this section, a community services organisation is a body that—

(a) is incorporated on a not-for-profit basis for the benefit of the public; and

(b) provides community services without charge or for a charge that is below the cost to the body of providing the services; and

(c) does not restrict its services to persons who are members of the body.

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

(a) a body will not be regarded as incorporated on a not-for-profit basis—

(i) if a principal or subsidiary object of the body is—

(A) to secure a pecuniary profit for the members of the body or any of them; or

(B) to engage in trade or commerce; or

(ii) if the constitution or rules of the body provide that the surplus assets of the body on a winding-up are to be distributed to its members or to another body that does not have identical or similar aims or objects;

(b) subject to the operation of paragraph (a), a body that receives funds from the State or Commonwealth Governments in order to subsidise its costs or charges will be taken to satisfy the requirements of subsection (3)(b);

(c) any of the following are community services:

(i) the provision of emergency accommodation;

(ii) the provision of food or clothing for disadvantaged persons;

(iii) the provision of supported accommodation;

(iv) the provision of essential services, or employment support, for persons with mental health disabilities, or with intellectual or physical disabilities;

(v) the provision of legal services for disadvantaged persons;

(vi) the provision of drug or alcohol rehabilitation services;

(vii) the conduct of research into, or the provision of community education about, diseases or illnesses, or the provision of palliative care to persons who suffer from diseases or illnesses;

(d) disadvantaged persons are persons who are disadvantaged by reason of poverty, illness, frailty, or mental, intellectual or physical disability.

162—Rebate of rates—religious purposes

The rates on land containing a church or other building used for public worship (and any grounds), or land solely used for religious purposes, will be rebated at 100 per cent.

163—Rebate of rates—public cemeteries

The rates on land being used for the purposes of a public cemetery will be rebated at 100 per cent.

164—Rebate of rates—Royal Zoological Society of SA

The rates on land (other than land used as domestic premises) owned by, or under the care, control and management of, the Royal Zoological Society of South Australia Incorporated will be rebated at 100 per cent.

165—Rebate of rates—educational purposes

(1) The rates on land—

(a) occupied by a government school under a lease or licence and being used for educational purposes; or

(b) occupied by a non-government school registered under Part 5 of the *Education Act 1972* and being used for educational purposes,

will be rebated at 75 per cent (or, at the discretion of the council, at a higher rate).

(2) The rates on land being used by a university or university college to provide accommodation and other forms of support for students on a not-for-profit basis will be rebated at 75 per cent (or, at the discretion of the council, at a higher rate).

166—Discretionary rebates of rates

(1) A council may grant a rebate of rates or service charges in any of the following cases (not being cases that fall within a preceding provision of this Division):

(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 is desirable for the purpose of assisting or supporting a business in its area;

(c) where the rebate will conduce to the preservation of buildings or places of historic significance;

(d) where the land is being used for educational purposes;

(e) where the land is being used for agricultural, horticultural or floricultural exhibitions;

(f) where the land is being used for a hospital or health centre;

(g) where the land is being used to provide facilities or services for children or young persons;

(h) where the land is being used to provide accommodation for the aged or disabled;

(i) where the land is being used for a residential aged care facility that is approved for Commonwealth funding under the *Aged Care Act 1997* (Cwlth) or a day therapy centre;

(j) where the land is being used by an organisation which, in the opinion of the council, provides a benefit or service to the local community;

(k) where the rebate relates to common property or land vested in a community corporation under the *Community Titles Act 1996* over which the public has a free and unrestricted right of access and enjoyment;

(l) where the rebate is considered by the council to be appropriate to provide relief against what would otherwise amount to a substantial change in rates payable by a ratepayer due to—

(i) a redistribution of the rates burden within the community arising from a change to the basis or structure of the council's rates; or

(ii) a change to the basis on which land is valued for the purpose of rating, rapid changes in valuations, or anomalies in valuations;

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

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

(ii) a liability that is unfair or unreasonable;

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

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

(1a) A council must, in deciding whether to grant a rebate of rates or charges under subsection (1)(d), (e), (f), (g), (h), (i) or (j), take into account—

(a) the nature and extent of council services provided in respect of the land for which the rebate is sought in comparison to similar services provided elsewhere in its area; and

(b) the community need that is being met by activities carried out on the land for which the rebate is sought; and

(c) the extent to which activities carried out on the land for which the rebate is sought provides assistance or relief to disadvantaged persons,

and may take into account other matters considered relevant by the council.

(2) A rebate of rates or charges under subsection (1)may be granted on such conditions as the council thinks fit.

(3) A rebate of rates or charges under subsection (1)(a), (b) or (k) may be granted for a period exceeding one year, but not exceeding 10 years.

(3a) A rebate of rates or charges under subsection (1)(l) may be granted for a period exceeding one year, but not exceeding three years.

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

(4) 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.

Division 6—Valuation of land for the purpose of rating

167—Valuation of land for the purposes of rating

(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, or caused to be made, by the Valuer-General; or

(b) valuations made by a valuer employed or engaged by the council, or by a firm or consortium of valuers engaged by the council,

or a combination of both.

(3) For the purposes of subsection (2)—

(a) —

(i) in relation to the adoption of valuations under subsection (2)(a)—the most recent valuations available to the council at the time that the council adopts its budget under this Act will govern the assessment of rates for the financial year; and

(ii) in relation to the adoption of valuations under subsection (2)(b)—the valuations may be up to five years old; and

(b) if the council adopts a combination of valuations under subsection (2)(a) and (b)—the valuations must be consistent with any guidelines, policies or standards published by the Valuer-General by notice in the Gazette for the purposes of this section; and

(c) all land within a particular land use category declared by the regulations as a permissible differentiating factor must be subject to valuations adopted under subsection (2)(a) or to valuations adopted under subsection (2)(b), and not to a combination of both.

(4) The council may rely on an audit of valuations undertaken by the Valuer-General for the purpose of ensuring compliance with subsection (3)(b).

(5) Subsection (3)(c) does not apply in a case where the land use category attributed to a particular piece of land is changed following the declaration of a rate or rates for a particular financial year.

(6) A notice of the adoption of valuations must be published in the Gazette within 21 days after the date of the adoption.

(7) A notice under subsection (6) need only set out the total of the valuations.

(8) 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 valuer under the *Land Valuers Act 1994*.

168—Valuation of land

(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 must, at the request of the Valuer-General, furnish to the Valuer-General any information requested by the Valuer-General for the purposes of valuing land within the area of the council.

(3) If 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; and

(ii) require a person to answer questions or to furnish returns of information relevant to the valuation; and

(b) the council must, as soon as practicable after the valuation is made, enter the valuation in the assessment record; and

(c) notice of the valuation must be given by the council to the principal ratepayer in respect 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; or

(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.

Maximum penalty: $5 000.

169—Objections to valuations made by council

(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—

(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 60 days after the date of service of the 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) For the purposes of determining the period within which an objection to a valuation must be made—

(a) a notice of the valuation sent by post to a person at the address for the person shown in the assessment record will be taken to be served at that address at the end of the second day after the day on which it was sent by post unless it is proved that it was not delivered to that address at all; and

(b) an apparently genuine document purporting to be issued by a council and to certify that a specified notice was sent by post on a specified day to a specified person at a specified address will, in the absence of proof to the contrary, constitute proof of the matters so certified.

(5) The council must refer the objection to the valuer who made the valuation and request the valuer to reconsider the valuation.

(6) If, on reconsideration, the valuer thinks that the valuation should be altered, the valuation will be altered in accordance with the valuer's opinion.

(7) The council must give the objector written notice of the outcome of his or her objection.

(8) 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.

(9) A request under subsection (8)—

(a) must be made in the prescribed manner and form; and

(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.

(10) The council must refer the request to the Valuer-General and the matter will then be referred to a valuer selected from a panel of valuers constituted under Part 4 of the *Valuation of Land Act 1971* in accordance with procedures set out in that Act.

(11) The valuer to whom the matter is referred under subsection (10) 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 in accordance with that Act to the valuer on the subject matter of the review).

(12) If the valuer considers that the valuation should be altered, the valuation will, subject to subsection (13), be altered in accordance with the valuer's opinion.

(13) 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.

(14) If a valuation is reduced on the review, the fee paid by the objector under subsection (9) must be refunded.

(15) 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 court, appeal against the valuation to the Land and Valuation Court.

(16) 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.

(17) 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 7—Issues associated with the declaration of rates

170—Notice of declaration of rates

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.

Division 8—The assessment record

172—Chief executive officer to keep assessment record

(1) The chief executive officer of a council must ensure that a record (the ***assessment record***) is kept in which is entered—

(a) —

(i) a brief description of each separate piece of rateable land in the area; and

(ii) the rateable value of the land; and

(b) if a service charge is imposed by the council on non-rateable land in the area—a brief description of that land; and

(c) the name and address of the owner of the land; and

(d) if the owner is not the principal ratepayer in respect of the land—the name and address of the principal ratepayer; and

(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); and

(f) if the land is rated on the basis of a particular land use—that land use; and

(g) other prescribed information.

(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 record as the principal ratepayer in respect of the land.

(3) If an application is duly made under subsection (2), the chief executive officer must enter the occupier's name in the assessment record as the principal ratepayer.

(4) Despite subsection (1), if the chief executive officer is satisfied that the inclusion in the assessment record of the name or address of a 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 record.

(5) If 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) if the person's residential address is included in respect of rateable property that the person owns but does not occupy—suppress the person's residential address from the assessment record;

(b) if the person's residential address is rateable land described in the assessment record—suppress the person's name from the assessment record in relation to that land.

(6) The chief executive officer may, as he or she thinks fit—

(a) keep the assessment record 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 record that may be necessary to keep the record in a correct and up-to-date form.

173—Alterations to assessment record

(1) Application may be made to the chief executive officer of a council for an alteration of the assessment record—

(a) by an owner or occupier of land, on the ground that particular information entered in the assessment record 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 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 District Court for an order for rectification of the assessment record.

174—Inspection of assessment record

(1) A person is entitled to inspect the assessment record at the principal office of the council during ordinary office hours.

(2) A person is entitled, on payment of a fee fixed by the council, to a copy of an entry made in the assessment record.

175—Duty of Registrar-General to supply information

(1) If—

(a) an estate in fee simple or an estate of freehold in Crown land is granted to a person; or

(b) a lease of Crown land is granted to a person, or a transfer of a lease (or part of a lease) of Crown land is consented to,

and the estate, lease or transfer is registered in the Lands Titles Registration Office, the Registrar-General must furnish to the council for the area within which the land is situated for noting in the assessment record—

(c) the full name 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 lease.

(2) A notice furnished under subsection (1) is, unless the contrary is proved, sufficient evidence of the matters stated in the notice for the purposes of this Chapter.

Division 9—Imposition and recovery of rates and charges

176—Preliminary

In this Division—

rates includes a service charge imposed under this Part.

177—Rates are charges against land

(1) Rates imposed on land are a charge on the land.

(2) However, if 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 in proportion to the lot entitlements of the respective lots.

(3) Subsection (2) does not apply in a case where section 147(6) applies.

178—Liability for rates

(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 record 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 (9), rates may be recovered as a debt from—

(a) the principal ratepayer; or

(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.

(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 rent or other consideration payable under the lease or licence in satisfaction of the liability for rates.

(5) If the council gives a notice under subsection (4), an additional charge of 5 per cent of the amount in arrears is payable and recoverable as part of those rates.

(6) A council may remit the charge payable under subsection (5) in whole or in part.

(7) If—

(a) the council gives a notice to a lessee or licensee under subsection (4); and

(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.

Maximum penalty: $750.

(8) If rates are paid by, or recovered from, a person who is not the principal ratepayer, that person may, subject to an 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).

(9) If an occupier of land derives his or her right of occupancy from a residential tenancy agreement under the *Residential Tenancies Act 1995*, 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).

179—Liability for rates if land is not rateable for the whole of the financial year

(1) If land is rateable 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) A council may, for the purposes of the operation of subsection (1) in respect of land that becomes rateable after the adoption of valuations by the council for the relevant year, specifically adopt a valuation of the land.

(3) 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.

(4) If land ceases to be rateable 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.

(5) If land ceases to be rateable land for a reason other than the reason under subsection (4) during the course of a financial year and the rates have been paid, the council must refund to the principal ratepayer an amount proportionate to the remaining part of the financial year.

180—Service of rate notice

(1) A council must, as soon as practicable after—

(a) the declaration of a rate; or

(b) the imposition of a service charge; or

(c) a change in the rates liability of land,

send to the principal ratepayer or, in the case of a service charge, the owner or occupier of the relevant land, a rates notice.[1]

(2) A rates notice must incorporate, or be accompanied by, the information required by the regulations and comply with any other requirement prescribed by the regulations.

Note—

1 See Chapter 14 Part 2 for information concerning the service of this notice.

181—Payment of rates—general principles

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

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

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

(4) Despite a preceding subsection—

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

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

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

(a) the amount of the instalment; and

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

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

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

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

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

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

(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; and

(b) a fine of 2 per cent of the amount of the instalment is payable; and

(c) on the expiration of each full month from that date, interest at the prescribed percentage of the amount in arrears (including the amount of any previous unpaid fine and including interest from any previous month) accrues.

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

(9) A council may remit any amount payable under subsection (8) in whole or in part.

(10) An 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—

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

(b) prompt payment of rates.

(12) Except as provided by subsection (8)—

(a) a council may not impose a surcharge or administrative levy with respect to the payment of rates by instalments under subsection (1); but

(b) a council may impose a surcharge or administrative levy not exceeding 1 per cent of the rates payable in a particular financial year with respect to the payment of rates by instalments under subsection (4)(b).

(13) A council may, in relation to the payment of separate rates or service rates, by written notice incorporated in a notice for the payment of those rates sent to the principal ratepayer shown in the assessment record in respect of the land at the address shown in the assessment record at least 30 days before an amount is payable in respect of the rates for a particular financial year, impose a requirement that differs from the requirements of this section.

(15) Despite a preceding subsection, a council may decide that rates of a particular kind will be payable in more than four instalments in a particular financial year and, in such a case—

(a) the instalments must be payable on a regular basis (or essentially a regular basis) over the whole of the financial year, or the remainder of the financial year (depending on when the rates are declared); and

(b) the council must give at least 30 days notice before an instalment falls due.

(17) In this section—

the prescribed percentage is to be calculated as follows:

$$P = \frac{CADR + 3\%}{12}$$

where—

P is the prescribed percentage

CADR is the cash advance debenture rate for that financial year.

182—Remission and postponement of payment

(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) postpone payment in whole or in part for such period as the council thinks fit; or

(b) remit the rates in whole or in part.

(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 cash advance debenture rate); and

(b) may be granted on other conditions determined by the council; 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 postponements of rates—

(a) to assist or support a business in its area; or

(b) to alleviate the effects of anomalies that have occurred in valuations under this Act.

(4) A council may grant other or additional remissions of rates 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).

(5) A council may require a ratepayer who claims to be entitled to a remission of rates by virtue of a determination under subsection (4) to provide evidence verifying his or her entitlement.

(6) A council may revoke a determination under subsection (4) at any time (but the revocation will not affect an entitlement to remission in relation to rates declared before the revocation takes effect).

(7) A council cannot grant to a ratepayer a remission of general rates under this section without also granting to the ratepayer a comparable remission of any other rates that may also apply under this Part.

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

182A—Postponement of rates—Seniors

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

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

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

(c) the land is owned by—

(i) the prescribed ratepayer; or

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

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

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

(3) A council may—

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

(b) impose conditions on the postponement of rates,

but only in accordance with the regulations.

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

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

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

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

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

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

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

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

(i) after—

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

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

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

(ii) before—

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

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

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

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

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

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

Maximum penalty: $5 000.

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

Maximum penalty: $10 000.

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

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

(12) In this section—

prescribed rate is an amount calculated as follows:

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

where—

P is the prescribed rate

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

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

183—Application of money in respect of rates

If 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;

(d) fourthly—in satisfaction of liabilities for rates in the order in which those liabilities arose.

184—Sale of land for non-payment of rates

(1) If an 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 record—

(a) stating the period for which the rates have been in arrears; and

(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; and

(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 who is responsible for the administration of the *Crown Lands Act 1929*.

(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 throughout 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) The exception under subsection (6) relating to land held from the Crown will not apply if the Minister responsible for the administration of the *Crown Lands Act 1929* grants his or her consent to the sale of land by public auction.

(8) An auction under this section must be advertised on at least two separate occasions in a newspaper circulating throughout the State.

(9) 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.

(10) If—

(a) an auction fails; or

(b) an auction is not to be held because 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.

(11) 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;

(e) fifthly—in discharging any other mortgages, encumbrances and charges of which the council has notice;

(f) sixthly—in payment to the owner of the land.

(12) 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*.

(13) If land is sold in pursuance of this section, an instrument of transfer or conveyance (as appropriate) under the council's common seal will, on registration, operate to vest title to the land in the purchaser.

(14) The title vested in a purchaser under subsection (13) 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.

(15) An instrument of transfer or conveyance in pursuance of a sale under this section must, when lodged with the Registrar-General for registration, 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.

(16) If it is not reasonably practicable to obtain the duplicate certificate of title to land that is sold in pursuance of this section (or other relevant instrument), the Registrar-General may register a transfer or conveyance despite the non-production of the duplicate (or instrument), 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.

(17) 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.

(18) This section does not authorise the sale of non-rateable land on account of the non-payment of a service charge.

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

185—Procedure where council cannot sell land

(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, or if the current valuation of land under this Part is less than the amount of outstanding rates, the council may apply to the Minister who is responsible for the administration of the *Crown Lands Act 1929* for an order under this section.

(2) On the receipt of an application by a council under subsection (1), the Minister 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 (and the lease, licence or agreement is cancelled);

(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; 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) If it is not reasonably practicable to obtain a 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 10—Miscellaneous

186—Recovery of rates not affected by an objection, review or appeal

(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) an 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) an 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 an 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; and

(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:

$$P = \frac{CADR}{12}$$

where—

P is the prescribed rate

CADR is the cash advance debenture rate for that financial year.

187—Certificate of liabilities

(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); and

(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; or

(b) an occupier of the land; or

(c) a person who has entered or declares to the council that he or she proposes to enter into a contract to purchase the land; or

(d) a mortgagee or prospective mortgagee of the land.

(3) An application for a certificate under this section—

(a) must be in writing; and

(b) must identify the land to which the application relates; and

(c) must state the nature of the applicant's interest in the land; and

(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) If 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.

187A—Administrative audits by Ombudsman

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

(2) The Ombudsman may, in carrying out a review under this section, exercise the powers of the Ombudsman under the *Ombudsman Act 1972* as if carrying out an investigation under that Act, subject to such modifications as may be necessary, or as may be prescribed.

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

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

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

(a) the Minister; and

(b) any council that was under review,

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

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

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

187B—Investigation by Ombudsman

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

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

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

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

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

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

(a) the Ombudsman; and

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

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

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

Part 2—Fees and charges

188—Fees and charges

(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 authorisation, licence or permit granted by the council;

(g) in respect of any matter for which another Act provides that a fee fixed under this Act is to be payable;

(h) 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.

(2a) Fees or charges under subsection (1)(d) must not exceed a reasonable estimate of the direct cost to the council in providing the information, materials, copies or extracts.

(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) If—

(a) a fee or charge is fixed or prescribed by or under this or another Act in respect of a particular matter; or

(b) this or another 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 decision 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) If 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.

Chapter 11—Land

Part 1—Local government land

Division 1—Preliminary

189—Crown as owner of land

For the purposes of this Part, if a council has, by or under this or another Act, the care, control and management of land that has not been granted in fee simple, the ***owner*** of land will be taken to be the Minister to whom the administration of the relevant Act has been committed.

Division 2—Acquisition of land

190—Acquisition of land by agreement

A council may acquire land by agreement.

191—Compulsory acquisition of land

(1) A council may, with the Minister's written approval, acquire land compulsorily.

(2) However, Ministerial approval is not required for the compulsory acquisition of land for a purpose classified by the regulations as an approved purpose.

(3) The *Land Acquisition Act 1969* applies to the acquisition of land under this section.

192—Assumption of care, control and management of land

(1) A council may assume the care, control and management of land in its area that has been set aside for the use or enjoyment of the public or a section of the public if—

(a) the owner of the land; and

(b) any person who has a recognised interest in the land under subsection (2),

consent to the assumption.

(2) The following persons have a recognised interest in land:

(a) a trustee of the land under an instrument of trust;

(b) a person with a registered estate or interest in the land, or a person claiming to have an estate or interest in the land as a caveator or lienor.

(3) A consent is not required from a person under subsection (1) if the person—

(a) cannot be found after reasonable inquiry; or

(b) is a body that has become defunct.

(4) A council must immediately cause a copy of a resolution under subsection (1) to be published in the Gazette (but the operation or validity of such a resolution is not dependent on publication under this subsection).

Division 3—Community land

193—Classification

(1) All local government land (except roads) that is owned by a council or under a council's care, control and management at the commencement of this section (the ***commencement date***) is taken to have been classified as community land unless—

(a) the council resolves to exclude the land from classification as community land within three years after the commencement date; and

(b) the land is unaffected by provisions of a reservation, dedication, trust or other instrument that would prevent or restrict its alienation.

(2) Before the council resolves to exclude land from classification as community land under subsection (1)(a), it must follow the relevant steps set out in its public consultation policy.

(3) If land is under the care, control and management of a council but is not owned by the council, the council cannot resolve to exclude the land from classification as community land under subsection (1)(a) without the approval of the owner of the land.

(4) Local government land (other than a road) that is acquired by, or is brought under the care, control and management of, the council after the commencement date is taken to have been classified as community land unless—

(a) the council resolves before it becomes local government land that it is to be excluded from classification as community land under this section; and

(b) the land is not affected by provisions of a reservation, dedication, trust or other instrument that would prevent or restrict its alienation.

(4a) Land that formed a road or part of a road that is vested in a council after the closure of the road under the *Roads (Opening and Closing) Act 1991* is taken to have been classified as community land unless the council resolves before, or at the time of, the making of the relevant road process order under that Act that it is to be excluded from classification as community land under this section.

(5) A council may, by resolution, classify local government land as community land if the land has previously been excluded from classification as such.

(6) A council must give notice in the Gazette of a resolution—

(a) to exclude land from classification as community land under subsection (4); or

(b) to classify, as community land, land that had previously been excluded from classification as such under subsection (5).

(7) For the purposes of this section, local government land does not include easements or rights of way.

194—Revocation of classification of land as community land

(1) A council may (subject to the following exceptions and qualifications) revoke the classification of land as community land in accordance with the following procedure.

Exceptions and qualifications—

(a) The classification of the Adelaide Park Lands as community land cannot be revoked unless the revocation is by force of a provision of another Act.

(b) The classification of land as community land cannot be revoked if the land is required to be held for the benefit of the community under Schedule 8, under a special Act of Parliament relating to the land, or under an instrument of trust.

(c) The classification of land as community land cannot be revoked if the power to revoke the classification of that land is excluded by regulation.

(d) The classification of other land as community land cannot be revoked unless—

(i) the Minister approves revocation of the classification; and

(ii) if the land is under the care, control and management of the council but is not owned by the council—the owner of the land approves revocation of the classification.

(2) Before a council revokes the classification of land as community land—

(a) the council must prepare and make publicly available a report on the proposal containing—

(i) a summary of the reasons for the proposal; and

(ii) a statement of any dedication, reservation or trust to which the land is subject; and

(iii) a statement of whether revocation of the classification is proposed with a view to sale or disposal of the land and, if so, details of any Government assistance given to acquire the land and a statement of how the council proposes to use the proceeds; and

(iv) an assessment of how implementation of the proposal would affect the area and the local community; and

(v) if the council is not the owner of the land—a statement of any requirements made by the owner of the land as a condition of approving the proposed revocation of the classification; and

(b) the council must follow the relevant steps set out in its public consultation policy.

(3) After complying with the requirements of subsection (2), the council—

(a) must submit the proposal with a report on all submissions made on it as part of the public consultation process to the Minister; and

(b) if the Minister approves the proposal—may make a resolution revoking the classification of the land as community land.

(4) The Minister must consult with the relevant council before a regulation is made under subsection (1) in relation to a specific piece of land.

(5) For the purposes of subsection (1)(a) (but subject to the exclusion of roads under section 193(1)), the Adelaide Park Lands will be taken to be any local government land within the Adelaide Park Lands, as defined (from time to time) under the *Adelaide Park Lands Act 2005*.

195—Effect of revocation of classification

(1) The revocation of the classification of land as community land frees the land from a dedication, reservation or trust affecting the land, other than a dedication, reservation or trust under the *Crown Lands Act 1929*.

(2) If it appears from the Register Book that the land is subject to a dedication, reservation or trust, other than a dedication reservation or trust under the *Crown Lands Act 1929*, the council must, immediately after the revocation of the classification of land as community land, give notice of the revocation to the Registrar-General in a manner and form approved by the Registrar-General (and the Registrar-General must then make appropriate amendments to any relevant instrument of title or other public record).

Division 4—Management plans

196—Management plans

(1) A council must prepare and adopt a management plan or management plans for its community land if—

(a) the land falls within the ambit of section 194(1)(b) or (c); or

(b) the land is, or is to be, occupied under a lease or licence; or

(c) the land has been, or is to be, specifically modified or adapted for the benefit or enjoyment of the community.

(1a) The Adelaide City Council must prepare and adopt a management plan for the Adelaide Park Lands.

(2) A single management plan may apply to one or more separate holdings of community land.

(3) A management plan must—

(a) identify the land to which it applies; and

(b) state the purpose for which the land is held by the council; and

(c) state the council's objectives, policies (if any) and proposals for the management of the land; and

(d) state performance targets and how the council proposes to measure its performance against its objectives and performance targets; and

(e) in the case of the management plan for the Adelaide Park Lands—

(i) provide information on any arrangements or restrictions on public use of any part of the park lands, or on movement through the park lands; and

(ii) provide specific information on the council's policies for the granting of leases or licences over any part of the park lands.

(4) If a management plan relates to land that is not in the council's ownership, the council must consult with the owner of the land at an appropriate stage during the preparation of the plan and the plan must—

(a) identify the owner of the land; and

(b) state the nature of any trust, dedication or restriction to which the land is subject apart from this Act; and

(c) contain any provisions that the owner reasonably requires and identify those provisions as provisions required by the owner.

(5) A management plan—

(a) should (as far as practicable) be consistent with other relevant official plans and policies about conservation, development and use of the land; and

Example—

The management plan should be consistent with strategic plans affecting development of land in the relevant area and with statutory or other official policies for protecting the State heritage, or for encouraging recreational or sporting activities, or for fostering tourism.

(b) must contain any special provisions required under the regulations.

Example—

The regulations may for example contain special provisions relating to the management of the Adelaide Park Lands for inclusion in the relevant management plans.

(6) In the event of an inconsistency between the provisions of an official plan or policy under another Act and the provisions of a management plan under this Act, the provisions of the official plan or policy prevail to the extent of the inconsistency.

(7) A council must have a management plan for community land in its area (if required)—

(a) if the land was owned by the council or was under the council's care, control and management at the commencement of this Part—within five years after the commencement of this Part; or

(b) if the land is acquired or placed under the council's care, control and management after the commencement of this Part—as soon as practicable after the requirement for the plan arises.

(8) The Adelaide City Council must have a management plan under this section for the Adelaide Park Lands within 2 years after the adoption of the first Adelaide Park Lands Management Strategy under the *Adelaide Park Lands Act 2005* unless the Governor, by regulation, allows an extension of time.

(9) In this section—

Adelaide Park Lands means the Adelaide Park Lands under the *Adelaide Park Lands Act 2005*, but does not include any land constituting a road (or part of a road).

197—Public consultation on proposed management plan

(1) Before a council adopts a management plan for community land it must—

(a) make copies of the proposed plan available for inspection or purchase at the council's principal office; and

(b) follow the relevant steps set out in its public consultation policy.

(2) A council may adopt a management plan without complying with the requirements of subsection (1) if the council adopted the plan after a process of public notification and consultation before the commencement of this Act.

(3) A council must give public notice of its adoption of a management plan.

198—Amendment or revocation of management plan

(1) A management plan may be amended or revoked by the adoption of a proposal for its amendment or revocation.

(2) A council may only adopt a proposal for amendment to, or revocation of, a management plan after the council has carried out the public consultation that would be required if the proposal were for a new management plan.

(3) However, public consultation is not required if the amendment has no impact or no significant impact on the interests of the community.

(4) A council must give public notice of its adoption of a proposal for the amendment or revocation of a management plan.

199—Effect of management plan

A council must manage community land in accordance with any management plan for the relevant land.

Division 5—Business use of community land

200—Use of community land for business purposes

(1) A person must not use community land for a business purpose unless the use is approved by the council.

(2) The council cannot approve the use of community land for a business purpose contrary to the provisions of a management plan.

(3) The council's approval may be given on conditions the council considers appropriate.

(4) A person must not—

(a) use community land for a business purpose in contravention of subsection (1); or

(b) contravene a condition of an approval for the use of community land for a business purpose.

Maximum penalty: $5 000.

Division 6—Disposal and alienation of local government land

201—Sale or disposal of local government land

(1) A council may sell or otherwise dispose of an interest in land—

(a) vested in the council in fee simple; or

(b) vested in the council as lessee.

(2) However, a council cannot dispose of community land or land forming a road or part of a road except as follows:

(a) the council may dispose of community land—

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

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

(b) the council may dispose of land that formed a road or part of a road after the closure of the road under the *Roads (Opening and Closing) Act 1991*;

(c) the council may grant a lease, licence, authorisation or permit under this Act;

(d) the council may grant an easement (including a right of way) over community land;

(e) the council may grant an easement (excluding a right of way) over a road or part of a road.

(3) If—

(a) State government financial assistance was given to the council to acquire community land; and

(b) the council has not resolved to use the proceeds of the sale or disposal of the land for the acquisition or development of other land for public or community use or for the provision of community facilities,

the Minister may as a condition of approving revocation of its classification with a view to sale or other disposal require the council to pay to the Crown, or to apply for a purpose specified by the Minister, on the sale or disposal of the land, an amount not exceeding the amount that bears the same proportion to the sale price (in the case of a sale) or to the value of the land (in the case of another form of disposal) as the amount of State government financial assistance bore to the purchase price (in the case of a purchase) or to the value of the land (in the case of another form of acquisition) at the time that the council acquired the land.

202—Alienation of community land by lease or licence

(1) A council may grant a lease or licence over community land (including community land that is, or forms part of, a park or reserve).

(2) Before the council grants a lease or licence relating to community land, it must follow the relevant steps set out in its public consultation policy.

(3) However, a council need not comply with the requirements of subsection (2) if—

(a) the grant of the lease or licence is authorised in an approved management plan for the land and the term of the proposed lease or licence is five years or less; or

(b) the regulations provide, in the circumstances of the case, for an exemption from compliance with a public consultation policy.

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

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

(5) A lease or licence may provide for—

(a) the erection or removal of buildings and other structures for the purpose of activities conducted under the lease or licence;

(b) the exclusion, removal or regulation of persons, vehicles or animals from or on the land, and the imposition of admission or other charges;

(c) any other matter relevant to the use or maintenance of the land.

(6) A lease or licence must be consistent with any relevant management plan.

(7) This section operates subject to the provisions of the *Adelaide Park Lands Act 2005* in respect of the Adelaide Park Lands under that Act.

Division 8—Register of community land

207—Register

(1) A council must keep a register of all community land in its area.

(2) The register—

(a) must contain the information required by the regulations; and

(b) must contain copies of current management plans; and

(c) may consist (if the council so decides) of a computer record of the relevant information.

(3) The register must be available for inspection (without charge) by the public at the principal office of the council during ordinary office hours.

(4) A person is entitled, on payment of a fee fixed by the council, to an extract from the register.

Part 2—Roads

Division 1—Ownership of roads

208—Ownership of public roads

(1) All public roads in the area of a council are vested in the council in fee simple under the *Real Property Act 1886* (and any land so vested that has not been previously brought under that Act is automatically brought under that Act without further application).

(2) When land vests in a council as a public road under this or another Act, the land is discharged from all mortgages, charges, easements and other encumbrances, and all other rights, privileges, trusts, limitations or restrictions (unless provided otherwise by this or another Act).

(3) Subsection (2) does not operate so as to discharge any easement that the council resolves to preserve under this subsection.

(4) A council must cause a copy of a resolution declaring a road or land to be a public road, or preserving an easement under subsection (3), to be published in the Gazette.

(5) A resolution declaring a road or land to be a public road will not take effect until publication under subsection (4).

209—Ownership of fixtures and equipment installed on public roads

(1) Fixtures and equipment (including pipes, wires, cables, fittings and other objects) installed in, on, across, under or over a public road by the provider of public infrastructure remain the property of the provider of that infrastructure.

(2) Fixtures and equipment (including pipes, wires, cables, fittings and other objects) installed in, on, across, under or over a public road under an authorisation or permit from the council remain, subject to the conditions of the authorisation or permit, the property of the holder of the authorisation or permit.

(3) Subsections (1) and (2) operate subject to the provisions of any agreement to which the council is a party that provides for the vesting of property in the council.

(4) In this section—

public infrastructure means infrastructure and other facilities used in or in connection with the supply of water or electricity, gas or other forms of energy, the provision of telecommunications, or the drainage or removal of waste water or sewage.

210—Conversion of private road to public road

(1) A council may declare a private road to be a public road if—

(a) the owner of the road asks for, or consents to, the declaration; or

(b) the council makes reasonable inquiries to find the owner and fails to do so.

(2) At least three months before a council makes a declaration under this section, it must—

(a) if the identity and whereabouts of the owner of the road are known to the council—give written notice to the owner of the proposed declaration; and

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

(b) give public notice of the proposed declaration.

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

(a) an owner of the private road may apply to the court for compensation for the loss of the owner's interest in the road;

(b) a person who has some other form of registered legal interest over the private road may apply to the court for compensation for the affect of the discharge of that interest.[1]

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

(4) Any compensation on an application under subsection (3) will be assessed in accordance with the appropriate provisions of the *Land Acquisition Act 1969*.

(5) A declaration under this section must be published in the Gazette.

(6) On publication of the declaration, the private road is converted to a public road and vests in the council in fee simple.

(7) The council must furnish to the Registrar-General a copy of any declaration under this section in a manner and form approved by the Registrar-General immediately after it is made.

Note—

1 This subsection does not prevent the council and an owner from entering into an agreement about the payment of compensation (if any).

Division 2—Highways

211—Highways

(1) A council may exercise its powers under this Part in relation to a highway if (and only if)—

(a) the council is acting under an agreement with the relevant authority; or

(b) the council is acting under or in accordance with a notice of the Commissioner of Highways under section 26 of the *Highways Act 1926*.

(2) In this section—

relevant authority means the Commissioner of Highways or other authority that has the care, control and management of the highway.

Division 3—Power to carry out roadwork

212—Power to carry out roadwork

(1) A council may carry out roadwork in its area or, by agreement with another council, in the area of another council.

(2) A council may do anything reasonably necessary for, or incidental to, roadwork.

Examples—

- The council may store road materials by the roadside in the vicinity of the work.
- The council may temporarily close the road or establish temporary roads for the diversion of traffic.
- The council may erect temporary fences or barriers, erect signals or signs or give or display notices associated with the carrying out of the roadwork.

(3) However—

(a) a council must, in carrying out roadwork, comply with any relevant requirement under the *Road Traffic Act 1961*; and

(b) a council must, before carrying out roadwork in relation to a road that runs into or intersects with a highway (and that may have an effect on the users of that highway), consult with the Commissioner of Highways; and

(c) a council may only carry out roadwork in relation to a private road if—

(i) the owner agrees; or

(ii) the council has given the owner reasonable notice of the proposed roadwork and a reasonable opportunity to make representations and has considered any representations made in response to the notice; or

(iii) the identity or whereabouts of the owner is unknown to the council; and

(d) a council may only carry out roadwork on other private land with the agreement of the owner (unless otherwise provided by this Act).

213—Recovery of cost of roadwork

(1) If a council carries out roadwork by agreement, the council may recover the whole of the cost or an agreed contribution under the terms of the agreement.

(2) If a council carries out roadwork to repair damage to a road, the council may recover the cost of carrying out the work, as a debt, from—

(a) the person who caused the damage; or

(b) in the case of damage caused by the bursting, explosion or fusion of any pipe, wire, cable, fitting or other object—the person who is the owner, or who has control, of that infrastructure.

(3) If a council carries out roadwork on a private road, the council may recover the cost of the work or a contribution towards the cost of the work determined by the council—

(a) as a debt from the owner of the private road; or

(b) by way of a separate rate under Chapter 10 imposed on adjoining land with access to the private road.

214—Contribution between councils where road is on boundary between council areas

(1) If a council carries out roadwork on a road on the boundary between two council areas, the council is entitled to a reasonable contribution from the other council towards the cost of the work.

(2) The contribution will be—

(a) an amount agreed between the councils; or

(b) in the absence of agreement—an amount determined by the court in which the action for contribution is brought.

(3) A council is not entitled to contribution under this section unless the council seeking contribution gives the other council reasonable notice of the nature of the proposed roadwork and allows the council a reasonable opportunity to make representations about the proposed work—but notice is not required in a case of urgency.

215—Special provisions for certain kinds of roadwork

(1) If a council changes the level of a road, the council must—

(a) ensure that adjoining properties have adequate access to the road; and

(b) construct any retaining walls, embankments or other structures necessary to provide protection required in consequence of the change of level.

(2) A council may carry out roadwork to allow water from a road to drain into adjoining property if, in the council's opinion—

(a) there is no significant risk of damage to the adjoining property; or

(b) the roadwork does not significantly increase the risk of damage to adjoining property.[1]

(3) A court may award damages against the council for damage caused by the drainage of water into an adjoining property in consequence of roadwork carried out by the council under subsection (2) only if satisfied that the council acted on an unreasonable basis.

(4) A council must give reasonable notice of proposed action to drain water into land under subsection (2) to the owner of the land—but notice is not required in a case of urgency.

Note—

1 The council may of course acquire a licence or easement to permit the drainage of water into the adjoining property.

Division 4—Power to require others to carry out work

216—Power to order owner of private road to carry out specified roadwork

(1) A council may, by order in writing to the owner of a private road, require the owner to carry out specified roadwork to repair or improve the road.

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

(a) any proposal to make an order; and

(b) if an order is made, any order,

under subsection (1).

217—Power to order owner of infrastructure on road to carry out specified maintenance or repair work

(1) A council may, by order in writing to the owner of a structure or equipment (including pipes, wires, cables, fittings and other objects) installed in, on, across, under or over a road, require the owner—

(a) to carry out specified work by way of maintenance or repair; or

(b) to move the structure or equipment in order to allow the council to carry out roadwork.

(2) If the order is not complied with within a reasonable time fixed in the order—

(a) the council may itself take the action required by the order and recover the cost of doing so as a debt from the owner; and

(b) the owner is guilty of an offence and liable to a penalty not exceeding $5 000.

(3) Subsection (1) and (2) do not apply to the owner of electricity infrastructure, public lighting infrastructure or gas infrastructure if the Commission has determined, on application by the owner, that there are reasonable grounds for not requiring the owner to take the action specified in the order.

(4) In this section—

Commission means the Essential Services Commission established under the *Essential Services Commission Act 2002*;

electricity infrastructure has the same meaning as in the *Electricity Act 1996*;

gas infrastructure has the same meaning as in the *Gas Act 1997*, but does not include a transmission pipeline within the meaning of the *Petroleum Act 2000*;

owner of a structure or equipment includes a lessee or licensee;

public lighting infrastructure has the same meaning as in the *Electricity Corporations (Restructuring and Disposal) Act 1999*.

218—Power to require owner of adjoining land to carry out specified work

(1) A council may, by order in writing to the owner of land adjoining a road, require the owner to carry out specified work to construct, remove or repair a crossing place from the road to the land.

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

(a) any proposal to make an order; and

(b) if an order is made, any order,

under subsection (1).

Division 5—Names and numbers

219—Power to assign a name, or change the name, of a road or public place

(1) A council may assign a name to a public or private road, or to a public place, or change the name of a public or private road, or of a public place.

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

(2) If a council proposes to change the name of a public road that runs into the area of an adjoining council, the council must—

(a) give the adjoining council at least two months notice of the proposed change; and

(b) consider any representations made by the adjoining council in response to the notice.

(3) A council—

(a) must immediately notify the Registrar-General, the Surveyor-General and the Valuer-General of the assignment of a name, or the change of a name, under this section; and

(b) must, on request by the Registrar-General, the Surveyor-General or the Valuer-General, provide information about the names of roads and public places in the council's area.

(4) Public notice must be given of the assigning or changing of a name under subsection (1).

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

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

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

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

220—Numbering of premises and allotments

(1) A council may adopt a numbering system for buildings and allotments adjoining a road.

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

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

(2) A council may from time to time alter a numbering system, or substitute a new numbering system, under this section.

(3) Public notice must be given of the adopting, altering or substituting of a numbering system for a particular road.

(4) A council must immediately notify the Valuer-General of a decision of the council to adopt, alter or substitute a numbering system under this section.

(5) An owner of land must not adopt a number for a building or allotment that is inconsistent with a numbering system adopted by the council under this section.

Maximum penalty: $2 500.

(6) An owner of land must, at the request of the council, ensure that the appropriate number for the owner's building or allotment is displayed in a form directed or approved by the council.

Maximum penalty: $750.

Expiation fee: $105.

Division 6—Control of work on roads

221—Alteration of road

(1) A person (other than the council or a person acting under some other statutory authority) must not make an alteration to a public road unless authorised to do so by the council.

Maximum penalty: $5 000.

(2) A person makes an alteration to a public road if the person—

(a) alters the construction or arrangement of the road to permit or facilitate access from an adjacent property; or

(b) erects or installs a structure (including pipes, wires, cables, fixtures, fittings and other objects) in, on, across, under or over the road; or

(c) changes or interferes with the construction, arrangement or materials of the road; or

(d) changes, interferes with or removes a structure (including pipes, wires, cables, fixtures, fittings or other objects) associated with the road; or

(e) plants a tree or other vegetation on the road, interferes with vegetation on the road, or removes vegetation from the road.

(3) An authorisation is not required under this section for an alteration to a road if—

(a) the person who proposes to make the alteration has some other statutory authorisation to make the alteration; or

(b) the purpose of the alteration is to permit vehicular access to and from land adjoining the road and the alteration is approved as part of a development authorisation under the *Development Act 1993*; or

(c) the alteration is of a kind classified under the regulations as a minor alteration.

(4) Before the council authorises the erection or installation of a structure under subsection (2)(b), the council must give consideration to whether the structure will—

(a) unduly obstruct the use of the road; or

(b) unduly interfere with the construction of the road; or

(c) have an adverse effect on road safety.

(5) A council is not liable for injury, damage or loss resulting from anything done under the authority of an authorisation under subsection (2)(b).

(6) An authorisation under this section—

(a) may be granted for a particular act or occasion; or

(b) may be granted for a term and if so granted is, subject to revocation for breach of a condition, to remain in force for a term (not exceeding 42 years) stated in the authorisation and, at the expiration of a term, may be renewed by the council for a further term (not exceeding 42 years) fixed by the council at the time of the renewal.

222—Permits for business purposes

(1) A person must not use a public road for business purposes unless authorised to do so by a permit.

Maximum penalty: $2 500.

Expiation fee: $210.

Examples—

- carrying on business from a pie-cart drawn up on the side of the road;
- establishing a kiosk on the side of a road;
- extending the business of a restaurant or café to outside tables situated on a footpath or roadside;

- depasturing stock;
- cropping.

(2) A permit may grant rights of exclusive occupation in relation to part of a public road.

(3) A permit may be granted for a particular occasion or for a term stated in the permit.

(4) The term of a permit cannot exceed five years.

(5) This section does not apply to a person who is simply travelling along a road.

223—Public consultation

(1) If a council proposes to grant an authorisation or permit—

(a) that would result in any part of a road being fenced, enclosed or partitioned so as to impede the passage of traffic to a material degree; or

(c) in relation to a use or activity for which public consultation is required under the regulations,

the council must, before granting the authorisation or permit, follow the relevant steps set out in its public consultation policy.

(2) The council must also give written notice of the proposal to agencies that are, under the regulations, to be notified of the proposal.

(3) The regulations may prescribe exceptions to the operation of subsection (1)(a).

224—Conditions of authorisation or permit

A council may grant an authorisation or permit under this Division on conditions the council considers appropriate.

Examples—

The conditions could for example—

- require compliance with specified safety requirements;
- require the person to whom the authorisation or permit is given to carry out specified work (or additional work) such as earthwork, drainage work and fencing;
- require specified insurance or indemnities;
- require the maintenance of structures erected or installed, or vegetation planted, under the authorisation or permit in good condition and to specified standards;
- in the case of an authorisation or permit given for business purposes—require the payment to the council of rent or other consideration;
- require the removal of a structure erected or installed under the authorisation or permit at the end of a stated period.

225—Cancellation of authorisation or permit

(1) A council may, by notice in writing to the holder of an authorisation or permit, cancel the authorisation or permit for breach of a condition.

(2) However, before the council cancels an authorisation or permit, the council must—

(a) give the holder of the authorisation or permit a written notice of the proposed cancellation stating the grounds on which the council proposes to act and allowing the holder a reasonable period to make written representations to the council on the proposed cancellation; and

(b) consider any representations made in response to the notice.

(3) The period allowed under subsection (2)(a) must be at least one month unless the council determines that a shorter period should apply to protect the health or safety of the public, or otherwise to protect the public interest.

Division 7—Moveable signs

226—Moveable signs

(1) Subject to this section, a person may place and maintain a moveable sign on a road without an authorisation or permit under this Part if (and only if)—

(a) the design and structure of the sign complies with the requirements of the council's by-laws; and

(b) the sign is placed in a position that complies with the requirements of the council's by-laws; and

(c) any other relevant requirements of the council's by-laws are complied with; and

(d) the sign does not unreasonably—

(i) restrict the use of the road; or

(ii) endanger the safety of members of the public.

(2) However, a by-law cannot be made with the effect of prohibiting the placement of a moveable sign on a part of a road (other than a carriageway) unless the prohibition is reasonably necessary—

(a) to protect public safety; or

(b) to protect or enhance the amenity of a particular locality.

(3) A person may place and maintain a moveable sign on a road without an authorisation or permit under this Part and without reliance on subsection (1) if—

(a) the sign is placed there pursuant to an authorisation under another Act; or

(b) the sign is designed to direct people to the open inspection of any land or building that is available for purchase or lease; or

(c) the sign is related to a State or Commonwealth election and is displayed during the period commencing on the issue of the writ or writs for the election and ending at the close of polls on polling day; or

(ca) the sign is related to an election held under this Act or the *Local Government (Elections) Act 1999* and is displayed during the period commencing 4 weeks immediately before the date that has been set (either by or under either Act) for polling day and ending at the close of voting on polling day; or

(d) the sign is of a prescribed class.

(4) No action lies against a council or an officer or employee of a council for injury, damage or loss resulting from the placement of a moveable sign on a road unless the council itself or some person acting on behalf of the council placed the sign on the road.

227—Removal of moveable sign

(1) If—

(a) the design or construction of a moveable sign that has been placed on a road does not comply with a requirement of the council's by-laws; or

(b) the positioning of the sign does not comply with a requirement of the council's by-laws; or

(c) any other relevant requirement of the council's by-laws is not complied with; or

(d) the sign unreasonably—

(i) restricts the use of the road; or

(ii) endangers the safety of members of the public,

an authorised person may order the owner of the sign to remove the sign from the road.[1]

(2) If the authorised person cannot find the owner, or the owner fails to comply immediately with the order, the authorised person may remove and dispose of the sign.

Note—

1 Any breach of a relevant by-law may also constitute an offence under Chapter 12.

Division 8—General provisions regulating authorised work

228—How work is to be carried out

A person authorised to carry out work on a road under this or another Act must—

(a) carry out the work as expeditiously as is practicable in the circumstances; and

(b) take action that is reasonably practicable in the circumstances to minimise obstruction of the road and inconvenience to road users; and

(c) if a code of practice governing the work is prescribed by the regulations—comply with the code of practice.

Maximum penalty: $5 000.

229—Road to be made good

A person who breaks up, or damages, a road under an authorisation conferred by this Act or another Act must restore the road at least to the condition that existed immediately before the action was taken.

Maximum penalty: $5 000.

Division 9—Survey marks

230—Survey marks

The Surveyor-General, or another person authorised under the *Survey Act 1992* to do so, may affix survey marks in a public road.

Division 10—Register

231—Register

(1) A council must keep a register of public roads in its area.

(2) The register—

(a) must include the information required by regulation; and

(b) may consist (if the council so decides) of a computer record of the relevant information.

(3) The register must be available for public inspection (without charge) at the principal office of the council during ordinary office hours.

(4) A person is entitled, on payment of a fee fixed by the council, to an extract from the register.

Division 11—Miscellaneous

232—Trees

Before a council plants vegetation, or authorises or permits the planting of vegetation, on a road, the council must (in addition to complying with any other statutory requirement)—

(a) give consideration to whether the vegetation is, on balance, appropriate to the proposed site taking into account—

(i) environmental and aesthetic issues; and

(ii) the use and construction of the road (including the potential for interference with the construction of the road or with structures (including pipes, wires, cables, fixtures, fittings or other objects) in the road); and

(iii) road safety matters; and

(iv) other matters (if any) considered relevant by the council; and

(b) if the vegetation may have a significant impact on residents, the proprietors of nearby businesses or advertisers in the area, follow the relevant steps set out in its public consultation policy.

233—Damage

(1) A person who, without the council's permission, intentionally or negligently damages a road or a structure (including pipes, wires, cables, fixtures, fittings and other objects) belonging to the council associated with a road is liable to the council in damages.

(2) The council may recover damages under this section in the same way as damages for a tort.

234—Council's power to remove objects etc from roads

(1) A council may remove and dispose of any structure, object or substance from a road if—

(a) it has been erected, placed or deposited on the road without the authorisation or permit required under this Part; or

(b) an authorisation or permit has been granted but has later expired or been cancelled.

(2) The council may recover the cost of acting under this section as a debt from the person who erected, placed or deposited the structure, object or substance on the road.

(3) If, as a result of any accident involving a vehicle or vehicles, any wreckage, objects or materials are left on a road, the council may clear the area and may recover the cost from the driver of the vehicle or, if more than one vehicle was involved, the driver of any one of the vehicles.

Part 3—Anti-pollution measures

235—Deposit of rubbish etc

(1) A person who, without the council's authorisation or permit—

(a) deposits rubbish on a public road or public place; or

(b) deposits goods, materials, earth, stone, gravel, or any other substance on a public road or public place,

is guilty of an offence.

Maximum penalty: $5 000.

Expiation fee: $315.

(2) Anything that falls from a vehicle onto a public road or public place is taken, for the purposes of subsection (1), to have been deposited by the person by or on whose behalf the vehicle is operated.

(3) It is a defence to a charge of an offence against subsection (1) to establish—

(a) that the act subject to the charge was done by or with the consent of the owner of the land on which the act was done; or

(b) that the defendant could not, by the exercise of reasonable care, have prevented the occurrence out of which the charge arose.

(4) 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 anything deposited in contravention of this section.

236—Abandonment of vehicles and farm implements

(1) A person who abandons a vehicle or farm implement on a public road or public place is guilty of an offence.

Maximum penalty: $5 000.

Expiation fee: $315.

(2) The court by which a person is convicted of an offence against subsection (1) 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 the vehicle or farm implement.

237—Removal of vehicles

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

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

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

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

(a) by written notice in the prescribed form—

(i) served on the owner personally; or

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

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

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

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

(a) take possession of the vehicle; and

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

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

(6) If—

(a) the vehicle is offered for sale but is not sold; or

(b) the council reasonably believes that the proceeds of the sale of the vehicle would be unlikely to exceed the costs incurred in selling the vehicle or the costs incidental to removing or holding the vehicle, or those costs combined,

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

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

(a) firstly, in payment of the costs of and incidental to the sale;

(b) secondly, in payment of the costs of and incidental to the removal, custody and maintenance of the vehicle and of the notice served, posted or published under this section;

(c) thirdly, in payment of the balance to the owner of the vehicle.

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

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

(a) the goods will be taken to be unclaimed goods for the purposes of the *Unclaimed Goods Act 1987*; and

(b) the council will be taken to be a bailee of the goods under that Act.

Part 4—Specific by-law provisions

238—Power to control access and use of land

(1) A council may make by-laws controlling access to and use of local government land.

Examples—

The by-laws may for example—

- fix opening hours for specified land and prohibit or restrict access at other times;
- regulate, restrict or prohibit public access to specified land;
- regulate, restrict or prohibit the bringing of animals or a specified class of animals onto specified land or the movement of animals or a specified class of animals on specified land;
- close specified land, or part of the land, to public access;
- regulate, restrict or prohibit the lighting of fires;
- regulate, restrict or prohibit sporting or other activities on specified land;
- regulate the use of facilities provided on specified land;
- regulate the speed or route of vehicles driving on the land;
- regulate, restrict or prohibit the parking or standing of vehicles.

(2) However—

(a) a by-law cannot be made under subsection (1) about access to or use of a road; and

(b) a by-law prohibiting a person from bringing alcoholic liquor onto local government land, or consuming alcoholic liquor on local government land, may only be made if the land constitutes a park or a reserve.

(3) If a council makes a by-law about access to or use of a particular piece of local government land under this section, a notice setting out the effect of the by-law should be erected in a prominent position on, or in the immediate vicinity of, the land to which the by-law applies.

239—By-laws about use of roads

(1) A council may make by-laws about the use of roads for—

(a) moveable signs; or

(b) the broadcasting of announcements or advertisements; or

(c) public exhibitions or displays; or

(d) soliciting for religious or charitable purposes; or

(e) motor vehicle maintenance or repair; or

(f) the movement of animals; or

(g) any other use in relation to which the making of by-laws is authorised by regulation.

(2) Subject to this Act, a by-law made under subsection (1) can regulate, restrict or prohibit the use of which it relates.

240—Posting of bills etc

A council may make by-laws prohibiting the posting of bills, advertisements or other papers or items on a building or structure on a road, other local government land or other public place, without the permission of the council.

Part 5—Other matters

241—Native title

(1) No dealing with land under this Act affects native title in the land.

(2) However, subsection (1) does not apply if the effect is valid under a law of the State or the *Native Title Act 1993* (Commonwealth).

242—Time limits for dealing with certain applications

(1) This section applies to—

(a) an application for a council's approval of the proposed use of community land for a business purpose; or

(b) an application for the council's authorisation to use a road for a business purpose; or

(c) an application of a kind declared by regulation to be an application to which this section applies.

(2) An application to which this section applies must be decided within two months after the relevant date and, if not so decided, is taken to have been refused.

(3) A council must notify the applicant in writing as soon as practicable of a decision or presumptive decision on an application to which this section applies.

(4) In this section, the ***relevant date*** is the date of the application or, in the case of an application on which the council proposes to conduct public consultation, a later date the council fixes in a written notice given to the applicant within one month after the date of the application as the date on which it expects to complete the process of public consultation.

243—Registrar-General to issue certificate of title

(1) If land vests for an estate in fee simple in a council under this Act, the council must apply to the Registrar-General for the issue of a certificate of title for the land under the *Real Property Act 1886*.

(2) An application under this section must—

(a) be made in a manner and form approved by the Registrar-General; and

(b) be accompanied by—

(i) unless otherwise required by the Registrar-General—the duplicate certificate of title for the land; and

(ii) any surveys of the land and other materials that the Registrar-General may reasonably require; and

(iii) a fee fixed by the Registrar-General.

244—Liability for injury, damage or loss on community land

(1) A council is only liable as occupier of community land for injury, damage or loss that is a direct consequence of a wrongful act on the part of the council.

(2) However, this section does not affect a council's liability as occupier of a building or artificial structure on community land.

245—Liability for injury, damage or loss caused by certain trees

(1) A council is not liable for any damage to property which results from—

(a) the planting of a tree in a road; or

(b) the existence of a tree growing in a road (whether planted by the council or not).

(2) However, if—

(a) the owner or occupier of property adjacent to the road has made a written request to the council to take reasonable action to avert a risk of damage to property of the owner or occupier from the tree; and

(b) the council has failed to take reasonable action in response to the request,

the council may be liable for any damage to property that would have been averted if the council had taken reasonable action in response to the request.

245A—Council may require bond or other security in certain circumstances

(1) Subject to this section, if—

(a) a person has approval to carry out development under the *Development Act 1993*; and

(b) the council has reason to believe that the performance of work in connection with the development could cause damage to any local government land (including a road) within the vicinity of the site of the development,

the council may, by notice in writing served on the person who has the benefit of the approval, require the person to enter into an agreement that complies with any requirements prescribed by the regulations so as to ensure that money is available to address the cost of any damage that may be caused.

(2) The regulations may prescribe or limit the terms or conditions of any agreement that may be required under subsection (1) (including by providing the maximum amount that may be payable under such an agreement or by providing that a prescribed form of guarantee or indemnity may be given in substitution for any bond or other form of security).

(3) A person required to enter into an agreement under subsection (1) may, within 28 days after service of the notice under that subsection, appeal to the Environment, Resources and Development Court against the imposition of the requirement, or against the terms or conditions of the agreement.

(4) The Court may, on hearing an appeal—

(a) confirm, vary or reverse any requirement that has been imposed (but not so as to create any inconsistency with the regulations);

(b) remit the matter to the council for further consideration;

(c) make any consequential or ancillary order, or impose any condition or requirement, that it considers necessary or expedient.

(5) Subject to the outcome of any appeal under this section, a person who fails to comply with a requirement under this section within a period prescribed by the regulations is guilty of an offence.

Maximum penalty: $5 000.

Expiation fee: $500.

(6) A regulation cannot be made under this section unless the Minister has given the LGA notice of the proposal to make a regulation under this section and given consideration to any submission made by the LGA within a period (of between 3 and 6 weeks) specified by the Minister.

Chapter 12—Regulatory functions

Part 1—By-laws

246—Power to make by-laws

(1) Subject to this or another Act, a council may make by-laws—

(a) that are within the contemplation of this or another Act; or

(b) that relate to a matter in relation to which the making of by-laws is authorised by the regulations under this or another Act.

(2) A council cannot make a by-law that requires that a person obtain a licence from the council to carry out an activity at a particular place unless the council has express power to do so under an Act.

(3) Subject to this or another Act, a by-law made by a council may—

(a) operate subject to specified conditions; and

(b) refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by an authority or body, either as in force at the time the by-law is made or as in force from time to time; and

(c) be of general or limited application, and provide for exemptions; and

(d) make different provision according to the persons, things or circumstances to which it is expressed to apply; and

(e) provide that the by-law, or a provision of a by-law, applies only within a part or parts of the area as the council may determine from time to time; and

(f) provide that a matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the council, a specified person, authority or body, or a person holding a specified office; and

(g) fix a minimum as well as a maximum penalty for any breach of a 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 $750, and in the case of a continuing offence fix a further penalty not exceeding $50 for every day on which the offence or breach of the by-law continues; and

(h) in a case of a by-law relating to the driving, parking or standing of vehicles—

(i) impose, modify or restrict any evidentiary burden on a party to proceedings for an offence against the by-law, or provide for other matters in respect of evidence or the proof of any matter; and

(ii) fix entrance fees or parking fees; and

(iii) provide that the owner and the driver of a vehicle driven, parked or standing in contravention of the by-law are each guilty of an offence and liable to the relevant penalty.

(4) If a code, standard or other document is adopted under subsection (3)(b) as it is in force from time to time, an alteration to the code, standard or other document will not take effect for the purposes of the by-law before a day on which notice of that alteration is published by the council in the Gazette and in a newspaper circulating in the area of the council.

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

(5) 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 per cent of the maximum fine for the offence to which it relates.

(6) In any proceedings for an offence against a by-law under subsection (3)(h)—

(a) an allegation in a complaint that a person named in the complaint was the owner of a specified vehicle on a specified day will be taken to be proved in the absence of proof to the contrary; and

(b) if it is proved that a vehicle was driven, parked or left standing in contravention of the by-law it will be presumed, in the absence of evidence to the contrary, that the vehicle was so driven, parked or left standing by the owner of the vehicle.

(7) Despite a preceding subsection, the owner and driver of a vehicle cannot both be convicted of an offence arising out of the same circumstances and so conviction of the owner exonerates the driver and conversely conviction of the driver exonerates the owner.

247—Principles applying to by-laws

A by-law made by a council must—

(a) be consistent with the objectives of the provision that authorises the by-law and accord with the provisions and general intent of the enabling Act; and

(b) adopt a means of achieving those objectives that does not—

(i) unreasonably burden the community; or

(ii) make unusual or unexpected use of the power conferred by the enabling Act (having regard to the general intent of the Act); and

(c) avoid restricting competition to any significant degree unless the council is satisfied that there is evidence that the benefits of the restriction to the community outweigh the costs of the restriction, and that the objectives of the by-law can only be reasonably achieved by the restriction; and

(d) avoid unreasonable duplication or overlap with other statutory rules or legislation; and

(e) avoid regulating a matter so as to contradict an express policy of the State that provides for the deregulation of the matter; and

(f) avoid breaching principles of justice and fairness; and

(g) be expressed plainly and in gender neutral language,

but a by-law cannot be challenged on the ground that it is inconsistent with one or more of these principles.

248—Rules relating to by-laws

(1) A by-law made by a council must not—

(a) exceed the power conferred by the Act under which the by-law purports to be made; or

(b) be inconsistent with this or another Act, or with the general law of the State; or

(c) without clear and express authority in this or another Act—

(i) have retrospective effect; or

(ii) impose a tax; or

(iii) purport to shift the onus of proof to a person accused of an offence; or

(iv) provide for the further delegation of powers delegated under an Act; or

(d) unreasonably interfere with rights established by law; or

(e) unreasonably make rights dependent on administrative and not judicial decisions.

(2) If a by-law is inconsistent with a trust that applies to 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.

(3) This section does not affect the validity of a by-law made before the commencement of this section.

249—Passing by-laws

(1) If 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 code, standard or other document proposed to be applied 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 so far as is reasonably practicable on the Internet; 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 the terms of the by-law, or describe in general terms the by-law's nature and effect.

(2) A council must give reasonable consideration to a written or other acceptable submission made to the council on a proposed by-law.

(3) A by-law cannot be made 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.

(4) 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.

(5) Subject to subsection (6), a by-law comes into operation four months after the day on which it is published in the Gazette or from a later day or days fixed in the by-law.

(6) A by-law may take effect from an earlier day specified in the by-law if—

(a) it revokes a by-law without making provision in substitution for that by-law; or

(b) it corrects an error or inaccuracy in a by-law; or

(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 a 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 a 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; or

(e) the council has been formed by the amalgamation of two or more councils and the by-law (or a by-law in substantially the same terms) was previously in force in the area of a council that has been amalgamated.

(7) A council must publish a notice of the making of a by-law under this section in a newspaper circulating in the area of the council.

(8) Section 10AA of the *Subordinate Legislation Act 1978* does not apply to a by-law of a council.

250—Model by-laws

(1) The Governor may, by proclamation, make, alter or revoke model by-laws dealing with a subject on which a council has power under this or another Act to make a by-law.

(2) A model by-law, or an alteration to a model by-law—

(a) must be published in the Gazette; and

(b) must be laid before both Houses of Parliament under the *Subordinate Legislation Act 1978*; and

(c) is subject to disallowance under that Act.

(3) A council may adopt a model by-law, or an alteration to a model by-law, made by the Governor under this section if—

(a) the adoption occurs 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; and

(c) the council adopts all of the model by-law or alteration (as the case may be).

(4) However, a council cannot adopt a model by-law or alteration unless the time for disallowance under the *Subordinate Legislation Act 1978* has passed (and the model by-law or alteration has not been disallowed).

(5) The resolution adopting a model by-law or alteration must be published in the Gazette.

(6) The operation of a model by-law or alteration adopted by a council under this section takes effect from a day specified in the resolution (which must not be earlier than the day of publication of the resolution in the Gazette), or, if no day is specified, from the day of publication of the resolution in the Gazette.

(7) A council must publish a notice of the adoption of a model by-law or alteration under this section in a newspaper circulating in the area of the council.

(8) An alteration or revocation of a model by-law by the Governor does not affect the prior adoption of the model by-law by the council.

(9) A council may, by further by-law, revoke a by-law adopted under this section.

251—Expiry of by-laws

(1) A by-law made under this Act, and all subsequent by-laws altering that by-law, unless it has already expired or been revoked, expire on 1 January of the year following the year in which the seventh anniversary of the day on which the by-law was made falls.

(2) For the purposes of this section, a by-law will be taken to have been made on the day on which it is published in the Gazette or, in the case of a model by-law, the day on which the notice of the resolution adopting the model by-law is published in the Gazette.

252—Register of by-laws and certified copies

(1) A council must cause a separate register to be kept of all by-laws made or adopted by the council.

(2) The register must include a copy of any code, standard or other document referred to or incorporated in a by-law.

(3) A person is entitled to inspect the register at the principal office of the council during ordinary office hours.

(4) A person is entitled, on payment of a fee fixed by the council, to an extract from the register.

(5) A person is entitled, on payment of a fee fixed by the council, to a certified copy of a by-law of a council in force in its area (or a part of its area) at the particular time.

(6) If a by-law only applies within a part or parts of the area of a council as the council may determine from time to time, and the council has made a determination, a certified copy of the resolution making the determination must accompany a copy of the by-law provided under subsection (5).

(7) The certificate referred to in subsections (5) and (6) may be given by the principal member of the council or the chief executive officer of the council.

253—Revocation of by-law does not affect certain resolutions

(1) If—

(a) a by-law revokes a by-law, or part of a by-law, that provides that the council may pass a resolution for a particular purpose; and

(b) the revoking by-law contains provisions substantially corresponding to those of the revoked by-law,

then—

(c) the revocation does not affect the operation of a resolution in force immediately before the revocation to the extent that the resolution is not inconsistent with the revoking by-law; and

(d) the resolution continues to have effect as if passed under the revoking by-law.

Part 2—Orders

Division 1—Power to make orders

254—Power to make orders

(1) A council may order a person to do or to refrain from doing a thing specified in Column 1 of the following table if in the opinion of the council the circumstances specified opposite it in Column 2 of the table exist and the person comes within the description opposite it in Column 3 of the table.

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
1. Unsightly condition of land		
To take action considered by the council to be necessary to ameliorate an unsightly condition.	Land, or a structure or object on land, is unsightly and detracts significantly from the amenity of the locality in which the land is situated.	The owner or occupier of the land.

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
2. Hazards on lands adjoining a public place		
(1) To fence, empty, drain, fill or cover land (including land on which there is a building or other structure).	(1) A hazard exists that is, or is likely to become, a danger to the public.	(1) The owner or occupier of the land.
(2) To remove overgrown vegetation, cut back overhanging branches, or to remove a tree.	(2) The vegetation, branches or tree create, or are likely to create, danger or difficulty to persons using a public place.	(2) The owner or occupier of the land.
(3) To remove or modify a flag or banner, a flagpole or sign, or similar object or structure that intrudes into a public place.	(3) The relevant object or structure creates, or is likely to create, danger or difficulty to persons using a public place.	(3) The owner or occupier of the land.
(4) Where the public place is a road—to take action necessary to protect the road or to remove a hazard to road users.	(4) A situation exists that is causing, or is likely to cause, damage to the road or a hazard to road users.	(4) The owner or occupier of the land.
Examples— · To fill an excavation, or to prevent drainage of water across the road. · To construct a retaining wall or to remove or modify a fence. · To fence land to prevent the escape of animals. · To remove a structure or vegetation near an intersection.		

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
3. Animals that may cause a nuisance or hazard		
To do or to refrain from doing the thing specified in the order in order to abate a nuisance or a hazard to health or safety associated with a live or dead animal or animals, or otherwise to deal with an animal or animals.	A person is keeping or dealing with (or failing to deal with) an animal or animals (whether the animal or animals are alive or dead) so as to cause, or to be likely to cause, a nuisance or a hazard to health or safety. A person is the owner or occupier of land where an animal or animals are located which may cause, or be likely to cause, a nuisance or a hazard to health or safety, or otherwise to become a pest. **Examples—** (1) The slaughtering of animals in a town or urban situation. (2) Keeping an excessive number of insects, birds or other animals. (3) Keeping bees in close proximity to other property. (4) Keeping animals so as to generate excessive noise, dust or odours, or to attract pests or vermin. (5) Keeping an aggressive animal, or keeping an animal in a situation where it cannot be adequately contained or may cause danger to the public. (6) Failing to deal with a wasp's nest	The owner or occupier of land or any person apparently engaged in promoting or conducting an activity.

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
4. Inappropriate use of vehicle		
To refrain from using a caravan or vehicle as a place of habitation.	A person is using a caravan or vehicle as a place of habitation in circumstances that— (a) present a risk to the health or safety of an occupant; or (b) cause a threat of damage to the environment; or (c) detract significantly from the amenity of the locality.	The owner or occupier of the land or a person apparently occupying the caravan or vehicle.

(2) A reference in the table to an animal or animals includes birds and insects.

Division 2—Associated matters

255—Procedures to be followed

(1) A council must, before taking action to make an order under this Part (but subject to this section), give the person to whom it is proposed that the order be directed a notice in writing—

(a) stating the proposed action, including the terms of the proposed order and the period within which compliance with the order will be required; and

(b) stating the reasons for the proposed action; and

(c) inviting the person to show, within a specified time (of a reasonable period), why the proposed action should not be taken (by making representations to the council or a person nominated to act on behalf of the council).

(2) If a notice is directed to a person who is not the owner of the relevant land, the council must take reasonable steps to serve a copy of the notice on the owner.

(3) The council may, after considering representations made within the time specified under subsection (1)—

(a) make an order in accordance with the terms of the original proposal; or

(b) make an order with modifications from the terms of the original proposal; or

(c) determine not to proceed with an order.

(4) The council is not required to give further notice before it makes an order with modifications under subsection (3)(b).

(5) A council may—

(a) include two or more orders in the same instrument;

(b) direct two or more persons to do something specified in the order jointly.

(6) An order must—

(a) subject to this section, specify a reasonable period within which compliance with the order is required; and

(b) state the reasons for the order.

(7) An order must be served on the person to whom it is addressed.[1]

(8) If an order is directed to a person who is not the owner of the relevant land, the council must take reasonable steps to serve a copy of the order on the owner.

(9) If land is owned or occupied by more than one person—

(a) an order in respect of the land is not invalid merely because it is not directed to all of those owners or occupiers; and

(b) an owner or occupier who complies with an order may recover a fair contribution from other owners or occupiers.

(10) Nothing in this section affects the right of a person from recovering from another all or any of the expenses incurred by the person in complying with an order.

(11) A council may, at the request, or with the agreement, of the person to whom an order is directed, vary an order or may, on its own initiative, revoke an order if satisfied that it is appropriate to do so.

(12) If a council, in the circumstances of a particular case, considers—

(a) that an activity constitutes, or is likely to constitute, a threat to life or an immediate threat to public health or public safety; or

(b) that an emergency situation otherwise exists,

the council may—

(c) proceed immediately to make an order under this section without giving notice under subsection (1); and

(d) require immediate compliance with an order despite subsection (6)(a).

(13) A council is not required to comply with any other procedure, or to hear from any other person, except as provided by this section before it makes an order under this section.

Note—

1 See Chapter 14 Part 2 about various forms of service.

256—Rights of review

(1) An order must include a statement setting out the rights of a person to appeal against the order under this Act.

(2) A statement is sufficient for the purposes of subsection (1) if it includes the information specified by the regulations.

(3) A person to whom an order is directed may, within 14 days after service of the order, appeal against the order to the District Court.

257—Action on non-compliance

(1) If the requirements of an order are not complied with in the time fixed for compliance or, if there is an application for review, within 14 days after the determination of the review, the council may (subject to the outcome of any review) take the action required by the order.

(2) Action to be taken by a council under subsection (1) may be taken on the council's behalf by an employee of the council or by another person authorised by the council for the purpose.

(3) The reasonable costs and expenses incurred by a council in taking action under this section may be recovered by the council as a debt from the person who failed to comply with the requirements of the order.

(4) The regulations may limit the amount of costs and expenses recoverable under subsection (3) in a case involving a European wasp's nest.

(5) If an amount is recoverable from a person by a council under this section, the council may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid and, if the amount is not paid by the person within that period—

(a) the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid; and

(b) if the person is the owner of the land to which the order relates—the council may, in accordance with Schedule 6, impose a charge over the land for the unpaid amount, together with interest.

(6) No civil liability attaches to a council, an employee of a council, or a person acting under the authority of a council, for anything done by the council, employee, or person under this section.

(7) In this section—

European wasp's nest means the nest of an insect of the species *Vespula germanica*.

258—Non-compliance with an order an offence

A person who contravenes or fails to comply with an order under this Part is guilty of an offence.

Maximum penalty: $2 500.

Expiation fee: $210.

Division 3—Policies

259—Councils to develop policies

(1) A council must take reasonable steps to prepare and adopt policies concerning the operation of this Part.

(2) A council must—

(a) prepare a draft of a policy; and

(b) by notice in a newspaper circulating in the area of the council, give notice of the place or places at which copies of the draft are available for inspection (without charge) and purchase (on payment of a fee fixed by the council) and invite interested persons to make written representations on the draft within a period specified by the council (being a period of at least 4 weeks).

(3) A council must consider any submission made to the council on a proposed policy in response to an invitation under subsection (2).

(4) A council may amend a policy at any time.

(5) However, a council must, before adopting an amendment to a policy, take the steps specified by subsections (2) and (3) (as if the amendment were a new policy), unless the council determines that the amendment is of only minor significance.

(6) A person is entitled to inspect (without charge) a policy at the principal office of the council during ordinary office hours.

(7) A person is entitled, on payment of a fee fixed by the council, to a copy of the policy.

(8) A council must, in considering whether to make an order under this Part, deal with the particular case on its merits but must also take into account any relevant policy under this Division.

Part 3—Authorised persons

260—Appointment of authorised persons

(1) A council may, by instrument in writing, appoint a person (other than a member of the council) as an authorised person.

(2) An appointment may be subject to conditions or limitations specified in the instrument of appointment.

(3) The council must issue to an authorised person an identity card—

(a) containing a photograph of the authorised person; and

(b) identifying any conditions or limitations imposed under subsection (2).

(4) An authorised person must, on demand by a person affected by an exercise or proposed exercise of a power under this Act, produce his or her identity card for inspection by that person.

(5) A council may, at any time, revoke an appointment under this section, or vary or revoke a condition or limitation, or impose a further condition or limitation.

(6) No civil liability attaches to an authorised person for an honest act or omission in the exercise, performance or discharge, or purported exercise, performance or discharge, of powers, functions or duties under this or other Acts.

(7) A liability that would, but for subsection (6), attach to an authorised person attaches instead to the council.

261—Powers under this Act

(1) An authorised person may—

(a) after giving reasonable notice to the owner or occupier of land, enter land—

(i) for a purpose related to the operation, administration or enforcement of this or another Act by the council (including to ascertain whether an order should be made or other action taken by the council under this or another Act); or

(ii) to carry out any inspection that the council is authorised to undertake under this or another Act; or

(iii) to carry out any work that the council is authorised to undertake under this or another Act;

(b) subject to subsection (2), where necessary, break into any place for a purpose related to the administration or enforcement of this Act;

(c) require a person to produce documents (which may include a written record reproducing in an understandable form information stored by computer, microfilm or other process) as reasonably required in connection with the administration or enforcement of this Act or a by-law under this Act;

(d) examine, copy or take extracts from documents or information so produced or require a person to provide a copy of any such document or information;

(e) carry out tests, make measurements or take photographs, films or video recordings as reasonably necessary in connection with the administration or enforcement of this Act or a by-law under this Act;

(f) require a person whom the authorised person reasonably suspects to have committed, or to be committing or about to commit, any breach of this Act or a by-law under this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity;

(g) require a person who the authorised person reasonably suspects has knowledge of matters in respect of which information is reasonably required for the administration or enforcement of this Act or a by-law under this Act to answer questions in relation to those matters;

(h) give expiation notices to persons alleged to have committed expiable offences under this Act or a by-law under this Act;

(i) give any directions reasonably required in connection with the exercise of a power conferred above or otherwise in connection with the administration or enforcement of this Act or a by-law under this Act.

(2) An authorised person may only exercise the power conferred by subsection (1)(b) on the authority of a warrant issued by a magistrate unless the authorised person believes, on reasonable grounds, that the circumstances require immediate action to be taken.

(3) A magistrate must not issue a warrant under subsection (2) unless satisfied, on information given on oath—

(a) that there are reasonable grounds to suspect that a provision of this or another Act has been, is being, or is about to be, breached; or

(b) that the warrant is otherwise reasonably required in the circumstances.

(4) In the exercise of powers under this Act, an authorised person may be assisted by such persons as he or she considers necessary in the circumstances.

(5) An occupier of a building must give to an authorised person or a person assisting an authorised person such assistance as is reasonably required for the effective exercise of the powers conferred by this section to be exercised.

Maximum penalty: $5 000.

(6) Subject to subsection (7), a person who—

(a) without reasonable excuse, hinders or obstructs an authorised person, or a person assisting an authorised person, in the exercise of powers under this Act; or

(b) uses abusive, threatening or insulting language to an authorised person, or a person assisting an authorised person; or

(c) without reasonable excuse, fails to obey a requirement or direction of an authorised person under this Act; or

(d) without reasonable excuse, fails to answer, to the best of the person's knowledge, information and belief, a question put by an authorised person; or

(e) falsely represents, by words or conduct, that he or she is an authorised person,

is guilty of an offence.

Maximum penalty: $5 000.

(7) A person is not obliged to answer a question or to produce, or provide a copy of, a document or information as required under this section if to do so might tend to incriminate the person or make the person liable to a penalty.

(8) A person is not obliged to provide information under this section that is privileged on the ground of legal professional privilege.

(9) A person who assaults an authorised person, or a person assisting an authorised person in the exercise of powers under this Act, is guilty of an offence.

Maximum penalty: $10 000 or imprisonment for 2 years.

(10) An authorised person, or a person assisting an authorised person, who—

(a) addresses offensive language to any other person; or

(b) without lawful authority hinders or obstructs or uses or threatens to use force in relation to any other person,

is guilty of an offence.

Maximum penalty: $5 000.

262—Power of enforcement

(1) If a person (the ***offender***) engages in conduct that is a contravention of this Act or a by-law under this Act, an authorised person may order the offender—

(a) if the conduct is still continuing—to stop the conduct; and

(b) whether or not the conduct is still continuing—to take specified action to remedy the contravention.

(2) A person must comply with an order under this section.

Maximum penalty: $5 000.

(3) If a person does not comply with an order, the authorised person may take action reasonably required to have the order carried out.

(4) However, an authorised person may not use force against an offender under this section.

Chapter 13—Review of local government acts, decisions and operations

Part 1—Conduct of members

263—Grounds of complaint

(1) There are grounds for complaint under this Part against a member of a council if the member has contravened or failed to comply with section 74.

(2) Nothing in this Part prevents a person from making a complaint to the Ombudsman at any time under the *Ombudsman Act 1972*.

264—Complaints

(1) A public official or any other person may lodge with the District Court a complaint setting out the matters that are alleged to constitute the grounds for complaint against a member of a council under this Part.

(2) However, a person other than a public official cannot lodge a complaint without the written approval of a legally qualified person appointed by the Minister after consultation with the LGA.

(3) An apparently genuine document purporting to be an approval under subsection (2) will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof that the approval has been given.

(4) The complaint must be lodged within a time prescribed by the rules of court.

265—Hearing by District Court

(1) On the lodging of a complaint, the District Court may conduct a hearing for the purpose of determining whether the matters alleged in the complaint constitute grounds for action against the member of the council under this Part.

(2) Without limiting the usual powers of the District Court, the District Court may during the hearing—

(a) allow an adjournment to enable the Ombudsman or another person to investigate or further investigate matters to which the complaint relates; and

(b) allow the modification of the complaint or additional allegations to be included in the complaint subject to any conditions as to adjournment and notice to parties and other conditions that the District Court may think fit to impose.

(3) The District Court may at any time dismiss a complaint if it considers—

(a) that the matter is frivolous or vexatious; or

(b) that the matter raised in the complaint is trivial; or

(c) that the complainant does not have a sufficient interest in the matter to which the complaint relates; or

(d) that there is some other good reason for not allowing the matter to proceed under this Part.

266—Constitution of District Court

(1) In proceedings under this Part, the District Court will, if a Judge of the District Court so determines, sit with assessors selected in accordance with Schedule 7.

267—Outcome of proceedings

(1) On the hearing of a complaint, the District Court may, if it is satisfied that the grounds for complaint exist and that there is proper cause for taking action against the person to whom the complaint relates, by an order or orders do one or more of the following:

(a) reprimand the person;

(b) require the person to attend a specified course of training or instruction, or to take other steps;

(c) impose a fine not exceeding $5 000 on the person;

(d) suspend the person from any office under this Act for a period not exceeding two months;

(e) disqualify the person from any office under this Act;

(f) disqualify the person from becoming a member of a council, a council committee or a subsidiary of a council for a period not exceeding five years.

(2) If a person is disqualified under subsection (1)(e), the office immediately becomes vacant.

(3) A fine imposed under subsection (1) is payable to general revenue in accordance with an order of the District Court.

(4) If—

(a) a person has been found guilty of an offence; and

(b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,

the person is not liable to a fine under this section in respect of conduct giving rise to the offence.

268—Application to committees and subsidiaries

(1) The provisions of this Part extend to committees and to members of committees established by councils as if—

(a) a committee were a council; and

(b) a member of a committee were a member of a council.

(2) The provisions of this Part extend to subsidiaries and to board members of subsidiaries as if—

(a) a subsidiary were a council; and

(b) a board member of a subsidiary were a member of a council.

269—Report on operation of Part

(1) The Minister must ensure that a report on the operation of this Part for the period between the commencement of this Part and 30 June 2002 is prepared by 31 August 2002.

(2) The Minister must, within six sitting days after receiving the report under this section, have copies of the report laid before the Houses of Parliament.

Part 2—Internal review of council actions

270—Council to establish grievance procedures

(1) A council must establish procedures for the review of decisions of—

(a) the council;

(b) employees of the council;

(c) other persons acting on behalf of the council.

(2) The procedures must address the following matters (and may address other matters):

(a) the manner in which an application for review may be made;

(b) the assignment of a suitable person to reconsider a decision under review;

(c) the matters that must be referred to the council itself for consideration or further consideration;

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

(d) the notification of the progress and outcome of an application for review;

(e) the time frames within which notifications will be made and procedures on a review will be completed.

(3) A council is not entitled to charge a fee on an application for review.

(4) A council, or a person assigned to consider the application, may refuse to consider an application for review if—

(a) the application is made by an employee of the council and relates to an issue concerning his or her employment; or

(b) it appears that the application is frivolous or vexatious; or

(c) the applicant does not have a sufficient interest in the matter.

(5) A council must ensure that copies of a document concerning the procedures that apply under this section are available for inspection (without charge) and purchase (on payment of a fee fixed by the council) by the public at the principal office of the council.

(6) A council may amend the procedures established by the council under this section from time to time.

(7) Nothing in this section prevents a person from making a complaint to the Ombudsman at any time under the *Ombudsman Act 1972*.

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

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

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

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

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

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

271—Mediation, conciliation and neutral evaluation

(1) A council may, as part of, or in addition to, the procedures established under section 270, make provision for disputes between a person and the council to be dealt with under a scheme involving mediation, conciliation or neutral evaluation under this section.

(2) A scheme made under this section must provide for the constitution of panels of persons who are available to act as mediators, conciliators and evaluators, and for the selection of an appropriate mediator, conciliator or evaluator if a dispute is to be dealt with under this section.

(3) For the purposes of mediation proceedings—

(a) the mediator may call a conference of the parties to the dispute and at that conference seek to identify the issues and the possibilities of resolving the matter by agreement; and

(b) a conference may be adjourned from time to time by the mediator; and

(c) the mediator may at any time interview the parties separately or together; and

(d) the mediator may at any time bring the proceedings to an end if the mediator considers that the proceedings will not result in an agreed settlement between the parties.

(3a) For the purposes of conciliation proceedings—

(a) the conciliator may call a conference of the parties to the dispute and at that conference seek to identify the issues and to provide advice as to how the matter might be settled through the conciliation proceedings; and

(b) the conciliator may make a recommendation for the resolution of the dispute; and

(c) a conference may be adjourned from time to time by the conciliator; and

(d) the conciliator may at any time bring the proceedings to an end if the conciliator considers that the proceedings will not result in a settlement of the matter.

(4) For the purposes of conducting neutral evaluation of a dispute—

(a) the parties must attend before the evaluator at a time and place determined by the evaluator; and

(b) the evaluator must hear the parties and seek to—

(i) identify and reduce the issues of fact and law that are in dispute; and

(ii) assess the relative strengths and weaknesses of each party's case; and

(iii) offer an opinion of the likely outcome of further proceedings; and

(c) the evaluator may at any time interview the parties separately or together.

(5) A mediator or evaluator may otherwise inform himself or herself on a matter as he or she thinks fit.

(6) Evidence of anything said or done in an attempt to resolve a matter by mediation or neutral evaluation under this section must not be disclosed in subsequent proceedings.

(7) Costs and expenses associated with the appointment and work of a mediator or evaluator under this section will be shared equally between the council and the other party.

(8) No civil liability attaches to a mediator or evaluator acting in good faith under this section.

(9) Nothing in this section prevents a person from making a complaint to the Ombudsman at any time under the *Ombudsman Act 1972*.

Part 3—Reviews initiated by Minister

Division 1—Councils

272—Investigation of a council

(1) If—

(a) the Minister has reason to believe—

(i) that a council has—

(A) contravened or failed to comply with a provision of this or another Act; or

(B) failed to discharge a responsibility under this or another Act; or

(ii) that an irregularity has occurred in the conduct of the affairs of a council (in relation to matters arising under this or another Act); or

(b) the Minister is empowered to act under this section on the basis of another provision of this Act,

the Minister may appoint an investigator or investigators to carry out an investigation and to report on the matter.

(2) The Minister must, before making an appointment under subsection (1), give the council a reasonable opportunity to explain its actions, and to make submissions, to the Minister.

(3) An investigator may, for the purposes of an investigation—

(a) require a member or employee of the council to answer, orally or in writing, questions put by the investigator to the best of the member's or the employee's knowledge, information and belief;

(b) require a person to whom questions are put under paragraph (a) to verify the answers to those questions by declaration;

(c) require a 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.

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

Maximum penalty: $10 000.

(5) A person is not excused from answering a question or from producing books, papers or other records under this section on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

(6) However, if compliance by a natural person with a requirement to answer a question or to produce a book, paper or other record might tend to incriminate the person or make the person liable to a penalty—

(a) in the case of a person who is required to produce a book, paper or record, the book paper or record (as distinct from the contents of the book, paper or record); or

(b) in any other case, the answer given in compliance with the requirement,

is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).

(7) 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.

(8) The Minister must supply the council with a copy of a report presented under subsection (7).

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

273—Action on a report

(1) The Minister may, on the basis of—

(a) a report of an investigator or investigators under this Division; or

(b) a report of the Auditor-General (under this or another Act); or

(c) a report of the Ombudsman (under another Act),

take action under this section.

(2) The action that the Minister may take is any of the following:

(a) the Minister may make recommendations to a council;

(b) if the Minister considers—

(i) that a council has contravened or failed to comply with a provision of this or another Act; or

(ii) that a council has failed to discharge a responsibility under this or another Act; or

(iii) that an irregularity has occurred in the conduct of the affairs of a council (in relation to matters arising under this or another Act),

the Minister may give directions to the council to rectify the matter, or to prevent a recurrence of the act, failure or irregularity;

(c) if the Minister considers that there has been—

(i) a serious contravention or failure on the part of a council to comply with a provision of this or another Act; or

(ii) a serious failure on the part of a council to discharge a responsibility under this or another Act; or

(iii) a serious irregularity in the conduct of the affairs of a council (in relation to matters arising under this or another Act),

and accordingly that the council should be declared as a defaulting council under this Division—the Minister may recommend to the Governor that the council be declared to be a defaulting council.

(3) The Minister must, before taking action under subsection (2)(b) or (c), give the council a reasonable opportunity to make submissions to the Minister on the report on which the action is based.

(4) A council must comply with a direction under subsection (2)(b).

(5) If the Minister makes a recommendation under subsection (2)(c), 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.

(6) If a proclamation is made under subsection (5), 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.

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

(8) On the making of a proclamation under subsection (5), all the members of the defaulting council are suspended from their respective offices until the council ceases to be a defaulting council.

(9) 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).

(10) If 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.

(11) 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.

(12) 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.

(13) 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.

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

(15) 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.

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

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

(b) if a proclamation is made declaring the offices of all members of the defaulting council to be vacant—on 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—on the expiration of 12 months from the date on which the council was declared to be a defaulting council.

Division 2—Subsidiaries

274—Investigation of a subsidiary

(1) If the Minister has reason to believe that—

(a) irregularities or difficulties may exist in the management of a subsidiary or the administration of the affairs of a subsidiary; or

(b) a subsidiary has acted outside its charter (see Schedule 2); or

(c) a subsidiary may have breached this Act or another law; or

(d) some other form of irregularity has occurred in the conduct or management of the affairs of a subsidiary; or

(e) some other matter has arisen in relation to the subsidiary that justifies consideration or investigation under this section,

the Minister may refer the matter to the relevant council or councils for investigation and report.

(2) If—

(a) the council or councils do not provide a report to the Minister under subsection (1) within a period specified by the Minister; or

(b) the Minister is not satisfied with the outcome of a report to the Minister under subsection (1),

the Minister may appoint an investigator or investigators to carry out an investigation and to report to the Minister on the matter.

(3) The Minister must, before making an appointment under subsection (2), give the council or councils a reasonable opportunity to make submissions to the Minister.

(4) An investigator appointed under subsection (2) may, for the purposes of an investigation—

(a) require a board member or employee of the subsidiary to answer, orally or in writing, questions put by the investigator to the best of the member's or the employee's knowledge, information and belief;

(b) require a person to whom questions are put under paragraph (a) to verify the answers to those questions by declaration;

(c) require a 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.

(5) A person who refuses or fails to comply with a requirement under subsection (4) is guilty of an offence.

Maximum penalty: $10 000.

(6) A person is not excused from answering a question or from producing books, papers or other records under this section on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

(7) However, if compliance by a natural person with a requirement to answer a question or to produce a book, paper or other record might tend to incriminate the person or make the person liable to a penalty—

(a) in the case of a person who is required to produce a book, paper or record, the book paper or record (as distinct from the contents of the book, paper or record); or

(b) in any other case, the answer given in compliance with the requirement,

is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).

(8) At the conclusion of an investigation by an investigator or investigators appointed under subsection (2) the investigator or investigators must present a written report to the Minister on the results of the investigation.

(9) The Minister must supply the subsidiary and the council, or constituent councils, with a copy of a report presented under subsection (8).

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

275—Action on a report

(1) The Minister may, on the basis of a report under section 274, require that specified action be taken in respect of a subsidiary.

(2) The Minister must, before imposing a requirement under subsection (1), give the relevant council or councils a reasonable opportunity to make submissions to the Minister.

(3) The Minister acting under subsection (1) may, for example—

(a) require the adoption of specified management practices;

(b) require that the subsidiary cease a specified activity;

(c) require that steps be taken to amend the charter of the subsidiary;

(d) require that steps be taken to wind up the subsidiary.

Part 4—Special jurisdiction

276—Special jurisdiction

(1) The following proceedings may be taken before, and determined by, the District Court:

(a) proceedings to try the title of a member to an office;

(b) proceedings to try the right of a person to be admitted or restored to an office;

(c) proceedings to compel restoration or admission;

(d) proceedings to compel a council to proceed to an election, poll or appointment;

(e) proceedings to try the validity of a rate or service charge;

(f) proceedings to try the validity of a by-law;

(g) proceedings to compel the production or delivery of any books, voting-papers, or other documents or papers to the production or possession of which a council or person is entitled under this Act.

(2) The proceedings may be brought by—

(a) the council; or

(b) an elector; or

(c) the Minister; or

(d) any other person with a material interest in the matter.

(3) Proceedings under subsection (1)(a) must be commenced within two months from the date on which the person was elected or appointed to the relevant office, or on which the cause arose by reason of which the person is liable to be ousted from the relevant office (as the case may be).

(4) Proceedings under subsection (1)(e) must be commenced within two months from the date of publication of the notice of the declaration of the rate or service charge in the Gazette.

(5) The District Court may make an order—

(a) declaring a person not to be entitled to the office then occupied by that person, and that the office or place is vacant, or that another person is entitled to the office;

(b) requiring the council to proceed to take the necessary steps for and to hold an election or poll, or to make an appointment;

(c) compelling a person or persons to proceed to any ballot or poll that may be necessary;

(d) quashing a rate or service charge which is invalid;

(e) declaring a by-law to be invalid;

(f) compelling the production or delivery of any books, voting-papers, or documents by or to a council, or an employee of a council, to or by a person.

(6) No order to admit or restore a person to an office can be made while another person occupies the office.

(7) Except to the extent that this or another Act provides an express right to bring particular proceedings[1], no proceedings may be brought before a court or tribunal constituted by law—

(a) to admit or restore to office, or to compel a council to proceed to the election or appointment of, a principal member, councillor, auditor, officer or other person to an office in, or in the appointment of, the council; or

(b) to compel a person or persons to proceed to a ballot or poll; or

(c) to challenge a valuation, assessment, rate or service charge, or to make or allow an alteration to a valuation, assessment, rate or service charge; or

(d) to compel the production or delivery of any books, voting-papers or other documents or papers, to the production or possession of which a council or a person may be entitled under this Act.

Example—

1 A person may bring certain proceedings before the Court of Disputed Returns under the *Local Government (Elections) Act 1999*.

Chapter 14—Miscellaneous

Part 1—Ministerial delegations and approvals

277—Delegation by the Minister

(1) The Minister may delegate a power or function vested or conferred on the Minister under this Act (other than a power or function under Chapter 13 Part 3).

(2) A delegation—

(a) may be made—

(i) to a particular person or body; or

(ii) to the person for the time being occupying a particular office or position; and

(b) may be made subject to conditions and limitations specified in the instrument of delegation; and

(c) is revocable at will and does not prevent the Minister from acting in a matter.

(3) The Minister must ensure that a register of delegations is kept and made available for public inspection.

278—Approval by Minister does not give rise to liability

No liability attaches to the Crown or to the Minister on account of an approval given by the Minister under this Act.

Part 2—Service of documents and proceedings

279—Service of documents by councils etc

(1) A document required or authorised to be served on or given to a person by a council, council subsidiary, employee of a council or authorised person (the ***serving authority***) under this or another Act may be served on or given to the person—

(a) personally; or

(b) by leaving it at the last residential or business address of the person known to the serving authority (including, in the case of a corporation, the registered address of the corporation); or

(c) by post addressed to the person at the last residential or business address of the person known to the serving authority (including, in the case of a corporation, the registered address of the corporation); or

(d) by leaving it in the letter box to which the document could be sent under paragraph (c); or

(e) by a means indicated by the person as being an available means of service (such as by facsimile transmission or by delivering it, addressed to the person, to the facilities of a document exchange); or

(f) if the document is to be served on a person as the owner of land, the land is unoccupied, and the identity or address of the owner is unknown to the council—by placing the document on a conspicuous part of the land; or

(g) by any means provided for service of the document by another Act or law.

(2) If a document must be served on the owner or occupier of land and there is more than one owner or occupier, it is sufficient if the document is served on any owner or occupier (and not on all owners or occupiers).

(3) If a person (***the agent***) has actual or ostensible authority to accept service of a document on behalf of another, the document may be served on the agent as if the agent were that other person.

(4) In this section—

document includes a notice, order or demand.

280—Service of documents on councils

(1) A document required or authorised to be served on or given to a council under this or another Act may be served or given—

(a) by leaving it at the principal office of the council; or

(b) by post addressed to the principal office of the council; or

(c) by a means indicated by the council as being an available means of service (such as by facsimile transmission or by delivering it, addressed to the council, to the facilities of a document exchange); or

(d) by leaving it with another person who has authority to accept documents on the council's behalf.

(2) In this section—

council includes a subsidiary of a council;

document includes a notice or order.

281—Recovery of amounts from lessees or licensees

(1) If an owner of land is liable to pay an amount to a council, the council may, by written notice to a lessee or licensee of the land, require him or her to pay to the council rent or other consideration payable under the lease or licence in satisfaction of the liability to the council.

(2) If—

(a) the council gives a notice to a lessee or licensee under subsection (1); and

(b) the council, by written notice to the owner of the land, informs the owner of the imposition of the requirement under subsection (1); and

(c) the lessee or licensee, contrary to the terms of the notice under subsection (1), 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.

Maximum penalty: $500.

282—Ability of occupiers to carry out works

(1) If an owner of land fails to carry out work which a council has required the owner to carry out under an Act, an occupier of the land may, with the approval of the council, cause the work to be carried out.

(2) Subject to an express provision in an agreement between the owner and the occupier, a person who carries out work under subsection (1) may—

(a) recover expenses incurred in carrying out the work from the owner of the land; and

(b) if the person is a lessee or licensee of the owner of the land—set off expenses incurred in carrying out the work against a liability under the lease or licence.

Part 3—Evidence

283—Evidence of proclamations

(1) A copy of the Gazette containing a proclamation made by the Governor under this Act is conclusive evidence of the fact, terms, and validity of the proclamation, and is evidence of the facts stated, recited or assumed in the proclamation.

(2) No proclamation purporting to be made under this Act 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.

284—Evidence of appointments and elections

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

285—Evidence of resolutions etc

A copy of the Gazette containing a notice that a resolution was passed or order made at a meeting of a council or council committee, or that a 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;

(c) of any fact stated in the notice relating to the majority by which the resolution was passed or proposition adopted or affirmed, and the number and proportion of members or electors present.

286—Evidence of making of a rate

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

287—Evidence of assessment record

A copy of, or extract from, the assessment record kept under Chapter 10 certified by the chief executive officer as a true copy or extract is conclusive evidence that an assessment referred to in the copy or extract was duly made (except in proceedings to quash the assessment).

288—Evidence of Government assessment

A copy of a valuation roll for the time being in force under the *Valuation of Land Act 1971* is, so far as it relates to rateable property within an area, evidence of the Valuer-General's assessment for that rateable property.

289—Evidence of registers

A copy of, or extract from, a register kept under this Act certified by the chief executive officer as a true copy or extract is conclusive evidence of the contents of the register (or so much of it as may be contained in the copy or extract).

290—Evidence of by-law

(1) In any legal proceedings, a document bearing a certificate, purporting to be signed by the principal member of a council or the chief executive officer of a council, that the document is a copy of a by-law in force within the area of a council is admissible, without other proof, as sufficient evidence of—

(a) the existence of the by-law; and

(b) the performance of the requirements of this Act in respect of the making, publishing and operation of the by-law.

(2) A copy of the Gazette containing a notice of a resolution of the adoption of a model by-law (or of an alteration to a model by-law) under this Act is conclusive evidence of the adoption, and if the resolution of which the notice is given provides for the revocation of any other by-law, is conclusive evidence of the revocation.

291—Evidence of boundaries

In any legal proceedings, a certificate purporting to be signed by the chief executive officer of a council and giving details of the boundaries of the area of the council is sufficient evidence of those boundaries.

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

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

293—Evidence of costs incurred by council

In any proceedings for the recovery of expenses or an amount due to a council by a person by reason of the carrying out by the council of any work under an Act, a certificate purporting to be signed by the chief executive officer of the council is sufficient 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.

Part 4—Other matters

294—Power to enter and occupy land in connection with an activity

(1) Subject to this section, an employee or contractor of a council may, insofar as may be reasonably necessary for carrying out a function or responsibility of the council—

(a) enter land at any reasonable time;

(b) occupy the land on behalf of the council;

(c) —

(i) obtain earth, minerals or timber from land;

(ii) deposit soil on land;

(iii) construct temporary roads and structures on land;

(iv) deposit or store materials on land;

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

(v) carry out any other incidental activity on land.

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

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

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

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

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

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

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

(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 land under this section.

(3) The council must—

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

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

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

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

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

(4) 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 authorised under this section to enter or occupy—

(a) land that is within 450 metres of the curtilage of a house; or

(b) a garden or a park; or

(c) a quarry, brickfield or other similar place from which materials are commonly obtained for commercial purposes; or

(d) land where a permit, claim, lease, licence, tenement or private mine exists under the *Mining Act 1971* or the *Opal Mining Act 1995*.

(7) A council does not require a mining tenement or other authorisation under the *Mining Act 1971* with respect to the exercise of powers under this section.

(8) In this section—

minerals include stone, gravel, clay and sand;

work includes work associated with—

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

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

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

296—Reclamation of land

(1) If a council raises, fills in, improves, drains, levels or reclaims land in the area of the council, the council may recover the whole or a proportion of the cost of the work from the owners of adjacent or adjoining rateable land improved by the performance of the work in proportion to additional value the work has added to the land.

(2) The amount of additional value will be determined by a valuation undertaken by a valuer appointed by the council.

(3) The council must give notice of the valuation to the relevant owner.

(4) An owner may object to or appeal against the valuation within 21 days after receiving a notice under subsection (3).

(5) The objection or appeal will be conducted in the same manner as an objection to or appeal against a valuation under Chapter 10 Part 1 Division 6.

297—Property in rubbish

Any rubbish that a council collects within its area is the property of the council and the council may sell or dispose of it as the council thinks appropriate.

298—Power of council to act in emergency

(1) If 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 that action 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.

(5) While a declaration under the *Emergency Management Act 2004* is in force in relation to flooding in the area of a council, the powers conferred by that Act operate to the exclusion of the powers of the council under this section.

299—Vegetation clearance

(1) A council may, on the application of the owner or occupier of the land (the ***relevant land***), by order under this section, require the owner or occupier of adjoining land to remove or cut back vegetation encroaching on to the relevant land.

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

(a) any proposal to make an order; and

(b) if an order is made, any order,

under subsection (1).

300—Costs of advertisements

(1) The cost of an advertisement required by this Act must be paid by the council, council subsidiary or person whose action immediately necessitates the advertisement.

(2) The Minister may require payment of the cost before causing an advertisement to be published under this Act.

301—River, stream or watercourse forming a common boundary

If a river, stream or other watercourse is described as the boundary of an area or ward, a line along the middle of the river, stream or watercourse will be taken to constitute the boundary.

302—Application to Crown

(1) Except where expressly provided by this Act, this Act does not apply to or bind the Crown.

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

302A—Local government sector employees

(1) A local government sector employer brought within the ambit of this subsection by the regulations (either by being specifically prescribed or by being a member of a prescribed class) is declared not to be a national system employer for the purposes of the *Fair Work Act 2009* of the Commonwealth.

(2) In this section—

local government sector employer means—

(a) a council; or

(b) a subsidiary or a regional subsidiary; or

(c) any other entity established under this Act; or

(d) the LGA; or

(e) any other entity established by a body referred to in a preceding paragraph.

302B—Whistleblowing

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

303—Regulations

(1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Without limiting subsection (1), the regulations may prescribe matters in relation to which a council may make by-laws.

(3) A regulation under this Act may operate subject to prescribed conditions.

(4) The regulations may incorporate, adopt, apply or make reference to, with or without modification, a 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.

(5) Any regulations adopting a code or standard may contain such incidental, supplementary and transitional provisions as appear to the Governor to be necessary.

(6) The regulations, or a code or standard adopted by the regulations, may—

(a) refer to or incorporate, wholly or partially and with or without modification, a standard or other document prepared or published by a prescribed body, either as in force at the time the regulations are made or as in force from time to time; and

(b) be of general or limited application; and

(c) make different provision according to the persons, things or circumstances to which they are expressed to apply; and

(d) provide that a matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, a council, an authorised person or any prescribed authority.

(7) If—

(a) a code or standard is adopted by the regulations; or

(b) the regulations, or a code or standard adopted by the regulations, refers to a standard or other document prepared or published by a prescribed body,

then—

(c) a copy of the code, standard or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations; and

(d) in any legal proceedings, evidence of the contents of the code, standard or other document may be given by production of a document purporting to be certified by or on behalf of the Minister as a true copy of the code, standard or other document; and

(e) the code, standard or other document has effect as if it were a regulation made under this Act.

(8) A regulation may prescribe a penalty (not exceeding $1 250) for contravention of the regulation.

(9) The Minister should consult with the LGA before a regulation is made under this Act.

(10) Subsection (9) does not limit the effect of any provision of this Act that specifically requires consultation with the LGA.

Schedule 1—Provisions relating to organisations that provide services to the local government sector

Part 1—Local Government Association

1—The Local Government Association of South Australia

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

(2) The LGA—

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

(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 LGA 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 LGA 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 LGA.

2—Local government indemnity schemes

(1) Subject to this clause, the LGA—

(a) will conduct and manage the *Local Government Association Mutual Liability Scheme*; and

(b) will continue to conduct and manage a local government workers compensation self-insurance scheme for the benefit of—

(i) councils (including their subsidiaries); and

(ii) the LGA; 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 clause 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 LGA may, pursuant to a resolution of the LGA passed by an absolute majority of the members of the LGA at a general meeting of the LGA, 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 clause.

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

(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 clause, whether established before or after the enactment of this clause.

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

Part 2—Local Government Superannuation Scheme

3—Local Government Superannuation Scheme

(1) The scheme known as the *Local Government Superannuation Scheme* continues in existence.

(2) Subclause (1) applies subject to the operation of Schedule 1 of the *Local Government (Superannuation Scheme) Amendment Act 2008*.

(3) This Act and the *Local Government (Superannuation Scheme) Amendment Act 2008* are to be read together as if the 2 Acts formed a single Act, and a contribution by an employer for the benefit of an employee who is a member of the Local Government Superannuation Scheme will therefore be a contribution under this Act.

(4) This Part will expire on a day to be fixed by proclamation.

Schedule 1A—Implementation of Stormwater Management Agreement

Division 1—Preliminary

1—Interpretation

(1) In this Schedule—

approved stormwater management plan means a stormwater management plan that has been approved by the Authority in accordance with clause 15;

Authority—means the Stormwater Management Authority established under clause 4;

Fund means the Stormwater Management Fund established under Division 5;

infrastructure includes associated devices and works;

Metropolitan Adelaide has the same meaning as in the *Development Act 1993*;

metropolitan council means a council whose area is wholly or partly within Metropolitan Adelaide;

public authority means—

(a) a Minister; or

(b) an agency or instrumentality of the Crown; or

(c) a council or council subsidiary;

regional NRM board means a regional NRM board within the meaning of the *Natural Resources Management Act 2004*;

Stormwater Management Agreement means the Agreement on Stormwater Management entered into by the State of South Australia and the LGA on 14 March 2006 and applying throughout the State;

stormwater management plan—see Division 3.

(2) A reference to the ***Minister*** in a provision of this Schedule is a reference to—

(a) if the Governor has, by notice in the Gazette, assigned the functions of the Minister for the purposes of that provision to a Minister specified in the notice—the Minister so specified; or

(b) in any other case—the Minister responsible for the administration of this Act.

2—Approval of Stormwater Management Agreement and statement of objects

(1) The Stormwater Management Agreement is approved.

(2) The objects of this Schedule are as follows:

(a) to ensure the proper operation of the Stormwater Management Agreement—

(i) by the creation of the Stormwater Management Authority referred to in the Agreement; and

(ii) by putting in place administrative and funding arrangements, and conferring powers, necessary for the proper discharge of State and local government responsibilities relating to stormwater management as stated in the Agreement;

(b) to ensure that environmental objectives and issues of sustainability are given due consideration in the discharge of State and local government responsibilities relating to stormwater management as stated in the Agreement.

3—Interaction with other Acts

This Schedule is in addition to and does not limit or derogate from the provisions of any other Act.

Division 2—Stormwater Management Authority

4—Establishment of Stormwater Management Authority

(1) The *Stormwater Management Authority* is established.

(2) The Authority—

(a) is a body corporate with perpetual succession and a common seal; and

(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 Authority may borrow money or accept other forms of financial accommodation but only in accordance with the written approval of the Treasurer.

5—Functions of Authority

The Authority has the following functions:

(a) to liaise with relevant public authorities with a view to ensuring the proper functioning of the State's stormwater management system;

(b) to facilitate and co-ordinate stormwater management planning by councils;

(c) to formulate policies and provide information to councils in relation to stormwater management planning (including policies and information promoting the use of stormwater to further environmental objectives and address issues of sustainability including the use of stormwater for human consumption, for the maintenance of biodiversity and other appropriate purposes);

(d) to facilitate programs by councils promoting the use of stormwater to further environmental objectives and address issues of sustainability including the use of stormwater for human consumption, for the maintenance of biodiversity and other appropriate purposes;

(e) to undertake functions in accordance with Division 3 in relation to stormwater management plans;

(f) to administer the Fund in accordance with Division 5;

(g) to ensure that relevant public authorities co-operate in an appropriate fashion in relation to stormwater management planning and the construction and maintenance of stormwater management works;

(h) to undertake stormwater management works in circumstances provided for by this Schedule;

(i) to provide advice to the Minister in relation to the State's stormwater management system.

6—Board of Authority

(1) The board of the Authority will consist of 7 members appointed by the Governor of whom—

(a) 1 is to be a representative of a northern metropolitan council appointed on the nomination of the LGA; and

(b) 1 is to be a representative of a southern metropolitan council appointed on the nomination of the LGA; and

(c) 1 is to be a representative of a council other than a metropolitan council appointed on the nomination of the LGA; and

(d) 3 are to be members appointed on the nomination of the Minister; and

(e) 1 is to be appointed from a panel of 3 persons nominated by the LGA (and this member is to be appointed as the presiding member of the board).

(2) A person nominated under subclause (1)(a), (b), (c) or (d) must have appropriate qualifications or experience in public administration, water resources, stormwater management, environmental management or infrastructure development.

(3) At least 1 member of the board must be a woman and at least 1 member must be a man.

(4) The Minister may grant a member of the board leave of absence from the board and appoint a suitable person to act as a member of the board during that period of absence (provided that if the member being granted leave was appointed on the nomination of the LGA, the person appointed to act as a member in his or her absence must also be appointed on the nomination of the LGA).

(5) In this clause—

northern metropolitan council means a metropolitan council whose area is wholly or partly north of the River Torrens;

southern metropolitan council means a metropolitan council whose area is wholly or partly south of the River Torrens.

7—Terms and conditions of office

(1) A member of the board will be appointed on conditions determined by the Governor for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, 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 official duties satisfactorily.

(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 removed from office under subclause (2).

8—Remuneration

A member of the board (other than a member who has been appointed as an officer or employee of a public authority) is entitled to remuneration, allowances and expenses determined by the Minister.

9—Validity of acts

An act or proceeding of the board is not invalid by reason only of a vacancy in its membership or a defect in the election or appointment of a member.

10—Proceedings of board

(1) A quorum of the board consists of 5 members.

(2) The member appointed as the presiding member 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.

(3) A decision carried by a majority of the votes cast by the members present at a meeting of the board is a decision of the board, provided that at least 4 of the members present vote in favour of the decision.

(4) Each member present at a meeting of the board has 1 vote on any question arising for decision.

(5) A conference by telephone or other electronic means between the members of the board will, for the purposes of this clause, be taken to be a meeting of the board at which the participating members are present if—

(a) notice of the conference is given to all members in the manner determined by the board for the purpose; and

(b) each participating member is capable of communicating with every other participating member during the conference.

(6) A proposed resolution of the board becomes a valid decision of the board despite the fact that it is not voted on at a meeting of the board if—

(a) notice of the proposed resolution is given to all members of the board in accordance with procedures determined by the board; and

(b) a majority of the members express concurrence in the proposed resolution by letter, facsimile transmission, email or other written communication setting out the terms of the resolution.

(7) The board must have accurate minutes kept of its meetings.

(8) Subject to this Schedule, the board may determine its own procedures.

11—Delegation

(1) The Authority 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) However, the Authority may not delegate—

(a) power to issue an order under clause 16; or

(b) power to make a recommendation to the Minister under clause 23.

(3) 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 Authority from acting in a matter.

12—Use of facilities

The Authority may, by arrangement with the relevant body, make use of the services of the staff, equipment or facilities of—

(a) an administrative unit in the Public Service; or

(b) an agency or instrumentality of the Crown; or

(c) a council; or

(d) the LGA.

Division 3—Stormwater management plans

13—Preparation of stormwater management plans by councils

(1) The Authority must issue guidelines for the preparation of stormwater management plans by councils.

(2) The guidelines—

(a) must set out objectives to be reflected in stormwater management plans; and

(b) must set out appropriate public consultation processes to be followed by councils in the preparation of stormwater management plans; and

(c) must be approved by the Natural Resources Management Council established under the *Natural Resources Management Act 2004*; and

(d) once approved, must be published in the Gazette.

(3) The objectives set out in the guidelines must—

(a) be consistent with the objectives of the Stormwater Management Agreement; and

(b) include—

(i) environmental objectives; and

(ii) objectives addressing issues of sustainability,

that are consistent with the objects of the *Environment Protection Act 1993*, the *Natural Resources Management Act 2004* and other relevant legislation aimed at protection or enhancement of the environment, the maintenance of biodiversity and the sustainable management of natural resources.

(4) A stormwater management plan prepared by a council or group of councils must—

(a) comply with the guidelines issued by the Authority; and

(b) be prepared in consultation with the relevant regional NRM board or boards; and

(c) be prepared in accordance with any other procedures or requirements prescribed by the regulations.

(5) A regional NRM board must consider any stormwater management plan prepared by a council or group of councils in respect of an area that falls within the region of the board and must, by notice in writing given as expeditiously as practicable, advise the Authority whether, in the opinion of the board, the stormwater management plan contains appropriate provisions.

14—Authority may require preparation of stormwater management plan

(1) The Authority may, of its own motion or at the request of a regional NRM board, by notice in the Gazette require a specified council, or specified councils, to prepare a stormwater management plan.

(2) A notice under subclause (1) must specify—

(a) the areas in respect of which the stormwater management plan is to be prepared (whether described as hydrological catchment areas, towns, regions or otherwise); and

(b) the time within which the plan is to be prepared.

(3) A notice under subclause (1) may be varied or revoked by the Authority by subsequent notice in the Gazette.

(4) A stormwater management plan required to be prepared by a council or councils in accordance with this clause is only taken to have been so prepared when approved by the Authority in accordance with clause 15.

15—Approval of stormwater management plans

(1) The Authority may approve a stormwater management plan prepared by a council or councils.

(2) However, the Authority must not approve a stormwater management plan unless it has received advice in respect of the plan from the relevant regional NRM board or boards in accordance with clause 13(5).

(3) The Authority must publish notice in the Gazette of the approval of a stormwater management plan.

Division 4—Orders

16—Authority may issue order

(1) If—

(a) a council fails to comply with a notice under clause 14(1); or

(b) a council fails to comply with an approved stormwater management plan prepared by the council (or prepared by the council and another council or other councils); or

(c) the Authority is satisfied that action by a council is necessary to provide for the management of stormwater by the provision of infrastructure or the performance of any work or to preserve and maintain the proper functioning of any stormwater infrastructure that the council has the care, control and management of,

the Authority may serve on the council an order under this clause.

(2) The Authority must not serve an order on a council under subclause (1)(c) unless the Authority has (not less than 5 days before serving the order) given the council written notice of its intention to serve the order.

(3) An order issued by the Authority—

(a) must be in the form of a written notice; and

(b) must specify the council to whom it is issued; and

(c) must—

(i) in the case of an order issued under subclause (1)(a)—specify the notice and set out the particulars of the alleged failure; or

(ii) in the case of an order issued under subclause (1)(b)—specify the plan and set out particulars of the alleged failure; or

(iii) in the case of an order issued under subclause (1)(c)—specify the action that, in the opinion of the Authority, should be undertaken by the council; and

(d) may impose any requirement reasonably required for the purpose for which the order is issued.

(4) If a council to whom an order is issued fails to comply with the order, the Authority may—

(a) take any action required by the order; and

(b) apply monies from the Fund to cover the costs and expenses incurred by the Authority in taking the action or recover such costs and expenses (or any portion of them) from the council as a debt, as the Authority thinks fit.

(5) However, the Authority must, before taking any action under subclause (4), give the council a reasonable opportunity to make submissions to the Authority in relation to the matter.

(6) If costs and expenses are to be recovered from a council as a debt, the Authority and the council may enter into an agreement for the debt to be repaid over a period of time, subject to the payment by the council of interest on the debt (at a rate agreed by the Authority and the council).

Division 5—Stormwater Management Fund

17—Establishment of Stormwater Management Fund

(1) The *Stormwater Management Fund* is established.

(2) The Fund must be kept as directed or approved by the Treasurer.

(3) The Fund is to consist of the following money:

(a) any money appropriated by Parliament for the purposes of the Fund;

(b) any money contributed to the Fund by regional NRM boards;

(c) any money received from the Local Government Disaster Fund;

(d) any money paid into the Fund at the direction or with the approval of the Minister or the Treasurer;

(e) any money received by way of grant, gift or bequest or any other contribution for the purposes of the Fund;

(f) any income from investment of money belonging to the Fund;

(g) any money paid into the Fund under any other Act.

(4) The Authority may, with the approval of the Treasurer, invest any of the money belonging to the Fund that is not immediately required for the purposes of the Fund in such manner as is approved by the Treasurer.

18—Payments out of Fund

(1) The Authority may apply any part of the Fund (without further appropriation than this subclause) for any of the following purposes:

(a) the preparation of stormwater management plans;

(b) the carrying out of works or the acquisition of land (including by a council or some other entity) in accordance with an approved stormwater management plan or otherwise for the purpose of stormwater management;

(c) community education and awareness programmes related to stormwater management;

(d) projects or measures relating to water quality or pollution abatement;

(e) investigations, research, pilot programmes or other projects relating to stormwater management;

(f) payment of the operational costs or expenses of the Authority;

(g) the making of any payment required or authorised by or under this Schedule or any other Act or law.

(2) If the Authority is satisfied that a council has failed to comply with an order under clause 16, the Authority may refuse to make, or may cancel or suspend, a payment that would otherwise have been made to the council from the Fund in respect of the matter to which the order relates.

19—Accounts and audit

(1) The Authority must cause proper accounts to be kept of money paid to and from the Fund.

(2) The Auditor-General may, at any time, and must at least once in each year, audit the accounts of the Fund.

20—Annual reports

(1) The Authority must, within 3 months after the end of each financial year deliver to the Minister and to the President of the LGA a report on the operation of the Fund during that financial year.

(2) The report must include an assessment by the Authority of the adequacy of the Fund to meet claims on the Fund under this Schedule and the Stormwater Management Agreement.

(3) The Minister must cause a copy of the report to be laid before each House of Parliament within 12 sitting days after his or her receipt of the report.

Division 6—Miscellaneous

21—Special powers in relation to land

(1) Without limiting any other provision of this Act, the Authority may, for the purpose of taking action required by an order in accordance with clause 16 and a council may, for the purpose of taking action consistent with the provisions of an approved stormwater management plan or required by an order under clause 16—

(a) enter and occupy any land; and

(b) construct, maintain or remove any infrastructure; and

(c) excavate any land; and

(d) inspect, examine or survey any land and for that purpose—

(i) fix posts, stakes or other markers on the land; and

(ii) dig trenches or sink test holes in the land to determine the nature of the top soil and underlying strata; and

(iii) remove samples for analysis; and

(e) alter water table levels, stop or reduce the flow of water in a watercourse, divert water flowing in a watercourse to another watercourse or to a lake or control the flow of water in any other manner; and

(f) hold water in a watercourse or lake or by any other means; and

(g) divert water to an underground aquifer, dispose of water to a lake, underground aquifer or the sea, or deal with water in any other manner; and

(h) deepen, widen or change the course of a watercourse, deepen or widen a lake or take action to remove any obstruction to the flow of water; and

(i) undertake any other form of work (including work undertaken for the purposes of stormwater management or flood mitigation); and

(j) undertake any testing, monitoring or evaluation; and

(k) undertake any other activity of a prescribed kind.

(2) A council or the Authority must not exercise a power under subclause (1)(b), (c), (h) or (i) in relation to private land with the intention that any infrastructure will be permanent unless—

(a) it is intended that the owner of the private land will undertake the care, control or management of any relevant infrastructure and the council or the Authority (as the case may be) is acting with the agreement of the owner; or

(b) the council or the Authority (as the case may be) has first acquired an easement or other appropriate interest over the relevant land by agreement with the owner or in accordance with the *Land Acquisition Act 1969* and any other applicable laws.

(3) Subclause (2) does not limit or affect the ability of a council or the Authority to acquire land by agreement for the purpose of constructing any infrastructure or performing any work.

(4) In this clause—

lake and ***watercourse*** have the same meaning as in section 31 of the *Natural Resources Management Act 2004*.

22—Entry and occupation of land other than council land

(1) This clause does not apply to or in relation to land the use, or the care, control and management, of which is vested in a council.

(2) The Authority or a council must give reasonable notice of an intention to enter, or to enter and occupy, land in accordance with clause 21 to the occupier of the land.

(3) The period of the notice must be at least 2 business days except—

(a) where the occupier has given his or her consent; or

(b) in an emergency, in which case the Authority or council must give such notice (if any) as it considers is reasonable in the circumstances.

(4) If the Authority or a council enters or occupies land to which this clause applies, the Authority or council (as the case may be)—

(a) must cause as little harm and inconvenience as practicable; and

(b) must not occupy the land for any longer than is reasonably necessary; and

(c) must leave the land as nearly as possible in the condition in which it found the land; and

(d) must co-operate as far as practicable with any owner or occupier of the land.

23—Vesting of infrastructure etc

(1) Subject to this clause, the Minister may, by notice in the Gazette made on the recommendation of the Authority, vest in a public authority the care, control and management of any stormwater infrastructure.

(2) Subject to this clause, the Minister may, by notice in the Gazette made on the recommendation of the Authority, vest in a public authority the care, control and management of any public land that is specified in an approved stormwater management plan as being land that should be under the care, control and management of the public authority.

(3) The Minister must, before publishing a notice vesting the care, control and management of infrastructure or land in a public authority under subclause (1) or (2), give the public authority a reasonable opportunity to make submissions to the Minister in relation to the proposed notice.

(4) If the care, control and management of infrastructure or land is vested in a public authority under subclause (1) or (2), the public authority is responsible for the maintenance and repair of the infrastructure or the maintenance of the land.

(5) A public authority is not liable to pay compensation to another public authority in respect of a notice under this clause.

(6) Subject to this clause, the Minister may, by subsequent notice made on the recommendation of the Authority, vary or revoke a notice under this clause.

(7) In this clause—

public land means land vested in, or under the care, control and management of, a public authority.

24—Immunity from liability

(4) No liability attaches to the Crown, the Authority or a council in respect of the preparation or approval of a stormwater management plan in accordance with this Schedule.

25—Assessment of reasonable costs and expenses

For the purposes of this Schedule, the reasonable costs and expenses that have been or would be incurred by the Authority in taking any action are to be assessed by reference to the reasonable costs and expenses that would have been or would be incurred in having the action taken by independent contractors engaged for that purpose.

26—Evidentiary

(1) In any proceedings, a certificate executed by the Authority or the Minister certifying as to a matter relating to—

(a) an order of the Authority under clause 16; or

(b) a notice under clause 23; or

(c) a delegation or authority under this Schedule,

constitutes proof, in the absence of proof to the contrary, of the matters so certified.

(2) In any proceedings against a council for the recovery of reasonable costs and expenses incurred by the Authority under this Schedule, a certificate executed by the Authority detailing the costs and expenses, the purpose for which they were incurred and (if relevant) the proportion payable by the council constitutes proof, in the absence of proof to the contrary, of the matters so certified.

(3) An apparently genuine document purporting to be an authorisation, order or other document, or a copy of an authorisation, order or other document, issued or executed by the Minister, the Treasurer or the Authority under this Schedule will be accepted as such in the absence of proof to the contrary.

27—Regulations

Without limiting section 303, regulations may be made—

(a) empowering the Authority to require the provision of reports, statements, documents or other forms of information for the purposes of carrying out its functions under this Schedule or otherwise in connection with the administration or operation of this Schedule;

(b) requiring the Authority to disclose information or provide records to the Minister or the Treasurer or otherwise providing for Ministerial supervision of the operations of the Authority;

(c) imposing performance obligations on the Authority or requiring the preparation of a charter or performance statements in relation to the operations of the Authority;

(d) setting out the duties and liabilities of the board of the Authority and members of the board of the Authority;

(e) making any provision in relation to the financial arrangements or corporate governance of the Authority;

(f) prescribing penalties (not exceeding a fine of $20 000) for contravention of a regulation made in accordance with this clause.

Schedule 2—Provisions applicable to subsidiaries

Part 1—Subsidiaries established by one council

1—Application for Ministerial approval

(1) A council proposing to establish a subsidiary of the council under this Act must apply to the Minister under this Part.

(2) An application by a council for the approval of the Minister to establish a subsidiary must—

(a) be in a form approved by the Minister; and

(b) be accompanied by information required by the Minister; and

(c) be accompanied by a copy of the proposed charter for the subsidiary (see clause 3).

(3) A subsidiary comes into existence if or when the Minister, by notice in the Gazette, signifies his or her approval of the establishment of the subsidiary.

(4) The council must, in conjunction with the publication of a notice under subclause (3), ensure that a copy of the charter of the subsidiary is published in the Gazette.

2—Corporate status

A subsidiary established under this Part—

(a) is a body corporate; and

(b) has the name assigned to it by its charter; and

(c) has the powers, functions and duties specified in its charter; and

(d) holds its property on behalf of the council.

3—Charter of subsidiary

(1) A charter must be prepared for a subsidiary by the council.

(2) The charter must address—

(a) the purpose for which the subsidiary is established;

(b) the constitution of a board of management as the subsidiary's governing body;

(c) whether board members will be required to submit returns under Chapter 5, Part 4, Division 2;

(d) the powers, functions and duties of the subsidiary;

(e) the nature and scope of any activities that will be undertaken outside the area of the council;

(f) staffing issues, including whether the subsidiary may employ staff and, if so, the process by which conditions of employment will be determined;

(g) whether the subsidiary is intended to be partially or fully self-funding, and other relevant arrangements relating to costs and funding;

(h) any special accounting, internal auditing or financial systems or practices to be established or observed by the subsidiary;

(i) the acquisition or disposal of assets;

(j) the manner in which surplus revenue is to be dealt with by the subsidiary;

(k) the nature and scope of any investment which may be undertaken by the subsidiary;

(l) the subsidiary's obligations to report on its operations, financial position and other relevant issues;

(m) other matters contemplated by this Part or prescribed by the regulations.

(3) The council may include in the charter other matters that it considers to be appropriate.

(4) The charter may be reviewed by the council at any time and must be reviewed by the council whenever it is relevant to do so because of a review of the council's strategic management plans.

(5) The council must, if it amends a charter—

(a) furnish a copy of the charter, as amended, to the Minister; and

(b) ensure that a copy of the charter, as amended, is published in the Gazette.

4—Appointment of board of management

(1) Subject to the charter of the subsidiary, the membership of a board of management of a subsidiary will be determined by the council and may consist of, or include, persons who are not members of the council.

(2) A board member will be appointed by the council for a term, not exceeding 4 years, specified in the instrument of appointment and, at the expiration of a term of office, is eligible for reappointment.

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

(a) dies; or

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

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

(d) becomes a bankrupt or applies for the benefit of a law for the relief of insolvent debtors; or

(e) fails to submit a return for the purposes of a Register of Interests in accordance with this Act if such returns are required by the charter; or

(f) is removed from office by the council by written notice.

(4) A board member must be appointed to chair meetings of the board of management.

(5) On the office of a board member becoming vacant, a person may be appointed in accordance with this clause to the vacant office.

(6) The council may appoint a suitable person to be a deputy of a board member during a period of absence of the board member and a reference in this Act to a board member will be taken to include, unless the contrary intention appears, a reference to a deputy while acting as a board member.

(7) If a member or employee of the council is appointed as a board member, he or she is not to be taken to have vacated his or her office as a member of the council, or of the staff of the council or to have been invalidly appointed to the board of management because—

(a) the potential exists for the duties of the two offices to be in conflict; or

(b) the duties of either office require, by implication, the person's full time attention.

(8) The council may give directions in relation to an actual or potential conflict of duty and duty between offices held concurrently, or in relation to some other incompatibility between offices held concurrently and, if the person concerned complies with those directions, he or she is excused from any breach that would otherwise have occurred.

5—Proceedings of board of management

(1) A quorum of a board of management will be determined by the charter of the subsidiary.

(2) The board member appointed to chair the board of management will preside at meetings of the board of management at which he or she is present and, if that board member is absent from a meeting, another board member chosen by the board members present at the meeting will preside.

(3) A decision carried by a majority of the votes cast by board members at a meeting is a decision of the board of management.

(4) Each board member present at a meeting of the board of management has one vote on a question arising for decision and, if the votes are equal, the board member presiding at the meeting may exercise a casting vote.

(5) A telephone or video conference between board members will, for the purposes of this clause, be taken to be a meeting of the board of management at which the participating board members are present if—

(a) notice of the conference is given to all board members in the manner determined by the board of management for that purpose; and

(b) each participating board member is capable of communicating with every other participating board member during the conference.

(6) A proposed resolution of the board of management becomes a valid decision of the board of management despite the fact that it is not voted on at a meeting if—

(a) notice of the proposed resolution is given to all board members in accordance with procedures determined by the board of management; and

(b) a majority of the board members express their concurrence in the proposed resolution by letter, telex, facsimile transmission or other written communication, or electronic communication, setting out the terms of the resolution.

(7) Unless otherwise determined by the charter of the subsidiary, Chapter 6 Part 3 extends to a subsidiary as if—

(a) a subsidiary were a council; and

(b) the board members of the subsidiary were members of the council.

(8) A person authorised in writing by the council for the purposes of this clause may attend (but not participate in) a meeting of the board of management and may have access to papers provided to board members for the purpose of the meeting.

(9) If a board of management considers that a matter dealt with at a meeting attended by a representative of the council should be treated as confidential, the board of management may advise the council of that opinion, giving the reason for the opinion, and the council may, subject to subclause (10), act on that advice as the council thinks fit.

(10) If the council is satisfied on the basis of the board of management's advice under subclause (9) that the subsidiary owes a duty of confidence in respect of a matter, the council must ensure the observance of that duty in respect of the matter, but this subclause does not prevent a disclosure as required in the proper performance of the functions or duties of the council.

(11) The board of management must cause accurate minutes to be kept of its proceedings.

(12) Subject to this clause, and to a direction of the council, the board of management may determine its own procedures.

6—Specific functions of board of management

(1) The board of management of a subsidiary is responsible for the administration of the affairs of the subsidiary.

(2) The board of management of a subsidiary must ensure as far as practicable—

(a) that the subsidiary observes all plans, targets, structures, systems and practices required or applied to the subsidiary by the council; and

(b) that all information furnished to the council is accurate; and

(c) that the council is advised, as soon as practicable, of any material development that affects the financial or operating capacity of the subsidiary or gives rise to the expectation that the subsidiary may not be able to meet its debts as and when they fall due.

(3) Anything done by the board of management in the administration of the affairs of the subsidiary is binding on the subsidiary.

7—Board members' duty of care etc

(1) A board member must at all times act with reasonable care and diligence in the performance and discharge of official functions and duties, and (without limiting the effect of the foregoing) for that purpose—

(a) must take reasonable steps to inform himself or herself about the subsidiary and relevant aspects of the operations and activities of the council; and

(b) must take reasonable steps through the processes of the board of management to obtain sufficient information and advice about matters to be decided by the board of management or pursuant to a delegation to enable him or her to make conscientious and informed decisions; and

(c) must exercise an active discretion with respect to all matters to be decided by the board of management or pursuant to a delegation.

(2) A board member is not bound to give continuous attention to the affairs of the subsidiary but is required to exercise reasonable diligence in attendance at and preparation for meetings of the board of management.

(3) In determining the degree of care and diligence required to be exercised by a board member, regard must be had to the skills, knowledge or acumen possessed by the board member and the degree of risk involved in a particular circumstance.

(4) A board member does not commit a breach of duty under this clause by acting in accordance with a direction from the council.

8—Business plans

(1) A subsidiary must, in consultation with the council, prepare and adopt a business plan consistent with its charter.

(2) A subsidiary and the council must ensure that the first business plan of the subsidiary is prepared within six months after the subsidiary is established.

(3) A business plan of a subsidiary continues in force for the period specified in the plan or until the earlier adoption by the subsidiary of a new business plan.

(4) A subsidiary must, in consultation with the council, review its business plan on an annual basis.

(5) A subsidiary may, after consultation with the council, amend its business plan at any time.

(6) A business plan must set out or include—

(a) the performance targets that the subsidiary is to pursue; and

(b) a statement of the financial and other resources, and internal processes, that will be required to achieve the subsidiary's performance targets; and

(c) the performance measures that are to be used to monitor and assess performance against targets.

9—Budget

(1) A subsidiary must have a budget for each financial year.

(2) Each budget of a subsidiary—

(a) must deal with each principal activity of the subsidiary on a separate basis; and

(b) must be consistent with its business plan and the council's strategic management plans; and

(c) must comply with standards and principles prescribed by the regulations; and

(d) must be adopted after 31 May for the ensuing financial year, and before a date fixed by the council; and

(e) must be provided to the council in accordance with the regulations.

(3) A subsidiary may, with the approval of the council, amend its budget for a financial year at any time before the year ends.

(4) A subsidiary may incur, for a purpose of genuine emergency or hardship, spending that is not authorised by its budget.

(5) A subsidiary may, in a financial year, after consultation with the council, incur spending before adoption of its budget for the year, but the spending must be provided for in the appropriate budget for the year.

10—Subsidiary subject to direction by council

(1) A subsidiary is subject to the direction and control of the council.

(2) A direction given by the council under this clause must be in writing, and a copy of any direction must be available at the principal office of the council.

11—Provision of information

(1) A subsidiary must, at the request of the council, furnish to the council information or records in the possession or control of the subsidiary as the council may require in such manner and form as the council may require.

(2) If the board of management of the subsidiary considers that information or a record furnished under this clause contains matters that should be treated as confidential, the board of management may advise the council of that opinion giving the reason for the opinion and the council may, subject to subclause (3), act on that advice as the council thinks fit.

(3) If the council is satisfied on the basis of the board of management's advice that the subsidiary owes duty of confidence in respect of a matter, the council must ensure the observance of that duty in respect of the matter, but this subclause does not prevent a disclosure as required in the proper performance of the functions or duties of the council.

12—Reporting

(1) A subsidiary must, at the request of the council, report to the council on any matter, and on any basis, specified by the council.

(2) A subsidiary must, on or before a day determined by the council, furnish to the council a report on the work and operations of the subsidiary for the preceding financial year.

(3) A report under subclause (2) must—

(a) incorporate the audited financial statements of the subsidiary for the relevant financial year; and

(b) contain any other information or report required by the council or prescribed by the regulations.

(4) A report under subclause (2) must be incorporated into the annual report of the council.

13—Internal audit

(1) A subsidiary must establish and maintain effective auditing of its operations.

(2) A subsidiary must establish an audit committee.

(3) Subject to the regulations, an audit committee will comprise persons determined or approved by the council (and may include persons who are members of the council's audit committee).

(4) The functions of an audit committee include—

(a) reviewing annual financial statements to ensure that they provide a timely and fair view of the state of affairs of the subsidiary; and

(b) liaising with external auditors; and

(c) reviewing the adequacy of the accounting, internal auditing, reporting and other financial management systems and practices of the subsidiary on a regular basis.

14—Liabilities

(1) Liabilities incurred or assumed by a subsidiary are guaranteed by the council.

(2) A borrowing of a subsidiary requires the approval of the council (which may be absolute or conditional).

15—Principles of competitive neutrality

If a subsidiary is declared by its charter to be involved in a significant business activity, the charter must also specify the extent to which the principles of competitive neutrality[1] are to be applied to the activities of the subsidiary and, to the extent that may be relevant, the reasons for any non-application of these principles.

Note—

1 See Part 4 of the *Government Business Enterprises (Competition) Act 1996*.

16—Winding-up

(1) A subsidiary may be wound up—

(a) by the Minister acting at the request of the council; or

(b) by the Minister on the ground that there has been a failure to comply with a requirement of the Minister under section 275 and that the circumstances are, in the opinion of the Minister, sufficiently serious to justify the taking of action to wind up the subsidiary.

(2) A subsidiary is wound up by the Minister publishing a notice in the Gazette.

(3) Any assets or liabilities of the subsidiary at the time of winding-up vest in or attach to the council on the winding-up.

Part 2—Regional subsidiaries established by two or more councils

17—Application for Ministerial approval

(1) Two or more councils proposing to establish a regional subsidiary under this Act must apply to the Minister under this Part.

(2) An application by two or more councils for the approval of the Minister to establish a regional subsidiary must—

(a) be in a form approved by the Minister; and

(b) be accompanied by information required by the Minister; and

(c) be accompanied by a copy of the proposed charter for the subsidiary (see clause 19).

(3) A subsidiary comes into existence if or when the Minister, by notice in the Gazette, signifies his or her approval of the establishment of the subsidiary.

(4) The constituent councils must, in conjunction with the publication of a notice under subclause (3), ensure that a copy of the charter of the subsidiary is published in the Gazette.

18—Corporate status

A regional subsidiary established under this Part—

(a) is a body corporate; and

(b) has the name assigned to it by its charter; and

(c) has the powers, functions and duties specified in its charter; and

(d) holds its property on behalf of the constituent councils.

19—Preparation of charter

(1) A charter must be prepared for a regional subsidiary by the constituent councils.

(2) The charter must address—

(a) the purpose for which the subsidiary is established;

(b) the constitution of a board of management as the subsidiary's governing body and, in respect of the board of management—

(i) the method by which board members will be appointed, and their terms of office determined;

(ii) the conditions of appointment, or the method by which those conditions will be determined;

(iii) the appointment of a board member to chair meetings;

(iv) the appointment of deputies to board members;

(c) whether board members will be required to submit returns under Chapter 5, Part 4, Division 2;

(d) the powers, functions and duties of the subsidiary;

(e) the nature and scope of any activities that will be undertaken outside the area of the constituent councils;

(f) staffing issues, including whether the subsidiary may employ staff and, if so, the process by which conditions of employment will be determined;

(g) whether the subsidiary is intended to be partially or fully self-funding, or to have the ability to raise revenue, and other relevant arrangements relating to costs and funding, including the financial contributions to be made by the constituent councils;

(h) any special accounting, internal auditing or financial systems or practices to be established or observed by the subsidiary;

(i) the acquisition or disposal of assets;

(j) the manner in which surplus revenue is to be dealt with by the subsidiary;

(k) the nature and scope of any investment which may be undertaken by the subsidiary;

(l) the subsidiary's obligations to report on its operations, financial position and other relevant issues, and processes for other forms of reporting to the constituent councils;

(m) the process or mechanism by which the subsidiary will be subject to direction by the constituent councils;

(n) the manner in which disputes between the constituent councils relating to the subsidiary will be resolved;

(o) issues surrounding a council becoming a constituent council, or ceasing to be a constituent council;

(p) the manner in which the property of the subsidiary is to be distributed in the event of a winding up;

(q) the proportions in which the constituent councils are to be responsible for the liabilities of the subsidiary in the event of its insolvency;

(r) other matters contemplated by this Part or prescribed by the regulations.

(3) The constituent councils may include in the charter other matters that the councils consider to be appropriate.

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

(5) The constituent councils must, if they amend a charter—

(a) furnish a copy of the charter, as amended, to the Minister; and

(b) ensure that a copy of the charter, as amended, is published in the Gazette.

20—Appointment of board of management

(1) Subject to the charter of the subsidiary, the membership of a board of management of a regional subsidiary will be determined by the constituent councils and may consist of, or include, persons who are not members of a council.

(2) A board member is, at the expiration of a term of office, eligible for reappointment.

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

(a) dies; or

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

(c) resigns by written notice addressed to the constituent councils and served on any of them; or

(d) becomes a bankrupt or applies for the benefit of a law for the relief of insolvent debtors; or

(e) fails to submit a return for the purposes of a Register of Interests in accordance with this Act if such returns are required by the charter; or

(f) is removed from office by the constituent councils by written notice, or in any other manner specified by the charter.

(4) On the office of a board member becoming vacant, a person may be appointed in accordance with the charter to the vacant office.

(5) A reference in this Act to a board member will be taken to include, unless the contrary intention appears, a reference to a deputy while acting as a board member.

(6) If a member or employee of a constituent council is appointed as a board member, he or she is not taken to have vacated his or her office as a member of the council, or of the staff of the council, or to have been invalidly appointed to the board of management because—

(a) the potential exists for the duties of the two offices to conflict; or

(b) the duties of either office require, by implication, the person's full time attention.

(7) A council may give directions in relation to an actual or potential conflict of duty and duty between offices held concurrently, or in relation to some other incompatibility and, if the person concerned complies with those directions, he or she is excused from any breach that would otherwise have occurred.

21—Proceedings of board of management

(1) A quorum of a board of management will be determined by the charter of the subsidiary.

(2) The board member appointed to chair the board of management will preside at meetings of the board of management at which he or she is present and, if that board member is absent from a meeting, another board member chosen by the board members present at the meeting will preside.

(3) A decision carried by a majority of the votes cast by board members at a meeting is a decision of the board of management.

(4) Each board member present at a meeting of the board of management has one vote on a question arising for decision and, if the votes are equal, the board member presiding at the meeting does not have a second or casting vote.

(5) A telephone or video conference between board members will, for the purposes of this clause, be taken to be a meeting of the board of management at which the participating board members are present if—

(a) notice of the conference is given to all board members in the manner determined by the board of management for that purpose; and

(b) each participating board member is capable of communicating with every other participating board member during the conference.

(6) A proposed resolution of the board of management becomes a valid decision of the board of management despite the fact that it is not voted on at a meeting if—

(a) notice of the proposed resolution is given to all board members in accordance with procedures determined by the board of management; and

(b) a majority of the board members express their concurrence in the proposed resolution by letter, telex, facsimile transmission or other written communication, or electronic communication, setting out the terms of the resolution.

(7) Unless otherwise determined by the charter of the subsidiary, Chapter 6 Part 3 extends to a subsidiary as if—

(a) a subsidiary were a council; and

(b) the board members of the subsidiary were members of the council.

(8) A person authorised in writing by a constituent council for the purposes of this clause may attend (but not participate in) a meeting of the board of management and may have access to papers provided to board members for the purpose of the meeting.

(9) If a board of management considers that a matter dealt with at a meeting attended by a representative of a constituent council should be treated as confidential, the board of management may advise the council of that opinion, giving the reason for the opinion, and the council may, subject to subclause (10), act on that advice as the council thinks fit.

(10) If a council is satisfied on the basis of the board of management's advice under subclause (9) that the subsidiary owes a duty of confidence in respect of a matter, the council must ensure the observance of that duty in respect of the matter, but this subclause does not prevent a disclosure as required in the proper performance of the functions or duties of the council.

(11) The board of management must cause accurate minutes to be kept of its proceedings.

(12) Subject to this clause, and to a direction of the constituent councils, the board of management may determine its own procedures.

22—Specific functions of board of management

(1) The board of management of a regional subsidiary is responsible for the administration of the affairs of the subsidiary.

(2) The board of management of a regional subsidiary must ensure as far as practicable—

(a) that the subsidiary observes all plans, targets, structures, systems and practices required or applied to the subsidiary by the constituent councils; and

(b) that all information furnished to a constituent council is accurate; and

(c) that the constituent councils are advised, as soon as practicable, of any material development that affects the financial or operating capacity of the subsidiary or gives rise to the expectation that the subsidiary may not be able to meet its debts as and when they fall due.

(3) Anything done by the board of management in the administration of the affairs of the subsidiary is binding on the subsidiary.

23—Board members' duty of care etc

(1) A board member must at all times act with reasonable care and diligence in the performance and discharge of official functions and duties, and (without limiting the effect of the foregoing) for that purpose—

(a) must take reasonable steps to inform himself or herself about the subsidiary and relevant aspects of the operations and activities of the constituent councils; and

(b) must take reasonable steps through the processes of the board of management to obtain sufficient information and advice about matters to be decided by the board of management or pursuant to a delegation to enable him or her to make conscientious and informed decisions; and

(c) must exercise an active discretion with respect to all matters to be decided by the board of management or pursuant to a delegation.

(2) A board member is not bound to give continuous attention to the affairs of the subsidiary but is required to exercise reasonable diligence in attendance at and preparation for meetings of the board of management.

(3) In determining the degree of care and diligence required to be exercised by a board member, regard must be had to the skills, knowledge or acumen possessed by the board member and the degree of risk involved in a particular circumstance.

(4) A board member does not commit a breach of duty under this clause by acting in accordance with a direction from the constituent councils.

24—Business plans

(1) A regional subsidiary must, in consultation with the constituent councils, prepare and adopt a business plan.

(2) A subsidiary and the constituent councils must ensure that the first business plan of the subsidiary is prepared within six months after the subsidiary is established.

(3) A business plan of a subsidiary continues in force for the period specified in the plan or until the earlier adoption by the subsidiary of a new business plan.

(4) A subsidiary must, in consultation with the constituent councils, review its business plan on an annual basis.

(5) A subsidiary may, after consultation with the constituent councils, amend its business plan at any time.

(6) A business plan must set out or include—

(a) the performance targets that the subsidiary is to pursue; and

(b) a statement of the financial and other resources, and internal processes, that will be required to achieve the subsidiary's performance targets; and

(c) the performance measures that are to be used to monitor and assess performance against targets.

25—Budget

(1) A regional subsidiary must have a budget for each financial year.

(2) Each budget of a subsidiary—

(a) must deal with each principal activity of the subsidiary on a separate basis; and

(b) must be consistent with its business plan; and

(c) must comply with standards and principles prescribed by the regulations; and

(d) must be adopted after 31 May for the ensuing financial year, and before a date fixed by the constituent councils; and

(e) must be provided to the constituent councils in accordance with the regulations.

(3) A subsidiary may, with the approval of the constituent councils, amend its budget for a financial year at any time before the year ends.

(4) A subsidiary may incur, for a purpose of genuine emergency or hardship, spending that is not authorised by its budget.

(5) A subsidiary may, in a financial year, after consultation with the constituent councils, incur spending before adoption of its budget for the year, but the spending must be provided for in the appropriate budget for the year.

26—Subsidiary subject to direction by councils

A regional subsidiary is subject to the joint direction and control of the constituent councils.

27—Provision of information

(1) A regional subsidiary must, at the written request of a constituent council, furnish to the council information or records in the possession or control of the subsidiary as the council may require in such manner and form as the council may require.

(2) If the board of management of the subsidiary considers that information or a record furnished under this clause contains matters that should be treated as confidential, the board of management may advise the council of that opinion giving the reason for the opinion and the council may, subject to subclause (3), act on that advice as the council thinks fit.

(3) If the council is satisfied on the basis of the board of management's advice that the subsidiary owes a duty of confidence in respect of a matter, the council must ensure the observance of that duty in respect of the matter, but this subclause does not prevent a disclosure as required in the proper performance of the functions or duties of the council.

28—Reporting

(1) A regional subsidiary must, on or before a day determined by the constituent councils, furnish to the constituent councils a report on the work and operations of the subsidiary for the preceding financial year.

(2) A report under subclause (1) must—

(a) incorporate the audited financial statements of the subsidiary for the relevant financial year; and

(b) contain any other information or report required by the council or prescribed by the regulations.

(3) A report under subclause (1) must be incorporated into the annual report of each constituent council.

29—Council becoming or ceasing as a constituent council

A council may, in accordance with the charter of the subsidiary and with the approval of the Minister—

(a) become a constituent council of a regional subsidiary;

(b) cease to be a constituent council of a regional subsidiary.

30—Internal audit

(1) A regional subsidiary must establish and maintain effective auditing of its operations.

(2) A regional subsidiary must, unless exempted by regulation, establish an audit committee.

(3) Subject to the regulations, an audit committee will comprise persons determined or approved by the constituent councils (and may include persons who are members of a constituent council's audit committee).

(4) The functions of an audit committee include—

(a) reviewing annual financial statements to ensure that they provide a timely and fair view of the state of affairs of the subsidiary; and

(b) liaising with external auditors; and

(c) reviewing the adequacy of the accounting, internal auditing, reporting and other financial management systems and practices of the subsidiary on a regular basis.

31—Liabilities

(1) Liabilities incurred or assumed by a regional subsidiary are guaranteed by the constituent councils.

32—Principles of competitive neutrality

If a regional subsidiary is declared by its charter to be involved in a significant business activity, the charter must also specify the extent to which the principles of competitive neutrality[1] are to be applied to the activities of the subsidiary and, to the extent that may be relevant, the reasons for any non-application of these principles.

Note—

1 See Part 4 of the *Government Business Enterprises (Competition) Act 1996*.

33—Winding-up

(1) A regional subsidiary may be wound up—

(a) by the Minister acting at the request of the constituent councils; or

(b) by the Minister on the ground that there has been a failure to comply with a requirement of the Minister under section 275 and that the circumstances are, in the opinion of the Minister, sufficiently serious to justify the taking of action to wind up the subsidiary.

(2) A subsidiary is wound up by the Minister publishing a notice in the Gazette.

(3) Any assets or liabilities of the subsidiary at the time of winding-up vest in or attach to the constituent councils on the winding-up in accordance with the charter.

Part 3—Common matters

34—Board members' duties of honesty

(1) A board member of a subsidiary must at all times act honestly in the performance and discharge of official functions and duties.

(2) A board member or former board member of a subsidiary must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as a board member to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the subsidiary or a council.

(3) A board member of a subsidiary must not, whether within or outside the State, make improper use of his or her position as a board member to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the subsidiary or a council.

35—Disclosure

(1) If a subsidiary discloses to a person in pursuance of this Schedule a matter in respect of which the subsidiary owes a duty of confidence, the subsidiary must give notice of the disclosure to the person to whom the duty is owed.

(2) A member of the board of management of a subsidiary does not commit a breach of duty by reporting a matter relating to the affairs of the subsidiary to a council or otherwise in accordance with the provisions of this Act.

36—Power of delegation

(1) A subsidiary may delegate a power or function vested or conferred under this or another Act.

(2) A delegation may be made—

(a) to a committee; or

(b) to an employee of the subsidiary or of the council or of a constituent council; or

(c) to a person for the time being occupying a particular office or position.

(3) A delegation—

(a) is subject to conditions and limitations determined by the subsidiary or specified by the regulations; and

(b) is revocable at will and does not prevent the subsidiary from acting in a matter.

(4) This clause does not limit or affect a power of delegation under another Act.

37—Common seal and execution of documents

(1) The common seal of a subsidiary must not be affixed to a document except in pursuance of a decision of the board of management, and the affixing of the seal must be attested by the signatures of two board members.

(2) The board of management may, by instrument under the common seal of the subsidiary, authorise a board member, or other person (whether nominated by name or by office or title) to execute documents on behalf of the subsidiary subject and limitations (if any) specified in the instrument of authority.

(3) Without limiting subclause (2), an authority may be given so as to authorise two or more persons to execute documents jointly on behalf of the subsidiary.

(4) A document is duly executed by the subsidiary if—

(a) the common seal of the subsidiary is affixed to the document in accordance with this clause; or

(b) the document is signed on behalf of the subsidiary by a person or persons in accordance with authority conferred under this clause.

38—Protection from liability

(1) No civil liability attaches to a board member of a subsidiary for an honest act or omission in the exercise, performance or discharge, or purported exercise, performance or discharge, of the member's or subsidiary's powers, functions or duties.

(2) A liability that would, but for this clause, attach to a board member attaches instead to the subsidiary.

39—Interests in companies

(1) A subsidiary must not—

(a) participate in the formation of a company; or

(b) acquire shares in a company.

(2) However, subclause (1) does not limit—

(a) the investment of money as authorised by the subsidiary's charter; or

(b) the ability of a regional subsidiary to participate in the formation of, or to become a member of, a company limited by guarantee established as a national association to promote and advance the interests of an industry in which local government has an interest.

40—Saving provision

No act or proceeding of a subsidiary is invalid by reason of—

(a) a vacancy or vacancies in the membership of the board of management; or

(b) a defect in the appointment of a board member.

Schedule 3—Register of Interests—Form of returns

1—Interpretation

(1) In this Schedule, unless the contrary intention appears—

beneficial interest in property includes a right to re-acquire the property;

family, in relation to a member, means—

(a) a spouse or domestic partner of the member; and

(b) a child of the member who is under the age of 18 years and normally resides with the member;

family company of a member means a proprietary company—

(a) in which the member or a member of the member's family is a shareholder; and

(b) in respect of which the member or a member of the member's family, or any such persons together, are in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the company;

family trust of a member means a trust (other than a testamentary trust)—

(a) of which the member or a member of the member's family is a beneficiary; and

(b) which is established or administered wholly or substantially in the interests of the member or a member of the member's family, or any such persons together;

financial benefit, in relation to a person, means—

(a) any remuneration, fee or other pecuniary sum exceeding $1 000 received by the person in respect of a contract of service entered into, or paid office held by, the person; and

(b) the total of all remuneration, fees or other pecuniary sums received by the person in respect of a trade, profession, business or vocation engaged in by the person where that total exceeds $1 000,

but does not include an annual allowance, fees, expenses or other financial benefit payable to the person under this Act;

gift means a transaction in which a benefit of pecuniary value is conferred without consideration or for less than adequate consideration, but does not include an ordinary commercial transaction or a transaction in the ordinary course of business;

income source, in relation to a person, means—

(a) any person or body of persons with whom the person entered into a contract of service or held any paid office; and

(b) any trade, vocation, business or profession engaged in by the person;

a person related to a member means—

(a) a member of the member's family;

(b) a family company of the member;

(c) a trustee of a family trust of the member;

return period, in relation to an ordinary return of a member, 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 30 June next following; and

(b) in the case of any other member the period of 12 months expiring on 30 June on or within 60 days after which the ordinary return is required to be submitted.

trade or professional organisation means a body, corporate or unincorporate, of—

(a) employers or employees; or

(b) persons engaged in a profession, trade or other occupation,

being a body of which the object, or one of the objects, is the furtherance of its own professional, industrial or economic interests or those of any of its members.

(2) For the purposes of this Schedule, a person who is an object of a discretionary trust is to be taken to be a beneficiary of that trust.

(3) For the purpose of this Schedule, a person is an investor in a body if—

(a) the person has deposited money with, or lent money to, the body that has not been repaid and the amount not repaid equals or exceeds $10 000; or

(b) the person holds, or has a beneficial interest in, shares in, or debentures of, the body or a policy of life insurance issued by the body.

(4) For the purposes of the Schedule, in relation to a return by a member—

(a) two or more separate contributions made by the same person for or towards the cost of travel undertaken by the member or a member of the member's family during the return period are to be treated as one contribution for or towards the cost of travel undertaken by the member;

(b) two or more separate gifts received by the member or a person related to the member from the same person during the return period are to be treated as one gift received by the member;

(c) two or more separate transactions to which the member or a person related to the member is a party with the same person during the return period under which the member or a person related to the member has had the use of property of the other person (whether or not being the same property) during the return period are to be treated as one transaction under which the member has had the use of property of the other person during the return period.

2—Contents of return

(1) For the purposes of this Act, 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 person related to the member has or expects to have in the period of 12 months after the date of the primary return; and

(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 subclause (3).

(2) For the purposes of this Act, an ordinary return must be in the prescribed form and contain the following information:

(a) if the member required to submit the return or a person related to the member received, or was entitled to receive, a financial benefit during any part of the return period—the income source of the financial benefit; and

(b) if 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; and

(c) the source of any contribution made in cash or in kind of or above the amount or value of $750 (other than any contribution by the council, by the State, by an employer or by a person related by blood or marriage) for or towards the cost of any travel beyond the limits of South Australia undertaken by the member or a member of his or her family during the return period, and for the purposes of this paragraph ***cost of travel*** includes accommodation costs and other costs and expenses associated with the travel; and

(d) particulars (including the name of the donor) of any gift of or above the amount or value of $750 received by the member or a person related to the member during the return period from a person other than a person related by blood or marriage to the member or to a member of the member's family; and

(e) if the member or a person related to the member has been a party to a transaction under which the member or person related to the member has had the use of property of the other person during the return period and—

(i) the use of the property was not acquired for adequate consideration or through an ordinary commercial transaction or in the ordinary course of business; and

(ii) the market price for acquiring a right to such use of the property would be $750 or more; and

(iii) the person granting the use of the property was not related by blood or marriage to the member or to a member of the member's family,

the name and address of that person; and

(f) the information required by subclause (3).

(3) For the purposes of this Act, a return (whether primary or ordinary) must contain the following information:

(a) the name or description of any company, partnership, association or other body in which the member required to submit the return or a person related to the member is an investor; and

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

(b) the name of any political party, any body or association formed for political purposes or any trade or professional organisation of which the member is a member; and

(c) a concise description of any trust (other than a testamentary trust) of which the member or a person related to the member is a beneficiary or trustee (including the name and address of each trustee); and

(d) the address or description of any land in which the member or a person related to the member has any beneficial interest other than by way of security for any debt; and

(e) any fund in which the member or a person related to the member has an actual or prospective interest to which contributions are made by a person other than the member or a person related to the member; and

(f) if the member or a person related to the member is indebted to another person (not being related by blood or marriage to the member or to a member of the member's family) in an amount of or exceeding $7 500—the name and address of that other person; and

(g) if the member or a person related to the member is owed money by a natural person (not being related to the member or a member of the member's family by blood or marriage) in an amount of or exceeding $10 000—the name and address of that person; and

(h) any other substantial interest whether of a pecuniary nature or not of the member or of a person related to the member of which the member is aware and which he or she considers might appear to raise a material conflict between his or her private interest and the public duty that he or she has or may subsequently have as a member.

(4) A member is required by this clause only to disclose information that is known to the member or ascertainable by the member by the exercise of reasonable diligence.

(5) Nothing in this clause requires a member to disclose information relating to a person as trustee of a trust unless the information relates to the person in the person's capacity as trustee of a trust by reason of which the person is related to the member.

(6) A member may include in a return such additional information as the member thinks fit.

(7) Nothing in this clause will be taken to prevent a member from disclosing information required by this clause in such a way that no distinction is made between information relating to the member personally and information relating to a person related to the member.

(8) Nothing in this clause requires disclosure of the actual amount or extent of a financial benefit, gift, contribution or interest.

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

1 The following material must be included in the annual report of a council:

(a) a copy of the audited financial statements of the council for the relevant financial year;

(b) a list of the registers that are required to be kept under this Act or the *Local Government (Elections) Act 1999*;

(c) a list of the codes of conduct or practice required under this Act or the *Local Government (Elections) Act 1999*;

(f) information on allowances paid to members of the council or a council committee;

(g) information on the number of senior executive officers and information on the kinds of allowances, bonuses and benefits that are made available to those officers as part of a salary package;

(ga) a report on the use of sections 90(2) and 91(7) by the council and its council committees containing the information required by the regulations;

(gb) a report on the applications made to the council under the *Freedom of Information Act 1991* during the relevant financial year containing the information required by the regulations;

(h) a statement of—

(i) the council's representation quota; and

(ii) the average representation quota for councils of a similar size and type (taking into account various factors prescribed by the regulations); and

(iii) when the council next intends to conduct a review under Chapter 3 Part 1 Division 2; and

(iv) the procedures that are available under Chapter 3 for electors to make submissions on representation under this Act;

(ha) the annual report of any subsidiary received by the council under Schedule 2 for the relevant financial year;

(i) other material prescribed by the regulations;

(j) other information to be included in the annual report under this or another Act.

2 The following matters must be reported on in the annual report of a council:

(a) the council's performance in implementing its strategic management plans during the relevant financial year, and the council's projections and targets under its plans for the next financial year;

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

(b) the extent to which activities of the council have been subjected to competitive tender or other measures to ensure services are delivered cost-effectively, and the extent (if any) to which the council has pursued policies for purchasing local goods and services;

(c) the decision-making structure of the council;

(ca) the training and development activities for members of the council during the relevant financial year;

(d) the implementation of equal employment opportunity programs, and other human resource management or development programs, during the relevant financial year;

(e) the progress of the council in preparing or finalising any management plans for community land required under the Chapter 11;

(f) other matters prescribed by the regulations.

3 In this Schedule—

representation quota for a council is an amount ascertained by dividing the number of electors for the area of the council (as at the last closing date under the *Local Government (Elections) Act 1999*) by the number of members who constitute the council (ignoring any fractions resulting from the division and expressed as a quota).

Schedule 5—Documents to be made available by councils

Reviews of council constitution, wards and boundaries

- Representation options papers and reports on reviews of council composition or ward structure (Chapter 3 Part 1 Division 2)
- Reports to the Minister under Chapter 3 Part 2 Division 4 or 5 provided to the council by the Boundary Adjustment Facilitation Panel
- Summary of issues surrounding a proposal to be submitted to a poll under Chapter 3 Part 2 Division 5

Registers and Returns

- Registers required under this Act or the *Local Government (Elections) Act 1999*, other than the Register of Interests kept for the purposes of Chapter 7 Part 4 Division 2
- Campaign donations returns under the *Local Government (Elections) Act 1999*

Codes

- Codes of conduct or codes of practice under this Act or the *Local Government (Elections) Act 1999*

Meeting papers

- Notice and agenda for meetings of the council, council committees and electors
- Minutes of meetings
- Documents and reports to the council or a council committee that are able to be supplied to members of the public
- Recommendations adopted by resolution of the council

Policy and administrative documents

- Record of delegations under this Act (other than delegations made by the Minister)
- Contract and tenders policies
- Policy for the reimbursement of members' expenses
- Strategic management plans
- Annual business plan (after adoption by council) and the summary required under this Act
- Annual budget (after adoption by council)
- Audited financial statements
- Annual report
- Extracts from the council's assessment record
- List of fees and charges
- Public consultation policies
- Management plans for community land
- Policy on the making of orders
- Procedures for the review of council decisions (Chapter 13 Part 2) and any report under section 270(8)
- Charter for subsidiaries established by the council or for which the council is a constituent council
- The most recent information statement of the council under the *Freedom of Information Act 1991*
- Any policy document of the council within the meaning of the *Freedom of Information Act 1991* (if not already referred to above)

By-laws

- By-laws made by the council

Schedule 6—Charges over land

1—Preliminary

(1) This Schedule applies to a charge on land created by this Act.

(2) However, this Schedule does not apply to rates, charges, interests or fines recoverable under Chapter 10.

2—Notice of charge to Registrar-General

(1) For the purposes of imposing a charge over land, a council must deliver to the Registrar-General a notice, in a form determined by the Registrar-General—

(a) identifying the land over which the charge is to exist; and

(b) declaring the unpaid amount, and the rate of interest; and

(c) requesting the Registrar-General to make a note under this section in the Register Book.

(2) On receipt of a notice under subclause (1), the Registrar-General must enter an appropriate note in the Register Book and, when that entry is made, a charge is created over the land.

3—Effect of charge

(1) The effect of the charge is as follows:

(a) the Registrar-General must not, after entry of the note under clause 2, register an instrument affecting the land over which the charge exists unless—

(i) the instrument—

(A) was executed before the entry was made; or

(B) has been executed under or pursuant to an agreement entered into before the entry was made; or

(C) relates to an instrument registered before the entry was made; or

(ii) the instrument is an instrument of a prescribed class; or

(iii) the instrument is expressed to be subject to the operation of the charge; or

(iv) the instrument is a duly stamped conveyance that results from the exercise of a power of sale under a mortgage, charge or encumbrance registered before the entry was made; and

(b) the council has the same powers in respect of the land over which the charge exists as are given by the *Real Property Act 1886* to a mortgagee under a mortgage in respect of which default has been made in payment of money secured by the mortgage.

(2) An instrument registered under subclause (1)(a)(i) or (ii) has effect, in relation to the charge, as if it had been registered before the entry was made.

(3) If an instrument is registered under subclause (1)(a)(iv), the charge will be taken to be cancelled by the registration of the instrument and the Registrar-General must take whatever action the Registrar-General considers appropriate to give effect to the cancellation.

4—Discharge of charge

(1) The council in whose favour a charge exists must, if the amount to which the charge relates is paid, by notice in a form determined by the Registrar-General, apply for the discharge of the charge.

(2) The Registrar-General must then cancel the relevant entry.

Schedule 7—Selection of assessors for proceedings in the District Court

(1) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of elected members in local government.

(2) The Minister must establish a panel of persons who may sit as assessors consisting of persons who have experience in dealing with complaints against public officials.

(3) A member of a panel is to be appointed by the Minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.

(4) A member of a panel is, on the expiration of a term of office, eligible for reappointment.

(5) Subject to subclause (6), if assessors are to sit with the District Court in proceedings under this Act, a Judge of the Court must select one member from each of the panels to sit with the Court in the proceedings.

(6) A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the District Court is disqualified from participating in the hearing of the matter.

(7) If an assessor dies or is for any reason unable to continue with any proceedings, the District Court constituted of the judicial officer who is presiding at the proceedings and the other assessor may, if the judicial officer so determines, continue and complete the proceedings.

Schedule 8—Provisions relating to specific land

6—Beaumont Common

(1) Beaumont Common is classified as community land and the classification is irrevocable.

(2) The Corporation of the City of Burnside must continue to maintain Beaumont Common for the benefit of the community as park lands.

(3) The council must not develop or adapt Beaumont Common, or any part of it, for the purpose of an organised sporting activity.

This requirement must be included in the management plan for Beaumont Common.

(4) In this clause—

Beaumont Common means the whole of the land comprised in Certificate of Title Register Book Volume 479 Folio 61.

7—Glenelg amusement park

(1) The Glenelg amusement park is classified as community land and the classification is irrevocable.

(2) The City of Holdfast Bay—

(a) must continue to maintain the park for the benefit of the community as a public park; and

(b) may—

(i) provide in the park facilities or amenities for public refreshment, recreation or amusement; and

(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; and

(iii) otherwise deal with land comprised in the park, as the Minister may approve.

These matters must be addressed in the management plan for the park.

(3) Section 32 of the *Development Act 1993* does not apply to the grant of a lease or licence by the council under subclause (2).

(4) In this clause—

Glenelg amusement park or ***the park*** means the land designated as Allotment 3 in the plan deposited in the Lands Titles Registration Office No. DP 49075.

8—Klemzig Memorial Garden

(1) The Klemzig Memorial Garden is classified as community land and the classification is irrevocable.

(2) The City of Port Adelaide Enfield must continue to maintain the garden for the benefit of the community as a place of public interest and for use as a public garden.

(3) The council—

(a) must maintain and preserve the granite monument and gateway pillars erected at the garden; and

(b) must develop the garden in a manner that is consistent with its historical significance and its use as a public garden; and

(c) must not develop the garden except after consultation with the Church; and

(d) must, in the maintenance of the garden, have due regard to any representations made by the Church.

These matters must be addressed in the management plan for the garden.

(4) The Church will be entitled to use the garden on at least one occasion in each year for the purpose of conducting a religious ceremony.

(5) In this clause—

the Church means the Lutheran Church of Australia Incorporated;

Klemzig Memorial Garden or ***the garden*** means the whole of the land comprised in Certificate of Title Register Book Volume 1701 Folio 180.

9—Levi Park

(1) Levi Park is classified as community land and the classification is irrevocable.

(2) The Corporation of the Town of Walkerville must continue to maintain Levi Park for the benefit of the community as a public park.

(3) The council—

(a) must preserve for as long as possible the Moreton Bay fig tree growing in the park; and

(b) must maintain and preserve Vale House for the benefit of the community; and

(c) must maintain and preserve the caravan park and camping ground in the park; and

(d) must not alter the nature of the use of the park, or of any part of the park, without the approval of the Minister.

These matters must be addressed in the management plan for the park.

(4) In this clause—

Levi Park or ***the park*** means the whole of the land comprised in Certificate of Title Register Book Volume 1601 Folio 134 and Volume 2995 Folio 177.

10—Reynella Oval

(1) Reynella Oval is classified as community land and the classification is irrevocable.

(2) The City of Onkaparinga must continue to maintain the oval for the benefit of the community as a recreational area.

(3) In this clause—

Reynella Oval or ***the oval*** means the whole of the land comprised in Certificate of Title Register Book Volume 4038 Folio 669, 670 and 671, Volume 4142 Folio 706, and Volume 5557 Folio 739.

11—Lochiel Park Lands

(1) In this clause—

Council means The Corporation of the City of Campbelltown;

LMC means the Land Management Corporation or, if that body ceases to exist, a person or body brought within the ambit of this definition by the regulations;

Lochiel Park Lands means the portions of the land marked "P" and "R" in the plan deposited in the General Registry Office as GRO Plan No 302/2005;

responsible Minister means the Minister to whom the Governor has from time to time, by notice in the Gazette, assigned the functions of responsible Minister for the purposes of this clause.

(2) On the commencement of this clause, the Lochiel Park Lands will revert to the status of unalienated Crown land.

(3) The Minister responsible for the administration of the *Crown Lands Act 1929* must, as soon as practicable after the commencement of this clause, grant a licence under the *Crown Lands Act 1929* to LMC to occupy the Lochiel Park Lands for the purpose of carrying out functions under this clause.

(4) The Minister granting the licence may determine the terms and conditions of the licence and those terms and conditions will have effect despite any provisions of the *Crown Lands Act 1929*.

(5) The Lochiel Park Lands must be established as park lands and held for the benefit of the community.

(6) LMC must undertake works to establish the Lochiel Park Lands as park lands for the purposes of subclause (5).

(7) The works must be undertaken in accordance with a scheme determined by the responsible Minister.

(8) The responsible Minister must, in establishing the scheme, consult with the Council.

(9) LMC must, in undertaking the works, consult with the Council on a regular basis.

(10) LMC must continue to occupy the Lochiel Park Lands—

(a) while it establishes the Lochiel Park Lands as park lands; and

(b) for a period of 36 months after practical completion (determined in accordance with subclause (11)).

(11) Practical completion will be determined by the responsible Minister, by notice in the Gazette, after the responsible Minister is satisfied that the scheme established under subclause (7) has been completed.

(12) The responsible Minister must consult with the Council before publishing a notice under subclause (11).

(13) The Governor may, at any time after the expiration of the period of 36 months referred to in subclause (10)(b), by proclamation—

(a) cancel the licence granted to LMC in accordance with subclause (3); and

(b) place the Lochiel Park Lands under the care, control and management of the Council.

(14) The responsible Minister must, before a proclamation is made under subclause (13), consult with the Council.

(15) When the Lochiel Park Lands are placed under the care, control and management of the Council, the Lochiel Park Lands will be taken to be classified as community land and the classification is irrevocable.

(16) In addition, the Council—

(a) must maintain access across the Lochiel Park Lands to the land associated with Lochend House; and

(b) must take reasonable steps to maintain and preserve any infrastructure or other facilities existing within the Lochiel Park Lands at the time that the Lochiel Park Lands are placed under the care, control and management of the Council; and

(c) must take reasonable steps to preserve any vegetation within the Lochiel Park Lands; and

(d) must not develop or adapt any part of the Lochiel Park Lands for an organised sporting activity or for any other purpose that restricts free access and use of the land as park lands; and

(e) must not otherwise alter the nature of the use of any part of the Lochiel Park Lands except in accordance with the management plan adopted under subclause (18) (but in any event ensuring that the Lochiel Park Lands remain as park lands that provide free access to the public).

(17) However, the Council may (as it thinks fit) and must, at the direction of the responsible Minister, allow an authority access to the Lochiel Park Lands in order to allow the construction or maintenance of infrastructure or public services (including storm-water, electricity, gas, water, sewerage or communications infrastructure or services).

(18) The Council must, with the assistance of LMC, prepare a management plan for the Lochiel Park Lands in accordance with Chapter 11 Part 1 and must adopt the plan within 6 months after the Lochiel Park Lands are placed under the care, control and management of the Council.

(19) The Council must not grant a lease or licence over any part of the Lochiel Park Lands except in accordance with the management plan, or with the approval of the responsible Minister.

12—Frew Park

(1) Frew Park is classified as community land and the classification is irrevocable.

(2) The Frew Park trust is revoked by force of this clause.

(3) In this clause—

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

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

Legislative history

Notes

- This version is comprised of the following:

Chapter 1	15.11.2010
Chapter 2	3.6.2004
Chapter 3	1.2.2010
Chapter 4	8.4.2010
Chapter 5	8.4.2010
Chapter 6	8.4.2010
Chapter 7	8.4.2010
Chapter 8	1.7.2010
Chapter 9	8.4.2010
Chapter 10	15.11.2010
Chapter 11	15.11.2010
Chapter 12	8.4.2010
Chapter 13	8.4.2010
Chapter 14	15.11.2010
Schedules	15.11.2010

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1999	62	*Local Government Act 1999*	26.8.1999	1.1.2000 (*Gazette 9.12.1999 p3113*) except s 223(1)(a), (b)—26.8.2001 (s 7(5) *Acts Interpretation Act 1915*)
2000	4	*District Court (Administrative and Disciplinary Division) Amendment Act 2000*	20.4.2000	Sch 1 (cl 23)—1.6.2000 (*Gazette 18.5.2000 p2554*)
2001	(225)	Regulations varying the *Local Government (General) Regulations 1999* (*Gazette 4.10.2001 p4375*)	—	4.10.2001: r 2
2001	67	*Local Government (Consultation on Rating Policies) Amendment Act 2001*	6.12.2001	6.12.2001

2002	14	*Essential Services Commission Act 2002*	5.9.2002	Sch 3 (cl 1)—12.9.2002 (*Gazette 12.9.2002 p3393*)
2002	46	*Local Government (Access to Meetings and Documents) Amendment Act 2002*	12.12.2002	27.2.2003 (*Gazette 27.2.2003 p807*) except s 22(b)—1.1.2000: s 2(3) and except s 7—12.12.2002: s 2(2) and except s 12—22.5.2003 (*Gazette 22.5.2003 p2015*) and except ss 11 & 27—12.12.2004 (s 7(5) *Acts Interpretation Act 1915*)
2003	9	*Statutes Amendment (Gas and Electricity) Act 2003*	12.6.2003	Pt 5 (s 75)—1.7.2003 (*Gazette 26.6.2003 p2812*)
2003	44	*Statute Law Revision Act 2003*	23.10.2003	Sch 1—24.11.2003 (*Gazette 13.11.2003 p4048*)
2003	62	*Highways (Authorised Transport Infrastructure Projects) Amendment Act 2003*	11.12.2003	Pt 3 (ss 7 & 8)—5.8.2004 (*Gazette 5.8.2004 p2851*)
2004	13	*Local Government (Flood Mitigation Infrastructure) Amendment Act 2004*	13.5.2004	3.6.2004 (*Gazette 3.6.2004 p1716*)
2004	30	*Emergency Management Act 2004*	29.7.2004	Sch 1 (cl 4)—25.11.2004 (*Gazette 25.11.2004 p4406*)
2005	35	*Statutes Amendment (Local Government Elections) Act 2005*	14.7.2005	Pt 3 (ss 10—22) & Sch 1 (cll 1—4, 5(2), 6—9)—18.8.2005; Sch 1 (cl 5(1))—1.1.2006 (*Gazette 18.8.2005 p3058*)
2005	40	*Fire and Emergency Services Act 2005*	14.7.2005	Sch 6 (cl 10)—1.10.2005 (*Gazette 29.9.2005 p3547*)
2005	56	*Justices of the Peace Act 2005*	17.11.2005	Sch 2 (cl 33)—1.7.2006 (*Gazette 22.6.2006 p2012*)
2005	60	*Local Government (Financial Management and Rating) Amendment Act 2005*	1.12.2005	Pt 2 (s 5)—1.1.2006 (*Gazette 15.12.2005 p4325*); ss 21 and 23(1), (3) & (4)—1.7.2006 (*Gazette 25.5.2006 p1454*); ss 4 and 6—20, 22, 23(2), 24—35—25.1.2007 (*Gazette 25.1.2007 p276*)
2005	68	*Local Government (Lochiel Park Lands) Amendment Act 2005*	8.12.2005	Pt 2 (s 4)—27.7.2006 (*Gazette 27.7.2006 p2399*)
2005	69	*Adelaide Park Lands Act 2005*	8.12.2005	Sch 1 (cll 9—14)—14.12.2006 (*Gazette 7.12.2006 p4269*)
2006	25	*Development (Development Plans) Amendment Act 2006*	23.11.2006	Sch 1 (cll 1 & 2)—23.11.2008 (s 7(5) *Acts Interpretation Act 1915*)
2006	43	*Statutes Amendment (Domestic Partners) Act 2006*	14.12.2006	Pt 53 (ss 149—152)—1.6.2007 (*Gazette 26.4.2007 p1352*)
2007	8	*Local Government (Stormwater Management) Amendment Act 2007*	5.4.2007	Pt 2 (s 4)—1.7.2007 (*Gazette 10.5.2007 p1978*)
2007	17	*Development (Assessment Procedures) Amendment Act 2007*	5.4.2007	Sch 1 (cl 2)—5.4.2009 (s 7(5) *Acts Interpretation Act 1915*)
2008	9	*Statute Law Revision Act 2008*	17.4.2008	17.4.2008
2008	29	*Local Government (Superannuation Scheme) Amendment Act 2008*	10.7.2008	10.7.2008: s 2(1) except s 4—1.1.2009 (*Gazette 11.12.2008 p5474*)
2009	58	*Statutes Amendment (National Industrial Relations System) Act 2009*	26.11.2009	Pt 6 (s 32)—1.1.2010 (*Gazette 17.12.2009 p6351*)

2009	66	*Statutes Amendment (Council Allowances) Act 2009*	10.12.2009	Pt 2 (s 4)—14.1.2010 (*Gazette 14.1.2010 p51*)
2009	**81**	***Local Government (Accountability Framework) Amendment Act 2009***	**10.12.2009**	**8.4.2010 except ss 4(2), 18, 22, 23, 24(2)—(4), 25, 26, 33, 34, 49 & Sch 1—1.7.2010 (*Gazette 18.2.2010 p817*) and except ss 4(1), 24(1), 35, 47, 48 & 50—15.11.2010 (*Gazette 11.11.2010 p5305*) and except ss 5, 6, 8—10, 12, 13, 20, 24(5), 38, 40—43—uncommenced**
2009	84	*Statutes Amendment (Public Sector Consequential Amendments) Act 2009*	10.12.2009	Pt 87 (ss 204 & 205)—1.2.2010 (*Gazette 28.1.2010 p320*)

Provisions amended

New entries appear in bold.

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

Provision	How varied	Commencement
Ch 1		
s 2	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 4		
s 4(1)		
Adelaide City Council	inserted by 69/2005 Sch 1 cl 9	14.12.2006
Adelaide Park Lands	*deleted by 69/2005 Sch 1 cl 9*	*14.12.2006*
company	amended by 46/2002 s 3(a)	27.2.2003
CPI	**inserted by 81/2009 s 4(1)**	**15.11.2010**
domestic partner	inserted by 43/2006 s 149(1)	1.6.2007
highway	amended by 62/2003 s 7	5.8.2004
independent living units	amended by 43/2006 s 149(2)	1.6.2007
owner	amended by 46/2002 s 3(b), (c)	27.2.2003
relative	amended by 43/2006 s 149(3)	1.6.2007
spouse	substituted by 43/2006 s 149(4)	1.6.2007
supported accommodation	amended by 81/2009 s 4(2)	1.7.2010
unalienated Crown land	inserted by 46/2002 s 3(d)	27.2.2003
s 4(2)	amended by 35/2005 s 10(1)	18.8.2005
s 4(4)	inserted by 35/2005 s 10(2)	18.8.2005
Ch 2		
s 7	amended by 13/2004 s 4	3.6.2004
s 8	amended by 81/2009 s 5(1), (2)	uncommenced—not incorporated
Ch 3		
Ch 3 Pt 1		
s 12		

s 12(4)	amended by 35/2005 s 11(1)	18.8.2005
	amended by 81/2009 s 6(1)	uncommenced—not incorporated
s 12(4a)	s 12(4) contents commencing "The first" designated as s 12(4a) by 44/2003 s 3(1) (Sch 1)	24.11.2003
	deleted by 81/2009 s 6(2)	uncommenced—not incorporated
s 12(5)	substituted by 44/2003 s 3(1) (Sch 1)	24.11.2003
	substituted by 35/2005 s 11(2)	18.8.2005
s 12(6)—(8)	substituted by 35/2005 s 11(2)	18.8.2005
s 12(8a)	inserted by 35/2005 s 11(2)	18.8.2005
s 12(9)	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
	amended by 35/2005 s 11(3)	18.8.2005
s 12(11a)—(11d)	inserted by 35/2005 s 11(4)	18.8.2005
s 12(12)	amended by 35/2005 s 11(5)	18.8.2005
s 12(12a)	inserted by 35/2005 s 11(6)	18.8.2005
s 12(13)	amended by 35/2005 s 11(7)	18.8.2005
s 12(18)	substituted by 35/2005 s 11(8)	18.8.2005
s 12(18a)	inserted by 35/2005 s 11(8)	18.8.2005
s 12(24)	amended by 46/2002 s 4	27.2.2003
s 12(25)	inserted by 46/2002 s 4	27.2.2003
s 13		
s 13(2)	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
Ch 3 Pt 2		
s 19		
s 19(2) and (3)	*deleted by 84/2009 s 204*	*1.2.2010*
s 27		
s 27(3)	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 28		
s 28(3)	substituted by 35/2005 s 12	18.8.2005
s 28(12)	substituted by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 28(21)	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 28(22)	amended by 46/2002 s 5	27.2.2003
Ch 3 Pt 3		
s 33		
s 33(2)	amended by 46/2002 s 6	27.2.2003
s 33(2a)	inserted by 46/2002 s 6	27.2.2003
Ch 4		
Ch 4 Pt 1		
s 44		
s 44(3)	amended by 60/2005 s 4(1), (2)	25.1.2007
	amended by 81/2009 s 7	8.4.2010
Ch 4 Pt 3		
s 48		
s 48(aa1) and (a1)	inserted by 81/2009 s 8(1)	uncommenced—not incorporated

s 48(1)	amended by 81/2009 s 8(2), (4), (5)	uncommenced—not incorporated
	(a) deleted by 81/2009 s 8(3)	uncommenced—not incorporated
s 48(2a)	inserted by 81/2009 s 8(6)	uncommenced—not incorporated
s 48(4a) and (4b)	inserted by 81/2009 s 8(7)	uncommenced—not incorporated
s 48(6a)—(6e)	inserted by 81/2009 s 8(8)	uncommenced—not incorporated
Ch 4 Pt 4		
s 49		
s 49(a1)	inserted by 81/2009 s 9(1)	uncommenced—not incorporated
s 49(1)	amended by 81/2009 s 9(2)	uncommenced—not incorporated
s 49(2)	amended by 81/2009 s 9(3)	uncommenced—not incorporated
Ch 5		
Ch 5 Pt 1		
s 51		
s 51(2)	amended by 35/2005 s 13(1)	18.8.2005
s 51(4)	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
	amended by 35/2005 s 13(2)	18.8.2005
s 51(10)	inserted by 35/2005 s 13(3)	18.8.2005
Ch 5 Pt 2		
s 54		
s 54(2a)	inserted by 46/2002 s 7	12.12.2002
	substituted by 35/2005 s 14(1)	18.8.2005
s 54(8)—(10)	inserted by 35/2005 s 14(2)	18.8.2005
s 56		
s 56(1)	amended by 35/2005 s 15	18.8.2005
Ch 5 Pt 3		
s 58		
s 58(3)	*deleted by 56/2005 Sch 2 cl 33*	*1.7.2006*
s 59		
s 59(1)	amended by 81/2009 s 10	uncommenced—not incorporated
Ch 5 Pt 4		
s 63		
s 63(3a)	inserted by 35/2005 s 16	18.8.2005
s 74		
s 74(4)	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 74(4a)	amended by 43/2006 s 150	1.6.2007
	(c) deleted by 81/2009 s 11(1)	8.4.2010
s 74(4b)	inserted by 81/2009 s 11(2)	8.4.2010
s 74(5a) and (5b)	inserted by 81/2009 s 11(3)	8.4.2010
Ch 5 Pt 5		
s 76 before substitution by 66/2009		
s 76(2)	*amended by 35/2005 s 17(1), (2)*	*18.8.2005*

s 76(5)	*substituted by 35/2005 s 17(3)*	*18.8.2005*
s 76(8)	*substituted by 35/2005 s 17(4)*	*18.8.2005*
s 76(10)	*substituted by 35/2005 s 17(5)*	*18.8.2005*
s 76	substituted by 66/2009 s 4	14.1.2010
s 80	amended by 43/2006 s 151	1.6.2007
Ch 5 Pt 6	inserted by 35/2005 s 18	18.8.2005
Ch 6		
Ch 6 Pt 1		
s 83		
s 83(5)	amended by 46/2002 s 8	27.2.2003
s 84		
s 84(1a)	inserted by 81/2009 s 12(1)	uncommenced—not incorporated
s 84(2)	amended by 81/2009 s 12(2)	uncommenced—not incorporated
s 84(2a)	inserted by 46/2002 s 9	27.2.2003
	amended by 81/2009 s 12(3)	uncommenced—not incorporated
s 84(3)	amended by 81/2009 s 12(4)	uncommenced—not incorporated
s 84(4)	amended by 81/2009 s 12(5)	uncommenced—not incorporated
Ch 6 Pt 2		
s 87		
s 87(10)	amended by 46/2002 s 10	27.2.2003
s 88		
s 88(1a)	inserted by 81/2009 s 13(1)	uncommenced—not incorporated
s 88(2)	amended by 81/2009 s 13(2)	uncommenced—not incorporated
s 88(2a)	inserted by 46/2002 s 11	12.12.2004
	amended by 81/2009 s 13(3)	uncommenced—not incorporated
s 88(3)	amended by 81/2009 s 13(4)	uncommenced—not incorporated
s 88(4)	amended by 81/2009 s 13(5)	uncommenced—not incorporated
Ch 6 Pt 3		
s 90		
s 90(2)	substituted by 46/2002 s 12(a)	22.5.2003
s 90(3)	amended by 46/2002 s 12(b)—(e)	22.5.2003
	(l) deleted by 46/2002 s 12(f)	22.5.2003
	amended by 25/2006 Sch 1 cl 1	23.11.2008
s 90(7a)	inserted by 81/2009 s 14	8.4.2010
s 90(9)	inserted by 46/2002 s 12(g)	22.5.2003
Ch 6 Pt 4		
s 91		
s 91(8)	amended by 46/2002 s 13(a)	27.2.2003
s 91(9)	amended by 46/2002 s 13(b)	27.2.2003
Ch 6 Pt 5		
s 92		
s 92(2)	substituted by 46/2002 s 14	27.2.2003
Ch 6 Pt 6		

s 93A	inserted by 46/2002 s 15	27.2.2003
s 94		
s 94(4)	amended by 46/2002 s 16(a)	27.2.2003
s 94(7a)	inserted by 46/2002 s 16(b)	27.2.2003
s 94A	inserted by 46/2002 s 17	27.2.2003
Ch 7		
Ch 7 Pt 2		
s 106		
s 106(2a)	s 106(2) contents commencing "Payment of" designated as s 106(2a) by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 106(6)	substituted by 60/2005 s 5	1.1.2006
s 106(7)	inserted by 60/2005 s 5	1.1.2006
Ch 7 Pt 3		
s 107		
s 107(3)	s 107(2) contents commencing "In this section" designated as s 107(3) by 44/2003 s 3(1) (Sch 1)	24.11.2003
Ch 7 Pt 4		
s 110		
s 110(3a) and (3b)	inserted by 81/2009 s 15	8.4.2010
s 120		
s 120(9)	footnote 1 designated as s 120(9) by 44/2003 s 3(1) (Sch 1)	24.11.2003
Ch 8		
Ch 8 Pt 1		
s 122		
s 122(1)	amended by 60/2005 s 6(1), (2), (4), (5)	25.1.2007
	(c) deleted by 60/2005 s 6(3)	25.1.2007
	(f) deleted by 60/2005 s 6(5)	25.1.2007
s 122(1a)	inserted by 60/2005 s 6(6)	25.1.2007
s 122(2)	substituted by 25/2006 Sch 1 cl 2	23.11.2008
s 122(3) and (4)	substituted by 60/2005 s 6(7)	25.1.2007
s 122(4a)	inserted by 60/2005 s 6(7)	25.1.2007
s 122(8)	inserted by 60/2005 s 6(8)	25.1.2007
Ch 8 Pt 2	substituted by 60/2005 s 7	25.1.2007
s 123		
s 123(5)	amended by 81/2009 s 16(1)	8.4.2010
s 123(5a)	inserted by 81/2009 s 16(2)	8.4.2010
Ch 8 Pt 3		
Ch 8 Pt 3 Div 1		
s 124		
s 124(3)	footnote 1 designated as s 124(3) by 44/2003 s 3(1) (Sch 1)	24.11.2003
Ch 8 Pt 3 Div 2		

s 125	amended by 60/2005 s 8	25.1.2007
s 126		
s 126(1)	amended by 60/2005 s 9(1)	25.1.2007
s 126(2)	substituted by 60/2005 s 9(2)	25.1.2007
s 126(3)	*deleted by 60/2005 s 9(2)*	*25.1.2007*
s 126(4)	amended by 60/2005 s 9(3)	25.1.2007
Ch 8 Pt 3 Div 3		
s 127		
s 127(1)	amended by 81/2009 s 17	8.4.2010
	(b)—(e) deleted by 81/2009 s 17	8.4.2010
s 127(6)	footnote 1 designated as s 127(6) by 44/2003 s 3(1) (Sch 1)	24.11.2003
Ch 8 Pt 3 Div 4		
s 128		
s 128(2)	amended by 60/2005 s 10(1)	25.1.2007
s 128(2a)	inserted by 60/2005 s 10(2)	25.1.2007
s 128(4a)	inserted by 60/2005 s 10(3)	25.1.2007
s 128(6)—(8)	substituted by 60/2005 s 10(4)	25.1.2007
s 128(9) and (10)	inserted by 60/2005 s 10(4)	25.1.2007
s 129		
s 129(1)	substituted by 81/2009 s 18(1)	1.7.2010
s 129(3)	substituted by 81/2009 s 18(2)	1.7.2010
s 129(4)	amended by 81/2009 s 18(3), (4)	1.7.2010
s 129(5)	amended by 81/2009 s 18(5)	1.7.2010
s 129(5a)	inserted by 60/2005 s 11(1)	25.1.2007
	substituted by 81/2009 s 18(6)	1.7.2010
s 129(5b)—(5e)	inserted by 81/2009 s 18(6)	1.7.2010
s 129(6)	amended by 81/2009 s 18(7)—(9)	1.7.2010
s 129(9)	inserted by 81/2009 s 18(10)	1.7.2010
s 129(8)	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 129(9)	*deleted by 60/2005 s 11(2)*	*25.1.2007*
s 130		
s 130(1)	substituted by 60/2005 s 12	25.1.2007
Ch 8 Pt 3 Div 5	inserted by 60/2005 s 13	25.1.2007
Ch 8 Pt 5		
s 132		
s 132(3)	amended by 60/2005 s 14(1), (2)	25.1.2007
	amended by 81/2009 s 19(1)—(3)	8.4.2010
s 132(4a)	inserted by 81/2009 s 19(4)	8.4.2010
Ch 8 Pt 6	inserted by 60/2005 s 15	25.1.2007
s 132A	amended by 81/2009 s 20	uncommenced—not incorporated
Ch 9		
Ch 9 Pt 1		

s 133	example (b) deleted by 81/2009 s 21	8.4.2010
Ch 9 Pt 2		
s 136		
s 136(1) and (2)	s 136 designated as s 136(1) and (2) by 44/2003 s 3(1) (Sch 1)	24.11.2003
Ch 10		
Ch 10 Pt 1		
s 147		
s 147(2)	amended by 40/2005 Sch 6 cl 10	1.10.2005
s 150	substituted by 60/2005 s 16	25.1.2007
s 151		
s 151(1)	(b) deleted by 60/2005 s 17(1)	25.1.2007
s 151(5)—(7)	inserted by 67/2001 s 2	6.12.2001
s 151(8)	inserted by 67/2001 s 2	6.12.2001
	amended by 60/2005 s 17(2)	25.1.2007
s 151(8a)	inserted by 60/2005 s 17(3)	25.1.2007
s 151(9)	inserted by 67/2001 s 2	6.12.2001
s 151(10)	s 151 footnote 2 designated as s 151(10) by 44/2003 s 3(1) (Sch 1)	24.11.2003
	deleted by 60/2005 s 17(4)	25.1.2007
	inserted by 81/2009 s 22	1.7.2010
s 151(11)	inserted by 81/2009 s 22	1.7.2010
s 152		
s 152(1)	(b) deleted by 60/2005 s 18(1)	25.1.2007
s 152(2)	amended by 60/2005 s 18(2)	25.1.2007
	amended by 81/2009 s 23(1), (2)	1.7.2010
s 152(5)	s 152(4) contents commencing "In this section" amended and designated as s 152(5) by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 153		
s 153(1)	amended by 60/2005 s 19(1)	25.1.2007
s 153(3)	substituted by 60/2005 s 19(2)	25.1.2007
s 153(4) and (5)	inserted by 60/2005 s 19(2)	25.1.2007
s 154		
s 154(2)	amended by 60/2005 s 20(1), (2)	25.1.2007
s 154(3)	*deleted by 60/2005 s 20(3)*	*25.1.2007*
s 155		
s 155(1)		
prescribed service	amended by 60/2005 s 21(1), (2)	1.7.2006
s 155(2a)	**inserted by 81/2009 s 24(1)**	**15.11.2010**
s 155(3)	substituted by 60/2005 s 21(3)	1.7.2006
s 155(4)	amended by 60/2005 s 21(4)	1.7.2006
s 155(5)	amended by 60/2005 s 21(5)	1.7.2006
	amended by 81/2009 s 24(2), (3)	1.7.2010

s 155(6) and (7)	substituted by 81/2009 s 24(4)	1.7.2010
s 155(8)	substituted by 60/2005 s 21(6)	1.7.2006
s 155(10)	inserted by 60/2005 s 21(7)	1.7.2006
s 155(11)	inserted by 81/2009 s 24(5)	uncommenced—not incorporated
s 156		
s 156(7)	substituted by 60/2005 s 22(1)	25.1.2007
s 156(14a) and (14b)	inserted by 67/2001 s 3	6.12.2001
s 156(14c)	*inserted by 67/2001 s 3*	*6.12.2001*
	deleted by 60/2005 s 22(2)	*25.1.2007*
s 156(14d)	inserted by 67/2001 s 3	6.12.2001
s 156(14e)	inserted by 67/2001 s 3	6.12.2001
	amended by 60/2005 s 22(3)	25.1.2007
s 156(14ea)	inserted by 60/2005 s 22(4)	25.1.2007
s 156(14f)	inserted by 67/2001 s 3	6.12.2001
s 156(15)	substituted by 60/2005 s 22(5)	25.1.2007
s 158		
s 158(1)	amended by 60/2005 s 23(1)	1.7.2006
s 158(2)	amended by 60/2005 s 23(2)	25.1.2007
	amended by 81/2009 s 25(1)—(3)	1.7.2010
s 158(3)	amended by 60/2005 s 23(3)	1.7.2006
s 158(4) and (5)	inserted by 60/2005 s 23(4)	1.7.2006
s 158(6)	inserted by 81/2009 s 25(4)	1.7.2010
s 159		
s 159(5)	*deleted by 46/2002 s 18*	*27.2.2003*
s 161		
s 161(1)	amended by 81/2009 s 26	1.7.2010
s 161(4)	s 161(3) contents commencing "For the purposes" amended and designated as s 161(4) by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 166		
s 166(1)	amended by 46/2002 s 19(a)	27.2.2003
	amended by 60/2005 s 24(1)	25.1.2007
s 166(1a)	inserted by 46/2002 s 19(b)	27.2.2003
s 166(3a)	inserted by 46/2002 s 19(c)	27.2.2003
s 166(3b)	inserted by 60/2005 s 24(2)	25.1.2007
s 171 before deletion by 60/2005		
s 171(4)	*amended by 46/2002 s 20*	*27.2.2003*
s 171	*deleted by 60/2005 s 25*	*25.1.2007*
s 173		
s 173(8)	*deleted by 4/2000 s 9(1) (Sch 1 cl 23(a))*	*1.6.2000*
s 181		
s 181(1)	substituted by 60/2005 s 26(1)	25.1.2007

s 181(2)	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
	substituted by 60/2005 s 26(1)	25.1.2007
s 181(3)	*ceased: s 181(16)—omitted under Legislation Revision and Publication Act 2002*	*(1.7.2001)*
s 181(3)	inserted by 60/2005 s 26(1)	25.1.2007
s 181(4)—(7)	substituted by 60/2005 s 26(1)	25.1.2007
s 181(7a)	inserted by 60/2005 s 26(1)	25.1.2007
s 181(8)	amended by 60/2005 s 26(2)	25.1.2007
s 181(8a)	inserted by 60/2005 s 26(3)	25.1.2007
s 181(11)	substituted by 60/2005 s 26(4)	25.1.2007
s 181(12)	amended by 60/2005 s 26(5), (6)	25.1.2007
s 181(14)	*deleted by 60/2005 s 26(7)*	*25.1.2007*
s 181(16)	*deleted by 60/2005 s 26(8)*	*25.1.2007*
s 182		
s 182(1)	amended by 60/2005 s 27(1)	25.1.2007
s 182(8)	inserted by 60/2005 s 27(2)	25.1.2007
s 182A	inserted by 60/2005 s 28	25.1.2007
s 182A(1)	amended by 9/2008 s 2 (Sch 1)	17.4.2008
s 184		
s 184(19)	inserted by 60/2005 s 29	25.1.2007
ss 187A and 187B	inserted by 60/2005 s 30	25.1.2007
Ch 10 Pt 2		
s 188		
s 188(2a)	inserted by 46/2002 s 21	27.2.2003
Ch 11		
Ch 11 Pt 1		
Ch 11 Pt 1 Div 3		
s 193		
s 193(4a)	inserted by 46/2002 s 22(a)	27.2.2003
s 193(7)	inserted by 46/2002 s 22(b)	1.1.2000
s 194		
s 194(1)	amended by 69/2005 Sch 1 cl 10(1)	14.12.2006
s 194(2)	amended by 81/2009 s 27	8.4.2010
s 194(4)	footnote 1 amended and designated as s 194(4) by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 194(5)	inserted by 69/2005 Sch 1 cl 10(2)	14.12.2006
Ch 11 Pt 1 Div 4		
s 196		
s 196(1)	amended by 69/2005 Sch 1 cl 11(1)	14.12.2006
s 196(1a)	inserted by 69/2005 Sch 1 cl 11(2)	14.12.2006
s 196(3)	amended by 69/2005 Sch 1 cl 11(3)	14.12.2006
s 196(7)	amended by 46/2002 s 23	27.2.2003
s 196(8) and (9)	inserted by 69/2005 Sch 1 cl 11(4)	14.12.2006

Ch 11 Pt 1 Div 6		
s 201		
s 201(2)	amended by 46/2002 s 24	27.2.2003
	amended by 81/2009 s 28	8.4.2010
s 202		
s 202(4)	amended by 69/2005 Sch 1 cl 12(1)	14.12.2006
	substituted by 81/2009 s 29	8.4.2010
s 202(4a)	inserted by 81/2009 s 29	8.4.2010
s 202(7)	inserted by 69/2005 Sch 1 cl 12(2)	14.12.2006
Ch 11 Pt 1 Div 7 before deletion by 69/2005		
s 205		
s 205(1)	*amended by 46/2002 s 25*	*27.2.2003*
Ch 11 Pt 1 Div 7	*deleted by 69/2005 Sch 1 cl 13*	*14.12.2006*
Ch 11 Pt 2		
s 210		
s 210(2)	amended by 81/2009 s 30(1)	8.4.2010
s 210(3)	substituted by 81/2009 s 30(2)	8.4.2010
s 210(3a)	inserted by 81/2009 s 30(2)	8.4.2010
s 211		
s 211(1)	s 211 amended and redesignated as s 211(1) by 62/2003 s 8(1)	5.8.2004
s 211(2)	inserted by 62/2003 s 8(2)	5.8.2004
s 216		
s 216(2)	substituted by 81/2009 s 31	8.4.2010
s 217		
s 217(3)	amended by 14/2002 Sch 3 cl 1	12.9.2002
	amended by 9/2003 s 75(1)	1.7.2003
s 217(4)		
Commission	inserted by 14/2002 Sch 3 cl 1	12.9.2002
gas infrastructure	inserted by 9/2003 s 75(2)	1.7.2003
Industry Regulator	*deleted by 14/2002 Sch 3 cl 1*	*12.9.2002*
s 218		
s 218(2)	substituted by 81/2009 s 32	8.4.2010
s 219		
s 219(1a)	inserted by 81/2009 s 33(1)	1.7.2010
s 219(4)	amended by 81/2009 s 33(2)	1.7.2010
s 219(5)—(8)	inserted by 81/2009 s 33(3)	1.7.2010
s 220		
s 220(1a) and (1b)	inserted by 81/2009 s 34(1)	1.7.2010
s 220(3)	amended by 81/2009 s 34(2)	1.7.2010
s 220(4)	amended by 81/2009 s 34(3)	1.7.2010
s 221		

s 221(3)	amended by 46/2002 s 26	27.2.2003
s 223		
s 223(1)	amended by 46/2002 s 27(a)	12.12.2004
	(b) deleted by 46/2002 s 27(a)	12.12.2004
s 223(3)	inserted by 46/2002 s 27(b)	12.12.2004
s 226		
s 226(3)	amended by 35/2005 s 19	18.8.2005
Ch 11 Pt 3		
s 237	**substituted by 81/2009 s 35**	**15.11.2010**
Ch 11 Pt 5		
s 245A	inserted by 17/2007 Sch 1 cl 2	5.4.2009
Ch 12		
Ch 12 Pt 1		
s 246		
s 246(3)	amended by 46/2002 s 28	27.2.2003
s 246(4a)	inserted by 81/2009 s 36	8.4.2010
s 250		
s 250(2)	amended by 46/2002 s 29	27.2.2003
Ch 12 Pt 2		
s 254	amended by 46/2002 s 30	27.2.2003
s 254(1)	s 254 first sentence and table designated as s 254(1) by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 254(2)	s 254 footnote 1 designated as s 254(2) by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 256		
s 256(1)	amended by 4/2000 s 9(1) (Sch 1 cl 23(b))	1.6.2000
s 256(3)	amended by 4/2000 s 9(1) (Sch 1 cl 23(c))	1.6.2000
s 256(4)	*deleted by 4/2000 s 9(1) (Sch 1 cl 23(d))*	*1.6.2000*
s 256(5)	*deleted by 4/2000 s 9(1) (Sch 1 cl 23(e))*	*1.6.2000*
s 256(6)	*deleted by 4/2000 s 9(1) (Sch 1 cl 23(f))*	*1.6.2000*
s 256(7)	*deleted by 4/2000 s 9(1) (Sch 1 cl 23(g))*	*1.6.2000*
s 257		
s 257(1)	amended by 46/2002 s 31	27.2.2003
s 258	amended by 81/2009 s 37	8.4.2010
s 259		
s 259(2)	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
Ch 13		
Ch 13 Pt 1		
s 266		
s 266(1)	amended by 4/2000 s 9(1) (Sch 1 cl 23(h))	1.6.2000
s 266(2)	*deleted by 4/2000 s 9(1) (Sch 1 cl 23(i))*	*1.6.2000*
Ch 13 Pt 2		
s 270		

s 270(a1) and (a2)	inserted by 81/2009 s 38(1)	uncommenced—not incorporated
s 270(1)	amended by 81/2009 s 38(2)	uncommenced—not incorporated
s 270(2)	amended by 60/2005 s 31(1)	25.1.2007
s 270(4a)	inserted by 81/2009 s 38(3)	uncommenced—not incorporated
s 270(5)	amended by 81/2009 s 38(4)	uncommenced—not incorporated
s 270(6)	amended by 81/2009 s 38(5)	uncommenced—not incorporated
s 270(8) and (9)	inserted by 60/2005 s 31(2)	25.1.2007
s 271		
s 271(1)	amended by 81/2009 s 39(1)	8.4.2010
s 271(2)	amended by 81/2009 s 39(2), (3)	8.4.2010
s 271(3a)	inserted by 81/2009 s 39(4)	8.4.2010
Ch 13 Pt 3		
ss 271A and 271B	inserted by 81/2009 s 40	uncommenced—not incorporated
s 272		
s 272(1)	amended by 81/2009 s 41(1)	uncommenced—not incorporated
s 272(2)	amended by 81/2009 s 41(2)	uncommenced—not incorporated
s 272(2a) and (2b)	inserted by 81/2009 s 41(3)	uncommenced—not incorporated
s 272(3)	amended by 81/2009 s 41(4)	uncommenced—not incorporated
s 272(6a)—(6d)	inserted by 81/2009 s 41(5)	uncommenced—not incorporated
s 272(8a)	inserted by 81/2009 s 41(6)	uncommenced—not incorporated
s 273		
s 273(2)	amended by 81/2009 s 42(1), (2)	uncommenced—not incorporated
s 273(4)	deleted by 81/2009 s 42(3)	uncommenced—not incorporated
s 274		
s 274(3)	amended by 81/2009 s 43(1)	uncommenced—not incorporated
s 274(3a) and (3b)	inserted by 81/2009 s 43(2)	uncommenced—not incorporated
s 274(4)	amended by 81/2009 s 43(3)	uncommenced—not incorporated
s 274(7a) and (7b)	inserted by 81/2009 s 43(4)	uncommenced—not incorporated
Ch 13 Pt 4		
s 276		
s 276(7)	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 276(8)	*deleted by 4/2000 s 9(1) (Sch 1 cl 23(j))*	*1.6.2000*
Ch 14		
Ch 14 Pt 4		
s 294		
s 294(1)	amended by 81/2009 s 44(1)	8.4.2010
s 294(1a) and (1b)	inserted by 81/2009 s 44(2)	8.4.2010
s 294(3)	substituted by 81/2009 s 44(3)	8.4.2010
s 294(8)		
work	inserted by 81/2009 s 44(4)	8.4.2010
s 295 before deletion by 81/2009		
s 295(2)		

work	*substituted by 13/2004 s 5*	*3.6.2004*
s 295	*deleted by 81/2009 s 45*	*8.4.2010*
s 298		
s 298(3) and (4)	*deleted by 81/2009 s 46*	*8.4.2010*
s 298(5)	amended by 30/2004 Sch 1 cl 4	25.11.2004
s 302		
s 302(1)	**s 302 redesignated as s 302(1) by 81/2009 s 47**	**15.11.2010**
s 302(2)	**inserted by 81/2009 s 47**	**15.11.2010**
s 302A	inserted by 58/2009 s 32	1.1.2010
s 302B	**inserted by 81/2009 s 48**	**15.11.2010**
s 303		
s 303(9)	amended by 60/2005 s 32	25.1.2007
Sch 1		
Pt 2	substituted by 29/2008 s 4	1.1.2009
	will expire by proclamation: cl 3(4)	
Sch 1A	inserted by 8/2007 s 4	1.7.2007
cl 20		
cl 20(4)	*deleted by 9/2008 s 2 (Sch 1)*	*17.4.2008*
cl 24		
cl 24(1)—(3)	*deleted by 84/2009 s 205*	*1.2.2010*
Sch 2		
cl 4		
cl 4(2)	amended by 35/2005 s 20	18.8.2005
cl 13		
cl 13(2)	amended by 81/2009 s 49(1)	1.7.2010
cl 13(3)	amended by 60/2005 s 33(1)	25.1.2007
	amended by 81/2009 s 49(2)	1.7.2010
cl 14		
cl 14(3)	*deleted by 46/2002 s 32(a)*	*27.2.2003*
cl 19		
cl 19(4)	substituted by 60/2005 s 33(2)	25.1.2007
cl 30		
cl 30(2)	amended by 81/2009 s 49(3)	1.7.2010
cl 30(3)	amended by 60/2005 s 33(3)	25.1.2007
	amended by 81/2009 s 49(4)	1.7.2010
cl 31		
cl 31(2) and (3)	*deleted by 46/2002 s 32(b)*	*27.2.2003*
Sch 3		
cl 1		
family	amended by 43/2006 s 152	1.6.2007
cl 2		
cl 2(3)	**amended by 81/2009 s 50**	**15.11.2010**
Sch 4		

cl 1	amended by 46/2002 s 33(a)—(c)	27.2.2003
	(d) deleted by 60/2005 s 34(1)	25.1.2007
	(e) deleted by 81/2009 s 51	8.4.2010
cl 2	amended by 35/2005 s 21	18.8.2005
	amended by 60/2005 s 34(2)	25.1.2007
cl 3		
representation quota	amended by 46/2002 s 33(d)	27.2.2003
Sch 5	amended by 243/1999 r 23 as inserted by 225/2001 r 7	4.10.2001
	amended by 46/2002 s 34	27.2.2003
	amended by 35/2005 s 22	18.8.2005
	amended by 60/2005 s 35(1)—(3)	25.1.2007
Sch 8		
Pt 1	*heading preceding cl 1 deleted and Pt 1 heading inserted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
	deleted by 69/2005 Sch 1 cl 14(1)	*14.12.2006*
Pt 2		
heading	*heading preceding cl 6 deleted and Pt 2 heading inserted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
	deleted by 69/2005 Sch 1 cl 14(2)	*14.12.2006*
cl 11	inserted by 68/2005 s 4	27.7.2006
cl 12	inserted by 81/2009 s 52	8.4.2010

Transitional etc provisions associated with Act or amendments

Statutes Amendment (Local Government Elections) Act 2005, Sch 1—Transitional provisions

1—Interpretation

In this Schedule—

2006 periodic elections means the periodic elections to determine the membership of councils to be held in 2006 according to section 5 of the *Local Government (Elections) Act 1999*, as substituted by this Act.

2—Term of office

A member of a council—

(a) holding office immediately before the commencement of this clause; or

(b) elected or appointed after the commencement of this clause and before the close of nominations for the 2006 periodic elections,

may, subject to the provisions of the *Local Government Act 1999*, the *Local Government (Elections) Act 1999* or the *City of Adelaide Act 1998* (as the case requires), continue to hold his or her office until the conclusion of the 2006 periodic elections for the relevant office.

3—Allowances

(1) A council may—

(a) review the allowances to be payable to its members under section 24 of the *City of Adelaide Act 1998* or section 76 of the *Local Government Act 1999* (as the case requires) to take into account any relevant provision made by regulation on account of the enactment of this Act;

(b) as may be required, fix or apply allowances for any period up to the conclusion of the 2006 periodic election.

(2) An allowance under subclause (1) must be recorded in the Register of Allowances and Benefits for the relevant council.

4—Training and development policy

A council is not required to have a training and development policy under section 80A of the *Local Government Act 1999* until 1 July 2006.

5—Rolls and electoral processes

(1) The chief executive officer of a council cannot rely on subsection (8) of section 14 of the *Local Government (Elections) Act 1999* (as enacted by this Act) with respect to an entry on a voters roll at the time of the commencement of this subclause unless—

(a) the chief executive officer has sent a notice addressed to the relevant person at the rateable property advising the person about the operation of that section and the entitlements that apply with respect to the enrolment of residents; and

(b) the chief executive officer receives no reply within 28 days of the notice (or receives a reply within that period but the reply does not establish, to the satisfaction of the chief executive officer, that the person is an occupier within the ambit of section 14(1)(a)(iv) or (c)(iv) of the *Local Government (Elections) Act 1999*).

(2) To avoid doubt—

(a) any roll prepared under Schedule 1 of the *City of Adelaide Act 1998* will, until revised, have effect under the *Local Government (Elections) Act 1999*; and

(b) any application or other process made, commenced or dealt with under the *City of Adelaide Act 1998* will (if relevant) have effect for the purposes of the *Local Government (Elections) Act 1999*.

6—Review of council structures

(1) If a council has, before the commencement of this clause, commenced a review under section 12 of the *Local Government Act 1999* by the publication of a notice under subsection (5) of that section (as in existence before the amendment of that section by this Act), the council may continue with the process as set out in that section as if it had not been amended until an appropriate certificate is obtained from the Electoral Commissioner under that section.

(2) However, if—

(a) a proposal within the ambit of subclause (1) proposes that the composition of the relevant council be altered so that—

(i) the council will have a chairperson rather than a mayor; or

(ii) the council will have a mayor rather than a chairperson; and

(b) the council has not, before the commencement of this clause, referred its report on the proposal to the Electoral Commissioner under section 12(12) of the *Local Government Act 1999*,

the proposal cannot proceed unless or until it is approved at a poll in the manner contemplated by section 12(11c) and (11d) of the *Local Government Act 1999* as enacted by this Act.

(3) A proposal within the ambit of subclause (1) will then take effect in accordance with section 12(11b) and (18) of the *Local Government Act 1999* as enacted by this Act.

7—Change to principal member

(1) In addition to the operation of clause 6, if, at the time of the commencement of this clause—

(a) —

(i) a council is undertaking a review of its composition under section 12 of the *Local Government Act 1999* and has referred its report on its proposal or proposals to the Electoral Commissioner under subsection (12) of that section; and

(ii) a proposal is that the composition of the council be altered so that—

(A) the council will have a chairperson rather than a mayor; or

(B) the council will have a mayor rather than a chairperson; or

(b) —

(i) a council has completed a review under section 12 of the *Local Government Act 1999*; and

(ii) a proposal arising from the review is that the composition of the council be altered so that—

(A) the council will have a chairperson rather than a mayor; or

(B) the council will have a mayor rather than a chairperson; and

(iii) the composition of the council is to be altered as from the next general election of members of the council,

then despite the operation of section 12 of the *Local Government Act 1999* (and anything that would otherwise take effect if it were not for the operation of this provision), the proposal cannot take effect unless or until it is approved at a poll of electors for the relevant area as if it were a proposal within the ambit of clause 6(2) (and accordingly subject to the requirements of section 12(11c) and (11d) of the *Local Government Act 1999* as enacted by this Act).

(2) A proposal that is approved under subclause (1) will then have effect in accordance with a determination of the Electoral Commissioner under this clause.

8—Special provision—LGFA

(1) In this clause—

representative member of the LGFA Board means a representative member of the Board of the Local Government Finance Authority of South Australia.

(2) The Governor may, by proclamation—

(a) extend the term of office of a person who, immediately before the date of the proclamation, is a representative member of the LGFA Board to a date fixed by the proclamation;

(b) fix the term of office of a person who is to be elected or appointed (including by virtue of being re-elected or re-appointed) as a representative member of the LGFA Board to fill an office that will become vacant on the date fixed under paragraph (a).

(3) A proclamation under this clause has effect despite section 8(1) of the *Local Government Finance Authority Act 1983*.

9—Other provisions

(1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.

(2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.

(3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—

(a) decreasing the person's rights; or

(b) imposing liabilities on the person.

(4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule (or regulations made under this clause), apply to any amendment or repeal effected by this Act.

Local Government (Lochiel Park Lands) Amendment Act 2005, Sch 1—Amendment of Development Plan

1—Interpretation

In this Schedule—

Development Plan means the Development Plan under the *Development Act 1993* that relates to Campbelltown (City), as consolidated on 10 March 2005.

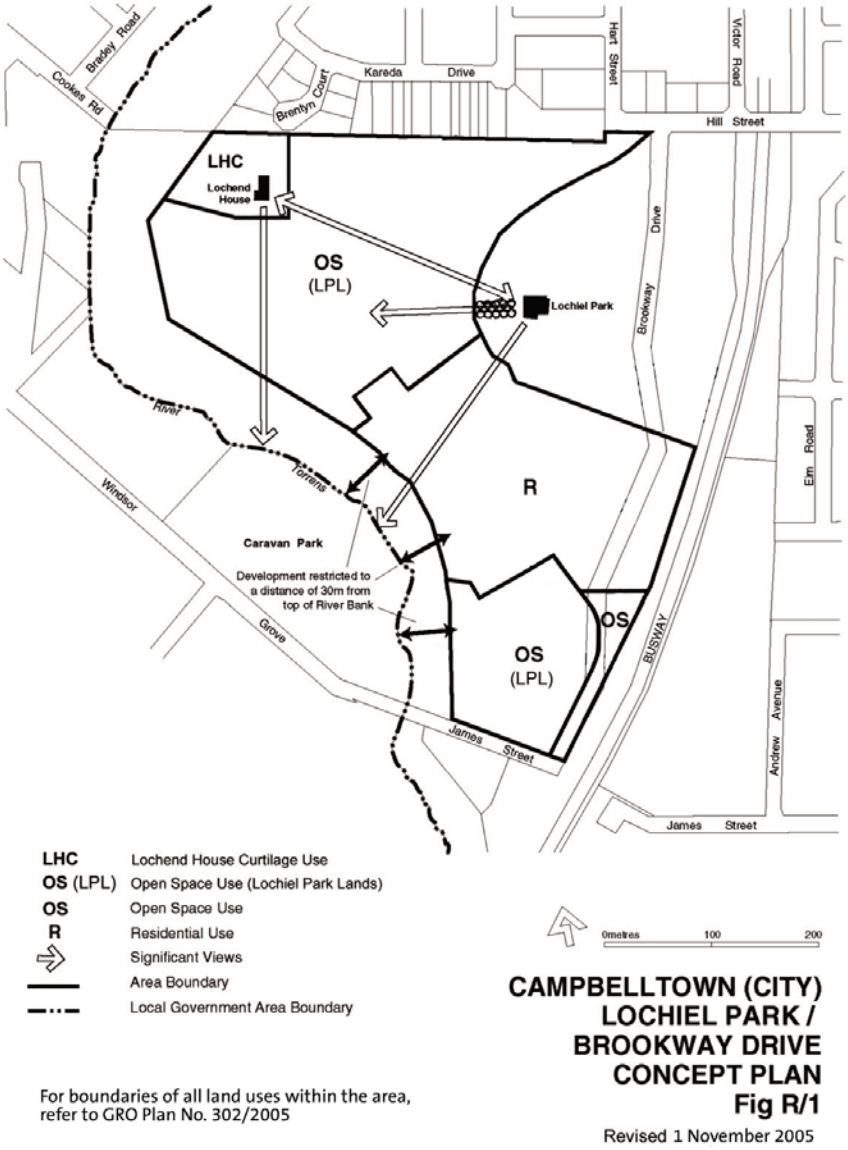
2—Amendment of Development Plan

The Development Plan is amended in the following manner:

(a) page 59, under the heading "Campbelltown Desired Future Character Statement", fourth paragraph—after "and to be utilised" insert:

, as the Lochiel Park Lands in accordance with Schedule 8 clause 11 of the *Local Government Act 1999*,

(b) Concept Plan Figure R/1—delete Concept Plan Figure R/1 and substitute:



(c) page 63, under the heading "Lochiel Park", principle number 5—after "and to be utilised" insert:

, as the Lochiel Park Lands in accordance with Schedule 8 clause 11 of the *Local Government Act 1999*,

Local Government (Superannuation Scheme) Amendment Act 2008, Sch 1—Transitional provisions

1—Interpretation

In this Schedule—

asset includes—

(a) a present, contingent or future legal or equitable estate or interest in real or personal property; or

(b) a present, contingent or future right, power, privilege or immunity;

Board means the Local Government Superannuation Board;

company means the company to be established by the Board in accordance with clause 4;

council means a council constituted under the relevant Act;

liability includes a present, contingent or future liability or obligation;

new scheme means the Local Government Superannuation Scheme continued in existence under a trust deed pursuant to this Schedule;

old scheme means the Local Government Superannuation Scheme under the relevant Act before the relevant day;

participating employer—a council or other authority or body is a participating employer for the purposes of the Local Government Superannuation Scheme if employees or former employees of the council, authority or body are members of the scheme;

relevant Act means the *Local Government Act 1999*;

relevant day means the day on which section 4 of this Act comes into operation;

trust deed means the trust deed to be prepared by the Board in accordance with clause 3.

2—Continuation of Local Government Superannuation Scheme

(1) The scheme known as the *Local Government Superannuation Scheme* is to continue in existence under a trust deed.

(2) A council or other authority or body that is a participating employer for the purposes of the old scheme immediately before the relevant day is to be a participating employer for the purposes of the new scheme and will be taken to be a signatory to the trust deed.

(3) A council or other authority or body that is within the ambit of subclause (2) must remain as a participating employer for the purposes of the new scheme for a period of at least 3 years following the commencement of the trust deed.

(4) Subclause (3) does not derogate—

(a) from the operation of clause 5(5); or

(b) from the operation of any other provision of this Schedule or of the trust deed.

3—Making and commencement of trust deed

(1) A trust deed is to be prepared by the Board for the purposes of continuing the Local Government Superannuation Scheme.

(2) The trust deed will commence on a day specified by the Treasurer by notice in the Gazette.

(3) The Treasurer may not issue a notice under subclause (2) until he or she is satisfied—

(a) that a company has been established in accordance with the requirements specified in clause 4; and

(b) that the trust deed meets the requirements specified in clause 5.

4—Establishment of company

(1) The Board is to establish a company to administer the new scheme in accordance with the trust deed.

(2) The members of the Board at the time of the dissolution of the Board are to be members of the board of directors of the company on the relevant day.

(3) A vacancy in the membership of the board of directors on the relevant day because of a vacancy in the Board's membership is to be filled in accordance with the constitution of the company (and subsequent vacancies will also be filled in accordance with the constitution of the company).

(4) A legal obligation of the Board at the time of the dissolution of the Board becomes, by force of this subclause, a legal obligation of the company (unless otherwise excluded by the Treasurer by notice in the Gazette).

(5) To avoid doubt, subclause (4) includes the obligation to manage financial records and accounts, to prepare financial statements and to arrange any audit associated with the activities of the Board and the operations of the old scheme before the dissolution of the Board under this Schedule.

5—Requirements for new scheme and trust deed

(1) Subject to this clause, the terms, conditions, benefit structure and membership of the old scheme immediately before the relevant day are to be continued under the trust deed in relation to the new scheme unless and until varied in accordance with the terms of the trust deed.

(2) For the purposes of subclause (1), an amendment to the old scheme made by regulation under clause 3 of Schedule 1 Part 2 of the relevant Act that has not come into operation before the relevant day will be taken to have come into operation immediately before that day.

(3) The trust deed is to provide that the trustee for the new scheme will be the company.

(4) The company is to continue to hold office as trustee unless and until another company is appointed to that role in accordance with the terms of the trust deed.

(5) A participating employer is to be required under the trust deed to continue making the required employer contributions in relation to an employee who is a member of the new scheme for as long as the employer continues to be liable in relation to the member.

6—Dissolution of Local Government Superannuation Board

The Board is dissolved by force of this clause on the relevant day.

7—Transfer of assets and liabilities

(1) On the commencement of the trust deed, the assets and liabilities of the old scheme are transferred to the company for the purposes of the new scheme.

(2) The transfer of assets and liabilities under this clause operates by force of this clause and despite the provisions of any other law.

8—Stamp duty

(1) No stamp duty is payable under a law of this State in respect of any transfer of assets or liabilities connected with, or arising out of, the operation of this Schedule.

(2) No person has an obligation under the *Stamp Duties Act 1923* to lodge a statement or return relating to a matter referred to in subclause (1), or to include in a statement or return a record or information relating to such a matter.

9—Revocation of regulations

On the relevant day, all regulations made under clause 3 of Schedule 1 Part 2 of the relevant Act are revoked.

10—Saving provision

Nothing done under this Schedule—

(a) constitutes a breach of, or default under, an Act or other law; or

(b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or

(c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom or in any other way); or

(d) constitutes a civil or criminal wrong; or

(e) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or

(f) releases a surety or other obligee wholly or in part from an obligation.

11—Application of Schedule

It is the intention of the Parliament that this Schedule apply within the State and outside the State to the full extent of the extra-territorial legislative capacity of the Parliament.

12—Other provisions

(1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.

(2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.

(3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—

(a) decreasing the person's rights; or

(b) imposing liabilities on the person.

(4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule, apply to any amendment effected by this Act.

Local Government (Accountability Framework) Amendment Act 2009, Sch 1—Transitional provisions

1—Interpretation

In this Schedule—

principal Act means the *Local Government Act 1999*.

2—Transitional provision—audit opinions

(1) Subject to subclause (2), the auditor of a council is not required—

(a) to undertake that part of an audit required by paragraph (b) of section 129(1) of the principal Act (as enacted by this Act); or

(b) to provide an audit opinion required by paragraph (b) of section 129(3) of the principal Act (as enacted by this Act),

until—

(c) in the case of a prescribed council—the audit in relation to the 2012/2013 financial year;

(d) in the case of any other council—the audit in relation to the 2015/2016 financial year.

(2) The Minister may, on the application of a prescribed council, grant a 1 year extension to the period that would otherwise apply under subclause (1)(c) with or without conditions.

(3) In this clause—

prescribed council means any of the following councils:

(a) City of Burnside;

(b) City of Charles Sturt;

(c) City of Holdfast Bay;

(d) City of Mitcham;

(e) City of Onkaparinga;

(f) City of Playford;

(g) City of Port Adelaide Enfield;

(h) City of Prospect;

(i) City of Salisbury;

(j) City of Tea Tree Gully;

(k) City of West Torrens;

(l) The Corporation of the City of Adelaide;

(m) The Corporation of the City of Campbelltown;

(n) The Corporation of the City of Marion;

(o) The Corporation of the City of Norwood Payneham and St Peters;

(p) The Corporation of the City of Unley;

(q) The Corporation of the Town of Walkerville.

3—Transitional provision—Rebate of rates

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

(a) 2010/2011—25% (or, at the discretion of the council, a higher rebate);

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

Historical versions

Reprint No 1—1.6.2000
Reprint No 2—26.8.2001
Reprint No 3—4.10.2001
Reprint No 4—6.12.2001
Reprint No 5—12.9.2002
Reprint No 6—12.12.2002
Reprint No 7—27.2.2003
Reprint No 8—22.5.2003
Reprint No 9—1.7.2003
Reprint No 10—24.11.2003
3.6.2004
5.8.2004
25.11.2004
12.12.2004
18.8.2005
1.10.2005
1.1.2006
1.7.2006
27.7.2006
14.12.2006
25.1.2007
1.6.2007

1.7.2007

17.4.2008

23.11.2008

1.1.2009

5.4.2009

1.1.2010

14.1.2010

1.2.2010

8.4.2010

1.7.2010