Western Australia

Local Government Act 1995

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Defined terms

Western Australia

Local Government Act 1995

An Act to provide for a system of local government in Western Australia, to amend the *Local Government Act 1960* [2] and for related purposes.

Part 1 — Introductory matters

What this Part is about

This Part deals with some matters that are relevant to the Act generally.

In particular —

(a) section 1.2 provides for the commencement of the Act; and

(b) section 1.3 summarizes the main content of the Act and what it intends to achieve; and

(c) section 1.5 explains the legal status of italicized notes such as this; and

(d) section 1.6 states the position of the Crown; and

(e) other provisions define some terms and concepts used in the Act.

1.1. Short title

This Act may be cited as the *Local Government Act 1995*.

1.2. Commencement

This Act comes into operation on 1 July 1996.

1.3. Content and intent

(1) This Act provides for a system of local government by —

(a) providing for the constitution of elected local governments in the State; and

(b) describing the functions of local governments; and

(c) providing for the conduct of elections and other polls; and

(d) providing a framework for the administration and financial management of local governments and for the scrutiny of their affairs.

(2) This Act is intended to result in —

(a) better decision-making by local governments; and

(b) greater community participation in the decisions and affairs of local governments; and

(c) greater accountability of local governments to their communities; and

(d) more efficient and effective local government.

[(3) deleted]

[Section 1.3 amended: No. 49 of 2004 s. 15; No. 22 of 2023 s. 4.]

1.4. Terms used

In this Act, unless the contrary intention appears —

absolute majority —

(a) in relation to a council, means a majority comprising enough of the members for the time being of the council for their number to be more than 50% of the number of offices (whether vacant or not) of member of the council;

(b) in relation to any other body, means a majority comprising enough of the persons for the time being constituting the body for their number to be more than 50% of the number of offices (whether vacant or not) on the body;

Advisory Board means the Local Government Advisory Board established by section 2.44;

auditor means —

(a) in relation to an audit, other than a performance audit —

(i) in relation to a local government that has an audit contract that is in force — a person for the time being appointed under Part 7 Division 2 to be the auditor of the local government; and

(ii) in relation to a local government that does not have an audit contract that is in force — the Auditor General;

and

(b) in relation to a performance audit — the Auditor General;

caretaker period has the meaning given in section 1.4A(1);

CEO means the chief executive officer of a local government;

commissioner means a commissioner appointed to a local government under sections 2.6(4), 2.36A(3), 2.37(4), 2.37A(1), 8.30 or 8.33;

council means the council of a local government;

councillor means a person who holds the office of councillor on a council (including a person who holds another office under section 2.17(2) or 2.17A(2) or (3) as well as the office of councillor);

councillor mayor or president means a mayor or president elected by the council from amongst the councillors;

Crown lands means lands of the Crown —

(a) not granted or contracted to be granted in fee simple; or

(b) not held or occupied —

(i) under conditional terms of purchase; or

(ii) with a right to acquire the fee simple;

Crown lease means a lease from the Crown of Crown lands, or a licence or concession from the Crown for taking a profit of Crown lands, but does not include —

(a) an instrument executed or issued pursuant to a contract or arrangement with the Crown by virtue of which land is held or occupied with a right, whether subject to compliance with conditions or otherwise, to acquire the fee simple; and

(b) a lease under the *Housing Act 1980*; and

(c) an instrument by virtue of which lands are held or occupied subject to the payment of a peppercorn or nominal rental;

Crown lessee means a person entitled under a Crown lease to an interest or a right in or over Crown lands;

Department means the department of the Public Service assisting the Minister to administer this Act;

Departmental CEO means the chief executive officer of the Department;

district means an area of the State that is declared to be a district under section 2.1;

election year means a year in which ordinary elections for local governments are required to be held;

elector, in relation to a district or ward, means a person who is eligible to be enrolled to vote at elections for the district or ward;

elector mayor or president means a mayor or president elected by electors of a district (including a person who is elected to an office of elector mayor or president under Schedule 4.1A);

Electoral Commissioner means the Electoral Commissioner appointed under the *Electoral Act 1907*;

electoral requirements has the meaning given by section 4.1;

employee means a person employed by a local government under section 5.36;

extraordinary election has the meaning given by section 4.8;

financial year means the period commencing on 1 July and ending on the next following 30 June;

inaugural election has the meaning given by section 4.2;

Inquiry Panel means an Inquiry Panel constituted under section 8.16;

local government means a local government established under this Act;

local government property means anything, whether land or not, that belongs to, or is vested in, or under the care, control or management of, the local government;

local public notice has the meaning given by section 1.7;

member, in relation to the council of a local government, means —

(a) an elector mayor or president of the local government; or

(b) a councillor on the council (including a councillor who holds another office under section 2.17(2) or 2.17A(2) or (3) as well as the office of councillor);

metropolitan area has the same definition as ***metropolitan region*** in the *Planning and Development Act 2005*;

municipal fund means the municipal fund established under section 6.6;

occupier where used in relation to land means the person by whom or on whose behalf the land is actually occupied or, if there is no occupier, the person entitled to possession of the land, and includes a person in unauthorised occupation of Crown land and where under a licence or concession there is a right to take profit of Crown land specified in the licence or concession, means the person having that right;

ordinary election has the meaning given by section 4.4;

ordinary elections day in relation to a local government, means a day fixed by section 4.6 or under section 4.7(2) for holding the polls for ordinary elections for that local government (whether or not any polls are actually held);

owner, where used in relation to land —

(a) means a person who is in possession as —

(i) the holder of an estate of freehold in possession in the land, including an estate or interest under a contract or an arrangement with the Crown or a person, by virtue of which contract or

arrangement the land is held or occupied with a right to acquire by purchase or otherwise the fee simple; or

(ia) the owner of a lot in a leasehold scheme as defined in the *Strata Titles Act 1985* section 3(1); and

(ii) a Crown lessee or a lessee or tenant under a lease or tenancy agreement of the land which in the hands of the lessor is not rateable land under this Act, but which in the hands of the lessee or tenant is by reason of the lease or tenancy rateable land under this or another Act for the purposes of this Act; or

(iii) a mortgagee of the land; or

(iv) a trustee, executor, administrator, attorney, or agent of a holder, lessee, tenant, or mortgagee, mentioned in this paragraph;

or

(b) where there is not a person in possession, means the person who is entitled to possession of the land in any of the capacities mentioned in paragraph (a), except that of mortgagee; or

(c) where, under a licence or concession there is a right to take profit of Crown land specified in the licence or concession, means the person having that right; or

(d) where a person is lawfully entitled to occupy land which is vested in the Crown, and which has no other owner according to paragraph (a), (b), or (c), means the person so entitled; or

(e) means a person who —

(i) under the *Mining Act 1978*, holds in respect of the land a mining tenement within the meaning given to that expression by that Act; or

(ii) in accordance with the *Mining Act 1978* holds, occupies, uses, or enjoys in respect of the land a mining tenement within the meaning given to that expression by the *Mining Act 1904* [3]; or

(iii) under the *Petroleum and Geothermal Energy Resources Act 1967* holds in respect of the land a permit, drilling reservation, lease or licence within the meaning given to each of those expressions by that Act;

or

(f) where a person is in the unauthorised occupation of Crown land, means the person so in occupation;

prescribed means prescribed by regulations;

regional local government means a regional local government established under section 3.61;

regional subsidiary means a regional subsidiary established under section 3.69;

Statewide public notice has the meaning given by section 1.8;

thoroughfare means a road or other thoroughfare and includes structures or other things appurtenant to the thoroughfare that are within its limits, and nothing is prevented from being a thoroughfare only because it is not open at each end;

WALGA means the Western Australian Local Government Association constituted under section 9.58;

ward means one of the wards into which a district is divided under section 2.2.

[Section 1.4 amended: No. 1 of 1998 s. 4 and 6(2); No. 64 of 1998 s. 4(2); No. 49 of 2004 s. 11 and 16(1); No. 38 of 2005 s. 15; No. 28 of 2006 s. 361; No. 35 of 2007 s. 99(2); No. 26 of 2016 s. 4; No. 5 of 2017 s. 4(1); No. 16 of 2019 s. 4; No. 30 of 2018 s. 157; No. 11 of 2023 s. 5.]

1.4A. Caretaker period

(1) In this Act —

caretaker period, in relation to a local government, means a period that —

(a) begins at the close of nominations (as defined in section 4.49(a)) for a relevant election for the local government; and

(b) ends —

(i) on the day after the day on which the returning officer declares the result of the relevant election under section 4.77; or

(ii) if section 4.57(1) applies to the relevant election — on the day after the day on which the close of nominations falls; or

(iii) if section 4.58(1) applies to the relevant election — on the day after the day on which the candidate dies.

(2) In subsection (1) —

relevant election means any of the following —

(a) an ordinary election;

(b) an inaugural election;

(c) an election under section 4.11, 4.12, 4.13 or 4.14;

(d) an election under section 4.15 after an election that is a relevant election under paragraph (a), (b) or (c) or this paragraph is declared invalid.

[Section 1.4A inserted: No. 11 of 2023 s. 6.]

1.5. Descriptions in italics not part of the law

A description that is printed in italics at the beginning of a Part of this Act explaining what it is about is not part of the Act.

1.6. Crown not generally bound

This Act does not bind the Crown except to the extent expressly stated in this Act.

1.7. Local public notice

Where under this Act local public notice of a matter is required to be given, notice of the matter must be —

(a) published on the official website of the local government concerned in accordance with the regulations; and

(b) given in at least 3 of the ways prescribed for the purposes of this section.

[Section 1.7 inserted: No. 16 of 2019 s. 5.]

1.8. Statewide public notice

Where under this Act Statewide public notice of a matter is required to be given, notice of the matter must be given in accordance with section 1.7(a) and (b) and the requirements prescribed for the purposes of this section.

[Section 1.8 inserted: No. 16 of 2019 s. 5.]

1.9. Decisions by absolute majority

The footnote ***Absolute majority required***, applying to a power conferred in this Act, means that —

(a) if the power is conferred on a local government, it can only be exercised by or in accordance with, a decision of an absolute majority of the council; or

(b) if the power is conferred on any other body, it can only be exercised by or in accordance with, a decision of an absolute majority of that body.

*[**1.10.** Deleted: No. 16 of 2019 s. 6.]*

Part 2 — Constitution of local government

What this Part is about

This Part deals with the constitutional framework of the system of elected local government in this State maintained as required by Part IIIB of the Constitution Act 1889.

In particular it deals with —

(a) the division of the State into districts and wards for local government purposes; and

(b) the creation of local governments; and

(c) the creation and membership of elected councils; and

(d) the qualifications of members of councils; and

(e) the terms of office of members of councils and how their offices may become vacant; and

(f) commissioners of local governments.

Division 1 — Districts and wards

2.1. State divided into districts

(1) The Governor, on the recommendation of the Minister, may make an order —

(a) declaring an area of the State to be a district; or

(b) changing the boundaries of a district; or

(c) abolishing a district; or

(d) as to a combination of any of those matters.

(2) Schedule 2.1 (which deals with creating, changing the boundaries of, and abolishing districts) has effect.

(3) The Minister can only make a recommendation under subsection (1) if the Advisory Board has recommended under Schedule 2.1 that the order in question should be made.

2.2. Districts may be divided into wards

(1) The Governor, on the recommendation of the Minister, may make an order —

(a) dividing a district into wards; or

(b) creating new wards in a district that is already divided into wards; or

(c) changing the boundaries of a ward; or

(d) abolishing any or all of the wards into which a district is divided; or

(e) as to a combination of any of those matters.

(2) For the purposes of this Act —

(a) an order that divides a district into wards is to be regarded as establishing a ward system for the district; and

(b) an order that abolishes all of the wards into which a district is divided and does not create new wards, is to be regarded as discontinuing the ward system for the district.

(3) Schedule 2.2 (which deals with wards and representation) has effect.

(4) The Minister can only make a recommendation under subsection (1) if the Advisory Board has recommended under Schedule 2.2 that the order in question should be made.

(5) An order cannot be made under subsection (1) in relation to a district which, under regulations made for the purposes of section 2.2A(1)(a), cannot be divided into wards.

[Section 2.2 amended: No. 11 of 2023 s. 7.]

2.2A. Regulations may provide that district cannot be divided into wards

(1) Regulations may —

(a) provide that a district cannot be divided into wards; and

(b) if the district is divided into wards — abolish all of the wards.

(2) If regulations are made for the purposes of subsection (1)(b) —

(a) the abolition of the wards does not of itself cause a change in the number of offices of councillor on the council; and

(b) regulations may give directions to the effect that, in advance of the abolition of the wards taking effect, Part 4 applies for the purpose of preparing for, and conducting, an election as if the abolition had already taken effect; and

(c) the operation of Part 4 is modified to the extent necessary to give effect to any directions given for the purposes of paragraph (b); and

(d) regulations may give other directions, including directions modifying the operation of this Act, for the purpose of giving effect to the abolition of the wards.

[Section 2.2A inserted: No. 11 of 2023 s. 8.]

2.3. Names of districts and wards

(1) An order under section 2.1 designating an area of the State to be a district is to include an order naming the district.

(2) An order under section 2.2 establishing a ward system for a district is to include an order naming the wards.

(3) If a local government proposes under Schedule 2.2 that an order be made changing the name of the district or a ward, the Minister may recommend to the Governor that the order be made, and the Governor may make the order accordingly.

(4) The Minister can only make a recommendation under subsection (3) if the Advisory Board has recommended under Schedule 2.2 that the order in question should be made.

2.4. District to be designated city, town or shire

(1) An order under section 2.1 declaring an area of the State to be a district is to include an order designating the district a city, town or shire.

(2) The Governor may, by order, change the designation of a district.

(3) A district can only be designated a city if —

(a) the district is in the metropolitan area and has more than 30 000 inhabitants more than half of whom live in an urban area; or

(b) the district, if it is not in the metropolitan area, has more than 20 000 inhabitants more than half of whom live in an urban area.

(4) A district can only be designated a town if more than half of its inhabitants live in an urban area.

(5) A district that is not designated a city or a town is to be designated a shire.

(6) The number of inhabitants of a district at a particular time is to be taken as that established by the Government Statistician appointed under the *Statistics Act 1907* according to the information then available to that person.

(7) Despite any change in the number or distribution of a district's inhabitants, the designation of the district continues to apply until it is changed under this section.

Division 2 — Local governments and councils of local governments

2.5. Local governments created as bodies corporate

(1) When an area of the State becomes a district, a local government is established for the district.

(2) The local government is a body corporate with perpetual succession and a common seal.

(3) The local government has the legal capacity of a natural person.

(4) The corporate name of the local government is the combination of the district's designation and name.

Example:

City of *(name of district)*

(5) If the district's name incorporates its designation, the designation is not repeated in the corporate name of the local government.

Example:

district's name : Albany (Town)

corporate name : Town of Albany

(6) Proceedings may be taken by or against the local government in its corporate name.

2.6. Local governments to be run by elected councils

(1) Each local government is to have an elected council as its governing body.

(2) The offices on the council of the local government of a city or town are those of the mayor, the deputy mayor and the councillors.

(3) The offices on the council of the local government of a shire are those of the president, the deputy president and the councillors.

(4) The Governor may, by order, appoint a person to be the commissioner of a local government until the offices of members of the council are filled for the first time and the council holds its first meeting.

2.7. Role of council

(1) The council —

(a) governs the local government's affairs; and

(b) is responsible for the performance of the local government's functions.

(2) Without limiting subsection (1), the council is to —

(a) oversee the allocation of the local government's finances and resources; and

(b) determine the local government's policies.

[Section 2.7 amended: No. 17 of 2009 s. 4.]

2.8. Role of mayor or president

(1) The mayor or president —

(a) presides at meetings in accordance with this Act; and

(b) provides leadership and guidance to the community in the district; and

(c) carries out civic and ceremonial duties on behalf of the local government; and

(d) speaks on behalf of the local government; and

(e) performs such other functions as are given to the mayor or president by this Act or any other written law; and

(f) liaises with the CEO on the local government's affairs and the performance of its functions.

(2) Section 2.10 applies to a councillor who is also the mayor or president and extends to a mayor or president who is not a councillor.

2.9. Role of deputy mayor or deputy president

The deputy mayor or deputy president performs the functions of the mayor or president when authorised to do so under section 5.34.

2.10. Role of councillors

A councillor —

(a) represents the interests of electors, ratepayers and residents of the district; and

(b) provides leadership and guidance to the community in the district; and

(c) facilitates communication between the community and the council; and

(d) participates in the local government's decision-making processes at council and committee meetings; and

(e) performs such other functions as are given to a councillor by this Act or any other written law.

Division 3 — How offices on the council are filled

2.11. Alternative methods of filling office of mayor or president

(1) When an order is made under section 2.1 declaring an area of the State to be a district, the Governor is, by order, to specify whether the first mayor or president of the local government is to be —

(a) elected by electors of the district under Part 4; or

(b) elected by the council from amongst the councillors under Schedule 2.3, Division 1.

(2) A local government may change* the method of filling the office of mayor or president used by the local government from

the election by the council method to the election by the electors method.

* *Absolute majority required.*

(3) A local government may exercise the power conferred by subsection (2) whether or not a proposal has been made under section 2.12.

(4) The method of filling the office of mayor or president used by a local government is changed from the election by the electors method to the election by the council method if the result of a poll declared under section 2.12A(4) is that a majority of electors of the district who voted at the poll voted in favour of the change.

(5) This section and sections 2.12 and 2.12A are subject to any regulations made for the purposes of section 2.12B.

[Section 2.11 amended: No. 49 of 2004 s. 17(1) and (2); No. 16 of 2019 s. 7; No. 11 of 2023 s. 9.]

2.12. Electors may propose change of method

(1) A proposal to change the method of filling the office of mayor or president used by a local government to the other method mentioned in section 2.11(1)(a) or (b) may be made to the local government by electors of the district who —

(a) are at least 250 in number; or

(b) are at least 10% of the total number of electors of the district.

(2) The proposal is to comply with any regulations about such proposals.

(3) If the proposal is to change the method of filling the office of mayor or president from the election by the council method to the election by the electors method, consideration is to be given to the proposal by such means as the council thinks fit after which a motion to change the method of filling the office of

mayor or president is to be put to the council for decision under section 2.11(2).

[Section 2.12 amended: No. 49 of 2004 s. 17(3).]

2.12A. Procedure to change method to election by council

(1) If —

(a) electors of the district, acting under section 2.12(1), propose; or

(b) the council, by motion passed by it, proposes,

to change the method of filling the office of mayor or president of the local government from the election by the electors method to the election by the council method, the local government is to —

(c) give local public notice of the proposal stating that submissions about the proposal may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given; and

(d) consider or reconsider the proposal in view of any submissions received.

(2) Subject to section 2.13(3), if the local government decides to proceed with the proposal, there is to be a poll of the electors of the district on the proposal and —

(a) the Advisory Board is to —

(i) determine the question to be voted on by the electors of the district; and

(ii) prepare a summary of the case for each way of voting on the question;

and

(b) the Electoral Commissioner is to —

(i) make the summary available to the electors before the poll is conducted; and

(ii) be responsible for the conduct of the poll; and

(iii) appoint a person to be the returning officer of the local government for the poll;

and

(c) the local government is to meet the expenses of the Electoral Commissioner in connection with the poll to the extent required by regulations.

(3) The returning officer is to conduct the poll for and under the direction of the Electoral Commissioner.

(4) As soon as is practicable after the result of the poll is known the returning officer is to declare and give notice of the result in accordance with regulations.

(5) A poll referred to in this section is not to be held more than once in every 4 years in a district, even if a proposal has been made by the electors under section 2.12.

[Section 2.12A inserted: No. 49 of 2004 s. 17(4).]

2.12B. Regulations may require local government to use election by electors method

(1) Regulations may —

(a) provide that the method of filling the office of mayor or president used by a local government —

(i) must be the election by the electors method; and

(ii) cannot be changed to the election by the council method;

and

(b) if the method of filling the office of mayor or president used by the local government is the election by the council method — change the method to the election by the electors method.

(2) If regulations are made for the purposes of subsection (1)(b) —

(a) regulations must, for the purposes of section 2.13(4)(a), provide for the change to have effect in relation to the filling of the office of mayor or president —

(i) at the next ordinary elections for the local government that are held after a day provided for in regulations for the purposes of this subparagraph; or

(ii) subject to subsection (3), at another time that coincides with the holding of a different type of election for the local government;

and

(b) regulations may give directions, including directions modifying the operation of this Act, for the purpose of giving effect to the change.

(3) Provision can be made as referred to in subsection (2)(a)(ii) only if the Minister is satisfied that the provision is appropriate because of particular circumstances.

Examples for this subsection:

1. The offices of members of the council have been declared vacant under section 2.37 and the next election for the local government will be an election under section 4.13.
2. The council has been dismissed under section 8.25(1) and the next election for the local government will be an election under section 4.14.

[Section 2.12B inserted: No. 11 of 2023 s. 10.]

2.13. When new method takes effect

(1) A decision under section 2.11(2) to change to the election by electors method has effect in relation to the filling of the office of mayor or president at the next ordinary elections of the local government held after the decision is made and from then on until a change under section 2.11(4) to the election by the council method takes effect.

(2) A change under section 2.11(4) to the election by the council method has effect in relation to the filling of the office of mayor or president at the first meeting of the council after the ordinary elections of the local government in the year in which the term of office of the incumbent mayor or president ends and from then on until a decision under section 2.11(2) to change to the election by electors method takes effect.

(3) A decision under section 2.11(2) has no effect if it is made during, and a decision under section 2.12A(2) has no effect unless a poll resulting from it is held before, the period beginning on the 80th day before, and ending on, the ordinary election day in the year in which the term of office of the incumbent mayor or president ends.

(4) A change made by regulations to the election by the electors method under section 2.12B(1)(b) has effect —

(a) in accordance with regulations made as referred to in section 2.12B(2)(a); and

(b) from then on, subject to subsection (5).

(5) If a local government ceases to be subject to regulations made for the purposes of section 2.12B(1)(a), the election by the electors method must nevertheless be used for filling the office of mayor or president until a change under section 2.11(4) to the election by the council method takes effect.

[Section 2.13 amended: No. 64 of 1998 s. 19(2); No. 49 of 2004 s. 17(5)-(7); No. 11 of 2023 s. 11.]

2.14. Extension of term in certain cases

If the method of filling the office of mayor or president of a local government is changed from election by electors to election by the council then, despite the Table to section 2.28, an elector mayor or president may continue to hold that office

after the end of his or her term until a mayor or president is elected by the council.

[Section 2.14 amended: No. 11 of 2023 s. 12.]

2.15. Filling office of deputy mayor or deputy president

The deputy mayor or deputy president is to be elected by the council under Schedule 2.3, Division 2.

[Section 2.15 amended: No. 49 of 2004 s. 18.]

2.16. Filling offices of councillors

(1) If a district is not divided into wards the councillors are to be elected by electors of the district under Part 4.

(2) If a district is divided into wards the councillors for a ward are to be elected by electors of that ward under Part 4.

Division 4 — Membership and size of the council

Subdivision 1 — Preliminary

[Heading inserted: No. 11 of 2023 s. 13.]

2.16A. Terms used

In this Division —

election has the meaning given in section 4.1;

election day, in relation to a local government, means a day fixed under this Act for the holding of any poll needed for an election for the local government (whether or not any poll is actually held);

ordinary election day, in relation to a local government, means a day fixed under this Act for the holding of any polls needed for ordinary elections for the local government (whether or not any polls are actually held);

population, in relation to a district, means the total number of people who reside permanently in the district, subject to section 2.16B.

[Section 2.16A inserted: No. 11 of 2023 s. 13.]

2.16B. Population estimates

(1) The Governor may, on the recommendation of the Minister, by order —

(a) specify an estimate of a district's population; and

(b) provide that the specified estimate is taken to be the district's population for the purposes of sections 2.17 and 2.17A.

(2) The order must provide for the provision made under subsection (1)(b) to have effect —

(a) on and from an ordinary election day for the local government; or

(b) subject to subsection (3), on and from an election day for the local government that is not an ordinary election day.

(3) Provision can be made under subsection (2)(b) only if the Minister is satisfied that the provision is appropriate because of particular circumstances.

Examples for this subsection:

1. The offices of members of the council have been declared vacant under section 2.37 and the next election for the local government will be an election under section 4.13.
2. The council has been dismissed under section 8.25(1) and the next election for the local government will be an election under section 4.14.

(4) Before making a recommendation under subsection (1), the Minister must consult the Government Statistician.

(5) An estimate of a district's population recommended under subsection (1) must be either —

(a) an estimate —

(i) that has been published under the *Statistics Act 1907* section 14; or

(ii) that has been approved by the Government Statistician in the course of the consultation under subsection (4);

or

(b) an estimate that, in the Minister's opinion, is substantially derived from statistics or other information —

(i) that has been published under the *Statistics Act 1907* section 14; or

(ii) that has been approved by the Government Statistician in the course of the consultation under subsection (4).

(6) The Minister must, in consultation with the Government Statistician, review an estimate specified in an order under this section at intervals of no more than 5 years with a view to deciding whether the estimate should be replaced.

(7) The Government Statistician must provide the Minister with any assistance requested in the course of a consultation under subsection (4) or (6).

(8) In subsections (4) to (7) —

Government Statistician means the Government Statistician appointed under the *Statistics Act 1907*.

(9) The *Interpretation Act 1984* section 42 applies to an order made under this section as if the order were regulations made under this Act.

[Section 2.16B inserted: No. 11 of 2023 s. 13.]

Subdivision 2 — Membership and size

[Heading inserted: No. 11 of 2023 s. 13.]

2.17. Members of council where mayor or president elected by electors

(1) If the method of filling the office of mayor or president is election by electors, the council is to consist of —

(a) the mayor or president; and

(b) a number of councillors that is —

(i) not less than the minimum number of councillors under subsection (3); but

(ii) not more than the maximum number of councillors under subsection (4).

Note for this paragraph:

For the council of the City of Perth, the number of councillors is 8 — see the *City of Perth Act 2016* section 9.

(2) One of the councillors is to hold the office of deputy mayor or deputy president in conjunction with their office as a councillor.

(3) For the purposes of subsection (1)(b)(i), the minimum number of councillors is as follows —

(a) if the district's population is not more than 75 000 — 4 councillors;

(b) otherwise — 8 councillors.

(4) For the purposes of subsection (1)(b)(ii), the maximum number of councillors is as follows —

(a) if the district's population is not more than 5 000 — 6 councillors;

(b) if the district's population is more than 5 000 but not more than 75 000 — 8 councillors;

(c) otherwise — 14 councillors.

(5) This section is subject to section 2.18A(5).

[Section 2.17 inserted: No. 11 of 2023 s. 13.]

2.17A. Members of council where mayor or president elected by council

(1) If the method of filling the office of mayor or president is election by the council, the council is to consist of a number of councillors that is —

(a) not less than the minimum number of councillors under subsection (4); but

(b) not more than the maximum number of councillors under subsection (5).

(2) One of the councillors is to hold the office of mayor or president in conjunction with their office as a councillor.

(3) Another of the councillors is to hold the office of deputy mayor or deputy president in conjunction with their office as a councillor.

(4) For the purposes of subsection (1)(a), the minimum number of councillors is as follows —

(a) if the district's population is not more than 75 000 — 5 councillors;

(b) otherwise — 9 councillors.

(5) For the purposes of subsection (1)(b), the maximum number of councillors is as follows —

(a) if the district's population is not more than 5 000 — 7 councillors;

(b) if the district's population is more than 5 000 but not more than 75 000 — 9 councillors;

(c) otherwise — 15 councillors.

(6) This section is subject to section 2.18A(5).

[Section 2.17A inserted: No. 11 of 2023 s. 13.]

Subdivision 3 — Orders

[Heading inserted: No. 11 of 2023 s. 14.]

2.18. Fixing and changing number of councillors

(1) When a local government is newly established the Governor, by order made on the recommendation of the Minister, is to —

(a) specify the number of offices of councillor on the council of the local government; and

(b) if the district is to have a ward system, specify the numbers of offices of councillor for the wards.

(2) When an order is made under section 2.2 discontinuing a ward system for a district, the number of offices of councillor on the council remains unchanged unless the order specifies otherwise.

(3) The Governor, on the recommendation of the Minister, may make an order —

(a) changing the number of offices of councillor on a council; or

(b) specifying or changing the number of offices of councillor for a ward; or

(c) as to a combination of those matters.

(4) The Minister can only make a recommendation under subsection (1) or (3) if the Advisory Board has recommended under Schedule 2.2 that the order in question should be made.

(5) This section is subject to section 2.18A.

[Section 2.18 amended: No. 11 of 2023 s. 15.]

2.18A. Change orders

(1) The Governor may, on the recommendation of the Minister, by order (a ***change order***) —

(a) specify the number of offices of councillor that the council of a local government is to have; and

(b) if relevant — specify the number of offices of councillor that each ward in the district is to have.

(2) The Minister can make a recommendation under subsection (1) specifying a number of offices only for either of the following purposes —

(a) if there is, or will be, a change in the method of filling the office of mayor or president used by the local government —

(i) increasing the number of councillors by 1, if the change is from the election by the electors method to the election by the council method; or

(ii) decreasing the number of councillors by 1, if the change is from the election by the council method to the election by the electors method;

(b) if an order has been made under section 2.16B that applies, or will apply, to the district —

(i) increasing the number of councillors to ensure that that number is, or will be, not less than the minimum number that applies, or will apply, to the local government under section 2.17 or 2.17A in consequence of the order made under section 2.16B; or

(ii) decreasing the number of councillors to ensure that that number is, or will be, not more than the maximum number that applies, or will apply, to the local government under section 2.17 or 2.17A in consequence of the order made under section 2.16B.

(3) A change order must provide for the increase or decrease in the number of councillors to have effect —

(a) on and from an ordinary election day for the local government; or

(b) subject to subsection (6), on and from an election day for the local government that is not an ordinary election day.

(4) However, if the increase or decrease in the number of councillors is more than 1, a change order may provide —

(a) for part of the increase or decrease to have effect —

(i) on and from an ordinary election day for the local government; or

(ii) subject to subsection (6), on and from an election day for the local government that is not an ordinary election day;

and

(b) for the remaining part of the increase or decrease to have effect —

(i) on and from the first ordinary election day for the local government that falls after the day on which the part increase or decrease under paragraph (a) takes effect; or

(ii) subject to subsection (6), on and from an election day for the local government that is not an ordinary election day and that falls after the day on which the part increase or decrease under paragraph (a) takes effect.

(5) A part increase or decrease under subsection (4)(a) has effect despite section 2.17 or 2.17A.

(6) Provision can be made under subsection (3)(b) or (4)(a)(ii) or (b)(ii) only if the Minister is satisfied that the provision is appropriate because of particular circumstances.

Examples for this subsection:

1. The offices of members of the council have been declared vacant under section 2.37 and the next election for the local government will be an election under section 4.13.
2. The council has been dismissed under section 8.25(1) and the next election for the local government will be an election under section 4.14.

(7) If the district is divided into wards, a change order may abolish all of the wards on the day on which the increase or decrease, or a part of the increase or decrease, in the number of councillors takes effect.

(8) If the increase or decrease, or a part of the increase or decrease, in the number of councillors takes effect on an ordinary election day for the local government, a change order may provide for this Act to apply as if the Table to section 2.28 provided for the terms of all councillors, or of all councillors for a ward, to end on the ordinary election day.

(9) If provision is made under subsection (8), the ordinary elections are to be held accordingly for the purpose of filling all offices of councillor or of councillor for the ward (as the number of those offices is increased or decreased on the ordinary election day).

(10) The making of a change order does not prevent any order being subsequently made under this Part that applies to the local government or district.

(11) The *Interpretation Act 1984* section 42 applies to a change order as if the change order were regulations made under this Act.

[Section 2.18A inserted: No. 11 of 2023 s. 16.]

Division 5 — Qualifications for holding office on the council

2.19. Qualifications for election to council

(1) A person is qualified to be elected as a member of a council if the person —

(a) is of or over the age of 18 years; and

(b) is an elector of the district; and

[(c) deleted]

(d) is not disqualified for membership of the council under section 2.20, 2.21, 2.22, 2.23 or 2.24; and

(e) is not disqualified by an order under section 5.113, 5.117 or 5.119 from holding office as a member of a council.

(2) A person is not qualified under subsection (1)(b) if he or she is only eligible for enrolment under section 4.30(1)(a) and (b) —

(a) as the nominee of a body corporate under section 4.31; or

(b) because of Schedule 9.3, clause 12(2).

(2A) Regulations may provide that an occupier is not qualified under subsection (1)(b) unless prescribed requirements are met.

(2B) In subsection (2A) —

occupier means a person —

(a) who is eligible to be enrolled under section 4.30(1); and

(b) whose eligibility claim referred to in section 4.30(1)(c) is based on occupation of rateable property.

(2C) The requirements that may be prescribed for the purposes of subsection (2A) include (without limitation) the following —

(a) requirements relating to whether any person is enrolled, or is regarded under section 4.29(2) as being enrolled, as an elector for the Legislative Assembly in respect of a residence that is the rateable property;

(b) other requirements relating to the current, past or future ownership, occupation or use of the rateable property.

(2D) In subsections (2B) and (2C), references to rateable property include a portion of rateable property as described in section 4.31(1D)(a) or (b).

(3) A person who is qualified under subsection (1) can be elected as a councillor for a ward whether or not he or she is an elector of that ward.

[Section 2.19 amended: No. 1 of 1998 s. 5(1); No. 1 of 2007 s. 4; No. 2 of 2012 s. 4; No. 11 of 2023 s. 17.]

2.20. Members of parliament disqualified

(1) A person is disqualified for membership of a council if the person is a member of a parliament.

(2) In this section —

member of a parliament means —

(a) a member of the Legislative Assembly; or

(b) a member of the Legislative Council, including a person who has been elected as a member of that House but is not yet entitled to sit or vote in that House because of section 8(2) of the *Constitution Acts Amendment Act 1899*; or

(c) a member of the House of Representatives; or

(d) a senator, including a person who has been elected as a senator but whose term of service as a senator has not yet begun.

[Section 2.20 amended: No. 2 of 2012 s. 5.]

2.21. Disqualification because of insolvency

A person is disqualified for membership of a council if the person is an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth.

[Section 2.21 amended: No. 10 of 2001 s. 121.]

2.22. Disqualification because of convictions

(1) A person is disqualified for membership of a council if the person —

(a) has been convicted of a crime and is in prison serving a sentence for that crime; or

(b) has been convicted in the preceding 5 years of a serious local government offence; or

(c) has been convicted of an offence for which the indictable penalty was or included —

(i) imprisonment for life; or

(ii) imprisonment for more than 5 years.

(2) A court that has sentenced a person for a serious local government offence may make an order —

(a) waiving the application of subsection (1)(b); or

(b) reducing the period of 5 years mentioned in subsection (1)(b),

and the court's order has effect in accordance with its terms.

(3) In this section —

former provisions means the *Local Government Act 1960* [4] as in force before the commencement of this Act;

indictable penalty means the penalty that the relevant law specified for the offence in the event of a person being convicted of the offence on indictment;

offence means an offence against a law of this State, the Commonwealth, another State or a Territory;

serious local government offence means an offence against this Act or the former provisions for which an offender —

(a) could be sentenced to imprisonment for a term of, or exceeding the period prescribed for the purposes of this section; or

(b) could be sentenced to pay a fine of or exceeding the amount prescribed for the purposes of this section.

[Section 2.22 amended: No. 2 of 2012 s. 12; No. 31 of 2018 s. 4.]

2.23. Disqualification because of membership of another council

A person is disqualified for membership of a council if the person is a member of another council.

2.24. Disqualification because of misapplication of funds or property

A person is disqualified for membership of a council if section 8.43(1), or an order under section 8.43(3), applies to the person.

2.25. Disqualification for failure to attend meetings

(1) A council may, by resolution, grant leave of absence, to a member.

(2) Leave is not to be granted to a member in respect of more than 6 consecutive ordinary meetings of the council without the approval of the Minister, unless all of the meetings are within a period of 3 months.

(3A) Leave is not to be granted in respect of —

(a) a meeting that has concluded; or

(b) the part of a meeting before the granting of leave.

(3) The granting of the leave, or refusal to grant the leave and reasons for that refusal, is to be recorded in the minutes of the meeting.

(4) A member who is absent, without obtaining leave of the council, throughout 3 consecutive ordinary meetings of the council is disqualified from continuing his or her membership of the council, unless all of the meetings are within a 2 month period.

(5A) If a council holds 3 or more ordinary meetings within a 2 month period, and a member is absent without leave throughout each of those meetings, the member is disqualified if he or she is absent without leave throughout the ordinary meeting of the council immediately following the end of that period.

(5) The non-attendance of a member at the time and place appointed for an ordinary meeting of the council does not constitute absence from an ordinary meeting of the council —

(a) if no meeting of the council at which a quorum is present is actually held on that day; or

(b) if the non-attendance occurs —

(i) while the member has ceased to act as a member after written notice has been given to the member under section 2.27(3) and before written notice has been given to the member under section 2.27(5); or

(ii) while proceedings in connection with the disqualification of the member have been commenced and are pending; or

(iiia) while the member is suspended under section 5.117(1)(a)(iv) or Part 8; or

(iii) while the election of the member is disputed and proceedings relating to the disputed election have been commenced and are pending;

or

(c) if the non-attendance occurs during a period for which the member is entitled to parental leave under subsection (5B).

(5B) For the purposes of subsection (5)(c), a member is entitled to parental leave for the period of 6 months beginning on the day on which the member or the member's spouse or de facto partner —

(a) gives birth; or

(b) either alone or with another person and whether in the State or elsewhere — adopts, or becomes the guardian or foster parent of, a person who is under 16 years of age.

(6) A member who before the commencement of the *Local Government Amendment Act 2009* section 5 was granted leave during an ordinary meeting of the council from which the member was absent is to be taken to have first obtained leave for the remainder of that meeting.

[Section 2.25 amended: No. 49 of 2004 s. 19(1); No. 17 of 2009 s. 5; No. 31 of 2018 s. 5; No. 11 of 2023 s. 18.]

2.26. Election to council terminates employment with local government

If a person who is employed by a local government is declared to be elected as a member of the local government's council then, by operation of this section, the person's employment with the local government ends when the person begins his or her term of office as a member.

2.27. Procedure to determine qualification to retain membership of council

(1) In this section —

disqualified, in relation to a member of a council, means —

(a) not qualified under section 2.19(1)(b) to be elected as a member of the council; or

(b) disqualified for membership of the council under section 2.20, 2.21, 2.22, 2.23 or 2.24; or

(c) disqualified from continuing his or her membership of the council under section 2.25.

(2) A member who considers that he or she is disqualified is to advise the CEO in writing without delay.

(3) If the CEO has reason (other than through receiving a notice under subsection (2)) to believe that a member of a council is disqualified the CEO is to give the member a written notice without delay indicating the reasons why the CEO believes the member to be disqualified.

(4) The CEO's notice under subsection (3) has to inform the member —

(a) that if the member believes that he or she is not disqualified, he or she may advise the CEO in writing within 14 days from the date of the service of the notice; and

(b) that if the member accepts that he or she is disqualified in accordance with the terms of the notice, he or she is to advise the CEO in writing.

(5) If, within 28 days from the date of service of the CEO's notice under subsection (3), the member satisfies the CEO that the member is not disqualified, the CEO is to give the member a written notice to that effect.

(6) Unless, within 28 days from the date of service of the CEO's notice under subsection (3), the member —

(a) satisfies the CEO that the member is not disqualified; or

(b) applies to the State Administrative Tribunal asking for a declaration as to whether or not the member is

disqualified and gives a copy of the application to the CEO,

the member is taken to have been disqualified for the reasons indicated in the CEO's notice.

(7A) If subsection (6) applies to a member the CEO is to give the member a written notice to that effect.

(7) The CEO or any other person may, at any time, apply to the State Administrative Tribunal for a declaration as to whether or not a member of a council is disqualified.

[(8) deleted]

(9) A person who acts as a member of a council while disqualified commits an offence.

Penalty: $5 000 or imprisonment for one year.

(10) This section as in force immediately before the commencement of the *Local Government Amendment Act 2009* section 6 applies to and in respect of a notice given under section 2.27(3) before that commencement.

[Section 2.27 amended: No. 55 of 2004 s. 685; No. 17 of 2009 s. 6; No. 2 of 2012 s. 6.]

Division 6 — Terms of office on the council and vacation of office

2.28. Days on which terms begin and end

(1) The days on which the term of a person holding an office on a council begins and ends depend on the nature of the office and the circumstances in which the person is elected to hold the office.

(2) The days are to be determined in accordance with the Table to this section.

Table to section 2.28
Terms of office

Item	Kind of office	How elected	Term begins	Term ends
1.	Elector mayor or president	Elected at an inaugural election, or a section 4.11, 4.12, 4.13 or 4.14 election, in an election year	On the day after — (a) the day on which the poll is held; or (b) if no poll is held, the day on which a poll would have been held	On the third Saturday in October in the fourth year after the year in which the term began (but note sections 2.14 and 2.30)
2.	Elector mayor or president	Elected at an inaugural election, or a section 4.11, 4.12, 4.13 or 4.14 election, in a year other than an election year	On the day after — (a) the day on which the poll is held; or (b) if no poll is held, the day on which a poll would have been held	On the third Saturday in October in the third year after the year in which the term began (but note sections 2.14 and 2.30)
3.	Councillor	Elected at an inaugural election or any other election not dealt with in item 4, 4A, 5, 6, 8 or 9	On the day after — (a) the day on which the poll is held; or (b) if no poll is held, the day on which a poll would have been held	On the day determined by the returning officer under section 4.78 (but note section 2.30)
4.	Elector mayor or president OR councillor	Elected at an ordinary election not dealt with in item 4A	On the day after the ordinary elections day	On the third Saturday in October in the fourth year after the year in which the term began (but note sections 2.14 and 2.30)

Item	Kind of office	How elected	Term begins	Term ends
4A.	Councillor	Elected at an ordinary election which was an election for all offices of councillor, or for all offices of councillor for a ward, in a case where provision made by a change order under section 2.18A(8) applied	On the day after the ordinary elections day	On the day determined by the returning officer under section 4.78 (but note section 2.30)
5.	Elector mayor or president OR councillor	Elected at an extraordinary election not dealt with in item 6, 7 or 8	On the day after — (a) the day on which the poll is held; or (b) if no poll is held, the day of nomination	On the day on which the term of office of the person whose office has become vacant would have ended if the vacancy had not occurred
6.	Elector mayor or president OR councillor	Elected at an extraordinary election to fill a vacancy arising by resignation including an election required under section 4.57 or 4.58 in respect of such an extraordinary election	On the day after — (a) the day on which the poll is held; or (b) if no poll is held, the nomination day, unless the office has not then become vacant in which case the term begins when the office becomes vacant	On the day on which the term of office of the person whose office has or will become vacant would have ended if the vacancy had not occurred
7.	Elector mayor or president	Elected at an extraordinary election required under section 4.57 or	On the day after —	On the third Saturday in October in the fourth year after

Item	Kind of office	How elected	Term begins	Term ends
		4.58 in respect of an ordinary election	(a) the day on which the poll is held; or (b) if no poll is held, the day of nomination	the year in which the term began (but note sections 2.14 and 2.30)
8.	Councillor	Elected at an extraordinary election required under section 4.57 or 4.58 in respect of an ordinary election	On the day after — (a) the day on which the poll is held; or (b) if no poll is held, the day of nomination	On the day determined by the returning officer under section 4.78 (but note section 2.30)
9.	Elector mayor or president OR councillor	Elected at a section 4.15 election	On the day after — (a) the day on which the poll is held; or (b) if no poll is held, the day of nomination	On the day ascertained as if the election were the election that has been declared invalid
10.	Elector mayor president OR councillor	Appointed under section 4.57(3)	On the day on which — (a) the person is appointed; or (b) the person's term would have begun if the person had been elected under section 4.57(1), whichever is later	On the day on which the term would have ended if the person had been elected under section 4.57(1) (but see Schedule 4.2, clause 9)
11.	Councillor mayor or president	Elected at any election	When the person is elected	When the mayor or president is next elected at or after the local government's

Item	Kind of office	How elected	Term begins	Term ends
				next ordinary elections
12.	Deputy mayor or deputy president	Elected at any election	When the person is elected	At the start of the first meeting of the council after the local government's next ordinary elections
13.	Elector mayor or president OR councillor	Elected under Schedule 4.1A	On the day on which the person is elected	On the day on which the former member's term of office would have ended had the office not become vacant
14.	Councillor	Elected under Schedule 4.1B	On the day after the day on which the poll for the concurrent election is held	On the day on which the former member's term of office would have ended had the office not become vacant

[Section 2.28 amended: No. 66 of 2006 s. 4; No. 2 of 2012 s. 7; No. 11 of 2023 s. 19.]

2.29. Declaration

(1) A person elected as an elector mayor or president or as a councillor has to make a declaration in the prescribed form before acting in the office.

(2) A person elected by the council as mayor, president, deputy mayor or deputy president has to make a declaration in the prescribed form before acting in the office.

(3) A declaration required by this section is to be taken or made before a prescribed person.

(4) A person who acts in an office contrary to this section commits an offence.

Penalty: $5 000 or imprisonment for one year.

[Section 2.29 amended: No. 24 of 2005 s. 57.]

2.30. Terms extended if ordinary elections delayed

Where an ordinary election is deferred or adjourned under this Act until after the third Saturday in October in any year, a member of a council whose term of office expires on that day can continue to act in the office until the substituted election day.

[Section 2.30 amended: No. 66 of 2006 s. 5.]

2.31. Resignation

(1) An elector mayor or president may resign from the office of mayor or president.

(2) A councillor may —

(a) resign from the office of councillor;

(b) resign from the office of councillor mayor or president, deputy mayor or deputy president.

(3) Written notice of resignation is to be signed and dated by the person who is resigning and delivered to the CEO.

(4) The resignation takes effect from the date of delivery of the notice or from a later day specified in the notice.

2.32. How extraordinary vacancies occur in offices elected by electors

The office of a member of a council as an elector mayor or president or as a councillor becomes vacant if the member —

(a) dies; or

(b) resigns from the office; or

(c) does not make the declaration required by section 2.29(1) within 2 months after being declared elected to the office; or

(d) advises or accepts under section 2.27 that he or she is disqualified, or is declared to be disqualified by the State Administrative Tribunal acting on an application under section 2.27; or

(da) is disqualified by an order under section 5.113, 5.117 or 5.119 from holding office as a member of a council; or

(db) is dismissed under section 8.15L or 8.25(2); or

(e) becomes the holder of any office or position in the employment of the local government; or

(f) while holding an office of councillor, is elected to the office of elector mayor or president on the council.

[Section 2.32 amended: No. 55 of 2004 s. 686; No. 24 of 2005 s. 58; No. 1 of 2007 s. 5; No. 31 of 2018 s. 6; No. 11 of 2023 s. 20.]

*[**2.33.** Deleted: No. 2 of 2012 s. 8.]*

2.34. How extraordinary vacancies occur in offices elected by council

(1) The office of a member of a council as a councillor mayor or president, deputy mayor or deputy president becomes vacant if the member —

(a) ceases to be a councillor under section 2.32; or

(b) resigns from the office; or

(c) does not make the declaration required by section 2.29(2) within 2 months after being elected to the office; or

(d) being the deputy mayor or deputy president, is elected by the council as mayor or president of the council.

(2) A person who holds an office referred to in subsection (1) immediately before an ordinary elections day continues to hold that office after that day (whether or not he or she ceases to be a councillor on that day) until his or her term of office ends under item 11 or 12 of the Table to section 2.28.

[Section 2.34 amended: No. 2 of 2012 s. 9.]

2.35. Vacancies on restructure of districts, wards or membership

Directions given by order under section 9.62 to give effect to an order under one or more of sections 2.1, 2.2 and 2.18 may direct which offices of members (if any) of a council are to become vacant, and when those offices become vacant.

2.36. Vacancies on dismissal of council or council member

(1) If a council is dismissed under section 8.25(1)the offices of the members become vacant from the time when the order dismissing the council takes effect.

(2) If a council member is dismissed under section 8.15L or 8.25(2) the office of the member becomes vacant from the time when the order dismissing the member takes effect.

[Section 2.36 amended: No. 31 of 2018 s. 7.]

2.36A. Power to declare offices vacant if district to be abolished

(1) If an order abolishing a district is made so as to take effect on a day other than the day on which that order is published in the *Gazette*, the Governor may, by order, declare all the offices of members of the council to be vacant.

(2) A declaration under this section —

(a) has no effect if it is made more than 2 years before the date on which the district is to be abolished; and

(b) takes effect from the time specified in it.

(3) When a declaration has been made under this section the Governor may, by order, appoint a person as commissioner of the local government until the district is abolished.

[Section 2.36A inserted: No. 64 of 1998 s. 4(1).]

2.37. Power to declare offices vacant

(1) If more than ½ of the offices of members of a council are vacant for any reason, the Governor may, by order, declare all the remaining offices of members to be vacant.

(2) If the Minister receives notification under section 5.3(3) about the failure of a council to hold a meeting, the Governor may, by order, declare all the offices of members of the council to be vacant.

(3) A declaration under this section takes effect from the time specified in the declaration.

(4) When a declaration has been made under this section the Governor may, by order, appoint a person to be the commissioner of the local government until the offices of members of the council are filled again and the new council holds its first meeting.

(5) An order under subsection (4) is to fix a day for any poll needed for the election of members to fill the vacant offices again.

(6) The day fixed is to be a day that is as soon as practicable after the declaration takes effect and allows enough time for the electoral requirements to be complied with, but is not to be later than 2 years after the day on which the declaration takes effect.

[Section 2.37 amended: No. 49 of 2004 s. 21.]

2.37A. Vacancies in all offices for any other reason

(1) If all the offices of members of a council have become vacant, or are going to become vacant, for any reason other than an order under section 2.36A(1), 2.37(1) or (2) or 8.25(1), the

Governor may, by order, appoint a person to be the commissioner of the local government until the offices of members of the council are filled again and the new council holds its first meeting.

(2) An order under subsection (1) is to fix a day for any poll needed for the election of members to fill the vacant offices again.

(3) The day fixed is to be a day that is as soon as practicable after the appointment takes effect and allows enough time for the electoral requirements to be complied with, but is not to be later than 2 years after the day on which the appointment takes effect.

[Section 2.37A inserted: No. 1 of 1998 s. 6(1); amended: No. 64 of 1998 s. 4(3); No. 49 of 2004 s. 22; No. 31 of 2018 s. 8.]

Division 7 — Commissioners

2.38. Function of commissioner

(1) The function of a commissioner of a local government is to exercise the powers and discharge the duties of the council of the local government and its mayor or president.

(2) A commissioner is to be regarded as being the council.

(3) Unless section 2.43 applies, or the contrary intention appears, a reference in this Act or another written law to a local government, a council or a member of a council includes reference to a commissioner.

2.39. Appointment of commissioner

(1) A commissioner of a local government can be appointed by the Governor under the power given by section 2.6(4), 2.36A(3), 2.37(4), 2.37A(1), 8.30 or 8.33 and not otherwise.

(2) Subsection (1) does not prevent the appointment of a person under Schedule 2.4 clause 4 to fill a vacancy in the office of commissioner.

[Section 2.39 amended: No. 1 of 1998 s. 6(3); No. 64 of 1998 s. 4(4); No. 17 of 2009 s. 7.]

2.40. Joint commissioners

(1) A power to appoint a commissioner includes power to appoint 3 or 5 commissioners to administer the local government and to appoint one of them to be the chairperson and another to be the deputy chairperson.

(2) If 3 or 5 commissioners are appointed —

(a) they are to exercise the powers and discharge the duties of the council of the local government jointly; and

(b) the chairperson is to exercise the powers and discharge the duties of the mayor or president; and

(c) the deputy chairperson is to exercise the powers and discharge the duties of the deputy mayor or deputy president.

2.41. Appointment, tenure, meetings etc.

Schedule 2.4 (which contains provisions about commissioners) has effect.

2.42. Commissioner to make declaration

(1) A person cannot act in the office of commissioner until he or she has made a declaration in the prescribed form.

(2) A person who acts in an office contrary to this section commits an offence.

Penalty: $5 000 or imprisonment for one year.

[Section 2.42 amended: No. 24 of 2005 s. 59.]

2.43. Applicability of certain provisions of this Act

(1) Division 5 does not apply to a commissioner except to the extent required by Schedule 2.4, clauses 1 and 3(c).

(2) Division 6 does not apply to a commissioner.

(3) Part 5, Division 6 does not apply to an interest that a commissioner has in a question relating to a payment or reimbursement under Schedule 2.4, clause 5.

Division 8 — Local Government Advisory Board

2.44. Advisory Board, establishment of

(1) There is established a body to be known as the Local Government Advisory Board.

(2) Schedule 2.5 (which contains provisions about the Local Government Advisory Board) has effect.

2.45. Advisory Board, functions of

(1) The functions of the Advisory Board include —

(a) considering and, if required by this Act, inquiring into any proposal made to it under this Act that an order be made to do any or all of the matters in section 2.1, 2.2, 2.3, 2.18(1) or 2.18(3); and

(b) making recommendations to the Minister on those proposals; and

(c) carrying out any other inquiries the Minister may direct; and

(d) considering whether as a consequence of any recommendation the Board proposes to make to the Minister, the making of an order to do any or any other of the matters in section 2.1, 2.2, 2.3, 2.18(1) or 2.18(3) in respect of a relevant district is or may be necessary.

(2) In subsection (1)(d) —

relevant district means a district to which the proposed recommendation relates or an adjoining district.

(3) If the Advisory Board considers that the making of an order referred to in subsection (1)(d) is or may be necessary, the Board

is to consider or inquire into the making of any such order as if it had received a proposal that such an order be made.

Part 3 — Functions of local governments

What this Part is about

This Part describes the functions of a local government and deals with some important issues that the performance of those functions may involve.

In particular —

(a) Division 1 describes the general function of a local government and contains some other general provisions;

(b) Divisions 2 and 3 deal with legislative and executive functions respectively;

(c) Division 4 allows functions to be performed by regional local governments.

Division 1 — General

3.1. General function

(1) The general function of a local government is to provide for the good government of persons in its district.

(1A) Without limiting subsection (1), the general function of a local government must be performed having regard to the following —

(a) the need —

(i) to promote the economic, social and environmental sustainability of the district; and

(ii) to plan for, and to plan for mitigating, risks associated with climate change; and

(iii) in making decisions, to consider potential long-term consequences and impacts on future generations;

(b) the need —

(i) to recognise the particular interests of Aboriginal people; and

(ii) to involve Aboriginal people in decision-making processes;

(c) the need to consider collaboration with other local governments.

(2) The scope of the general function of a local government is to be construed in the context of its other functions under this Act or any other written law and any constraints imposed by this Act or any other written law on the performance of its functions.

(3) A liberal approach is to be taken to the construction of the scope of the general function of a local government.

[Section 3.1 amended: No. 11 of 2023 s. 21.]

3.2. Relationship to State Government

The scope of the general function of a local government in relation to its district is not limited by reason only that the Government of the State performs or may perform functions of a like nature.

3.3. Act not to affect Crown's rights concerning alienated land

Nothing that this Act authorises a local government or anyone else to do prevents the Crown or a person acting on its behalf from doing anything relating to or affecting land alienated from the Crown that could have been done if this Act had not been enacted.

3.4. Functions may be legislative or executive

The general function of a local government includes legislative and executive functions.

Division 2 — Legislative functions of local governments

Subdivision 1 — Local laws made under this Act

3.5. Legislative power of local governments

(1) A local government may make local laws under this Act prescribing all matters that are required or permitted to be prescribed by a local law, or are necessary or convenient to be so prescribed, for it to perform any of its functions under this Act.

(2) A local law made under this Act does not apply outside the local government's district unless it is made to apply outside the district under section 3.6.

(3) The power conferred on a local government by subsection (1) is in addition to any power to make local laws conferred on it by any other Act.

(4A) Nothing in the *Building Act 2011* prevents a local government from making local laws under this Act about building work, demolition work, a standard for the construction or demolition of buildings or incidental structures, or the use and maintenance of, and requirements in relation to, existing buildings or incidental structures, as those terms are defined in section 3 of that Act.

(4B) Nothing in the *Health (Miscellaneous Provisions) Act 1911* or the *Public Health Act 2016* prevents a local government from making local laws under this Act about matters relating to public health (as defined in the *Public Health Act 2016* section 4(1)).

(4) Regulations may set out —

(a) matters about which, or purposes for which, local laws are not to be made; or

(b) kinds of local laws that are not to be made,

and a local government cannot make a local law about such a matter, or for such a purpose or of such a kind.

(5) Regulations may set out such transitional arrangements as are necessary or convenient to deal with a local law ceasing to have effect because the power to make it has been removed by regulations under subsection (4).

[Section 3.5 amended: No. 64 of 1998 s. 5; No. 24 of 2011 s. 166(2); No. 19 of 2016 s. 166.]

3.6. Places outside district

(1) If the Governor's approval has been first obtained, a local government may make a local law under this Act that applies outside its district.

(2) A local government cannot, under subsection (1), make a local law that applies to —

(a) a part of the State that is in the district of another local government; or

(b) a part of the State to which a local law made by another local government concerning the same subject matter applies under this section.

(3) The Governor may revoke any approval given under subsection (1) and, after that revocation, a local law made under the approval ceases to apply to the part of the State for which the approval was given.

(4) The Minister is to cause notice of any revocation under subsection (3) to be published in the *Gazette.*

3.7. Inconsistency with written laws

A local law made under this Act is inoperative to the extent that it is inconsistent with this Act or any other written law.

3.8. Local laws may adopt codes etc.

(1) A local law made under this Act may adopt the text of —

(a) any model local law, or amendment to it, published under section 3.9; or

(b) a local law of any other local government; or

(c) any code, rules, specifications, or standard issued by Standards Australia or by such other body as is specified in the local law.

(2) The text may be adopted —

(a) wholly or in part; or

(b) as modified by the local law; or

(c) as it exists at a particular date or, except if the text of a model local law is being adopted, as amended from time to time.

(3) The adoption may be direct, by reference made in the local law, or indirect, by reference made in any text that is itself directly or indirectly adopted.

[Section 3.8 amended: No. 74 of 2003 s. 79.]

3.9. Model local laws

(1) The Governor may cause to be prepared and published in the *Gazette* model local laws the provisions of which a local law made under this Act may adopt by reference, with or without modifications.

(2) Model local laws have no effect except to the extent that they are adopted.

(3) The Governor may, by notice published in the *Gazette*, amend a model local law published under this section.

(4) An amendment of a model local law does not affect any local law that adopted the model local law before the amendment but the amendment may be adopted by a further local law.

3.10. Creating offences and prescribing penalties

(1) A local law made under this Act may provide that contravention of a provision of the local law is an offence, and may provide for the offence to be punishable on conviction by a penalty not exceeding a fine of $5 000.

(2) If the offence is of a continuing nature, the local law may make the person liable to a further penalty not exceeding a fine of $500 in respect of each day or part of a day during which the offence has continued.

(3) The local law may provide for the imposition of a minimum penalty for the offence.

(4) The level of the penalty may be related to —

(a) the circumstances or extent of the offence;

(b) whether the offender has committed previous offences and, if so, the number of previous offences that the offender has committed.

[(5) deleted]

(6) A local law made under this Act may specify the method and the means by which any fines imposed are to be paid and collected, or recovered.

[Section 3.10 amended: No. 1 of 1998 s. 7.]

Subdivision 2 — Local laws made under any Act

3.11. Subdivision applies to local laws made under any Act

This Subdivision applies to local laws made under this Act and the procedure for making them and, unless a contrary intention appears in that other Act, to local laws made under any other Act, and the procedure for making them.

3.12. Procedure for making local laws

(1) In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.

(2A) Despite subsection (1), a failure to follow the procedure described in this section does not invalidate a local law if there has been substantial compliance with the procedure.

(2) At a council meeting the person presiding is to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner.

(3) The local government is to —

(a) give local public notice stating that —

(i) the local government proposes to make a local law the purpose and effect of which is summarized in the notice; and

(ii) a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and

(iii) submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given;

and

(b) as soon as the notice is given, give a copy of the proposed local law and a copy of the notice to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister; and

(c) provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.

[(3a) deleted]

(4) After the last day for submissions, the local government is to consider any submissions made and may make the local law* as proposed or make a local law* that is not significantly different from what was proposed.

** Absolute majority required.*

(5) After making the local law, the local government is to publish it in the *Gazette* and give a copy of it to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister.

(6) After the local law has been published in the *Gazette* the local government is to give local public notice —

(a) stating the title of the local law; and

(b) summarizing the purpose and effect of the local law (specifying the day on which it comes into operation); and

(c) advising that the local law is published on the local government's official website and that copies of the local law may be inspected at or obtained from the local government's office.

(7) The Minister may give directions to local governments requiring them to provide to the Parliament copies of local laws they have made and any explanatory or other material relating to them.

(8) In this section —

making in relation to a local law, includes making a local law to amend the text of, or repeal, a local law.

[Section 3.12 amended: No. 1 of 1998 s. 8; No. 64 of 1998 s. 6; No. 49 of 2004 s. 16(4) and 23; No. 26 of 2016 s. 5; No. 16 of 2019 s. 8.]

3.13. Procedure where significant change in proposal

If during the procedure for making a proposed local law the local government decides to make a local law that would be

significantly different from what it first proposed, the local government is to recommence the procedure.

3.14. Commencement of local laws

(1) Unless it is made under section 3.17, a local law comes into operation on the 14th day after the day on which it is published in the *Gazette* or on such later day as may be specified in the local law.

(2) A local law made under section 3.17 comes into operation on the day on which it is published in the *Gazette* or on such later day as may be specified in the local law.

[Section 3.14 amended: No. 1 of 1998 s. 9.]

3.15. Local laws to be publicised

A local government is to take reasonable steps to ensure that the inhabitants of the district are informed of the purpose and effect of all of its local laws.

3.16. Periodic review of local laws

(1) Within a period of 8 years from the day when a local law commenced or a report of a review of the local law was accepted under this section, as the case requires, a local government is to carry out a review of the local law to determine whether or not it considers that it should be repealed or amended.

(2) The local government is to give local public notice stating that —

(a) the local government proposes to review the local law; and

(b) a copy of the local law may be inspected or obtained at any place specified in the notice; and

(c) submissions about the local law may be made to the local government before a day to be specified in the

notice, being a day that is not less than 6 weeks after the notice is given.

[(2a) deleted]

(3) After the last day for submissions, the local government is to consider any submissions made and cause a report of the review to be prepared and submitted to its council.

(4) When its council has considered the report, the local government may determine* whether or not it considers that the local law should be repealed or amended.

** Absolute majority required.*

[Section 3.16 amended: No. 64 of 1998 s. 7; No. 49 of 2004 s. 24; No. 16 of 2019 s. 9.]

3.17. Governor may amend or repeal local laws

(1) The Governor may make local laws to amend the text of, or repeal, a local law.

(2) Subsection (1) does not include the power to amend a local law to include in it any provision that bears no reasonable relationship to the local law as in force before the amendment.

(3) The Minister is to give a local government notice in writing of any local law that the Governor makes to amend the text of, or repeal, any of the local government's local laws.

(4) Section 5.94 applies as if a local law made under this section by the Governor were a local law made by the local government in accordance with section 3.12.

(5) The reference in the *Interpretation Act 1984* section 42(8)(b) to local laws includes local laws made under this section by the Governor.

[Section 3.17 amended: No. 16 of 2019 s. 10.]

Division 3 — Executive functions of local governments

Subdivision 1 — Performing executive functions

3.18. Performing executive functions

(1) A local government is to administer its local laws and may do all other things that are necessary or convenient to be done for, or in connection with, performing its functions under this Act.

(2) In performing its executive functions, a local government may provide services and facilities.

(3) A local government is to satisfy itself that services and facilities that it provides —

(a) integrate and coordinate, so far as practicable, with any provided by the Commonwealth, the State or any public body; and

(b) do not duplicate, to an extent that the local government considers inappropriate, services or facilities provided by the Commonwealth, the State or any other body or person, whether public or private; and

(c) are managed efficiently and effectively.

3.19. Places to be regarded as within district

(1) For the purposes of the performance by a local government of any of its executive functions, its district is to be regarded as including —

(a) any part of another district in relation to which it has been given approval by the local government of that district to perform that function; and

(b) any part of the State in relation to which it has been given approval by the Governor to perform that function.

(2) Approval cannot be given under subsection (1)(b) in relation to a part of the State that is in a district.

(3) The Governor may revoke any approval given under subsection (1)(b).

(4) If the Governor has, under section 3.6, given approval for a local government to make a local law that has effect as if the local government's district included a part of the State that is not in a district, that approval is to be taken to include approval under this section to the extent necessary for the proper administration of that local law.

3.20. Performing functions outside district

(1) Things done by a local government in performing its executive functions may be done outside its own district but before it can do anything on land outside its own district that is not local government property of that local government it is required to have obtained the consent of —

(a) the owner of the land; and

(b) if the land is occupied, the occupier of the land; and

(c) if the land is under the control or management of any other person, that other person.

(2) This section does not apply to anything that a local government does in the district of another local government if it is done on behalf of the local government of that district.

3.21. Duties when performing functions

(1) In performing its executive functions, a local government, so far as is reasonable and practicable, is to —

(a) ensure that —

(i) the lawful use of any land, thoroughfare or premises is not obstructed, and any reasonable request that a person makes to avoid such obstruction is met; and

(ii) as little harm or inconvenience is caused and as little damage is done as is possible; and

(iii) danger to any person or property does not arise from anything done on land; and

(iv) anything belonging to it, or to a person who has exercised a power of entry on its behalf, that has been left on any land, premises or thing entered is removed as soon as practicable unless this Act expressly allows it to be left there;

and

(b) ensure that —

(i) buildings, fences, and other structures are not disturbed nor damaged; and

(ii) when it enters land that is fenced, it enters through the existing and usual openings in the fence unless it is expressly authorised to open the fence; and

(iii) any physical damage done to any land, premises or thing, is immediately made good unless compensation has been or is to be paid.

(2) Subsection (1)(b) does not apply to any land, premises or thing that is local government property.

3.22. Compensation

(1) If a person who is —

(a) the owner or occupier of land granted in fee simple; or

(b) the occupier of land held under lease or on conditional terms of purchase from the Crown, except for pastoral or timber purposes,

sustains damage through the performance by a local government of its functions under this Act, the local government is to compensate the person if the person requests compensation unless it is otherwise expressly stated in subsection (5) or in Schedule 3.1 or Schedule 3.2.

(2) Despite subsection (1), regulations amending Schedule 3.1 or Schedule 3.2 may exclude or limit the obligation of a local government to pay compensation for a particular matter.

(3) The assessment of damage for which compensation is to be paid is to include the value of any material taken under Subdivision 2.

(4) A dispute about the amount of compensation is to be determined by arbitration in accordance with section 3.23.

(5) Compensation is not payable for damage sustained through a local government —

(a) draining water onto land to the extent that the water follows a natural watercourse; or

(b) closing or restricting the use of a thoroughfare under section 3.50 or a power given by any other written law; or

(c) performing functions under section 3.51(2)(b); or

(d) performing any other prescribed function.

(6) This section does not limit section 9.57.

(7) Regulations may —

(a) prescribe the time within which compensation may be claimed and procedures for making claims;

(b) make provision as to how compensation for damage is to be assessed.

[Section 3.22 amended: No. 64 of 1998 s. 14(2).]

3.23. Arbitration

If a matter is to be determined by arbitration in accordance with this section —

(a) if the parties have not signed or otherwise assented to an agreement to refer the matter to arbitration, the matter is nevertheless to be regarded as having been referred for

arbitration under the *Commercial Arbitration Act 2012*; and

(b) the *Commercial Arbitration Act 2012* applies in respect of the reference and the arbitration; and

(c) the determination is to be made by 2 arbitrators, one to be appointed by each party, but this paragraph does not exclude the provisions of the *Commercial Arbitration Act 2012* that apply if a party defaults in the exercise of a power of appointment.

[Section 3.23 amended: No. 23 of 2012 s. 45.]

Subdivision 2 — Certain provisions about land

3.24. Authorising persons under this Subdivision

The powers given to a local government by this Subdivision can only be exercised on behalf of the local government by a person expressly authorised by it to exercise those powers.

3.25. Notices requiring certain things to be done by owner or occupier of land

(1) A local government may give a person who is the owner or, unless Schedule 3.1 indicates otherwise, the occupier of land a notice in writing relating to the land requiring the person to do anything specified in the notice that —

(a) is prescribed in Schedule 3.1, Division 1; or

(b) is for the purpose of remedying or mitigating the effects of any offence against a provision prescribed in Schedule 3.1, Division 2.

(2) Schedule 3.1 may be amended by regulations.

(3) If the notice is given to an occupier who is not the owner of the land, the owner is to be informed in writing that the notice was given.

(4) A person who is given a notice under subsection (1) is not prevented from complying with it because of the terms on which the land is held.

(5) A person who is given a notice under subsection (1) may apply to the State Administrative Tribunal for a review of the decision to give the notice.

(6) A person who fails to comply with a notice under subsection (1) commits an offence.

[Section 3.25 amended: No. 55 of 2004 s. 687.]

3.26. Additional powers when notices given

(1) This section applies when a notice is given under section 3.25(1).

(2) If the person who is given the notice (***notice recipient***) fails to comply with it, the local government may do anything that it considers necessary to achieve, so far as is practicable, the purpose for which the notice was given.

(3) The local government may recover the cost of anything it does under subsection (2) as a debt due from the person who failed to comply with the notice.

(4) If a notice recipient —

(a) incurs expense in complying with any requirement of the notice; or

(b) fails to comply with such a requirement and, as a consequence, is fined or has to pay to a local government the cost it incurs in doing anything under subsection (2),

the notice recipient may apply to a court for an order under subsection (6).

(5) In subsection (4) —

court means a court that would have jurisdiction to hear an action to recover a debt of the amount of the expense, fine or cost sought to be recovered by the notice recipient.

(6) On an application under subsection (4) the court may order —

(a) if the notice recipient is the owner, the occupier; or

(b) if the notice recipient is the occupier, the owner,

to pay to the notice recipient so much of that expense, fine or cost as the court considers fair and reasonable in the circumstances.

(7) In determining what is fair and reasonable the court is to have regard to —

(a) the type of land involved; and

(b) the terms on which the occupier is occupying the land; and

(c) any other matter the court considers to be relevant.

[Section 3.26 amended: No. 1 of 1998 s. 10.]

3.27. Particular things local governments can do on land that is not local government property

(1) A local government may, in performing its general function, do any of the things prescribed in Schedule 3.2 even though the land on which it is done is not local government property and the local government does not have consent to do it.

(2A) In subsection (1) land includes Crown land the subject of a pastoral lease within the meaning of the *Land Administration Act 1997* section 3.

(2) Schedule 3.2 may be amended by regulations.

(3) If Schedule 3.2 expressly states that this subsection applies, subsection (1) does not authorise anything to be done on land that is being used as the site or curtilage of a building or has been developed in any other way, or is cultivated.

(4A) For the purposes of subsection (3), planting pasture on land for grazing does not amount to cultivating the land.

(4) Nothing in subsection (3) prevents regulations amending Schedule 3.2 from stating that subsection (3) applies, or excluding its application, in relation to a particular matter.

[Section 3.27 amended: No. 17 of 2009 s. 8]

Subdivision 3 — Powers of entry

3.28. When this Subdivision applies

The powers of entry conferred by this Subdivision may be used for performing any function that a local government has under this Act if entry is required for the performance of the function or in any other case in which entry is authorised by this Act other than by a local law.

3.29. Powers of entry are additional

The powers of entry upon land conferred by this Subdivision are in addition to and not in derogation of any power of entry conferred by any other law.

3.30. Assistants and equipment

Entry under this Subdivision may be made with such assistants and equipment as are considered necessary for the purpose for which entry is required.

3.31. General procedure for entering property

(1) Except in an emergency or if the entry is authorised by the warrant of a justice, entry by or on behalf of a local government on to any land, premises or thing is not lawful unless —

(a) the consent of the owner or occupier has been obtained; or

(b) notice has been given under section 3.32.

(2) If notice has been given under section 3.32, a person authorised by the local government to do so may lawfully enter the land, premises or thing without the consent of the owner or occupier unless the owner or occupier or a person authorised by the owner or occupier objects to the entry.

(3) The powers conferred on a local government under this section may be exercised instead of the powers conferred under the *Public Works Act 1902* and are not subject to any qualification or restriction by any provision of that Act.

3.32. Notice of entry

(1) A notice of an intended entry is to be given to the owner or occupier of the land, premises or thing that is to be entered.

(2) The notice is to specify the purpose for which the entry is required and continues to have effect for so long as that requirement continues.

(3) The notice is to be given not less than 24 hours before the power of entry is exercised.

(4) Successive entries for the purpose specified in the notice are to be regarded as entries to which that notice relates.

3.33. Entry under warrant

(1) In the circumstances described in subsection (2), a justice may by warrant authorise a local government by its employees, together with such other persons as are named or described in

the warrant, or a police officer, to enter any land, premises or thing using such force as is necessary.

(2) A warrant may be granted under subsection (1) where a justice is satisfied that the entry is reasonably required by a local government for the purpose of performing any of its functions, but —

(a) entry has been refused or is opposed or prevented; or

(b) entry cannot be obtained; or

(c) notice cannot be given under section 3.32 without unreasonable difficulty or without unreasonably delaying entry.

(3) A warrant granted under subsection (1) —

(a) is to be in the prescribed form; and

(b) is to specify the purpose for which the land, premises or thing may be entered; and

(c) continues to have effect until the purpose for which it was granted has been satisfied.

3.34. Entry in emergency

(1) In an emergency a local government may lawfully enter any land, premises or thing immediately and without notice and perform any of its functions as it considers appropriate to deal with the emergency.

(2) For the purposes of this section, an emergency exists where the local government or its CEO is of the opinion that the circumstances are such that compliance with the requirements for obtaining entry other than under this section would be impractical or unreasonable because of, or because of the imminent risk of —

(a) injury or illness to any person; or

(b) a natural or other disaster or emergency; or

(c) such other occurrence as is prescribed for the purposes of this section.

(3) A local government may use reasonable force to exercise the power of entry given by subsection (1).

(4) A local government may exercise the power of entry given by subsection (1) at any time while the emergency exists and for so long subsequently as is reasonably required.

(5) Although notice of an intended entry under this section is not generally required, a local government is to give notice of an intended entry of land under this section to the owner or occupier of the land where it is practicable to do so.

3.35. Purpose of entry to be given on request

A person who enters or who has entered any land, premises or thing on behalf of a local government is to give particulars of the power by virtue of which the local government claims a right of entry on being requested to do so.

3.36. Opening fences

(1) This section applies only if it is expressly stated in Schedule 3.2.

(2) Subsection (1) does not prevent regulations amending Schedule 3.2 from stating that this section applies, or excluding the application of this section, in relation to a particular matter.

(3) If this section applies and it is not practicable to enter land that is fenced through the existing and usual openings in the fence, the local government may, on giving 3 days' notice in writing to the owner or occupier of the land that it intends to do so, open the fence.

(4) If it opens the fence the local government is to provide at the opening an effective gate or, if the owner of the land agrees, a device across the gap in the fence that enables motor traffic to pass through the gap and prevents the straying of livestock through the gap.

(5) If a gate is provided a person who, without the occupier's consent, leaves the gate open when it is not in use commits an offence.

(6) If a gate is provided, when the local government no longer requires the opening, it is to immediately remove the gate and make good the fence unless the owner agrees to its retention.

(7) The owner and occupier may, in a particular case, relieve the local government of any obligation that it has under this section.

Subdivision 4 — Impounding abandoned vehicle wrecks and goods involved in certain contraventions

[Heading amended: No. 8 of 2009 s. 87.]

3.37. Contraventions that can lead to impounding

(1) Regulations may prescribe any contravention of a regulation or local law made under this Act to be a contravention that can lead to impounding.

(2) Regulations may exclude the application of particular provisions of this Subdivision.

3.38. Terms used

In this Subdivision —

alleged offender means the person who is alleged to have committed a contravention that can lead to impounding;

contravention that can lead to impounding means anything prescribed to be a contravention that can lead to impounding;

goods means any goods involved in a contravention that can lead to impounding, and includes —

(a) a vehicle; or

(ab) an animal; or

(b) a stall or other structure temporarily placed on land,

involved in such a contravention;

non-perishable goods includes animals;

specified, in relation to a notice, means specified in the notice;

vehicle means a vehicle for which a vehicle licence is required under the *Road Traffic (Vehicles) Act 2012* if the vehicle is to be used on a road.

[Section 3.38 amended: No. 64 of 1998 s. 8; No. 28 of 2001 s. 33; No. 8 of 2012 s. 121.]

3.39. Power to remove and impound

(1) An employee authorised by a local government for the purpose may remove and impound any goods that are involved in a contravention that can lead to impounding.

(2) A person may use reasonable force to exercise the power given by subsection (1).

3.40. Vehicle may be removed if goods to be impounded are in or on vehicle

(1) Where under section 3.39 an employee may remove and impound any goods that are in or on a vehicle that is not itself to be impounded and, because of their size, nature or quantity or for any other reason, it is not convenient to unload and deal with them where they are, the employee may enter the vehicle for the purpose of removing it to a place where the goods may be conveniently unloaded and impounded.

(2) Where a vehicle is removed under subsection (1) the local government is to allow the alleged offender, as soon as practicable after the goods are unloaded from the vehicle, to resume control of the vehicle.

(3) If the person entitled to resume control of the vehicle is not present when the goods are unloaded or fails to resume control of the vehicle, the local government is to give notice to the person who is the holder of the requisite vehicle licence or permit under the *Road Traffic (Vehicles) Act 2012* in respect of

the vehicle, advising that the vehicle may be collected from a place specified during such hours as are specified.

[Section 3.40 amended: No. 8 of 2012 s. 122.]

3.40A. Abandoned vehicle wreck may be taken

(1) An employee authorised by a local government for the purpose may remove and impound a vehicle that, in the opinion of the local government, is an abandoned vehicle wreck.

(2) If, within 7 days after a vehicle is removed under subsection (1), the owner of the vehicle is identified, the local government is to give notice to that person advising that the vehicle may be collected from a place specified during such hours as are specified in the notice.

(3) A notice is to include a short statement of the effect of subsection (4)(b) and the effect of the relevant provisions of sections 3.46 and 3.47.

(4) If —

(a) after 7 days from the removal of a vehicle under subsection (1), the owner of the vehicle has not been identified; or

(b) after 7 days from being given notice under subsection (2), the owner of the vehicle has not collected the vehicle,

the local government may declare that the vehicle is an abandoned vehicle wreck.

(5) In this section —

abandoned vehicle wreck means a vehicle —

(a) that is not operational; and

(b) the owner of which has not been identified by the local government after using all reasonable avenues to do so; and

(c) that has a value that is less than the prescribed value calculated in the prescribed manner.

[Section 3.40A inserted: No. 49 of 2004 s. 25(1).]

3.41. Impounded perishable goods, notice to collect

(1) When any perishable goods are being removed under section 3.39 the employee removing them is required to personally give the person from whose charge they are removed notice that the goods may be collected from a place specified during such hours as are specified.

(2) The giving of the notice does not prevent a prosecution from being instituted against the alleged offender.

3.42. Impounded non-perishable goods

(1) When any non-perishable goods have been removed and impounded under section 3.39 the local government is required to either —

(a) institute a prosecution against the alleged offender; or

(b) give the alleged offender notice that the goods may be collected from a place specified during such hours as are specified.

(2) If after 7 days after the goods were removed, a local government has been unable to give the alleged offender a notice under subsection (1)(b) because it has been unable, after making reasonable efforts to do so, to find the alleged offender, the local government is to be taken to have given that notice.

[Section 3.42 amended: No. 64 of 1998 s. 9.]

3.43. Impounded non-perishable goods, court may confiscate

When a court convicts an alleged offender the court may, in addition to imposing any other penalty, order that any non-perishable goods removed and impounded under section 3.39 be confiscated.

3.44. Notice to collect goods if not confiscated

Where non-perishable goods have been removed and impounded under section 3.39 and a prosecution is instituted, if the alleged offender —

(a) is not convicted; or

(b) is convicted but the court does not order that the goods be confiscated,

the local government is required to give the alleged offender notice that the goods may be collected from a place specified during such hours as are specified.

3.45. Notice to include warning

A notice is to include a short statement of the effect of the relevant provisions of sections 3.46, 3.47 and 3.48.

3.46. Goods may be withheld until costs paid

(1) A local government may refuse to allow goods impounded under section 3.39 or 3.40A to be collected until the costs of removing, impounding and keeping them have been paid to the local government.

(2) A local government may refuse to allow goods removed under section 3.40 or 3.40A to be collected until the costs of removing and keeping them have been paid to the local government.

[Section 3.46 inserted: No. 64 of 1998 s. 10; amended: No. 49 of 2004 s. 25(2) and (3).]

3.47. Confiscated or uncollected goods, disposal of

(1) The local government may sell or otherwise dispose of any goods that have been ordered to be confiscated under section 3.43.

(2) The local government may sell or otherwise dispose of any vehicle that has not been collected within —

(a) 2 months of a notice having been given under section 3.40(3); or

(b) 7 days of a declaration being made under section 3.40A(4) that the vehicle is an abandoned vehicle wreck.

(2a) The local government may sell or otherwise dispose of impounded goods that have not been collected within the period specified in subsection (2b) of —

(a) a notice having been given under section 3.42(1)(b) or 3.44; or

(b) being impounded if the local government has been unable, after making reasonable efforts to do so, to give that notice to the alleged offender.

(2b) The period after which goods may be sold or otherwise disposed of under subsection (2a) is —

(a) for perishable goods — 3 days;

(b) for animals — 7 days;

(ca) for prescribed non-perishable goods — one month;

(c) for other non-perishable goods — 2 months.

(3) Section 3.58 applies to the sale of goods under this section as if they were property referred to in that section.

(4) Money received by a local government from the sale of goods under subsection (2a) is to be credited to its trust fund except to the extent required to meet the costs and expenses incurred by the local government in removing, impounding and selling the goods.

(5) Money received by a local government from the sale of a vehicle under subsection (2) is to be credited to its trust fund except to the extent required to meet the costs referred to in

section 3.46 and the expenses incurred by the local government in selling the vehicle.

(6) Unless this section requires it to be credited to its trust fund, money received by a local government from the sale under this section of any goods is to be credited to its municipal fund.

[Section 3.47 amended: No. 64 of 1998 s. 11; No. 49 of 2004 s. 25(4); No. 17 of 2009 s. 9.]

3.47A. Sick or injured animals, disposal of

(1) If an impounded animal is ill or injured to such an extent that treating it is not practicable the local government may humanely destroy the animal and dispose of the carcass.

(2) A local government must not destroy an animal under subsection (1) unless —

(a) because of the state of the animal, destroying it is urgent; or

(b) the local government has —

(i) taken reasonable steps to notify the owner; and

(ii) whether or not notice has been given under subparagraph (i), allowed the owner a reasonable opportunity to collect the animal.

(3) Subsection (2)(b) does not justify the destruction of an animal before it has been impounded for at least 7 days.

[Section 3.47A inserted: No. 64 of 1998 s. 12.]

3.48. Impounding expenses, recovery of

If goods are removed and impounded under section 3.39 and the alleged offender is convicted, the local government may, by action in a court of competent jurisdiction, recover from the alleged offender —

(a) if the goods are not sold under section 3.47, the expenses incurred by the local government in removing and

impounding them and in disposing of them if they are disposed of under section 3.47; and

(b) if the goods are confiscated and sold under section 3.47, the amount, if any, by which the money received from the sale and credited to the municipal fund under section 3.47(6) is insufficient to meet expenses incurred by the local government in removing, impounding, and selling them; and

(c) if the goods are not confiscated but are sold under section 3.47, the amount, if any, by which the money received from the sale is insufficient to meet the costs and expenses referred to in section 3.47(4) or (5), as the case requires.

[Section 3.48 amended: No. 64 of 1998 s. 13.]

Subdivision 5 — Certain provisions about thoroughfares

*[**3.49.** Deleted: No. 64 of 1998 s. 14(1).]*

3.50. Closing certain thoroughfares to vehicles

(1) A local government may close any thoroughfare that it manages to the passage of vehicles, wholly or partially, for a period not exceeding 4 weeks.

(1a) A local government may, by local public notice, order that a thoroughfare that it manages is wholly or partially closed to the passage of vehicles for a period exceeding 4 weeks.

(2) The order may limit the closure to vehicles of any class, to particular times, or to such other case or class of case as may be specified in the order and may contain exceptions.

[(3) deleted]

(4) Before it makes an order wholly or partially closing a thoroughfare to the passage of vehicles for a period exceeding

4 weeks or continuing the closure of a thoroughfare, the local government is to —

(a) give local public notice of the proposed order giving details of the proposal, including the location of the thoroughfare and where, when, and why it would be closed, and inviting submissions from any person who wishes to make a submission; and

(b) give written notice to each person who —

(i) is prescribed for the purposes of this section; or

(ii) owns land that is prescribed for the purposes of this section;

and

(c) allow a reasonable time for submissions to be made and consider any submissions made.

(5) The local government is to send to the Commissioner of Main Roads appointed under the *Main Roads Act 1930* a copy of the contents of the notice required by subsection (4)(a).

(6) An order under this section has effect according to its terms, but may be revoked by the local government, or by the Minister, by order of which local public notice is given.

[(7) deleted]

(8) If, under subsection (1), a thoroughfare is closed without giving local public notice, the local government is to give local public notice of the closure as soon as practicable after the thoroughfare is closed.

(9) The requirement in subsection (8) ceases to apply if the thoroughfare is reopened.

[Section 3.50 amended: No. 1 of 1998 s. 11; No. 64 of 1998 s. 15; No. 49 of 2004 s. 26.]

3.50A. Partial closure of thoroughfare for repairs or maintenance

Despite section 3.50, a local government may partially and temporarily close a thoroughfare, without giving local public notice, if the closure —

(a) is for the purpose of carrying out repairs or maintenance; and

(b) is unlikely to have a significant adverse effect on users of the thoroughfare.

[Section 3.50A inserted: No. 64 of 1998 s. 16.]

3.51. Affected owners to be notified of certain proposals

(1) In this section —

person having an interest, in relation to doing anything, means a person who —

(a) is the owner of the land in respect of which that thing is done, or any land that is likely to be adversely affected by doing that thing; or

(b) is shown on the title to any of the land mentioned in paragraph (a) as holding an interest in any of that land; or

(c) is prescribed for the purposes of this section.

(2) This section applies to —

(a) fixing or altering the level of, or the alignment of, a public thoroughfare; or

(b) draining water from a public thoroughfare or other public place onto adjoining land.

(3) Before doing anything to which this section applies, a local government is to —

(a) give notice of what is proposed to be done giving details of the proposal and inviting submissions from any person who wishes to make a submission; and

(b) allow a reasonable time for submissions to be made and consider any submissions made.

(4) The notice is to be given —

(a) in writing to each person having an interest; and

(b) if any land is likely to be adversely affected by the doing of the thing, by local public notice.

[Section 3.51 amended: No. 64 of 1998 s. 17.]

3.52. Public access to be maintained and plans kept

(1) This section applies in respect of a thoroughfare only if it is in the metropolitan area or on land that has been constituted a townsite under section 10 of the *Land Act 1933* [5].

(2) Except to the extent that it is authorised by law to close them or restrict their use, a local government is to ensure that public thoroughfares are kept open for public use.

(3) In fixing or altering the level of, or the alignment of, a public thoroughfare, a local government is to ensure that access by vehicle to land adjoining the thoroughfare can be reasonably provided.

(4) A local government is to keep plans of the levels and alignments of public thoroughfares that are under its control or management, and make those plans available for public inspection.

Subdivision 6 — Various executive functions

3.53. Control of certain unvested facilities

(1) In this section —

former section 300 means section 300 of the *Local Government Act 1960* [4] as in force before the commencement of this Act;

otherwise unvested facility means a thoroughfare, bridge, jetty, drain, or watercourse belonging to the Crown, the responsibility

for controlling or managing which is not vested in any person other than under this section.

(2) A local government is responsible for controlling and managing every otherwise unvested facility within its district unless subsection (5) states that this section does not apply.

(3) If the facility is partially within each of 2 or more districts, it is to be controlled and managed as the local governments for the districts concerned agree or, if they do not agree, as the Minister directs.

(4) An agreement or direction under subsection (3) has effect according to its terms.

(5) This section does not apply if any person was, immediately before the commencement of this Act, responsible for controlling or managing the facility unless —

(a) the responsibility arose under the former section 300; or

(b) the Governor, by order, declares that the facility is to be controlled and managed under this section.

3.54. Reserves under control of local government

(1) If land reserved under the *Land Administration Act 1997* is vested in or placed under the control and management of a local government, the local government may do anything for the purpose of controlling and managing that land that it could do under section 5 of the *Parks and Reserves Act 1895* if it were a Board appointed under that Act to manage and control the land and for that purpose a reference in that section to a by-law is to be read as a reference to a local law.

(2) Subsection (1) is subject to any express provision to the contrary made by an order under the *Land Administration Act 1997* in respect of the land.

[Section 3.54 amended: No. 49 of 2004 s. 74(4).]

3.55. Acquisition of land

A local government can only take land under Part 9 of the *Land Administration Act 1997* if it is in, or is to be regarded as being included in, its own district.

[Section 3.55 amended: No. 24 of 2000 s. 22.]

3.56. Tidal waters

A local government can only dredge in tidal waters or reclaim land that is at any time covered by tidal waters if it first obtains the consent, in writing, of the Minister responsible for the administration of the *Transport Co-ordination Act 1966*.

3.57. Tenders for providing goods or services

(1) A local government is required to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply goods or services.

(2) Regulations may make provision about tenders.

3.58. Disposing of property

(1) In this section —

dispose includes to sell, lease, or otherwise dispose of, whether absolutely or not;

property includes the whole or any part of the interest of a local government in property, but does not include money.

(2) Except as stated in this section, a local government can only dispose of property to —

(a) the highest bidder at public auction; or

(b) the person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender.

(3) A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property —

(a) it gives local public notice of the proposed disposition —

(i) describing the property concerned; and

(ii) giving details of the proposed disposition; and

(iii) inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given;

and

(b) it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.

(4) The details of a proposed disposition that are required by subsection (3)(a)(ii) include —

(a) the names of all other parties concerned; and

(b) the consideration to be received by the local government for the disposition; and

(c) the market value of the disposition —

(i) as ascertained by a valuation carried out not more than 6 months before the proposed disposition; or

(ii) as declared by a resolution of the local government on the basis of a valuation carried out more than 6 months before the proposed disposition that the local government believes to be a true indication of the value at the time of the proposed disposition.

(5) This section does not apply to —

(a) a disposition of an interest in land under the *Land Administration Act 1997* section 189 or 190; or

(b) a disposition of property in the course of carrying on a trading undertaking as defined in section 3.59; or

(c) anything that the local government provides to a particular person, for a fee or otherwise, in the performance of a function that it has under any written law; or

(d) any other disposition that is excluded by regulations from the application of this section.

[Section 3.58 amended: No. 49 of 2004 s. 27; No. 17 of 2009 s. 10.]

3.59. Commercial enterprises by local governments

(1) In this section —

acquire has a meaning that accords with the meaning of ***dispose***;

dispose includes to sell, lease, or otherwise dispose of, whether absolutely or not;

land transaction means an agreement, or several agreements for a common purpose, under which a local government is to —

(a) acquire or dispose of an interest in land; or

(b) develop land;

major land transaction means a land transaction other than an exempt land transaction if the total value of —

(a) the consideration under the transaction; and

(b) anything done by the local government for achieving the purpose of the transaction,

is more, or is worth more, than the amount prescribed for the purposes of this definition;

major trading undertaking means a trading undertaking that —

(a) in the last completed financial year, involved; or

(b) in the current financial year or the financial year after the current financial year, is likely to involve,

expenditure by the local government of more than the amount prescribed for the purposes of this definition, except an exempt trading undertaking;

trading undertaking means an activity carried on by a local government with a view to producing profit to it, or any other activity carried on by it that is of a kind prescribed for the purposes of this definition, but does not include anything referred to in paragraph (a) or (b) of the definition of ***land transaction***.

(2) Before it —

(a) commences a major trading undertaking; or

(b) enters into a major land transaction; or

(c) enters into a land transaction that is preparatory to entry into a major land transaction,

a local government is to prepare a business plan.

(3) The business plan is to include an overall assessment of the major trading undertaking or major land transaction and is to include details of —

(a) its expected effect on the provision of facilities and services by the local government; and

(b) its expected effect on other persons providing facilities and services in the district; and

(c) its expected financial effect on the local government; and

(d) its expected effect on matters referred to in the local government's current plan prepared under section 5.56; and

(e) the ability of the local government to manage the undertaking or the performance of the transaction; and

(f) any other matter prescribed for the purposes of this subsection.

(4) The local government is to —

(a) give Statewide public notice stating that —

(i) the local government proposes to commence the major trading undertaking or enter into the major land transaction described in the notice or into a land transaction that is preparatory to that major land transaction; and

(ii) a copy of the business plan may be inspected or obtained at any place specified in the notice; and

(iii) submissions about the proposed undertaking or transaction may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given;

and

(b) make a copy of the business plan available for public inspection in accordance with the notice; and

(c) publish a copy of the business plan on the local government's official website.

(5) After the last day for submissions, the local government is to consider any submissions made and may decide* to proceed with the undertaking or transaction as proposed or so that it is not significantly different from what was proposed.

** Absolute majority required.*

[(5a) deleted]

(6) If the local government wishes to commence an undertaking or transaction that is significantly different from what was

proposed it can only do so after it has complied with this section in respect of its new proposal.

(7) The local government can only commence the undertaking or enter into the transaction with the approval of the Minister if it is of a kind for which the regulations require the Minister's approval.

(8) A local government can only continue carrying on a trading undertaking after it has become a major trading undertaking if it has complied with the requirements of this section that apply to commencing a major trading undertaking, and for the purpose of applying this section in that case a reference in it to commencing the undertaking includes a reference to continuing the undertaking.

(9) A local government can only enter into an agreement, or do anything else, as a result of which a land transaction would become a major land transaction if it has complied with the requirements of this section that apply to entering into a major land transaction, and for the purpose of applying this section in that case a reference in it to entering into the transaction includes a reference to doing anything that would result in the transaction becoming a major land transaction.

(10) For the purposes of this section, regulations may —

(a) prescribe any land transaction to be an exempt land transaction;

(b) prescribe any trading undertaking to be an exempt trading undertaking.

[Section 3.59 amended: No. 1 of 1998 s. 12; No. 64 of 1998 s. 18(1) and (2); No. 16 of 2019 s. 11.]

3.60. No capacity to form or acquire control of body corporate

A local government cannot form or take part in forming, or acquire an interest giving it the control of, an incorporated company or any other body corporate except a regional local

government or regional subsidiary unless it is permitted to do so by regulations.

[Section 3.60 amended: No. 26 of 2016 s. 6.]

Division 4 — Regional local governments and regional subsidiaries

[Heading amended: No. 26 of 2016 s. 7.]

3.61. Establishing regional local government

(1) Two or more local governments (referred to in this Division as the ***participants***) may, with the Minister's approval, establish a regional local government to do things, for the participants, for any purpose for which a local government can do things under this Act or any other Act.

(2) An application for the Minister's approval is to be —

(a) in a form approved for that purpose by the Minister; and

(b) accompanied by a copy of an agreement between the participants to establish the regional local government (referred to in this Division as the ***establishment agreement***).

(3) The participants are to supply the Minister any further information about the application that the Minister asks for.

(4) If the Minister approves the application the Minister is to declare, by notice in the *Gazette*, that the regional local government is established —

(a) on the date; and

(b) under the name; and

(c) for the purpose,

set out in the notice.

3.62. Constitution and purpose of regional local government

(1) A regional local government —

(a) is a body corporate with perpetual succession and a common seal; and

(b) is to have as its governing body a council established under the establishment agreement and consisting of members of the councils of the participants.

(2) The purpose for which a regional local government is established (referred to in this Division as the ***regional purpose***) is as set out in the establishment agreement.

3.63. Dissolution or partial dissolution of regional local government

(1) A regional local government is to be wound up —

(a) at the direction of the Minister; or

(b) in accordance with the establishment agreement.

(2) A participant may, in accordance with the establishment agreement, withdraw from the regional local government and cease to be a participant.

3.64. Establishment agreement, what it must contain

The following matters are to be set out or provided for in the establishment agreement for a regional local government —

(a) the name of the regional local government; and

(b) a description of the region for which the regional local government is established; and

(c) the number of offices of member on the council of the regional local government and, in respect of each participant, the number of members to be appointed by that participant; and

(d) the appointment and tenure of members and deputy members of the council of the regional local government; and

(e) the election or appointment of a chairperson and deputy chairperson of the regional local government from amongst members of its council and the term of office of a chairperson and deputy chairperson, which is not to exceed 2 years; and

(f) the purpose for which the regional local government is established; and

(g) a means of determining the financial contributions of the participants to the funds of the regional local government; and

(h) procedures for the winding up of the regional local government or for the withdrawal of a participant from the regional local government; and

(i) procedures for the division of assets and liabilities between the participants in the event of the regional local government being wound up or a participant withdrawing from the regional local government; and

(j) a means of resolving disputes between participants as to matters relating to the regional local government; and

(k) any other prescribed matter.

[Section 3.64 amended: No. 49 of 2004 s. 28; No. 17 of 2009 s. 11; No. 5 of 2017 s. 5.]

3.65. Establishment agreement, amendment of

(1) The participants may amend the establishment agreement for a regional local government by agreement made with the Minister's approval, and a reference in this Division to the establishment agreement includes a reference to the establishment agreement as so amended.

(2) The establishment agreement can be amended under subsection (1) to include another local government as a further participant if that local government is a party to the amending agreement.

(3) Section 3.61(2) and (3) apply, with any necessary modifications, to an agreement amending the establishment agreement.

3.66. Application of enabling Acts to regional local government

(1) Except as otherwise stated in this section, this Act and any other Act under which anything can be done for the regional purpose apply in relation to a regional local government as if —

(a) the participants' districts together made up a single district; and

(b) the regional local government were the local government established for that district.

(2) A regional local government can only do things for the regional purpose, and the application of this Act or any other Act under subsection (1) is limited accordingly.

(3) The following provisions of this Act do not apply in relation to a regional local government —

(a) Part 2 (other than sections 2.7, 2.26, 2.29 and 2.32(e) and Division 7); and

(b) Part 4; and

(c) Part 5, Division 2, Subdivision 4; and

(d) Part 6, Division 6; and

(e) any provision prescribed for the purposes of this subsection.

(4) Part 6, Division 5, Subdivision 3 does not apply in relation to a regional local government unless the establishment agreement provides that it does.

(5) The provisions that do apply in relation to a regional local government apply to it subject to any prescribed modifications and any other necessary modifications.

[Section 3.66 amended: No. 49 of 2004 s. 29.]

3.67. Inconsistency between regional and other local laws

To the extent that a local law made by a regional local government is inconsistent with a local law made by a local government, the local law made by the regional local government prevails.

3.68. Other arrangements not affected

Nothing in sections 3.61 to 3.67 prevents local governments from making arrangements under which —

(a) a local government performs a function for another local government; or

(b) local governments perform a function jointly.

[Section 3.68 amended: No. 26 of 2016 s. 8.]

3.69. Regional subsidiaries

(1) Two or more local governments making arrangements under which they are to provide a service or carry on an activity jointly may, with the Minister's approval and in accordance with the regulations, form a subsidiary body (called a ***regional subsidiary***) to provide that service or carry on that activity.

(2) If the Minister approves the formation of a regional subsidiary, the Minister must, by notice in the *Gazette*, declare that the regional subsidiary is established —

(a) on the date set out in the notice; and

(b) under the name set out in the notice.

(3) A regional subsidiary —

(a) is a body corporate with perpetual succession and a common seal; and

(b) is to have a governing body consisting of members appointed in accordance with the regional subsidiary's charter (as approved by the Minister in accordance with section 3.70(3)).

(4) Without limiting subsection (3)(b), a governing body may consist of or include members who are not council members or employees.

[Section 3.69 inserted: No. 26 of 2016 s. 9.]

3.70. Regional subsidiaries to have charter

(1) Local governments proposing to form a regional subsidiary must prepare a charter addressing the following matters —

(a) the establishment and powers and duties of the regional subsidiary;

(b) the process for selecting and appointing members of the regional subsidiary's governing body;

(c) the qualifications that members of the regional subsidiary's governing body must have;

(d) the administration of the regional subsidiary, including the membership and procedures of its governing body, and the fees, allowances and expenses to be paid or reimbursed to the members of its governing body;

(e) the financial management, planning, auditing and reporting to be undertaken by the regional subsidiary;

(f) the process for amending the charter;

(g) the winding up of the regional subsidiary;

(h) any other matters required by the regulations to be dealt with in a charter.

(2) The local governments must forward the charter to the Minister when applying for approval for the formation of the regional subsidiary.

(3) A charter, and an amendment to a charter, are of no effect unless approved by the Minister.

[Section 3.70 inserted: No. 26 of 2016 s. 9.]

3.70A. Audit requirements for regional subsidiaries

(1) Section 7.1 and the provisions of Part 7 Divisions 3A to 4 apply in relation to a regional subsidiary as if the regional subsidiary were a local government.

(2) The application of a provision under subsection (1) is subject to any prescribed or necessary modifications to the provision provided for in the regulations.

[Section 3.70A inserted: No. 5 of 2017 s. 6.]

3.71. Regulations about regional subsidiaries

Regulations may —

(a) regulate the procedure for applying to the Minister for approval for the formation of a regional subsidiary; and

(b) require the local governments proposing to form a regional subsidiary to consult with the community in their districts in accordance with the regulations; and

(c) provide that a specified provision of this Act applies in relation to a regional subsidiary subject to any prescribed or necessary modifications; and

(d) provide for or regulate any other matter that is necessary or convenient to be provided for or regulated in respect of a regional subsidiary.

[Section 3.71 inserted: No. 26 of 2016 s. 9.]

3.72. Other provisions and arrangements not affected

(1) Section 3.69 has effect in addition to the provisions of this Division relating to regional local governments, and does not derogate from those provisions.

(2) Nothing in section 3.69 prevents local governments from making arrangements under which —

(a) a local government provides a service or carries on an activity for another local government; or

(b) local governments provide a service or carry on an activity jointly without forming a regional subsidiary.

[Section 3.72 inserted: No. 26 of 2016 s. 9.]

Part 4 — Elections and other polls

What this Part is about

This Part deals with elections of mayors and presidents by electors, elections of councillors, and polls and referendums, and with related matters.

In particular —

(a) Divisions 2, 3, 4, 5 and 6 describe the different kinds of elections and direct when those elections are to be held;

(b) Division 7 is about the officials who conduct elections;

(c) Division 8 sets out the qualifications for enrolment to vote at elections;

(d) Division 9 deals with the process of preparing for and conducting an election;

(e) Division 10 deals with complaints about the results of elections;

(f) Division 11 sets out a number of offences in relation to elections and provides for investigation and prosecution of offences;

(g) Division 12 deals with polls and referendums.

Division 1 — Preliminary

4.1. Terms used

In this Part —

election means —

(a) an election of a mayor or president by electors; or

(b) an election of a councillor or councillors whether in a district or in a ward;

election day means the day fixed under this Act for the holding of any poll needed for an election;

election notice has the meaning given by section 4.64;

electoral officer means a returning officer or a deputy returning officer or electoral officer appointed by a returning officer;

electoral requirements means the provisions of this Act about the preparation of electoral rolls, nomination of candidates and other preparations for the holding of elections;

electoral roll is a collective term that refers —

(a) in the case of a district that has wards, to the ward rolls; and

(b) in the case of any district or ward, to the residents roll or rolls and the owners and occupiers roll or rolls,

that may form the electoral roll;

polling place means —

(a) in the case of a voting in person election, a place appointed under section 4.23 for the casting of votes;

(b) in the case of a postal election, a place appointed under section 4.23 for the delivery of votes;

this Act means this Act or the regulations and ***this Part*** means this Part or the regulations made for the purposes of this Part.

4.1A. Conflict with Commonwealth or State election or referendum

(1) On a day fixed as polling day for the whole of State electorate or a district under the *Electoral Act 1907*, no election, referendum or other poll is to be held under this Act in, or in any part of, that electorate or district.

(2) On a day fixed for the holding of a referendum, as defined in the *Electoral Act 1907*, no election, referendum or other poll is to be held under this Act.

(3) On a day appointed under the *Commonwealth Electoral Act 1918* as polling day for an election of Senators for the State, no election, referendum or other poll is to be held under this Act.

(4) On a day appointed as polling day for an election of the House of Representatives for an Electoral Division in the State under the *Commonwealth Electoral Act 1918*, no election, referendum or other poll is to be held under this Act in, or in any part of, that Electoral Division.

(5) On a day fixed as voting day in the State, or an Electoral Division in the State under the *Referendum (Machinery Provisions) Act 1984* of the Commonwealth, no election, referendum or other poll is to be held under this Act in the State, or in any part of that Electoral Division, as is relevant.

(6) In this section —

Electoral Division has the same meaning as it has in the *Commonwealth Electoral Act 1918*.

[Section 4.1A inserted: No. 49 of 2004 s. 30(1); amended: No. 20 of 2021 s. 95(2).]

4.1B. Polling day may be changed where conflict with Commonwealth or State election or referendum

(1) Despite anything else in this Act and subject to subsection (2), where a poll cannot be held on the day fixed under this Act due to section 4.1A, the Governor may, before the day fixed for the poll, by order under section 9.62 fix a later day for the holding of the poll.

(2) The time for the holding of a poll is not to be extended under this section by more than 14 days later than the time originally fixed.

[Section 4.1B inserted: No. 49 of 2004 s. 30(1).]

Division 2 — Inaugural elections

4.2. Inaugural elections

(1) When a local government is newly established elections are to be held —

(a) to elect the councillors of the first council; and

(b) if the method of filling the office of mayor or president is by election by the electors, to elect the first mayor or president.

(2) An election under this section is called an ***inaugural election***.

4.3. Polling day for inaugural election

(1) Any poll needed for an inaugural election is to be held on a day fixed by the Governor by order under section 9.62.

(2) The day fixed is to be a day that is as soon as practicable after the establishment of the local government and allows enough time for the electoral requirements to be complied with, but is not to be later than one year after the establishment of the local government.

Division 3 — Ordinary elections

4.4. Ordinary elections

(1) When the term of office of an elector mayor or president or a councillor is going to end under the Table to section 2.28 an election to fill the office is to be held.

(2) An election under this section is called an ***ordinary election***.

(3) This section does not apply to the office of mayor or president if, under Part 2 Division 3, the next mayor or president is to be elected by the council.

[Section 4.4 amended: No. 11 of 2023 s. 24.]

4.5. Frequency of ordinary elections

A local government is to hold ordinary elections every 2 years.

4.6. Election day for ordinary elections

Any poll needed for an ordinary election is to be held on the day on which the previous term of office referred to in section 4.4(1) ends.

4.7. Ordinary elections day usually third Saturday in October

(1) The effect of section 4.6 is that —

(a) polls for ordinary elections to elect an elector mayor or president will be held on the third Saturday in October every 4 years; and

(b) polls for ordinary elections to elect councillors will be held on the third Saturday in October every 2 years.

(2) If in respect of a particular year in which ordinary elections are required to be held the Electoral Commissioner is of the opinion that it would not be in the public interest to hold polls for those ordinary elections on the third Saturday in October, the Electoral Commissioner may, by notice in the *Gazette*, fix a later Saturday in October, or the first, second or third Saturday in November, to be the day for holding any polls needed for those ordinary elections.

(3) The election day can be deferred under subsection (2) —

(a) for all local governments; or

(b) for a local government or local governments specified in the notice; or

(c) for a class or classes of local governments specified in the notice.

(4) In the notice under subsection (2), or by a later notice in the *Gazette*, the Electoral Commissioner may adjust any time,

period or date fixed under this Act to take account of the election day being deferred under subsection (2).

[Section 4.7 amended: No. 66 of 2006 s. 6.]

Division 4 — Extraordinary elections

4.8. Extraordinary elections

(1) If the office of a councillor or of an elector mayor or president becomes vacant under section 2.32, an election to fill the office is to be held, except if the vacancy is filled under Schedule 4.1A or 4.1B.

(2) An election is also to be held under this section if section 4.57 or 4.58 so requires.

(3) An election under this section is called an ***extraordinary election***.

[Section 4.8 amended: No. 2 of 2012 s. 10; No. 11 of 2023 s. 25.]

4.9. Election day for extraordinary election

(1) Any poll needed for an extraordinary election is to be held on a day decided on and fixed —

(a) by the mayor or president, in writing, if a day has not already been fixed under paragraph (b); or

(b) by the council at a meeting held within one month after the vacancy occurs, if a day has not already been fixed under paragraph (a).

(2) The election day fixed for an extraordinary election is to be a day that allows enough time for the electoral requirements to be complied with but, unless the Electoral Commissioner approves or section 4.10(b) applies, it cannot be later than 4 months after the vacancy occurs.

(3) If at the end of one month after the vacancy occurs an election day has not been fixed, the CEO is to notify the Electoral Commissioner and the Electoral Commissioner is to —

(a) fix a day for the holding of the poll that allows enough time for the electoral requirements to be complied with; and

(b) advise the CEO of the day fixed.

4.10. Extraordinary election can be held before resignation has taken effect

If a member resigns —

(a) the vacancy is to be regarded for the purposes of sections 4.8(1) and 4.9 as occurring when the CEO receives the notice of resignation even if the resignation takes effect on a later day; but

(b) the election day fixed for the extraordinary election cannot be earlier than one month before the resignation actually takes effect.

Division 5 — Other elections

4.11. Elections after restructure of districts, wards or membership

Any poll needed for an election to give effect to an order under section 2.1(1) changing the boundaries of a district or under section 2.2 or 2.18 is to be held on the day fixed by the Governor by order under section 9.62.

4.12. Elections after reinstatement of council

Any poll needed for an election to fill offices of members that are vacant when a suspended council is reinstated is to be held on the day fixed by order under section 8.29(4).

4.13. Elections after all members' offices become vacant

Any poll needed for an election to fill the vacant offices after the offices of members have been declared vacant under section 2.37, or after a commissioner of the local government has been appointed under section 2.37A, is to be held on the day fixed by order under section 2.37(5) or 2.37A(2).

[Section 4.13 amended: No. 11 of 2023 s. 26.]

4.14. Elections after council is dismissed

Any poll needed for an election to elect a new council after a council has been dismissed under section 8.25(1) is to be held on the day fixed by order under section 8.34(1).

[Section 4.14 amended: No. 31 of 2018 s. 9.]

4.15. Fresh election after election declared invalid

Any poll needed for a fresh election after an election is declared invalid is to be held on the day fixed by the Court of Disputed Returns under section 4.81(3).

Division 6 — Postponement and consolidation of elections

4.16. Postponement of elections to allow consolidation

(1) This section modifies the operation of sections 4.8, 4.9 and 4.10 in relation to the holding of extraordinary elections.

(2) If a member's office becomes vacant under section 2.32 (otherwise than by resignation) on or after the third Saturday in July in an election year and long enough before the ordinary elections day in that year to allow the electoral requirements to be complied with, any poll needed for the extraordinary election to fill the vacancy is to be held on that ordinary elections day.

(3) In the case of a member's office becoming vacant under section 2.32 by resignation, if —

(a) the resignation takes effect, or is to take effect, on or after the third Saturday in July in an election year but not later than one month after the ordinary elections day in that year; and

(b) the CEO receives notice of the resignation long enough before that ordinary elections day to allow the electoral requirements to be complied with,

any poll needed for the extraordinary election to fill the vacancy is to be held on that ordinary elections day.

(4) If a member's office becomes vacant under section 2.32 —

(a) after the third Saturday in October in the year before an election year; but

(b) before the third Saturday in July in that election year,

the council may, with the approval of the Electoral Commissioner, fix the ordinary elections day in that election year as the day for holding any poll needed for the extraordinary election to fill that vacancy.

[Section 4.16 amended: No. 66 of 2006 s. 7; No. 2 of 2012 s. 11; No. 11 of 2023 s. 27.]

4.17. Cases in which vacant offices can remain unfilled

(1) If a member's office becomes vacant under section 2.32 on or after the third Saturday in July in the election year in which the term of the office would have ended under the Table to section 2.28, the vacancy is to remain unfilled and the term of the member who held the office is to be regarded in section 4.6 as ending on the day on which it would have ended if the vacancy had not occurred.

(2) If a member's office becomes vacant under section 2.32 —

(a) after the third Saturday in October in the year before the election year in which the term of the office would have ended under the Table to section 2.28; but

(b) before the third Saturday in July in that election year,

the council may, with the approval of the Electoral Commissioner, allow the vacancy to remain unfilled and, in that case, the term of the member who held the office is to be regarded in section 4.6 as ending on the day on which it would have ended if the vacancy had not occurred.

[(3)-(4) deleted]

[Section 4.17 amended: No. 49 of 2004 s. 31; No. 66 of 2006 s. 8; No. 17 of 2009 s. 12; No. 11 of 2023 s. 28.]

4.18. Certain elections to be held as one

(1) This section applies to the following kinds of elections of councillors —

(a) ordinary elections;

(b) extraordinary elections;

(c) elections under section 4.11, 4.12 or 4.13.

(2) If in a district or ward the same election day is fixed for elections of more than one kind, Division 9 applies to those elections as if they were one election to fill all the offices of councillor for the district or ward that need to be filled.

Division 7 — Provisions about electoral officers and the conduct of elections

4.19. Returning officer

The principal electoral office of a local government is that of returning officer.

4.20. CEO to be returning officer unless other arrangements made

(1) Subject to this section the CEO is the returning officer of a local government for each election.

(2) A local government may, having first obtained the written agreement of the person concerned and the written approval of the Electoral Commissioner, appoint* a person other than the CEO to be the returning officer of the local government for —

(a) an election; or

(b) all elections held while the appointment of the person subsists.

** Absolute majority required.*

(3) An appointment under subsection (2) —

(a) is to specify the term of the person's appointment; and

(b) has no effect if it is made after the 80th day before an election day.

(4) A local government may, having first obtained the written agreement of the Electoral Commissioner, declare* the Electoral Commissioner to be responsible for the conduct of an election, or all elections conducted within a particular period of time, and, if such a declaration is made, the Electoral Commissioner is to appoint a person to be the returning officer of the local government for the election or elections.

** Absolute majority required.*

(5) A declaration under subsection (4) has no effect if it is made after the 80th day before election day unless a declaration has already been made in respect of an election for the local government and the declaration is in respect of an additional election for the same local government.

(6) A declaration made under subsection (4) on or before the 80th day before election day cannot be rescinded after that 80th day.

[Section 4.20 amended: No. 64 of 1998 s. 19(1); No. 49 of 2004 s. 16(4) and 32(1)-(4).]

4.21. Deputy returning officers

(1) A returning officer appointed under section 4.20(1) or (2) is to appoint one or more deputy returning officers.

(2) If the returning officer is appointed under section 4.20(4), the Electoral Commissioner is to appoint one or more deputy returning officers.

4.22. Returning officer to conduct elections

(1) An election is to be conducted by the returning officer of the local government for that election.

(2) In the case of a returning officer appointed under section 4.20(4), the returning officer is to conduct the election for and under the direction of the Electoral Commissioner.

(3) If the returning officer is absent or cannot perform his or her functions a deputy returning officer is to perform the returning officer's functions.

4.23. Returning officer's functions

The returning officer's functions are —

(a) to appoint places for the casting of votes, places for the delivery of postal votes and places for the counting of votes for elections (within or outside the district); and

(b) to appoint other electoral officers to assist in the conduct of elections; and

(c) to ensure that the necessary preparations are made for the conduct of elections; and

(d) to do anything which the returning officer is authorised or required to do under this Act or which is necessary or expedient in order to ensure that elections are conducted in accordance with this Act; and

(e) in the case of a returning officer appointed under section 4.20(4), to do other things if directed to do so by the Electoral Commissioner.

4.24. Electoral Commissioner's functions

The Electoral Commissioner's functions under this Act are to do anything which the Electoral Commissioner is authorised or required to do under this Act and, where the Electoral Commissioner is responsible for the conduct of the election, to do anything which is necessary or expedient for the proper and efficient conduct of the election.

4.25. Access to information

The Electoral Commissioner and the returning officer are to have access to any relevant information of a local government in order to perform their functions under this Act.

4.26. Delegation

(1) The Electoral Commissioner may delegate any of his or her powers or duties under this Act (except this power of delegation) to another person.

(2) A returning officer may delegate any of his or her powers or duties under this Act (except this power of delegation) to a deputy returning officer.

(3) Delegations must be in writing.

4.27. Regulations about electoral officers and conduct of elections

(1) Regulations may include provisions —

(a) about the appointment of returning officers under section 4.20(4), and deputy returning officers under section 4.21(2), and their removal or suspension by the Electoral Commissioner; and

(b) about the appointment, removal or suspension of electoral officers by returning officers; and

(c) about the declarations to be made by electoral officers; and

(d) setting out functions to be performed by local governments, CEOs and returning officers to ensure the proper and efficient conduct of elections.

(2) Despite any other written law, the decision of the Electoral Commissioner or a returning officer about the appointment, removal or suspension of an electoral officer is final.

4.28. Fees and expenses

A local government is to —

(a) pay fees to the electoral officers, in accordance with regulations, for conducting an election; and

(b) meet expenses incurred by the electoral officers in connection with an election; and

(c) if a declaration under section 4.20(4) has been made in relation to the election, meet the expenses of the Electoral Commissioner in connection with the election to the extent required by regulations.

Division 8 — Eligibility for enrolment

4.29. Eligibility of residents to be enrolled

(1) A person is eligible to be enrolled to vote at elections for a district or ward (the ***electorate***) if the person is enrolled as an

elector for the Legislative Assembly in respect of a residence in the electorate.

(2) For the purposes of subsection (1) a person is to be regarded as being enrolled as an elector for the Legislative Assembly even if his or her name has been omitted in error from the relevant electoral roll under the *Electoral Act 1907*.

4.30. Eligibility of non-resident owners and occupiers to be enrolled

(1) A person is eligible to be enrolled to vote at elections for a district or ward (the ***electorate***) if the person —

(a) is enrolled as an elector for the Legislative Assembly or the House of Representatives in respect of a residence outside the electorate; and

(b) owns or occupies rateable property within the electorate; and

(c) has made a successful eligibility claim that still has effect under section 4.33.

(2) For the purposes of subsection (1)(a) a person is to be regarded as being enrolled as an elector for the Legislative Assembly or the House of Representatives even if his or her name has been omitted in error from an electoral roll under the *Electoral Act 1907* or the *Commonwealth Electoral Act 1918*.

(3) For the purposes of subsection (1)(c) an eligibility claim is successful if it is accepted under section 4.32, whether or not the acceptance is before the close of enrolments, as defined in section 4.39(1).

(4) A person who is eligible under subsection (1) to vote at an election held less than 50 days after the commencement of the *Local Government Amendment Act 2009* section 13 is eligible to vote at that election.

[Section 4.30 amended: No. 17 of 2009 s. 13.]

4.31. Rateable property: ownership and occupation

(1) For the purposes of this Division, subsections (1A) to (1H) apply in relation to rateable property and its ownership and occupation.

(1A) Section 4.30 applies even if part of the rateable property is situated in another district.

(1B) If an enrolment eligibility claim is made in respect of rateable property situated partly in one ward and partly in another ward or wards, it is to be regarded for the purposes of that claim as being in —

(a) the ward nominated by the owner or occupier making the claim; or

(b) if no nomination is made, the ward determined by the CEO.

(1C) A person occupies rateable property if, and only if, the person has a right of continuous occupation under a lease, tenancy agreement or other legal instrument.

(1CA) Regulations may provide that, despite subsection (1C), a person is not to be regarded as occupying rateable property unless prescribed requirements (in addition to the requirement of subsection (1C)) are met.

(1CB) The requirements that may be prescribed for the purposes of subsection (1CA) include (without limitation) the following —

(a) requirements relating to whether any person is enrolled, or is regarded under section 4.29(2) as being enrolled, as an elector for the Legislative Assembly in respect of a residence that is the rateable property;

(b) other requirements relating to the current, past or future ownership, occupation or use of the rateable property.

(1D) A reference to the occupation of rateable property includes a reference to the occupation of —

(a) a separate building or portion of a building on the rateable property; or

(b) some other separate and distinguishable portion of the rateable property.

(1E) If more than 2 people own rateable property in conjunction with each other, the owners are whichever 2 of those people who, being eligible under section 4.30(1)(a), are nominated as owners by all or a majority of those people.

(1F) If more than 2 people occupy rateable property in conjunction with each other, the occupiers are whichever 2 of those people who, being eligible under section 4.30(1)(a), are nominated as occupiers by all or a majority of those people.

(1G) If a body corporate owns or occupies rateable property, the owners or occupiers are 2 people who, being eligible under section 4.30(1)(a), are nominated as owners or occupiers by the body corporate.

(1H) A nomination under subsection (1E), (1F) or (1G) applies in respect of any and all other rateable property in the district that is owned or occupied by the people or body corporate concerned.

(2) Regulations may include provisions about how nominations under subsections (1) to (1H) are made and how long they remain in effect.

[Section 4.31 amended: No. 19 of 2010 s. 51; No. 11 of 2023 s. 29.]

4.32. Eligibility to enrol under s. 4.30, how to claim

(1) A person who considers that he or she is eligible under section 4.30(1)(a) and (b) may make an enrolment eligibility claim in respect of the district or ward.

(2) The claim must —

(a) be made to the CEO in accordance with regulations; and

(b) without limiting paragraph (a), include, or be accompanied by, the following —

(i) any statutory declaration required under regulations;

(ii) any other prescribed information, document or item.

(3) A claim for enrolment as an occupier cannot be accepted unless —

(a) the claimant has had a right of occupation as referred to in section 4.31(1C) for the whole period of 12 months ending on the day before the day on which the claim is made; and

(b) if so prescribed (but without limiting paragraph (e)) — the claimant has paid rent in respect of the right of occupation referred to in paragraph (a) of at least the prescribed amount; and

(c) the claimant has a right of occupation as referred to in section 4.31(1C) for the whole period of 3 months beginning on the day on which the claim is made; and

(d) if so prescribed (but without limiting paragraph (e)) — the claimant is liable to pay rent in respect of the right of occupation referred to in paragraph (c) of at least the prescribed amount; and

(e) any prescribed requirements are met.

(3A) The right of occupation referred to in subsection (3)(a) —

(a) must be for —

(i) the rateable property to which the claim relates; or

(ii) another rateable property which is situated (wholly or partly) in the district;

and

(b) for different parts of the 12-month period, may be for different rateable properties.

(3B) The right of occupation referred to in subsection (3)(c) must be for the rateable property to which the claim relates.

(3C) The requirements that may be prescribed for the purposes of subsection (3)(e) include (without limitation) the following —

(a) requirements relating to whether any person is or was enrolled, or is or was regarded under section 4.29(2) as being enrolled, as an elector for the Legislative Assembly in respect of a residence that is a relevant rateable property;

(b) other requirements relating to the current, past or future ownership, occupation or use of a relevant rateable property.

(3D) In subsection (3C) —

relevant rateable property means —

(a) the rateable property to which the claim relates; or

(b) another rateable property that is relevant to the claim under subsection (3A).

(3E) In subsections (3A) to (3D) —

(a) subject to paragraph (b), references to a rateable property include a portion of a rateable property as described in section 4.31(1D)(a) or (b); and

(b) if the claim relates to a portion of a rateable property as described in section 4.31(1D)(a) or (b) — references to the rateable property to which the claim relates are to that portion.

(4) Except as provided for in subsection (5A), within 14 days after receiving an enrolment eligibility claim, the CEO must —

(a) decide —

(i) whether the claimant is eligible under section 4.30(1)(a) and (b); and

(ii) if applicable — whether the requirements under subsection (3)(a) to (e) are met;

and

(b) accept or reject the claim accordingly.

(5A) If a claim is made before the close of enrolments as defined in section 4.39(1), but less than 14 days before the close of nominations as defined in section 4.49(a), the CEO is to decide whether to accept or reject the claim before the close of nominations.

(5) The CEO can make any inquiries needed in order to make a decision.

(6) The CEO is to record the decision in a register kept for that purpose in accordance with regulations and is to give written notice of the decision to the claimant without delay.

(7) If the claim is rejected the notice has to set out the CEO's reasons for the decision.

(7A) Regulations may make provision in relation to how the CEO's reasons are to be set out.

(8) A person who is dissatisfied with the CEO's decision may appeal to the Electoral Commissioner in accordance with regulations and the Electoral Commissioner can confirm or reverse the decision.

(8A) Regulations may make provision in relation to the conduct of an appeal, including (without limitation) provision restricting, or authorising the Electoral Commissioner to restrict, the information, documents or items upon which an appellant can rely.

(9) On receipt of advice of the Electoral Commissioner's decision on an appeal, the CEO is to take any action that is necessary to give effect to that decision.

[Section 4.32 amended: No. 64 of 1998 s. 20; No. 49 of 2004 s. 33; No. 17 of 2009 s. 14; No. 16 of 2019 s. 12; No. 11 of 2023 s. 30.]

4.33. Claim of eligibility to enrol under s. 4.30, expiry of

(1) If an enrolment eligibility claim made by a person on the basis of ownership of rateable property within the electorate is accepted under section 4.32(4) or (8), the claim expires when the person ceases to own the property to which the claim relates.

(1A) If an enrolment eligibility claim made by a person on the basis of occupation of rateable property within the electorate is accepted under section 4.32(4) or (8), the claim expires —

(a) when the person ceases to occupy, as the case requires —

(i) the rateable property to which the claim relates; or

(ii) the portion of a rateable property, as described in section 4.31(1D)(a) or (b), to which the claim relates;

or

(b) if the claim has not already expired under paragraph (a) — on the day provided for under subsections (2A) to (3).

Note for this subsection:

For the purposes of paragraph (a), the reference to the person ceasing to occupy must be construed in accordance with section 4.31(1C) and any regulations made for the purposes of section 4.31(1CA).

(2A) Unless subsection (2B) or (3) applies, if an enrolment eligibility claim made by a person on the basis of occupation of rateable property within the electorate is accepted under section 4.32(4)

or (8), the claim expires on the day 6 months after the holding of the second ordinary elections of the local government after the claim is accepted.

(2B) If an enrolment eligibility claim on the basis of occupation of rateable property within the electorate is —

(a) made within the period of 56 days before the election day for ordinary elections of the local government; and

(b) accepted under section 4.32(4) or (8) before the election day,

the claim expires on the day 6 months after the holding of the third ordinary elections of the local government after the claim is accepted.

(2) For the purpose of subsection (2A) or (2B), an election that would have been held on a particular day but for the suspension of the council of the local government is to be regarded as having been held on that day.

(3) If the day on which an enrolment eligibility claim would expire under subsection (2A) or (2B) is less than 57 days before an election at which the occupier would be eligible to vote, the enrolment eligibility claim does not expire until the day after that election day.

[Section 4.33 amended: No. 64 of 1998 s. 21; No. 49 of 2004 s. 34; No. 17 of 2009 s. 15; No. 11 of 2023 s. 31.]

4.34. Accuracy of enrolment details to be maintained

The CEO is to ensure that the information about electors that is recorded from enrolment eligibility claims is maintained in an up to date and accurate form.

4.35. Decision that eligibility to enrol under s. 4.30 has ended

(1) The CEO may decide that a person is no longer eligible under section 4.30 to be enrolled to vote at elections for a district or ward if —

(a) the person has given the CEO written notice that the person is no longer eligible to be so enrolled; or

(b) the CEO is satisfied that the person is dead; or

(c) the CEO is satisfied that the person is no longer eligible to be so enrolled.

(2) The CEO is to give written notice to the person before making a decision under subsection (1)(c) and is to allow 28 days for the person to make submissions on the matter.

(3) If the CEO makes a decision under subsection (1)(c) the CEO is to give written notice of it to the person.

(4) If dissatisfied with the decision, the person may appeal to the Electoral Commissioner in accordance with regulations and the Electoral Commissioner can confirm or reverse the decision.

(4A) Regulations may make provision in relation to the conduct of an appeal, including (without limitation) provision restricting, or authorising the Electoral Commissioner to restrict, the information, documents or items upon which an appellant can rely.

(5) On receipt of advice of the Electoral Commissioner's decision on an appeal, the CEO is to take any action that is necessary to give effect to that decision.

(6) If, after considering submissions made under subsection (2), the CEO decides that the person is still eligible under section 4.30 to be enrolled to vote at elections for the district or ward, the CEO is to give written notice of that decision to the person.

(7) The CEO is to record any decision under subsection (1) or (6) in the register referred to in section 4.32(6).

[Section 4.35 amended: No. 49 of 2004 s. 35; No. 11 of 2023 s. 32.]

Division 9 — Electoral process

[Heading inserted: No. 19 of 2010 s. 44(2).]

Subdivision 1 — Stages of electoral process

[Heading inserted: No. 19 of 2010 s. 44(2).]

4.36. Application and term used: election

(1) This Division applies to the following stages in the preparation for, and conduct of, an election —

(a) *Stage 1 — Preparing the electoral roll;*

(b) *Stage 2 — Nomination of candidates;*

(c) *Stage 3 — After nominations close;*

(d) *Stage 4 — Preparing for voting;*

(e) *Stage 5 — Voting;*

(f) *Stage 6 — Counting the votes;*

(g) *Stage 7 — Declaring the result.*

(2) In this Division the election referred to in subsection (1) is referred to as the ***election***.

[Section 4.36 amended: No. 19 of 2010 s. 51.]

Subdivision 2 — Stage 1: Preparing the electoral roll

[Heading inserted: No. 19 of 2010 s. 44(2).]

4.37. New roll for each election

(1) An electoral roll is to be prepared for the election.

(2) If the district is not divided into wards the same electoral roll can be used for the election of an elector mayor or president and the election of a councillor or councillors.

(3) A new electoral roll need not be prepared for the election if —

(a) it is an extraordinary election the election day for which is less than 100 days after the election day for another election; and

(b) the CEO, with the approval of the Electoral Commissioner, decides that the roll that was used for the earlier election is suitable for use at the extraordinary election.

[Section 4.37 amended: No. 49 of 2004 s. 36.]

4.38. What roll consists of

(1) The electoral roll for the election is to consist of a residents roll and an owners and occupiers roll but these can be consolidated for the purposes of the election in accordance with regulations.

(2) Regulations are to include provisions about the form of rolls (e.g. consolidated rolls, district rolls, ward rolls, combined ward rolls), the details that they are to contain and the arrangement of those details, and can provide for cases in which details may be omitted for the protection of an elector or his or her family.

4.39. Close of enrolments

(1) In order to be included on the electoral roll for the election a person must be an elector of the district or ward, as the case requires, as at 5 p.m. on the 57th day before election day (the ***close of enrolments***).

(2) Statewide public notice of the time and date of the close of enrolments must be given on or after the 77th day, but not later than on the 63rd day, before election day by —

(a) the Electoral Commissioner if the Electoral Commissioner is responsible for the conduct of the election; or

(b) the CEO in any other case.

(3) The notice is to give details of the steps that a person can take to become an elector before the close of enrolments *[i.e. enrolling as an elector for the Legislative Assembly in respect of a residence in the district or ward (section 4.29) or making an enrolment eligibility claim in respect of the district or ward (sections 4.30 and 4.32)]*.

(4) If, under section 4.37(3), a previous electoral roll is going to be used for the election, no notice is to be published under subsection (2).

[Section 4.39 amended: No. 64 of 1998 s. 22; No. 16 of 2019 s. 13; No. 11 of 2023 s. 33.]

4.40. Residents roll

(1) Subject to section 4.37(3), on or before the 63rd day before election day, the CEO is to advise the Electoral Commissioner of the need to prepare a residents roll for the election.

(2) On or before the 43rd day before election day, the Electoral Commissioner is to prepare a residents roll for the election and forward a copy of it to the CEO.

(3) The residents roll is to include the names of all persons who were electors of the district or ward under section 4.29 at the close of enrolments (other than persons who will be under 18 years of age on election day) and is to be certified to that effect by the Electoral Commissioner.

[Section 4.40 amended: No. 66 of 2006 s. 9; No. 11 of 2023 s. 34.]

4.41. Owners and occupiers roll

(1) On or before the 43rd day before election day, the CEO is to prepare an owners and occupiers roll for the election.

(2) The owners and occupiers roll is to include the names of all persons who were electors of the district or ward under section 4.30 at the close of enrolments (other than persons who

will be under 18 years of age on election day) and is to be certified to that effect by the CEO.

[Section 4.41 amended: No. 66 of 2006 s. 10; No. 11 of 2023 s. 35.]

4.42. Supply of rolls to returning officer, members and candidates

(1) The CEO is to ensure that the returning officer has as many copies of the residents and owners and occupiers rolls as he or she may require for the purposes of the election.

(2) Copies of rolls are to be supplied, free of charge, to members of the council and candidates in accordance with regulations.

(3) Regulations may require, or otherwise make provision in relation to, any of the following in relation to a copy of a roll supplied under subsection (1) or (2) (the ***supplied copy***) —

(a) the destruction of the supplied copy;

(b) if the supplied copy is in electronic form — the deletion of the supplied copy;

(c) the making of a statutory declaration relating to the destruction or deletion of the supplied copy and the providing of the statutory declaration to the CEO or Electoral Commissioner.

(4) In subsection (3)(a) to (c), references to the supplied copy include —

(a) other copies of the roll, or other documents or information, derived (directly or indirectly and wholly or partly) from the supplied copy; and

(b) any documents or information containing details supplied under section 4.43(3b) relating to the roll.

[Section 4.42 amended: No. 11 of 2023 s. 36.]

4.43. Correction of rolls

(1) On or before the 29th day before election day the returning officer is to delete from the owners and occupiers roll the name of any person whose name also appears on the residents roll.

(2) Subsection (1) does not apply if the rolls have been consolidated.

(3) The returning officer may alter the residents and owners and occupiers rolls —

(a) by including the name of an elector whose name has been omitted in error; or

(b) by omitting the name of a person whose name has been included in error; or

(c) in any other manner that may be necessary to correct the rolls.

(3a) If the returning officer is not the CEO, the returning officer may direct the CEO to make the alterations to the rolls described in subsections (1) and (3) and the CEO is to comply with that direction.

(3b) If a roll is altered under this section or section 4.44A after it has been supplied under section 4.42(2) to members of the council and candidates, the returning officer is to supply details of the alteration to those members and candidates in accordance with regulations.

(4) Regulations may provide for the making of applications to have rolls corrected, the certification of corrections and procedures to be followed in altering or correcting the rolls.

[Section 4.43 amended: No. 64 of 1998 s. 23; No. 49 of 2004 s. 37; No. 17 of 2009 s. 16; No. 11 of 2023 s. 37.]

4.44A. Alteration of rolls

(1) The returning officer may alter the owners and occupiers roll by including the name of an elector whose enrolment eligibility

claim was made under section 4.32(1) before the close of enrolments, as defined in section 4.39(1), but accepted after that time.

(2) If the returning officer is not the CEO, the returning officer may direct the CEO to make an alteration to the roll described in subsection (1) and the CEO is to comply with that direction.

[Section 4.44A inserted No. 17 of 2009 s. 17.]

4.44. One enrolment per roll

An elector's name is not to appear more than once on the same electoral roll.

4.45. Failure to comply with time limits as to preparation of rolls

(1) If anything required by this Act to be done in connection with the preparation of an electoral roll has not been done within the time, or for the period or before the date allowed or required under this Act, the Minister may, by notice published in the *Gazette* —

(a) direct it to be done; and

(b) adjust any time period or date fixed under this Act in order to enable it to be done.

(2) When an omission or non-compliance is rectified in accordance with a notice under subsection (1), the electoral roll is validated as set out in the notice.

(3) A notice under this section has effect in accordance with its terms despite anything in this Act.

4.46. Fresh roll may be required

(1) If the Minister is satisfied that an electoral roll has not been properly prepared in accordance with this Division, the Minister may, by notice published in the *Gazette*, direct that a fresh electoral roll be prepared in accordance with directions set out in the notice.

(2) An electoral roll prepared under subsection (1) supersedes a previous electoral roll.

(3) A notice under this section has effect in accordance with its terms despite anything in this Act.

4.46A. Restrictions on use of information contained in rolls

(1) In this section —

enrolment information —

(a) means any information that is supplied to a person (***person X***) under section 4.42(2) or 4.43(3b); and

(b) includes any information that is derived (directly or indirectly and wholly or partly) from any information supplied to person X as referred to in paragraph (a);

supply includes disclose;

use includes supply.

(2) Person X must not use enrolment information, except for any of the following purposes —

(a) if applicable — a purpose connected with person X's candidature in the election;

(b) if applicable — the performance of person X's functions as a member of the council after the election;

(c) a prescribed purpose.

Penalty for this subsection: imprisonment for 1 year and a fine of $5 000.

(3) Subsection (2)(a) to (c) do not permit the use of enrolment information for a commercial purpose.

(4) Person X must not use enrolment information for a commercial purpose.

Penalty for this subsection: imprisonment for 1 year and a fine of $10 000.

(5) Person X must take all reasonable steps to ensure that any person to whom any information that is enrolment information is supplied (whether by person X or another person) —

(a) is informed, no later than the time of supply, that, as the case requires —

(i) the information was supplied to person X under section 4.42(2) or 4.43(3b); or

(ii) the information was derived (directly or indirectly and wholly or partly) from information supplied to person X under section 4.42(2) or 4.43(3b);

and

(b) does not use the information except for a purpose for which person X is permitted to use the information under subsection (2)(a), (b) or (c).

Penalty for this subsection: imprisonment for 1 year and a fine of $5 000.

(6) Except as permitted under subsection (7), a person (***person Y***) must not use any information that is enrolment information if person Y has been informed or otherwise come to know, or has reasonable grounds for believing, that the information —

(a) was supplied to person X under section 4.42(2) or 4.43(3b); or

(b) was derived (directly or indirectly and wholly or partly) from information supplied to person X under section 4.42(2) or 4.43(3b).

Penalty for this subsection: imprisonment for 1 year and a fine of $5 000.

(7) Person Y may use the information for a purpose for which person X is permitted to use the information under subsection (2)(a), (b) or (c).

(8) A person (***person Z***) must not use any information that is enrolment information for a commercial purpose if person Z has been informed or otherwise come to know, or has reasonable grounds for believing, that the information —

(a) was supplied to person X under section 4.42(2) or 4.43(3b); or

(b) was derived (directly or indirectly and wholly or partly) from information supplied to person X under section 4.42(2) or 4.43(3b).

Penalty for this subsection: imprisonment for 1 year and a fine of $10 000.

(9) Without limiting section 4.97, a prosecution for either of the following may be commenced by the Electoral Commissioner or a person authorised by the Electoral Commissioner —

(a) an offence against this section;

(b) an offence against section 4.95 of attempting to commit an offence against this section.

(10) Nothing in this section prevents a person from doing anything to comply with regulations made for the purposes of section 4.42(3).

[Section 4.46A inserted: No. 11 of 2023 s. 38.]

Subdivision 3 — Stage 2: Nomination of candidates

[Heading inserted: No. 19 of 2010 s. 44(2).]

4.47. Nominations, call for

(1) Statewide public notice calling for nominations of candidates for the election must be given on or after the 63rd day, but not later than on the 52nd day, before election day by —

(a) the Electoral Commissioner if the Electoral Commissioner is responsible for the conduct of the election; or

(b) the returning officer in any other case.

(2) The notice calling for nominations is to specify —

(a) the kind of election to be held and the vacancy or vacancies to be filled; and

(b) the place where nominations may be delivered or sent (the ***nomination place***); and

(c) the period within which nominations have to be delivered or sent; and

(d) any other arrangements made for the receipt by the returning officer of nominations.

[Section 4.47 amended: No. 16 of 2019 s. 14; No. 11 of 2023 s. 39.]

4.48. Candidate, eligibility of

(1) If the election is to fill an office or offices of councillor, a person can only be a candidate if the person was an elector of the district who, as at the close of enrolments, was qualified under section 2.19 to be elected as a member of the council and, at the time of nomination —

(a) the person is qualified under section 2.19 to be elected as a member of the council; and

(b) the person is not a candidate in another election to fill an office or offices of councillor on the council; and

(c) the person is not the holder of an office of member of a council other than an office the term of which will end on, or before, election day; and

(d) the person has completed the course of induction prescribed for the purposes of this subsection.

(2) If the election is to fill the office of elector mayor or president, a person can only be a candidate if —

(a) the person was an elector of the district who, as at the close of enrolments and at the time of nomination, was

qualified under section 2.19 to be elected as a member of the council; and

(b) at the time of nomination, the person has completed the course of induction prescribed for the purposes of this subsection.

[Section 4.48 amended: No. 49 of 2004 s. 38(1) and (2); No. 17 of 2009 s. 18; No. 16 of 2019 s. 15.]

4.49. How to make an effective nomination

The nomination of a candidate is only effective if —

(a) a completed nomination paper, in the prescribed form, is received by the returning officer at the nomination place (by delivery, post, facsimile or other prescribed means) within the period beginning on the 51st day before election day and ending at 4 p.m. on the 44th day before election day (the ***close of nominations***); and

(b) a profile of the candidate, prepared in accordance with regulations, accompanies the nomination paper; and

(ba) the nomination paper is accompanied by any prescribed information for publication under section 4.52; and

(bb) if the candidate is an occupier (as defined in section 2.19(2B)) — the nomination paper is accompanied by the following for the purpose of establishing that a requirement prescribed for the purposes of section 2.19(2A) is met or was met at the close of enrolments —

(i) any statutory declaration required under regulations;

(ii) any other prescribed information, document or item;

and

(c) evidence that the nomination is made by or with the consent of the candidate is given to the returning officer

in a prescribed manner on or with the nomination paper or before the close of nominations; and

(d) payment of the prescribed deposit in a prescribed manner is received by the returning officer when the nomination paper is received or before the close of nominations.

[Section 4.49 amended: No. 49 of 2004 s. 39; No. 11 of 2023 s. 40.]

4.50. Deposits, how dealt with

A deposit is to be dealt with in accordance with regulations and is refundable in such circumstances as are set out in regulations.

4.51. Nominations, rejection of

(1) The returning officer is to reject a nomination if —

(a) it is not effective under section 4.49; or

(b) the candidate is not an elector of the district or was not an elector of the district as at the close of enrolments; or

(ba) as at the close of enrolments, the candidate was not qualified to be elected as a member of a council due to section 2.19(2); or

(bb) the candidate is not qualified, or was not qualified as at the close of enrolments, to be elected as a member of the council due to regulations made for the purposes of section 2.19(2A); or

(c) in the case of a candidate for election as a councillor, the candidate is not eligible to be a candidate because of section 4.48(1)(b) or (c).

(2) If none of subsection (1)(a), (b), (ba), (bb) or (c) apply the returning officer is to accept the nomination.

(3) Despite subsection (1)(a), if the profile of the candidate does not meet the requirements of regulations, the returning officer may

amend the profile to meet those requirements and accept the nomination with the amended profile.

(4) If the returning officer rejects a nomination or amends a profile the returning officer is to give written notice of the decision, and the reasons for it, to the candidate without delay.

[Section 4.51 amended: No. 49 of 2004 s. 40; No. 11 of 2023 s. 41.]

4.52. Information about candidates to be published

(1) In this section —

relevant information, in relation to a candidate, means —

(a) the following details —

(i) the candidate's name;

(ii) the name to appear on the ballot paper;

(iii) the ward (if any) in respect of which the candidate has nominated;

(iv) the office for which the candidate has nominated;

(v) the type of election in which the candidate has nominated;

and

(b) the profile that accompanied the candidate's nomination paper under section 4.49(b) (as amended under section 4.51(3) if relevant); and

(c) any information that accompanied the candidate's nomination paper under section 4.49(ba); and

(d) any other prescribed information.

(2) If a nomination is accepted, the returning officer must ensure that the candidate's relevant information is published on the local government's official website.

(3) A candidate's relevant information must be kept on the local government's official website —

(a) if section 4.55 or 4.57(2)(a) applies — until the result is declared under section 4.77; or

(b) otherwise — until 6 p.m. on election day.

(4) Regulations may do either or both of the following —

(a) make provision in relation to how a candidate's relevant information must be published on the local government's official website under this section;

(b) make provision for a candidate's relevant information, or any part of a candidate's relevant information, to be published, or otherwise made available to electors, in ways in addition to its publication on the local government's official website under this section.

[Section 4.52 inserted: No. 11 of 2023 s. 42.]

4.53. Nominations, cancellation of

(1) The nomination of a candidate is cancelled if the candidate withdraws the nomination or dies before the close of nominations.

(2) The withdrawal of a nomination is only effective if —

(a) written notice of it is received by the returning officer at the nomination place (by delivery, post, facsimile or other prescribed means) before the close of nominations; and

(b) evidence that the withdrawal is made by or with the consent of the candidate is given to the returning officer in a prescribed manner on or with the withdrawal notice or before the close of nominations.

(3) If a nomination is cancelled, the returning officer must ensure —

(a) that the candidate's relevant information (as defined in section 4.52(1)) is removed from the local government's official website; and

(b) that notice of the cancellation is published on that website until the close of nominations.

(4) If a person who is a candidate in both an election to fill the office of mayor or president and an election to fill an office or offices of councillor on the council is elected unopposed under section 4.55 to fill the office of mayor or president, the nomination of the person as a candidate in the other election is to be regarded for the purposes of this Act as having been cancelled immediately before the close of nominations.

[Section 4.53 amended: No. 64 of 1998 s. 24(2); No. 11 of 2023 s. 43.]

Subdivision 4 — Stage 3: After nominations close

[Heading inserted: No. 19 of 2010 s. 44(2).]

4.54. Nominations to be declared

(1) As soon as possible after nominations have closed the returning officer is to declare the nominations that have been accepted and have not been cancelled.

(2) The declaration is to be made at the nomination place in the presence of any candidates and other people who wish to attend.

4.55. Same number of candidates as vacancies

If, at the close of nominations, the number of candidates is equal to the number of offices to be filled at the election, the candidate or candidates is or are elected unopposed.

4.56. More candidates than vacancies

If, at the close of nominations, the number of candidates is greater than the number of offices to be filled at the election —

(a) lots are to be drawn in accordance with regulations for the positions of the candidates on the ballot papers for the election; and

(b) the returning officer is to begin preparing for voting by the electors.

4.57. Less candidates than vacancies

(1) If, at the close of nominations, there are no candidates for the office or offices to be filled at the election, an extraordinary election is to be held to fill the office or offices as if it or they had become vacant on the day after the close of nominations.

(2) If, at the close of nominations, the number of candidates is less than the number of offices to be filled at the election —

(a) the candidate or candidates is or are elected; and

(b) an extraordinary election is to be held to fill the remaining office or offices as if it or they had become vacant on the day after the close of nominations.

(3) If, at the close of nominations for an extraordinary election required under subsection (1) or (2) there are no candidates or the number of candidates is less than the number of offices to be filled at the election, the council may appoint* to any unfilled office a person who would be eligible to be a candidate for election to the office and who is willing to accept the appointment.

** Absolute majority required.*

(4) A person appointed under subsection (3) is to be regarded as having been elected.

4.58. Candidates, death of after close of nominations

(1) If section 4.56 applies and a candidate dies after the close of nominations but before the vacant office or offices is or are filled, the election is void and an extraordinary election is to be held to fill the office or offices as if it or they had become vacant on the death of the candidate.

(2) If a candidate who has been elected dies before his or her term of office begins, an extraordinary election is to be held to fill the office to which the candidate had been elected as if it had become vacant on the death of the candidate.

4.59. Candidates, regulations about

Regulations may provide for —

(a) the provision of information as to gifts made to or for the benefit of candidates; and

(b) the control of the electioneering activities and practices of candidates; and

(c) the provision of information as to expenditure incurred in relation to an election by or for the benefit of candidates.

[Section 4.59 amended: No. 17 of 2009 s. 19.]

Subdivision 5 — Stage 4: Preparing for voting

[Heading inserted: No. 19 of 2010 s. 44(2).]

4.60. Voting by electors

If section 4.56 applies and the election is not void under section 4.58(1), the electors may vote to elect a candidate or candidates to fill the vacant office or offices.

4.61. Choice of methods of conducting election

(1) The election can be conducted as a —

postal election which is an election at which the method of casting votes is by posting or delivering them to an electoral officer on or before election day; or

voting in person election which is an election at which the principal method of casting votes is by voting in person on election day but at which votes can also be cast in person before election day, or posted or delivered, in accordance with regulations.

(2) The local government may decide* to conduct the election as a postal election.

** Absolute majority required.*

(3) A decision under subsection (2) has no effect if it is made after the 80th day before election day unless a declaration has already been made in respect of an election for the local government and the declaration is in respect of an additional election for the same local government.

(4) A decision under subsection (2) has no effect unless it is made after a declaration is made under section 4.20(4) that the Electoral Commissioner is to be responsible for the conduct of the election or in conjunction with such a declaration.

(5) A decision made under subsection (2) on or before the 80th day before election day cannot be rescinded after that 80th day.

(6) For the purposes of this Act, the poll for an election is to be regarded as having been held on election day even though the election is conducted as a postal election.

(7) Unless a resolution under subsection (2) has effect, the election is to be conducted as a voting in person election.

[Section 4.61 amended: No. 64 of 1998 s. 25; No. 49 of 2004 s. 16(4) and 32(5).]

4.62. Polling places required

(1) For every election in a district or a ward the returning officer is to ensure that there will be at least one polling place in the district that is open between 8 a.m. and 6 p.m. on election day.

(2) For a voting in person election in a district that is divided into wards, the returning officer is to ensure that there will be at least one polling place in each ward that is open between 8 a.m. and 6 p.m. on election day unless the returning officer determines that, in respect of a particular ward, it is not necessary or not practicable —

(a) to open a polling place in that ward on election day; or

(b) for there to be a polling place in that ward that is open all the time between 8 a.m. and 6 p.m. on election day.

(3) For a voting in person election in a ward the returning officer is to ensure that there will be at least one polling place in the ward that is open between 8 a.m. and 6 p.m. on election day unless the returning officer determines that it is not necessary or not practicable —

(a) to open a polling place in that ward on election day; or

(b) for there to be a polling place in that ward that is open all the time between 8 a.m. and 6 p.m. on election day.

4.63. Presiding and other officers, appointment of

(1) The electoral officers appointed by the returning officer are to include a presiding officer and one or more other electoral officers for each polling place.

(2) The returning officer may appoint himself or herself to be the presiding officer for a polling place.

4.64. Public notice about election

(1) As soon as practicable after preparations for the election have been completed (but not later than on the 26th day before election day) Statewide public notice about the election must be

given in accordance with regulations including details of how, when and where the election will be conducted and who the candidates are.

(1A) The Statewide public notice must be given by —

(a) the Electoral Commissioner if the Electoral Commissioner is responsible for the conduct of the election; or

(b) the returning officer in any other case.

(2) The Statewide public notice is called the ***election notice***.

[Section 4.64 amended: No. 16 of 2019 s. 17; No. 11 of 2023 s. 44.]

Subdivision 6 — Stage 5: Voting

[Heading inserted: No. 19 of 2010 s. 44(2).]

4.65. Right to vote

(1) An elector may vote at the election if the elector's name —

(a) is on the electoral roll used for the election; or

(b) was omitted in error from the electoral roll used for the election.

(2) If an elector's name has changed, the reference in subsection (1) to the elector's name includes a reference to the former name.

(3) A person who is not an elector, or who is under 18 years of age on election day, cannot vote at the election even if the person's name is on the electoral roll used for the election.

[Section 4.65 amended: No. 66 of 2006 s. 11.]

4.66. One vote for each elector

An elector is not to vote more than once at the election.

4.67. Where to vote in person

In a voting in person election —

(a) a vote (***absent vote***) may be cast before election day at the offices of another local government in such circumstances as are set out in regulations;

(b) a vote (***early vote***) may be cast before election day at the local government's offices, or at a place notified for that purpose in the election notice, in such circumstances as are set out in regulations;

(c) a vote in person on election day may be cast at a polling place appointed for the election.

4.68. When to vote

(1) In a voting in person election —

(a) an elector may cast an early or absent vote as soon as the election notice is given;

(b) an early vote may be cast not later than 4 p.m. on the day before election day;

(c) an absent vote may be cast not later than 4 p.m. on the 4th day before election day;

(d) a postal vote may be posted or delivered at any time after the relevant voting papers are issued but can only be accepted if it is received by an electoral officer in accordance with regulations not later than 6 p.m. on election day;

(e) a vote in person on election day may be cast between 8 a.m. and 6 p.m.

(2) In a postal election a vote may be posted or delivered at any time after the relevant voting papers are issued but can only be accepted if it is received by an electoral officer in accordance with regulations not later than 6 p.m. on election day.

4.69. How to vote

(1) This section sets out how votes are cast at an election.

(2) An elector must cast 1 first-preference vote by writing on the ballot paper the numeral 1 in the square opposite the name of the candidate for whom the elector votes as the elector's first preference.

(3) If there are 2 or more other candidates, the elector may cast preference votes by writing consecutive numerals from 2 (without repetition of any numeral) in the squares opposite the names of other candidates to indicate the order of the elector's preference for those other candidates.

(4) The elector —

(a) may cast preference votes under subsection (3) for 1 or more of the other candidates; and

(b) does not have to cast preference votes for all of the other candidates.

(5) Regulations made for the purposes of section 4.71(1)(a) must provide for ballot papers to have squares opposite the names of candidates for the purpose of giving effect to subsections (2) and (3).

[Section 4.69 inserted: No. 11 of 2023 s. 45.]

4.70. Presiding officer to maintain order at polling place

(1) The presiding officer is in charge of a polling place and has power to take any reasonable steps to ensure that voting is conducted in a peaceful and orderly manner.

(2) Without limiting subsection (1) the presiding officer may remove or exclude from the polling place any person who is disrupting or may disrupt the poll.

(3) For the purposes of this section the presiding officer may call on a member of the Police Force for assistance and a member of the Police Force is to render assistance if called on to do so.

4.71. Regulations about voting procedure

(1) Regulations are to include provisions about —

(a) the form, content and printing of voting papers; and

(b) measures to ensure that, so far as practicable, all electors who can vote are issued with voting papers for postal votes for a postal election; and

(c) applying for and issuing postal votes for a voting in person election (and may provide for applications to have effect for successive elections); and

(d) completing, transmitting and dealing with voting papers for postal votes; and

(e) applying for, issuing, completing, and dealing with voting papers for absent votes and early votes; and

(f) issuing, completing and dealing with ballot papers for votes cast in person on election day; and

(g) measures to be taken to ensure that ballot papers are marked in secret; and

(h) the design, preparation, use, supervision and security of ballot boxes for the receipt of ballot papers; and

(i) the assistance that may be given to electors who are unable to vote without assistance; and

(j) the appointment of scrutineers for candidates and the rights and obligations of scrutineers; and

(k) the adjournment of the poll in the case of riot, violence or other cause; and

(l) any other matter relating to the casting of votes at elections or to votes so cast.

(2) In this section —

voting papers means ballot papers and any other forms, declarations, envelopes, candidates' profiles or other papers associated with ballot papers.

Subdivision 7 — Stage 6: Counting the votes

[Heading inserted: No. 19 of 2010 s. 44(2).]

4.72. Outcome of election to be determined

(1) As soon as is practicable after voting has finished the returning officer is to arrange for the votes to be counted and ascertain the result of the election.

(2) The votes are to be counted at the place or places notified for the purpose in the election notice or, if that is impracticable because of riot, violence or other cause, at any other place appointed by the returning officer.

(3) Subject to any directions of the returning officer, candidates and scrutineers may be present when the votes are counted.

(4) The counting of votes may involve re-counts of votes under section 4.72A.

[Section 4.72 amended: No. 11 of 2023 s. 46.]

4.72A. Re-counts of votes

(1) The returning officer may arrange for some or all of the votes to be re-counted if, and to the extent that, the returning officer considers appropriate.

(2) The returning officer may arrange a re-count under subsection (1) —

(a) on the returning officer's own initiative; or

(b) on the written request of a candidate or scrutineer, which must —

(i) be made before the returning officer declares the result of the election under section 4.77; and

(ii) include the candidate's or scrutineer's reasons for the request.

(3) Regulations may prescribe circumstances in which the returning officer must arrange for some or all of the votes to be re-counted to the extent prescribed.

(4) In the course of a re-count under subsection (1) or (3), the returning officer may review a decision to accept or reject a ballot paper.

(5) A re-count under subsection (1) or (3) must be conducted before the returning officer declares the result of the election under section 4.77.

[Section 4.72A inserted: No. 11 of 2023 s. 47.]

4.73. Procedure when person is candidate in 2 elections

(1) If the election is to fill the office of mayor or president and any candidate is also a candidate in an election to fill an office or offices of councillor on the council held on the same election day, the result of the election for mayor or president is to be ascertained before the result of the other election is ascertained.

(2) If the election is to fill an office or offices of councillor and any candidate has been elected to fill the office of mayor or president on the council at an election held on the same election day, that candidate cannot be elected to an office of councillor.

(3) When subsection (2) applies, if the number of other candidates is equal to the number of offices to be filled at the election —

(a) the other candidate or candidates is or are elected unopposed; and

(b) the votes are to be counted —

(i) only if 2 or more of the councillors elected at that election will retire on different days; and

(ii) only for the purpose of applying the provisions of Schedule 4.2 about the order of retirement of councillors.

(4) When subsection (2) applies, if the number of other candidates is greater than the number of offices to be filled at the election, the counting of votes is to proceed.

(5) When votes are counted under subsection (3)(b) or (4) —

(a) if a ballot paper contains a first-preference vote for the candidate who has been elected to the office of mayor or president —

(i) the first-preference vote must be disregarded; and

(ii) the ballot paper must be treated as if any numeral indicating a preference for another candidate had been altered accordingly;

and

(b) if a ballot paper contains a preference vote for the candidate who has been elected mayor or president —

(i) the preference vote must be disregarded; and

(ii) the ballot paper must be treated as if any numeral indicating a subsequent preference for another candidate had been altered accordingly.

(6) In subsection (5) —

first-preference vote has the meaning given in Schedule 4.1 clause 1;

preference vote has the meaning given in Schedule 4.1 clause 1.

[Section 4.73 amended: No. 64 of 1998 s. 26; No. 11 of 2023 s. 48.]

4.73A. Procedure when councillor whose term is not expiring is candidate for mayor or president

(1) This section applies if —

(a) the election is to fill the office of mayor or president; and

(b) any candidate is a councillor on the council whose office would become vacant under section 2.32(f) were they to be elected mayor or president; and

(c) on the same election day —

(i) if the district is not divided into wards — there is an election to fill an office or offices of councillor on the council; or

(ii) if the district is divided into wards — there is an election to fill an office or offices of councillor on the council for the ward for which the candidate referred to in paragraph (b) is a councillor.

(2) The result of the election for mayor or president must be ascertained before the result of the election referred to in subsection (1)(c)(i) or (ii).

[Section 4.73A inserted: No. 11 of 2023 s. 49.]

4.74. How votes counted (Sch. 4.1)

The votes are to be counted, and the result of the election ascertained, in accordance with Schedule 4.1.

4.75. Acceptance and rejection of ballot papers

(1) The returning officer may accept a ballot paper that, in his or her opinion, clearly indicates the elector's wishes as required or authorised by section 4.69 even if the ballot paper is not marked precisely in accordance with section 4.69.

(2) In accepting a ballot paper under subsection (1) the returning officer, if appointed under section 4.20(4), is to have regard and

give effect to any directions or guidelines given by the Electoral Commissioner.

(3) Regulations may do either or both of the following —

(a) without limiting the returning officer's discretion to accept a ballot paper under subsection (1) —

(i) prescribe circumstances in which the returning officer must accept a ballot paper even if the ballot paper is not marked precisely in accordance with section 4.69; and

(ii) prescribe how the returning officer must treat a ballot paper when counting votes if the ballot paper was accepted under regulations made for the purposes of subparagraph (i);

(b) prescribe circumstances in which the returning officer must reject a ballot paper (despite subsection (1) or otherwise).

[Section 4.75 amended: No. 11 of 2023 s. 50.]

4.76. Review of decisions on ballot papers

Unless a Court of Disputed Returns decides otherwise, the returning officer's decision about the acceptance or rejection of a ballot paper is final but this does not prevent the returning officer from reviewing the decision in the course of a re-count of votes as referred to in section 4.72A(4).

[Section 4.76 amended: No. 11 of 2023 s. 51.]

Subdivision 8 — Stage 7: Declaring the result

[Heading inserted: No. 19 of 2010 s. 44(2).]

4.77. Returning officer to declare result

As soon as is practicable after the result of the election is known under section 4.55, 4.57 or 4.72, the returning officer is to

declare and give notice of the result in accordance with regulations.

Note for this section:

See Schedule 4.1A clause 19 and Schedule 4.1B clause 1(5) for further provisions relating to declarations and notices under this section.

[Section 4.77 amended: No. 11 of 2023 s. 52.]

4.78. Order of retirement of councillors

(1) If the election is to fill an office or offices of councillor, the returning officer, when declaring the result, is to declare the term for which and, if necessary, the vacant office to which, each successful candidate is elected.

(2) For the purpose of subsection (1) the returning officer is to make any determination that is necessary to give effect to the provisions of Schedule 4.2 about the order of retirement of councillors.

4.79. Report to Minister

(1) A returning officer is to provide the Minister with a report as to the result of the election.

(2) The report under subsection (1) —

(a) is to be provided within the prescribed period; and

(b) is to deal with the matters prescribed for the purposes of subsection (1).

(3) On being directed by the Minister to do so the returning officer, if appointed under section 4.20(1) or (2), is to provide the Minister with a report on the conduct of the election dealing with the matters set out in the direction or prescribed for the purposes of this subsection.

(4) If the Electoral Commissioner is responsible for the conduct of the election, the Electoral Commissioner may provide the Minister with a report on the conduct of the election.

Division 10 — Validity of elections

4.80. Complaints about result of election

(1) A person who is dissatisfied with the result of an election or with the way in which an election was conducted may make an invalidity complaint.

(2) In this Division —

invalidity complaint means a complaint —

(a) that the election is invalid; or

(b) that another person should be declared elected; or

(c) that the term of office of a councillor should be longer or shorter than the term determined by the returning officer; or

(d) that a declaration made under Schedule 4.1A clause 19 or Schedule 4.1B clause 1(5) by the returning officer should be changed.

[Section 4.80 amended: No. 11 of 2023 s. 53.]

4.81. Complaints to go to Court of Disputed Returns

(1) An invalidity complaint is to be made to a Court of Disputed Returns, constituted by a magistrate, but can only be made within 28 days after notice is given of the result of the election.

(2) Regulations may provide for the way in which an invalidity complaint can be made to a Court of Disputed Returns, the way in which the court can deal with it and the declarations and orders that the court can make.

(3) If the court declares the election to have been invalid —

(a) the election is null and void; and

(b) any office of member filled at the election is vacant; and

(ba) any declaration made under Schedule 4.1A clause 19 or Schedule 4.1B clause 1(5) by the returning officer is of no effect; and

(bb) any office of member filled under Schedule 4.1A or 4.1B by a candidate in the election is vacant; and

(c) the court is to fix a day for holding any poll needed for a fresh election; and

(d) the returning officer is to prepare for, conduct and ascertain and declare the result of the fresh election.

(4) If the court declares that a person (***candidate A***) ought to have been elected in place of another person (***candidate B***) —

(a) candidate B is not to act as a member of the council; and

(b) candidate A is to be regarded as having been elected; and

(c) notice of candidate A's election is to be published in accordance with regulations.

(5) If the court declares that a declaration under Schedule 4.1A clause 19 or Schedule 4.1B clause 1(5) (the ***original declaration***) should be changed —

(a) the court may make a declaration to replace the original declaration; and

(b) if the court makes a declaration under paragraph (a), the declaration —

(i) is to be regarded as a declaration under Schedule 4.1A clause 19 or Schedule 4.1B clause 1(5) (as the case requires); and

(ii) must be published in accordance with regulations;

and

(c) the court may otherwise make any orders that the court thinks fit, including (without limitation) any of the following —

(i) an order that a person who has been elected to the council under Schedule 4.1A or 4.1B is not to act as a member of the council;

(ii) an order that a person is to be regarded as having been elected to the council under Schedule 4.1A or 4.1B;

(iii) an order that Schedule 4.1A or 4.1B be applied or reapplied, with any modifications specified in the order, in relation to a vacancy.

[Section 4.81 amended: No. 11 of 2023 s. 54.]

4.82. No appeal

There is no appeal from a decision of a Court of Disputed Returns.

4.83. Validity of election

An election is not invalid because of —

(a) a failure to do something in connection with the election within the time, or for the period or before the date allowed or required under this Act, so long as the failure does not affect the result of the election; or

(b) an irregularity or defect in the appointment or authorisation of an electoral officer; or

(c) a formal omission, irregularity or defect in a document, declaration, publication or other thing that a person has made, issued or done in good faith.

4.84. Retention and availability of electoral papers, regulations about

Regulations may include provisions about —

(a) the collection, retention and disposal of papers used in or for the purposes of an election; and

(b) the purposes for which and circumstances in which those papers may be inspected.

Division 11 — Electoral offences

4.85. Bribery and undue influence, offence

(1) A person who —

(a) promises, offers or suggests a reward for, or on account of, or to induce, electoral conduct or a promise of electoral conduct; or

(b) gives, takes or seeks a reward for, or on account of, electoral conduct or a promise of electoral conduct,

commits an offence.

Penalty: $10 000 or imprisonment for 2 years.

(2) A person who —

(a) threatens, offers or suggests detriment for, or on account of, or to induce, electoral conduct or a promise of electoral conduct; or

(b) uses, causes, inflicts or procures detriment for or on account of, electoral conduct; or

(c) interferes with the free exercise of the franchise of an elector,

commits an offence.

Penalty: $10 000 or imprisonment for 2 years.

(3) The making of a declaration of public policy or a promise of public action does not give rise to an offence against this section.

(4) In this section —

detriment means violence, injury, punishment, damage, loss or disadvantage;

electoral conduct means —

(a) candidature at an election; or

(b) withdrawal of candidature from an election; or

(c) a vote, or an omission to vote, at an election; or

(d) support of, or opposition to, a candidate for election;

reward means a reward in the form of valuable consideration or any other recompense, benefit or advantage.

4.86. Breach or neglect by officers, offence

An electoral officer who —

(a) attempts to influence the vote of an elector, or, except by recording that vote, the result of an election; or

(b) discloses, except under compulsion of law, knowledge officially acquired concerning the vote of an elector; or

(c) refuses or wilfully neglects to discharge a duty imposed under this Part or otherwise contravenes a provision of this Part,

commits an offence.

Penalty: $10 000 or imprisonment for 2 years.

4.87. Printing and publication of electoral material

(1) A person who prints, publishes or distributes electoral material or causes electoral material to be printed, published or distributed, commits an offence unless —

(a) in the case of all electoral material, the name and address (not being a post-office box) of the person who authorised the electoral material appears at the end of the electoral material; and

(b) in the case of electoral material that is printed otherwise than in a newspaper, the name and business address of the printer appears at the end of the electoral material.

Penalty: $2 000.

(2) Subsection (1) does not apply to electoral material on an item included in a prescribed class of items.

(3) In this section —

electoral material means any advertisement, handbill, pamphlet, notice, letter or article that is intended or calculated to affect the result of an election but does not include an advertisement in a newspaper announcing the holding of a meeting;

print includes photocopy or reproduce by any means.

[Section 4.87 amended: No. 49 of 2004 s. 41.]

4.88. Offence to print, publish or distribute misleading or deceptive material

(1) A person must not, during the relevant period in relation to an election —

(a) print, publish or distribute deceptive material; or

(b) cause deceptive material to be printed, published or distributed.

Penalty: a fine of $5 000 or imprisonment for one year.

(2) It is a defence to a charge under subsection (1) to prove that the accused person did not know, and could not reasonably have been expected to know, that the material was likely to mislead or deceive an elector in relation to the casting of the elector's vote.

[(3) deleted]

(4) In this section —

deceptive material means any matter or thing that is likely to mislead or deceive an elector in relation to the casting of the elector's vote at the election;

print includes photocopy or reproduce by any means;

publish includes publish by radio or television;

relevant period means the period commencing when notice calling for nominations for the election is published and ending at 6 p.m. on election day.

[Section 4.88 amended: No. 26 of 2016 s. 10.]

4.89. Canvassing in or near polling places, offence

(1) If, on any day on which polling for an election takes place, a person —

(a) canvasses for votes; or

(b) solicits the vote of an elector; or

(c) induces an elector not to vote for a particular candidate; or

(d) induces an elector not to vote at the election,

in a polling place or within 6 m from the entrance to a polling place, that person commits an offence.

Penalty: $2 000.

(2) It is a defence to a charge under subsection (1) to prove that the accused person was within 6 m of the entrance to a polling place with the approval of the presiding officer.

[Section 4.89 amended: No. 64 of 1998 s. 27.]

4.90. False statements, offence

(1) A person who makes a statement in an application, form, nomination, return, declaration or certificate or other document under this Part relating to an election, or in answer to a question authorised to be asked under this Part, knowing the statement to be false, commits an offence.

Penalty: $5 000 or imprisonment for one year.

(2) A person who induces another person to commit an offence against subsection (1) also commits an offence against subsection (1).

4.91. Nomination papers, ballot papers and ballot boxes, offences relating to

(1) A person who —

(a) forges or fraudulently defaces or destroys a ballot paper or nomination paper; or

(b) fraudulently puts a ballot paper into a ballot box; or

(c) wilfully destroys, takes, opens or otherwise interferes with any ballot box or ballot papers without authority; or

(d) personates any elector,

commits an offence.

Penalty: $10 000 or imprisonment for 2 years.

(2) A person who —

(a) supplies a ballot paper without authority; or

(b) is in possession of an unauthorised ballot paper; or

(c) votes more than once in an election; or

(d) marks a ballot paper without authority,

commits an offence.

Penalty: $5 000 or imprisonment for one year.

(3) A person who fraudulently leaves a polling place with a ballot paper commits an offence.

Penalty: $2 000.

4.92. Postal votes, offences relating to

A candidate in an election, or a person expressly authorised to act on behalf of a candidate in connection with an election, who, in relation to the election —

(a) applies undue influence or pressure on an elector to apply for a postal vote; or

(b) interferes with an elector while the elector is applying for a postal vote; or

(c) takes custody of an envelope in which there is a postal vote; or

(d) causes any other person, not being the elector whose vote is in the envelope, to do anything referred to in paragraph (c),

commits an offence.

Penalty: $5 000 or imprisonment for one year.

4.93. Interference with electors: infringement of secrecy, offence

A person who —

(a) unlawfully communicates with, assists or interferes with an elector while the elector is marking a ballot paper; or

(b) unlawfully looks at or becomes acquainted with the vote of an elector; or

(c) discloses the vote of an elector,

commits an offence.

Penalty: $5 000 or imprisonment for one year.

4.94. Other electoral offences

A person who —

(a) when in a polling place on a day on which polling is taking place, misconducts himself or herself or fails to obey the reasonable instructions of an electoral officer; or

(b) re-enters a polling place without permission after being removed from the polling place under section 4.70; or

(c) not being a candidate in an election, canvasses at the election while he or she is an employee of the local government in question; or

(d) wilfully defaces, mutilates, destroys or removes a notice, list or other document which an electoral officer, acting within the scope of his or her authority, has exhibited or caused to be exhibited; or

(e) bets on the result of an election,

commits an offence.

Penalty: $2 000.

4.95. Offences, attempts to commit

An attempt to commit an offence against this Part is an offence punishable as if the offence had been committed.

4.96. Investigation of electoral misconduct

(1) The Electoral Commissioner or the returning officer may investigate whether misconduct, malpractice or maladministration has occurred in relation to an election.

(2) An investigation can be carried out on the initiative of the Electoral Commissioner or returning officer or in response to a complaint or information received from any other person (including a candidate).

(3) For the purposes of an investigation the Electoral Commissioner or returning officer has the same powers, and protection from liability, as an authorised person has under Part 8, Division 1.

(4) Section 8.11 applies in relation to a direction given by the Electoral Commissioner or returning officer in the course of an investigation.

(5) After carrying out an investigation under this section the Electoral Commissioner may provide the Minister with a report on the investigation.

(6) After carrying out an investigation under this section the returning officer is to provide the Minister with a report on the investigation.

(7) This section has effect in addition to Part 8 and does not prevent or affect the exercise of any power under that Part.

4.97. Prosecutions

(1) A prosecution for an offence against this Part may be commenced by the returning officer or any person referred to in section 9.24(1).

(2) If the returning officer commences a prosecution for an offence against this Part —

(a) the local government is to pay any expenses incurred by, and any costs awarded against, the returning officer in connection with the proceedings; and

(b) the returning officer is to pay to the local government any fees or costs paid to the returning officer in respect of the proceedings.

[Section 4.97 inserted: No. 84 of 2004 s. 53.]

4.98. Criminal Code not to apply

Chapter XIV of *The Criminal Code* does not apply to elections held under this Act.

Division 12 — Polls and referendums

4.99. Election procedures to apply to polls and referendums

(1) To the extent to which the provisions of this Part are capable of being applied with or without adaptation in respect of polls under another Part, those provisions apply with or without adaptation in respect of those polls.

(2) Despite subsection (1), regulations may make necessary or convenient provisions in relation to preparing for, conducting and ascertaining the result of polls under another Part of this Act and for ensuring the purity of the conduct of them.

(3) Regulations may make necessary or convenient provisions in relation to preparing for, conducting and ascertaining the result of polls and referendums held by local governments, whether under local laws or otherwise, and for ensuring the purity of the conduct of them.

(4) Without limiting subsection (2) or (3), regulations may provide for the electoral rolls that are to be used, or prepared and used, for polls and referendums.

Part 5 — Administration

What this Part is about

This Part deals with —

(a) council meetings, committees and their meetings and electors' meetings; and

(b) the employment of persons by local governments and matters relating to local government employees; and

(c) annual reports and plans; and

(d) the disclosure of financial interests in matters affecting local government decisions and in returns; and

(e) public access to local government information; and

(f) the limitation of the payment of fees, expenses and allowances to council and committee members, mayors and presidents; and

(g) codes of conduct.

[Notes to Part 5 amended: No. 49 of 2004 s. 42(1).]

Division 1 — Introduction

5.1. Term used: committee

In this Part, unless the contrary intention appears —

committee means a committee of a council.

5.2. Administration of local governments

The council of a local government is to ensure that there is an appropriate structure for administering the local government.

Division 2 — Council meetings, committees and their meetings and electors' meetings

Subdivision 1 — Council meetings

5.3. Ordinary and special council meetings

(1) A council is to hold ordinary meetings and may hold special meetings.

(2) Ordinary meetings are to be held not more than 3 months apart.

(3) If a council fails to meet as required by subsection (2) the CEO is to notify the Minister of that failure.

5.4. Calling council meetings

An ordinary or a special meeting of a council is to be held —

(a) if called for by either —

(i) the mayor or president; or

(ii) at least $^1/_3$ of the councillors,

in a notice to the CEO setting out the date and purpose of the proposed meeting; or

(b) if so decided by the council.

5.5. Convening council meetings

(1) The CEO is to convene an ordinary meeting by giving each council member at least 72 hours' notice of the date, time and place of the meeting and an agenda for the meeting.

(2) The CEO is to convene a special meeting by giving each council member notice, before the meeting, of the date, time, place and purpose of the meeting.

5.6. Who presides at council meetings

(1) The mayor or president is to preside at all meetings of the council.

(2) If the circumstances mentioned in section 5.34(a) or (b) apply the deputy mayor or deputy president may preside at a meeting of the council in accordance with that section.

(3) If the circumstances mentioned in section 5.34(a) or (b) apply and —

(a) the office of deputy mayor or deputy president is vacant; or

(b) the deputy mayor or deputy president is not available or is unable or unwilling to perform the functions of mayor or president,

then, the council is to choose one of the councillors present to preside at the meeting.

5.7. Minister may reduce number for quorum and certain majorities

(1) The Minister may reduce the number of offices of member required for a quorum at a council meeting specified by the Minister if there would not otherwise be a quorum for the meeting.

(2) The Minister may reduce the number of offices of member required at a council meeting to make a decision specified by the Minister if the decision is one which would otherwise be required to be made by an absolute majority and a sufficient number of members would not otherwise be present at the meeting.

Subdivision 2 — Committees and their meetings

5.8. Establishment of committees

A local government may establish* committees of 3 or more persons to assist the council and to exercise the powers and discharge the duties of the local government that can be delegated to committees.

** Absolute majority required.*

5.9. Committees, types of

(1) In this section —

other person means a person who is not a council member or an employee.

(2) A committee is to comprise —

(a) council members only; or

(b) council members and employees; or

(c) council members, employees and other persons; or

(d) council members and other persons; or

(e) employees and other persons; or

(f) other persons only.

5.10. Committee members, appointment of

(1) A committee is to have as its members —

(a) persons appointed* by the local government to be members of the committee (other than those referred to in paragraph (b)); and

(b) persons who are appointed to be members of the committee under subsection (4) or (5).

** Absolute majority required.*

(2) At any given time each council member is entitled to be a member of at least one committee referred to in section 5.9(2)(a) or (b) and if a council member nominates himself or herself to be a member of such a committee or committees, the local government is to include that council member in the persons appointed under subsection (1)(a) to at least one of those committees as the local government decides.

(3) Section 52 of the *Interpretation Act 1984* applies to appointments of committee members other than those appointed under subsection (4) or (5) but any power exercised under section 52(1) of that Act can only be exercised on the decision of an absolute majority of the council.

(4) If at a meeting of the council a local government is to make an appointment to a committee that has or could have a council member as a member and the mayor or president informs the local government of his or her wish to be a member of the committee, the local government is to appoint the mayor or president to be a member of the committee.

(5) If at a meeting of the council a local government is to make an appointment to a committee that has or will have an employee as a member and the CEO informs the local government of his or her wish —

(a) to be a member of the committee; or

(b) that a representative of the CEO be a member of the committee,

the local government is to appoint the CEO or the CEO's representative, as the case may be, to be a member of the committee.

[Section 5.10 amended: No. 16 of 2019 s. 18.]

5.11A. Deputy committee members

(1) The local government may appoint* a person to be a deputy of a member of a committee and may terminate such an appointment* at any time.

** Absolute majority required.*

(2) A person who is appointed as a deputy of a member of a committee is to be —

(a) if the member of the committee is a council member — a council member; or

(b) if the member of the committee is an employee — an employee; or

(c) if the member of the committee is not a council member or an employee — a person who is not a council member or an employee; or

(d) if the member of the committee is a person appointed under section 5.10(5) — a person nominated by the CEO.

(3) A deputy of a member of a committee may perform the functions of the member when the member is unable to do so by reason of illness, absence or other cause.

(4) A deputy of a member of a committee, while acting as a member, has all the functions of and all the protection given to a member.

[Section 5.11A inserted: No. 17 of 2009 s. 20.]

5.11. Committee membership, tenure of

(1) Where a person is appointed as a member of a committee under section 5.10(4) or (5), the person's membership of the committee continues until —

(a) the person no longer holds the office by virtue of which the person became a member, or is no longer the CEO, or the CEO's representative, as the case may be; or

(b) the person resigns from membership of the committee; or

(c) the committee is disbanded; or

(d) the next ordinary elections day,

whichever happens first.

(2) Where a person is appointed as a member of a committee other than under section 5.10(4) or (5), the person's membership of the committee continues until —

(a) the term of the person's appointment as a committee member expires; or

(b) the local government removes the person from the office of committee member or the office of committee member otherwise becomes vacant; or

(c) the committee is disbanded; or

(d) the next ordinary elections day,

whichever happens first.

5.12. Presiding members and deputies, election of

(1) The members of a committee are to elect a presiding member from amongst themselves in accordance with Schedule 2.3, Division 1 as if the references in that Schedule —

(a) to "office" were references to "office of presiding member"; and

(b) to "council" were references to "committee"; and

(c) to "councillors" were references to "committee members".

(2) The members of a committee may elect a deputy presiding member from amongst themselves but any such election is to be

in accordance with Schedule 2.3, Division 2 as if the references in that Schedule —

(a) to "office" were references to "office of deputy presiding member"; and

(b) to "council" were references to "committee"; and

(c) to "councillors" were references to "committee members"; and

(d) to "mayor or president" were references to "presiding member".

5.13. Deputy presiding members, functions of

If, in relation to the presiding member of a committee —

(a) the office of presiding member is vacant; or

(b) the presiding member is not available or is unable or unwilling to perform the functions of presiding member,

then the deputy presiding member, if any, may perform the functions of presiding member.

5.14. Who acts if no presiding member

If, in relation to the presiding member of a committee —

(a) the office of presiding member and the office of deputy presiding member are vacant; or

(b) the presiding member and the deputy presiding member, if any, are not available or are unable or unwilling to perform the functions of presiding member,

then the committee members present at the meeting are to choose one of themselves to preside at the meeting.

5.15. Reduction of quorum for committees

The local government may reduce* the number of offices of committee member required for a quorum at a committee

meeting specified by the local government if there would not otherwise be a quorum for the meeting.

** Absolute majority required.*

5.16. Delegation of some powers and duties to certain committees

(1) Under and subject to section 5.17, a local government may delegate* to a committee any of its powers and duties other than this power of delegation.

** Absolute majority required.*

(2) A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.

(3) Without limiting the application of sections 58 and 59 of the *Interpretation Act 1984* —

(a) a delegation made under this section has effect for the period of time specified in the delegation or if no period has been specified, indefinitely; and

(b) any decision to amend or revoke a delegation under this section is to be by an absolute majority.

(4) Nothing in this section is to be read as preventing a local government from performing any of its functions by acting through another person.

5.17. Limits on delegation of powers and duties to certain committees

(1) A local government can delegate —

(a) to a committee comprising council members only, any of the council's powers or duties under this Act except —

(i) any power or duty that requires a decision of an absolute majority of the council; and

(ii) any other power or duty that is prescribed;

and

(b) to a committee comprising council members and employees, any of the local government's powers or duties that can be delegated to the CEO under Division 4; and

(c) to a committee referred to in section 5.9(2)(c), (d) or (e), any of the local government's powers or duties that are necessary or convenient for the proper management of —

(i) the local government's property; or

(ii) an event in which the local government is involved.

(2) A local government cannot delegate any of its powers or duties to a committee referred to in section 5.9(2)(f).

[Section 5.17 amended: No. 49 of 2004 s. 16(2); No. 16 of 2019 s. 19.]

5.18. Register of delegations to committees

A local government is to keep a register of the delegations made under this Division and review the delegations at least once every financial year.

Subdivision 3 — Matters affecting council and committee meetings

5.19. Quorum for meetings

(1) The quorum for a meeting of a council or committee is at least 50% of the number of offices (whether vacant or not) of member of the council or the committee.

(2) Subsection (3) applies despite subsection (1) if a council member is not present at any time during a meeting of —

(a) the council; or

(b) a committee of which the council member is a member.

(3) The office held by the council member must be disregarded for the purpose of determining the quorum for the meeting at that time if the meeting is held during a period for which the council member is entitled to parental leave under section 2.25(5B).

(4) Despite subsection (3), the quorum for a meeting cannot be less than 2.

[Section 5.19 amended: No. 11 of 2023 s. 56.]

5.20. Decisions of councils and committees

(1) A decision of a council does not have effect unless it has been made by a simple majority or, if another kind of majority is required under any provision of this Act or has been prescribed by regulations or a local law for the particular kind of decision, by that kind of majority.

(2) A decision of a committee does not have effect unless it has been made by a simple majority or, if another kind of majority has been prescribed by regulations or a local law for the particular kind of decision, by that kind of majority.

(3) This section does not apply to elections —

(a) by a council of the local government's mayor or president under section 2.11; or

(b) by a council of the local government's deputy mayor or president under section 2.15; or

(c) by a committee of the committee's presiding member or deputy presiding member under section 5.12.

5.21. Voting

(1) Each council member and each member of a committee who is present at a meeting of the council or committee is entitled to one vote.

(2) Subject to section 5.67, each council member and each member of a committee to which a local government power or duty has

been delegated who is present at a meeting of the council or committee is to vote.

(3) If the votes of members present at a council or a committee meeting are equally divided, the person presiding is to cast a second vote.

(4) If a matter is voted on at a meeting of a council or committee, the person presiding must cause the following information to be recorded in the minutes —

(a) the total votes cast for;

(b) the total votes cast against;

(c) the individual vote of each member of the council or committee.

(4A) Subsection (4) does not apply to a vote that is required to be by secret ballot under Schedule 2.3.

(4B) Regulations may prescribe how information is to be recorded for the purposes of subsection (4)(a), (b) or (c).

(5) A person who fails to comply with subsection (2) or (3) commits an offence.

[Section 5.21 amended: No. 49 of 2004 s. 43; No. 11 of 2023 s. 57.]

5.22. Minutes of council and committee meetings

(1) The person presiding at a meeting of a council or a committee is to cause minutes to be kept of the meeting's proceedings.

(2) The minutes of a meeting of a council or a committee are to be submitted to the next ordinary meeting of the council or the committee, as the case requires, for confirmation.

(3) The person presiding at the meeting at which the minutes are confirmed is to sign the minutes and certify the confirmation.

5.23. Meetings generally open to public

(1) Subject to subsection (2), the following are to be open to members of the public —

(a) all council meetings; and

(b) all meetings of any committee to which a local government power or duty has been delegated.

(2) If a meeting is being held by a council or by a committee referred to in subsection (1)(b), the council or committee may close to members of the public the meeting, or part of the meeting, if the meeting or the part of the meeting deals with any of the following —

(a) a matter affecting an employee or employees; and

(b) the personal affairs of any person; and

(c) a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting; and

(d) legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting; and

(e) a matter that if disclosed, would reveal —

(i) a trade secret; or

(ii) information that has a commercial value to a person; or

(iii) information about the business, professional, commercial or financial affairs of a person,

where the trade secret or information is held by, or is about, a person other than the local government; and

(f) a matter that if disclosed, could be reasonably expected to —

(i) impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating

or dealing with any contravention or possible contravention of the law; or

(ii) endanger the security of the local government's property; or

(iii) prejudice the maintenance or enforcement of a lawful measure for protecting public safety;

and

(g) information which is the subject of a direction given under section 23(1a) of the *Parliamentary Commissioner Act 1971*; and

(h) such other matters as may be prescribed.

(3) A decision to close a meeting or part of a meeting and the reason for the decision are to be recorded in the minutes of the meeting.

5.23A. Electronic broadcasting and video or audio recording of council meetings

(1) In this section —

council meeting means a meeting of a council or committee;

electronic broadcasting means broadcasting by way of the Internet or other electronic means;

recording means a video recording or an audio recording.

(2) Regulations may require, regulate or otherwise make provision in relation to any of the following —

(a) the electronic broadcasting of council meetings (either live or with a delay);

(b) the making or retaining of recordings of council meetings;

(c) the making of recordings of council meetings publicly available;

(d) the provision of, or otherwise making available of, recordings of council meetings to any person (on the person's request or otherwise).

(3) Regulations made for the purposes of subsection (2) cannot require or authorise —

(a) the electronic broadcasting of any part of a council meeting that is closed to members of the public; or

(b) a recording of any such part of a council meeting —

(i) to be made publicly available; or

(ii) to be provided to, or otherwise made available to, any person other than the Departmental CEO or a person authorised by the Departmental CEO.

(4) Without limiting section 9.57A(2) or subsection (2), regulations made for the purposes of subsection (2) may provide for a local government, or any other person, to be not liable to an action for defamation in prescribed circumstances.

[Section 5.23A inserted: No. 11 of 2023 s. 58.]

5.24. Question time for public

(1) Time is to be allocated for questions to be raised by members of the public and responded to at —

(a) every ordinary meeting of a council; and

(b) such other meetings of councils or committees as may be prescribed.

(2) Procedures and the minimum time to be allocated for the asking of and responding to questions raised by members of the public at council or committee meetings are to be in accordance with regulations.

5.25. Regulations about council and committee meetings and committees

(1) Without limiting the generality of section 9.59, regulations may make provision in relation to —

(a) the matters to be dealt with at ordinary or at special meetings of councils; and

(b) the functions of committees or types of committee; and

(ba) the holding of council or committee meetings by telephone, video conference or other electronic means; and

(c) the procedure to be followed at, and in respect of, council or committee meetings; and

(d) methods of voting at council or committee meetings; and

(e) the circumstances and manner in which a decision made at a council or a committee meeting may be revoked or changed (which may differ from the manner in which the decision was made); and

(f) the content and confirmation of minutes of council or committee meetings and the keeping and preserving of the minutes and any documents relating to meetings; and

(g) the giving of public notice of the date and agenda for council or committee meetings; and

(h) the exclusion from meetings of persons whose conduct is not conducive to the proper conduct of the meetings and the steps to be taken in the event of persons refusing to leave meetings; and

(i) the circumstances and time in which the unconfirmed minutes of council or committee meetings are to be made available for inspection by members of the public; and

(j) the circumstances and time in which notice papers and agenda relating to any council or committee meeting and reports and other documents which could be —

(i) tabled at a council or committee meeting; or

(ii) produced by the local government or a committee for presentation at a council or committee meeting,

are to be made available for inspection by members of the public.

(2) Regulations providing for meetings to be held by telephone, video conference or other electronic means may modify the application of this Act in relation to those meetings to the extent necessary or convenient to facilitate the holding of those meetings in that way.

[Section 5.25 amended: No. 64 of 1998 s. 28.]

Subdivision 4 — Electors' meetings

5.26. Term used: electors

In this Subdivision —

electors includes ratepayers.

5.27. Electors' general meetings

(1) A general meeting of the electors of a district is to be held once every financial year.

(2) A general meeting is to be held on a day selected by the local government but not more than 56 days after the local government accepts the annual report for the previous financial year.

(3) The matters to be discussed at general electors' meetings are to be those prescribed.

[Section 5.27 modified: SL 2020/57 [1M].]

5.28. Electors' special meetings

(1) A special meeting of the electors of a district is to be held on the request of not less than —

(a) 300 electors or 5% of the number of electors — whichever is the lesser number; or

(b) $^1/_3$ of the number of council members.

(2) The request is to specify the matters to be discussed at the meeting and the form or content of the request is to be in accordance with regulations.

(3) The request is to be sent to the mayor or president.

(4) A special meeting is to be held on a day selected by the mayor or president but not more than 35 days after the day on which he or she received the request.

(5) Despite subsection (4), the mayor or president may —

(a) decide that the special meeting is not to be held if the mayor or president is satisfied that the substance of each matter for discussion specified in the request —

(i) was discussed at a special meeting that was held during the period of 12 months ending on the day on which the mayor or president received the request; or

(ii) was, or will be, discussed at a special meeting that was, or will be, held during the period of 35 days after the day on which the mayor or president received the request;

or

(b) decide that a matter for discussion specified in the request is not to be discussed at the special meeting in whole or in part if the mayor or president is satisfied that

the substance of the whole of the matter or the part of the matter (as the case requires) —

(i) was discussed at a special meeting that was held during the period of 12 months ending on the day on which the mayor or president received the request; or

(ii) was, or will be, discussed at a special meeting that was, or will be, held during the period of 35 days after the day on which the mayor or president received the request.

(6) If the mayor or president makes a decision under subsection (5)(a) or (b), each matter, or the whole or part of the matter, is to be considered at —

(a) the first ordinary council meeting after the mayor or president makes the decision; or

(b) if, when the mayor or president makes the decision, the CEO has already convened that first ordinary council meeting under section 5.5(1) — the second ordinary council meeting after the mayor or president makes the decision.

(7) The local government must give local public notice of any decision of the mayor or president made under subsection (5)(a) or (b) and of the reasons for the decision.

[Section 5.28 modified: SL 2020/57 [1M]; amended: No. 11 of 2023 s. 60.]

5.29. Convening electors' meetings

(1) The CEO is to convene an electors' meeting by giving —

(a) at least 14 days' local public notice; and

(b) each council member at least 14 days' notice,

of the date, time, place and purpose of the meeting.

(2) The local public notice referred to in subsection (1)(a) is to be treated as having commenced at the time the notice is first given and is to continue in the prescribed way until the meeting has been held.

[Section 5.29 amended: No. 16 of 2019 s. 20.]

5.30. Who presides at electors' meetings

(1) The mayor or president is to preside at electors' meetings.

(2) If the circumstances mentioned in section 5.34(a) or (b) apply the deputy mayor or deputy president may preside at an electors' meeting in accordance with that section.

(3) If the circumstances mentioned in section 5.34(a) or (b) apply and —

(a) the office of deputy mayor or deputy president is vacant; or

(b) the deputy mayor or deputy president is not available or is unable or unwilling to perform the functions of mayor or president,

then the electors present are to choose one of the councillors present to preside at the meeting but if there is no councillor present, able and willing to preside, then the electors present are to choose one of themselves to preside.

5.31. Procedure for electors' meetings

The procedure to be followed at, and in respect of, electors' meetings and the methods of voting at electors' meetings are to be in accordance with regulations.

5.32. Minutes of electors' meetings

The CEO is to —

(a) cause minutes of the proceedings at an electors' meeting to be kept and preserved; and

(b) ensure that copies of the minutes are made available for inspection by members of the public before the council meeting at which decisions made at the electors' meeting are first considered.

5.33. Decisions made at electors' meetings

(1) All decisions made at an electors' meeting are to be considered at the next ordinary council meeting or, if that is not practicable —

(a) at the first ordinary council meeting after that meeting; or

(b) at a special meeting called for that purpose,

whichever happens first.

(2) If at a meeting of the council a local government makes a decision in response to a decision made at an electors' meeting, the reasons for the decision are to be recorded in the minutes of the council meeting.

Division 3 — Acting for the mayor or president

5.34. When deputy mayors and deputy presidents can act

If —

(a) the office of mayor or president is vacant; or

(b) the mayor or president is not available or is unable or unwilling to perform the functions of the mayor or president,

then the deputy mayor may perform the functions of mayor and the deputy president may perform the functions of president, as the case requires.

5.35. Who acts if no mayor, president or deputy

(1) If the circumstances mentioned in section 5.34(a) or (b) apply and —

(a) the office of deputy mayor or deputy president is vacant; or

(b) the deputy mayor or deputy president is not available or is unable or unwilling to perform the functions of mayor or president,

and the mayor or president or deputy will not be able to perform the functions of the mayor or president for a time known to the council, then the council may appoint a councillor to perform during that time the functions of mayor or president, as the case requires.

(2) If the circumstances mentioned in section 5.34(a) or (b) apply and —

(a) the office of deputy mayor or deputy president is vacant; or

(b) the deputy mayor or deputy president is not available or is unable or unwilling to perform the functions of mayor or president,

and a person has not been appointed under subsection (1), the CEO, after consultation with, and obtaining the agreement of, 2 councillors selected by the CEO, may perform the functions of mayor or president, as the case requires.

Division 4 — Local government employees

5.36. Local government employees

(1) A local government is to employ —

(a) a person to be the CEO of the local government; and

(b) such other persons as the council believes are necessary to enable the functions of the local government and the functions of the council to be performed.

(2) A person is not to be employed in the position of CEO unless the council —

(a) believes that the person is suitably qualified for the position; and

(b) is satisfied* with the provisions of the proposed employment contract.

** Absolute majority required.*

(3) A person is not to be employed by a local government in any other position unless the CEO —

(a) believes that the person is suitably qualified for the position; and

(b) is satisfied with the proposed arrangements relating to the person's employment.

(4) Unless subsection (5A) applies, if the position of CEO of a local government becomes vacant, it is to be advertised by the local government in the manner prescribed, and the advertisement is to contain such information with respect to the position as is prescribed.

(5A) Subsection (4) does not require a position to be advertised if it is proposed that the position be filled by a person in a prescribed class.

(5) For the avoidance of doubt, subsection (4) does not impose a requirement to advertise a position before the renewal of a contract referred to in section 5.39.

[Section 5.36 amended: No. 49 of 2004 s. 44; No. 17 of 2009 s. 21.]

5.37. Senior employees

(1) A local government may designate employees or persons belonging to a class of employee to be senior employees.

(2) The CEO is to inform the council of each proposal to employ or dismiss a senior employee, other than a senior employee referred to in section 5.39(1a), and the council may accept or reject the CEO's recommendation but if the council rejects a recommendation, it is to inform the CEO of the reasons for its doing so.

(3) Unless subsection (4A) applies, if the position of a senior employee of a local government becomes vacant, it is to be advertised by the local government in the manner prescribed, and the advertisement is to contain such information with respect to the position as is prescribed.

(4A) Subsection (3) does not require a position to be advertised if it is proposed that the position be filled by a person in a prescribed class.

(4) For the avoidance of doubt, subsection (3) does not impose a requirement to advertise a position where a contract referred to in section 5.39 is renewed.

[Section 5.37 amended: No. 49 of 2004 s. 45 and 46(4); No. 17 of 2009 s. 22.]

5.38. Annual review of employees' performance

(1) A local government must review the performance of the CEO if the CEO is employed for a term of more than 1 year.

(2) The CEO must ensure that the performance of each other employee who is employed for more than 1 year is reviewed.

(3) A review under subsection (1) or (2) must be conducted at least once in relation to each year of the person's employment.

[Section 5.38 inserted: No. 16 of 2019 s. 21.]

5.39. Contracts for CEO and senior employees

(1) Subject to subsection (1a), the employment of a person who is a CEO or a senior employee is to be governed by a written contract in accordance with this section.

(1a) Despite subsection (1) —

(a) an employee may act in the position of a CEO or a senior employee for a term not exceeding one year without a written contract for the position in which he or she is acting; and

(b) a person may be employed by a local government as a senior employee for a term not exceeding 3 months, during any 2 year period, without a written contract.

(2) A contract under this section —

(a) in the case of an acting or temporary position, cannot be for a term exceeding one year;

(b) in every other case, cannot be for a term exceeding 5 years.

(3) A contract under this section is of no effect unless —

(a) the expiry date is specified in the contract; and

(b) there are specified in the contract performance criteria for the purpose of reviewing the person's performance; and

(c) any other matter that has been prescribed as a matter to be included in the contract has been included.

(4) A contract under this section is to be renewable and subject to subsection (5), may be varied.

(5) A provision in, or condition of, an agreement or arrangement has no effect if it purports to affect the application of any provision of this section.

(6) Nothing in subsection (2) or (3)(a) prevents a contract for a period that is within the limits set out in subsection 2(a) or (b)

from being terminated within that period on the happening of an event specified in the contract.

(7) A CEO is to be paid or provided with such remuneration as is determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975* section 7A.

(8) A local government is to ensure that subsection (7) is complied with in entering into, or renewing, a contract of employment with a CEO.

[Section 5.39 amended: No. 49 of 2004 s. 46(1)-(3); No. 2 of 2012 s. 13 (correction to reprint: Gazette 28 Mar 2013 p. 1317).]

5.39A. Model standards for CEO recruitment, performance and termination

(1) Regulations must prescribe model standards for local governments in relation to the following —

(a) the recruitment of CEOs;

(b) the review of the performance of CEOs;

(c) the termination of the employment of CEOs.

(2) Regulations may amend the model standards.

[Section 5.39A inserted: No. 16 of 2019 s. 22.]

5.39B. Adoption of model standards

(1) In this section —

model standards means the model standards prescribed under section 5.39A(1).

(2) Within 3 months after the day on which regulations prescribing the model standards come into operation, a local government must prepare and adopt* standards to be observed by the local government that incorporate the model standards.

** Absolute majority required.*

(3) Within 3 months after the day on which regulations amending the model standards come into operation, the local government must amend* the adopted standards to incorporate the amendments made to the model standards.

** Absolute majority required.*

(4) A local government may include in the adopted standards provisions that are in addition to the model standards, but any additional provisions are of no effect to the extent that they are inconsistent with the model standards.

(5) The model standards are taken to be a local government's adopted standards until the local government adopts standards under this section.

(6) The CEO must publish an up-to-date version of the adopted standards on the local government's official website.

(7) Regulations may provide for —

(a) the monitoring of compliance with adopted standards; and

(b) the way in which contraventions of adopted standards are to be dealt with.

[Section 5.39B inserted: No. 16 of 2019 s. 22.]

5.39C. Policy for temporary employment or appointment of CEO

(1) A local government must prepare and adopt* a policy that sets out the process to be followed by the local government in relation to the following —

(a) the employment of a person in the position of CEO for a term not exceeding 1 year;

(b) the appointment of an employee to act in the position of CEO for a term not exceeding 1 year.

** Absolute majority required.*

(2) A local government may amend* the policy.

* *Absolute majority required.*

(3) When preparing the policy or an amendment to the policy, the local government must comply with any prescribed requirements relating to the form or content of a policy under this section.

(4) The CEO must publish an up-to-date version of the policy on the local government's official website.

[Section 5.39C inserted: No. 16 of 2019 s. 22.]

5.40. Principles affecting employment by local governments

The following principles apply to a local government in respect of its employees —

(a) employees are to be selected and promoted in accordance with the principles of merit and equity; and

(b) no power with regard to matters affecting employees is to be exercised on the basis of nepotism or patronage; and

(c) employees are to be treated fairly and consistently; and

(d) there is to be no unlawful discrimination against employees or persons seeking employment by a local government on a ground referred to in the *Equal Opportunity Act 1984* or on any other ground; and

(e) employees are to be provided with safe and healthy working conditions in accordance with the *Work Health and Safety Act 2020*; and

(f) such other principles, not inconsistent with this Division, as may be prescribed.

[Section 5.40 amended: No. 36 of 2020 s. 364.]

5.41. Functions of CEO

The CEO's functions are to —

(a) advise the council in relation to the functions of a local government under this Act and other written laws; and

(b) ensure that advice and information is available to the council so that informed decisions can be made; and

(c) cause council decisions to be implemented; and

(d) manage the day to day operations of the local government; and

(e) liaise with the mayor or president on the local government's affairs and the performance of the local government's functions; and

(f) speak on behalf of the local government if the mayor or president agrees; and

(g) be responsible for the employment, management supervision, direction and dismissal of other employees (subject to section 5.37(2) in relation to senior employees); and

(h) ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law; and

(i) perform any other function specified or delegated by the local government or imposed under this Act or any other written law as a function to be performed by the CEO.

5.42. Delegation of some powers and duties to CEO

(1) A local government may delegate* to the CEO the exercise of any of its powers or the discharge of any of its duties under —

(a) this Act other than those referred to in section 5.43; or

(b) the *Planning and Development Act 2005* section 214(2), (3) or (5).

** Absolute majority required.*

(2) A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.

[Section 5.42 amended: No. 1 of 1998 s. 13; No. 28 of 2010 s. 70.]

5.43. Limits on delegations to CEO [28]

A local government cannot delegate to a CEO any of the following powers or duties —

(a) any power or duty that requires a decision of an absolute majority of the council;

(b) accepting a tender which exceeds an amount determined by the local government for the purpose of this paragraph;

(c) appointing an auditor;

(d) acquiring or disposing of any property valued at an amount exceeding an amount determined by the local government for the purpose of this paragraph;

(e) any of the local government's powers under section 5.98, 5.98A, 5.99, 5.99A, 5.100 or 5.129;

(f) borrowing money on behalf of the local government;

(g) hearing or determining an objection of a kind referred to in section 9.5;

(ha) the power under section 9.49A(4) to authorise a person to sign documents on behalf of the local government;

(h) any power or duty that requires the approval of the Minister or the Governor;

(i) such other powers or duties as may be prescribed.

[Section 5.43 amended: No. 49 of 2004 s. 16(3) and 47; No. 17 of 2009 s. 23; No. 16 of 2019 s. 23; No. 11 of 2023 s. 66.]

5.44. CEO may delegate powers and duties to other employees

(1) A CEO may delegate to any employee of the local government the exercise of any of the CEO's powers or the discharge of any

of the CEO's duties under this Act other than this power of delegation.

(2) A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.

(3) This section extends to a power or duty the exercise or discharge of which has been delegated by a local government to the CEO under section 5.42, but in the case of such a power or duty —

(a) the CEO's power under this section to delegate the exercise of that power or the discharge of that duty; and

(b) the exercise of that power or the discharge of that duty by the CEO's delegate,

are subject to any conditions imposed by the local government on its delegation to the CEO.

(4) Subsection (3)(b) does not limit the CEO's power to impose conditions or further conditions on a delegation under this section.

(5) In subsections (3) and (4) —

conditions includes qualifications, limitations or exceptions.

[Section 5.44 amended: No. 1 of 1998 s. 14(1).]

5.45. Other matters relevant to delegations under this Division

(1) Without limiting the application of sections 58 and 59 of the *Interpretation Act 1984* —

(a) a delegation made under this Division has effect for the period of time specified in the delegation or where no period has been specified, indefinitely; and

(b) any decision to amend or revoke a delegation by a local government under this Division is to be by an absolute majority.

(2) Nothing in this Division is to be read as preventing —

(a) a local government from performing any of its functions by acting through a person other than the CEO; or

(b) a CEO from performing any of his or her functions by acting through another person.

5.46. Register of, and records relevant to, delegations to CEO and employees

(1) The CEO is to keep a register of the delegations made under this Division to the CEO and to employees.

(2) At least once every financial year, delegations made under this Division are to be reviewed by the delegator.

(3) A person to whom a power or duty is delegated under this Act is to keep records in accordance with regulations in relation to the exercise of the power or the discharge of the duty.

5.47. Superannuation regulations

The Governor may make regulations about any matter relating to the provision of superannuation by a local government.

[Section 5.47 inserted: No. 17 of 2009 s. 24.]

5.48. Long service benefits for employees and employees of local government associations

(1) In this section —

employee includes an employee of WALGA;

long service benefit means any of the following —

(a) long service leave with pay; or

(b) long service leave taken on a *pro rata* basis with pay; or

(c) payment in lieu of long service leave.

(2) Long service benefits for employees are to be provided in accordance with regulations.

[Section 5.48 amended: No. 17 of 2009 s. 25.]

5.49. Workers' compensation arrangement

(1) In this section —

arrangement means the group self-insurance arrangement established under subsection (2);

eligible body means —

(a) a local government; or

(b) a regional local government; or

(ca) a regional subsidiary; or

(c) any other body with functions relating to local government approved in writing by the Minister;

WCIM Act means the *Workers' Compensation and Injury Management Act 1981*;

WorkCover WA has the same meaning as it has in the WCIM Act.

(2) WALGA is to establish and manage, for the benefit of itself and any eligible body that chooses to participate, a group self-insurance arrangement against liability to pay compensation under the WCIM Act.

(3) Subsection (2) does not apply unless the group of participants in the arrangement is exempted under section 164 of the WCIM Act.

(4) If an eligible body wishes to join or leave the arrangement, WALGA is to apply to WorkCover WA to seek a variation in the group exemption.

(5) Participants in the arrangement are jointly and severally liable for a liability of any participant to pay compensation under the WCIM Act, being a liability in relation to which that participant

is exempted under section 164 of that Act from the requirement to insure.

(6) WALGA is to dissolve the arrangement if exemption of the group under section 164 of the WCIM Act is cancelled.

(7) Nothing in this section limits the application of the WCIM Act.

[Section 5.49 amended: No. 42 of 2004 s. 165; No. 49 of 2004 s. 12; No. 26 of 2016 s. 11.]

5.50. Payments to employees in addition to contract or award

(1) A local government is to prepare a policy in relation to employees whose employment with the local government is finishing, setting out —

(a) the circumstances in which the local government will pay an employee an amount in addition to any amount to which the employee is entitled under a contract of employment or award relating to the employee; and

(b) the manner of assessment of the additional amount.

(1a) A local government must not make any payment of the kind described in subsection (1)(a) unless the local government has adopted a policy prepared under subsection (1).

(2) A local government may make a payment —

(a) to an employee whose employment with the local government is finishing; and

(b) that is more than the additional amount set out in the policy prepared under subsection (1) and adopted by the local government,

but local public notice is to be given in relation to the payment made.

(3) The value of a payment or payments made to a person under this section is not to exceed such amount as is prescribed or provided for by regulations.

(4) In this section a reference to a payment to a person includes a reference to the disposition of property in favour of, or the conferral of any other financial benefit on, the person.

(5) The CEO must publish the policy prepared under subsection (1) and adopted by the local government on the local government's official website.

[Section 5.50 amended: No. 64 of 1998 s. 29; No. 16 of 2019 s. 24.]

5.51. Employee who nominates for election to council to take leave

(1) If an employee of a local government nominates to be a candidate for election as a member of the council and the nomination is accepted then, by operation of this subsection, the employee is to be treated as being on leave from his or her employment on and from the day that the nomination is accepted until the day of the declaration of the poll or, if the nomination is cancelled, on the day of the cancellation.

(2) An employee to whom subsection (1) applies may, during the period of leave, be paid leave entitlements to which the employee is entitled under a contract of employment or award relating to the employee but otherwise the leave is to be unpaid leave.

5.51A. Code of conduct for employees

(1) The CEO must prepare and implement a code of conduct to be observed by employees of the local government.

(2) The CEO may amend the code of conduct.

(3) The CEO must publish an up-to-date version of the code of conduct on the local government's official website.

(4) Regulations may prescribe the content of, and other matters in relation to, codes of conduct under this section.

(5) A code of conduct under this section is of no effect to the extent that it is inconsistent with regulations made for the purposes of subsection (4).

[Section 5.51A inserted: No. 16 of 2019 s. 25.]

Division 5 — Annual reports and planning

[Heading amended: No. 49 of 2004 s. 42(2).]

*[**5.52.** Deleted: No. 49 of 2004 s. 42(3).]*

5.53. Annual reports

(1) The local government is to prepare an annual report for each financial year.

(2) The annual report is to contain —

(a) a report from the mayor or president; and

(b) a report from the CEO; and

[(c), (d) deleted]

(e) an overview of the plan for the future of the district made in accordance with section 5.56, including major initiatives that are proposed to commence or to continue in the next financial year; and

(f) the financial report for the financial year; and

(g) such information as may be prescribed in relation to the payments made to employees; and

(h) the auditor's report prepared under section 7.9(1) or 7.12AD(1) for the financial year; and

(ha) a matter on which a report must be made under section 29(2) of the *Disability Services Act 1993*; and

(hb) details of entries made under section 5.121 during the financial year in the register of complaints, including —

(i) the number of complaints recorded in the register of complaints; and

(ii) how the recorded complaints were dealt with; and

(iii) any other details that the regulations may require; and

(i) such other information as may be prescribed.

[Section 5.53 amended: No. 44 of 1999 s. 28(3); No. 49 of 2004 s. 42(4) and (5); No. 1 of 2007 s. 6; No. 5 of 2017 s. 7(1).]

5.54. Acceptance of annual reports

(1) Subject to subsection (2), the annual report for a financial year is to be accepted* by the local government no later than 31 December after that financial year.

** Absolute majority required.*

(2) If the auditor's report is not available in time for the annual report for a financial year to be accepted by 31 December after that financial year, the annual report is to be accepted by the local government no later than 2 months after the auditor's report becomes available.

[Section 5.54 amended: No. 49 of 2004 s. 49.]

5.55. Notice of annual reports

The CEO is to give local public notice of the availability of the annual report as soon as practicable after the report has been accepted by the local government.

5.55A. Publication of annual reports

The CEO is to publish the annual report on the local government's official website within 14 days after the report has been accepted by the local government.

[Section 5.55A inserted: No. 5 of 2017 s. 8.]

5.56. Planning for the future

(1) A local government is to plan for the future of the district.

(2) A local government is to ensure that plans made under subsection (1) are in accordance with any regulations made about planning for the future of the district.

[Section 5.56 inserted: No. 49 of 2004 s. 42(6).]

Division 6 — Disclosure of financial interests and gifts

[Heading amended: No. 16 of 2019 s. 26.]

Subdivision 1A — Preliminary

[Heading inserted: No. 16 of 2019 s. 26.]

5.57. Terms used

In this Division, unless the contrary intention appears —

gift means —

(a) a conferral of a financial benefit (including a disposition of property) made by 1 person in favour of another person unless adequate consideration in money or money's worth passes from the person in whose favour the conferral is made to the person who makes the conferral; or

(b) a travel contribution;

travel includes accommodation incidental to a journey;

travel contribution means a financial or other contribution made by 1 person to travel undertaken by another person.

[Section 5.57 inserted: No. 16 of 2019 s. 27.]

5.58. Provisions about gifts

(1) For the purposes of this Division —

(a) the amount of a gift comprising the conferral of a financial benefit is taken to be an amount equal to the value of the financial benefit at the time the gift was made; and

(b) the amount of a gift comprising a travel contribution (other than a financial contribution) is taken to be an amount equal to the value of the contribution at the time the gift was made.

(2) For the purposes of this Division, a gift made to a relevant person (as defined in section 5.59) by 2 or more related bodies corporate (as defined in the *Corporations Act 2001* (Commonwealth) section 9) is taken to have been made by a single corporation.

[Section 5.58 inserted: No. 16 of 2019 s. 27.]

Subdivision 1 — Disclosure of financial interests in matters affecting local government decisions

5.59. Terms used

In this Subdivision, unless the contrary intention appears —

extent, in relation to an interest, includes the value and amount of the interest;

interest relating to a gift means an interest that a relevant person has because of the operation of section 5.60 when read with section 5.62(1)(ea), (eb) or (ec);

member, in relation to a council or committee, means a council member or a member of the committee;

relevant person means a person who is either a member or a person to whom section 5.70, 5.71 or 5.71A applies.

[Section 5.59 amended: No. 16 of 2019 s. 28.]

5.60. When person has an interest

For the purposes of this Subdivision, a relevant person has an interest in a matter if either —

(a) the relevant person; or

(b) a person with whom the relevant person is closely associated,

has —

(c) a direct or indirect financial interest in the matter; or

(d) a proximity interest in the matter.

[Section 5.60 inserted: No. 64 of 1998 s. 30.]

5.60A. Financial interest

For the purposes of this Subdivision, a person has a financial interest in a matter if it is reasonable to expect that the matter will, if dealt with by the local government, or an employee or committee of the local government or member of the council of the local government, in a particular way, result in a financial gain, loss, benefit or detriment for the person.

[Section 5.60A inserted: No. 64 of 1998 s. 30; amended: No. 49 of 2004 s. 50.]

5.60B. Proximity interest

(1) For the purposes of this Subdivision, a person has a proximity interest in a matter if the matter concerns —

(a) a proposed change to a planning scheme affecting land that adjoins the person's land; or

(b) a proposed change to the zoning or use of land that adjoins the person's land; or

(c) a proposed development (as defined in section 5.63(5)) of land that adjoins the person's land.

(2) In this section, land (the ***proposal land***) adjoins a person's land if —

(a) the proposal land, not being a thoroughfare, has a common boundary with the person's land; or

(b) the proposal land, or any part of it, is directly across a thoroughfare from, the person's land; or

(c) the proposal land is that part of a thoroughfare that has a common boundary with the person's land.

(3) In this section a reference to a person's land is a reference to any land owned by the person or in which the person has any estate or interest.

[Section 5.60B inserted: No. 64 of 1998 s. 30.]

5.61. Indirect financial interests

A reference in this Subdivision to an indirect financial interest of a person in a matter includes a reference to a financial relationship between that person and another person who requires a local government decision in relation to the matter.

5.62. Closely associated persons

(1) For the purposes of this Subdivision a person is to be treated as being closely associated with a relevant person if —

(a) the person is in partnership with the relevant person; or

(b) the person is an employer of the relevant person; or

(c) the person is a beneficiary under a trust, or an object of a discretionary trust, of which the relevant person is a trustee; or

(ca) the person belongs to a class of persons that is prescribed; or

(d) the person is a body corporate —

(i) of which the relevant person is a director, secretary or executive officer; or

(ii) in which the relevant person holds shares having a total value exceeding —

(I) the prescribed amount; or

(II) the prescribed percentage of the total value of the issued share capital of the company,

whichever is less;

or

(e) the person is the spouse, de facto partner or child of the relevant person and is living with the relevant person; or

(ea) the relevant person is a council member and the person —

(i) gave an electoral gift to the relevant person in relation to the election at which the relevant person was last elected; or

(ii) has given an electoral gift to the relevant person since the relevant person was last elected;

or

(eb) the relevant person is a council member and the person has given a gift to which this paragraph applies to the relevant person since the relevant person was last elected; or

(ec) the relevant person is a CEO and the person has given a gift to which this paragraph applies to the relevant person since the relevant person was last employed (or appointed to act) in the position of CEO; or

(f) the person has a relationship specified in any of paragraphs (a) to (d) in respect of the relevant person's spouse or de facto partner if the spouse or de facto partner is living with the relevant person.

(1A) Subsection (1)(eb) and (ec) apply to a gift if —

(a) either —

(i) the amount of the gift exceeds the amount prescribed for the purposes of this subsection; or

(ii) the gift is 1 of 2 or more gifts made by 1 person to the relevant person at any time during a year and the sum of the amounts of those 2 or more gifts exceeds the amount prescribed for the purposes of this subsection;

and

(b) the gift is not an excluded gift under subsection (1B).

(1B) A gift is an excluded gift —

(a) if —

(i) the gift is a ticket to, or otherwise relates to the relevant person's attendance at, an event as defined in section 5.90A(1); and

(ii) the local government approves, in accordance with the local government's policy under section 5.90A, the relevant person's attendance at the event;

or

(b) if the gift is in a class of gifts prescribed for the purposes of this subsection.

(2) In subsection (1) —

electoral gift means a gift about which the relevant person was or is required by regulations under section 4.59(a) to provide information in relation to an election;

value, in relation to shares, means the value of the shares calculated in the prescribed manner or using the prescribed method.

[Section 5.62 amended: No. 64 of 1998 s. 31; No. 28 of 2003 s. 110; No. 49 of 2004 s. 51; No. 17 of 2009 s. 26; No. 16 of 2019 s. 29.]

5.63. Some interests need not be disclosed

(1) Sections 5.65, 5.70 and 5.71 do not apply to a relevant person who has any of the following interests in a matter —

(a) an interest common to a significant number of electors or ratepayers; or

(b) an interest in the imposition of any rate, charge or fee by the local government; or

(c) an interest relating to —

(i) a fee, reimbursement of an expense or an allowance to which section 5.98, 5.98A, 5.99, 5.99A, 5.100 or 5.101(2) refers; or

(ii) a gift permitted by section 5.100A; or

(iii) reimbursement of an expense that is the subject of regulations made under section 5.101A; or

(iv) a fee or reimbursement of an expense in accordance with a policy adopted by the local government under section 5.129;

or

(d) an interest relating to the pay, terms or conditions of an employee unless —

(i) the relevant person is the employee; or

(ii) either the relevant person's spouse, de facto partner or child is the employee if the spouse,

de facto partner or child is living with the relevant person;

or

[(e) deleted]

(f) an interest arising only because the relevant person is, or intends to become, a member or office bearer of a body with non-profit making objects; or

(g) an interest arising only because the relevant person is, or intends to become, a member, office bearer, officer or employee of a department of the Public Service of the State or Commonwealth or a body established under this Act or any other written law; or

(h) a prescribed interest.

(2) If a relevant person has a financial interest because the valuation of land in which the person has an interest may be affected by —

(a) any proposed change to a planning scheme for any area in the district; or

(b) any proposed change to the zoning or use of land in the district; or

(c) the proposed development of land in the district,

then, subject to subsection (3) and (4), the person is not to be treated as having an interest in a matter for the purposes of sections 5.65, 5.70 and 5.71.

(3) If a relevant person has a financial interest because the valuation of land in which the person has an interest may be affected by —

(a) any proposed change to a planning scheme for that land or any land adjacent to that land; or

(b) any proposed change to the zoning or use of that land or any land adjacent to that land; or

(c) the proposed development of that land or any land adjacent to that land,

then nothing in this section prevents sections 5.65, 5.70 and 5.71 from applying to the relevant person.

(4) If a relevant person has a financial interest because any land in which the person has any interest other than an interest relating to the valuation of that land or any land adjacent to that land may be affected by —

(a) any proposed change to a planning scheme for any area in the district; or

(b) any proposed change to the zoning or use of land in the district; or

(c) the proposed development of land in the district,

then nothing in this section prevents sections 5.65, 5.70 and 5.71 from applying to the relevant person.

(5) A reference in subsection (2), (3) or (4) to the development of land is a reference to the development, maintenance or management of the land or of services or facilities on the land.

[Section 5.63 amended: No. 1 of 1998 s. 15; No. 64 of 1998 s. 32; No. 28 of 2003 s. 111; No. 49 of 2004 s. 52; No. 17 of 2009 s. 27; No. 26 of 2016 s. 12; No. 11 of 2023 s. 70.]

*[**5.64.** Deleted: No. 28 of 2003 s. 112.]*

5.65. Members' interests in matters to be discussed at meetings to be disclosed

(1) A member who has an interest in any matter to be discussed at a council or committee meeting that will be attended by the member must disclose the nature of the interest —

(a) in a written notice given to the CEO before the meeting; or

(b) at the meeting immediately before the matter is discussed.

Penalty: $10 000 or imprisonment for 2 years.

(2) It is a defence to a prosecution under this section if the member proves that he or she did not know —

(a) that he or she had an interest in the matter; or

(b) that the matter in which he or she had an interest would be discussed at the meeting.

(3) This section does not apply to a person who is a member of a committee referred to in section 5.9(2)(f).

5.66. Meeting to be informed of disclosures

If a member has disclosed an interest in a written notice given to the CEO before a meeting then —

(a) before the meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting; and

(b) at the meeting the person presiding is to bring the notice and its contents to the attention of the persons present immediately before the matters to which the disclosure relates are discussed.

[Section 5.66 amended: No. 1 of 1998 s. 16; No. 64 of 1998 s. 33.]

5.67. Disclosing members not to participate in meetings

A member who makes a disclosure under section 5.65 must not —

(a) preside at the part of the meeting relating to the matter; or

(b) participate in, or be present during, any discussion or decision making procedure relating to the matter,

unless, and to the extent that, the disclosing member is allowed to do so under section 5.68 or 5.69.

Penalty: $10 000 or imprisonment for 2 years.

5.68. Councils and committees may allow members disclosing interests to participate etc. in meetings

(1) If a member has disclosed, under section 5.65, an interest in a matter, the members present at the meeting who are entitled to vote on the matter —

(a) may allow the disclosing member to be present during any discussion or decision making procedure relating to the matter; and

(b) may allow, to the extent decided by those members, the disclosing member to preside at the meeting (if otherwise qualified to preside) or to participate in discussions and the decision making procedures relating to the matter if —

(i) the disclosing member also discloses the extent of the interest; and

(ii) those members decide that the interest —

(I) is so trivial or insignificant as to be unlikely to influence the disclosing member's conduct in relation to the matter; or

(II) is common to a significant number of electors or ratepayers.

(1A) Subsection (1) does not apply if —

(a) the interest disclosed is an interest relating to a gift; and

(b) subsection (1B) or (1C) applies to the gift.

(1B) This subsection applies to the gift if the disclosing member was or is required by regulations under section 4.59(a) to provide information about the gift in relation to an election.

(1C) This subsection applies to the gift if —

(a) the amount of the gift exceeds the amount prescribed for the purposes of this subsection; or

(b) the gift is 1 of 2 or more gifts made by 1 person to the disclosing member at any time during a year and the sum of the amounts of those 2 or more gifts exceeds the amount prescribed for the purposes of this subsection.

(2) A decision under this section is to be recorded in the minutes of the meeting relating to the matter together with —

(a) the extent of any participation allowed by the council or committee; and

(b) if the decision concerns an interest relating to a gift, the information prescribed for the purposes of this paragraph.

(3) This section does not prevent the disclosing member from discussing, or participating in the decision making process on, the question of whether an application should be made to the Minister under section 5.69.

[Section 5.68 amended: No. 16 of 2019 s. 30; No. 11 of 2023 s. 71.]

5.69. Minister may allow members disclosing interests to participate etc. in meetings

(1) If a member has disclosed, under section 5.65, an interest in a matter, the council or the CEO may apply to the Minister to allow the disclosing member to participate in the part of the meeting, and any subsequent meeting, relating to the matter.

(2) An application made under subsection (1) is to include —

(a) details of the nature of the interest disclosed and the extent of the interest; and

(b) any other information required by the Minister for the purposes of the application.

(3) On an application under this section the Minister may allow, on any condition determined by the Minister, the disclosing member to preside at the meeting, and at any subsequent meeting, (if otherwise qualified to preside) or to participate in discussions or the decision making procedures relating to the matter if —

(a) there would not otherwise be a sufficient number of members to deal with the matter; or

(b) the Minister is of the opinion that it is in the interests of the electors or ratepayers to do so.

(4) A person must not contravene a condition imposed by the Minister under this section.

Penalty: $10 000 or imprisonment for 2 years.

(5) A decision under this section must be recorded in the minutes of the meeting relating to the matter.

[Section 5.69 amended: No. 49 of 2004 s. 53; No. 16 of 2019 s. 31.]

5.69A. Minister may exempt committee members from disclosure requirements

(1) A council or a CEO may apply to the Minister to exempt the members of a committee from some or all of the provisions of this Subdivision relating to the disclosure of interests by committee members.

(2) An application under subsection (1) is to include —

(a) the name of the committee, details of the function of the committee and the reasons why the exemption is sought; and

(b) any other information required by the Minister for the purposes of the application.

(3) On an application under this section the Minister may grant the exemption, on any conditions determined by the Minister, if the Minister is of the opinion that it is in the interests of the electors or ratepayers to do so.

(4) A person must not contravene a condition imposed by the Minister under this section.

Penalty: $10 000 or imprisonment for 2 years.

[Section 5.69A inserted: No. 64 of 1998 s. 34(1).]

5.70. Employees to disclose interests relating to advice or reports

(1) In this section —

employee includes a person who, under a contract for services with the local government, provides advice or a report on a matter.

(2) An employee who has an interest in any matter in respect of which the employee is providing advice or a report directly to the council or a committee must disclose the nature of the interest when giving the advice or report.

Penalty for this subsection: a fine of $10 000 or imprisonment for 2 years.

(2A) Subsection (2) applies to a CEO even if the advice or report is provided in accordance with a decision made under section 5.71B(2) or (6).

(3) An employee who discloses an interest under this section must, if required to do so by the council or committee, as the case may be, disclose the extent of the interest.

Penalty for this subsection: a fine of $10 000 or imprisonment for 2 years.

[Section 5.70 amended: No. 16 of 2019 s. 32.]

5.71. Employees to disclose interests relating to delegated functions

If, under Division 4, an employee has been delegated a power or duty relating to a matter and the employee has an interest in the matter, the employee must not exercise the power or discharge the duty and —

(a) in the case of the CEO, must disclose to the mayor or president the nature of the interest as soon as practicable after becoming aware that he or she has the interest in the matter; and

(b) in the case of any other employee, must disclose to the CEO the nature of the interest as soon as practicable after becoming aware that he or she has the interest in the matter.

Penalty: $10 000 or imprisonment for 2 years.

5.71A. CEOs to disclose interests relating to gifts in connection with advice or reports

(1) A CEO who has an interest relating to a gift in a matter in respect of which the CEO proposes to provide advice or a report, directly or indirectly, to the council or a committee must disclose the nature of the interest in a written notice given to the council.

Penalty for this subsection: a fine of $10 000 or imprisonment for 2 years.

(2) A CEO who makes a disclosure under subsection (1) must not provide the advice or report unless the CEO is allowed to do so under section 5.71B(2) or (6).

Penalty for this subsection: a fine of $10 000 or imprisonment for 2 years.

(3) A CEO who has an interest relating to a gift in a matter in respect of which another employee is providing advice or a report directly to the council or a committee must disclose the nature of the interest when the advice or report is provided.

Penalty for this subsection: a fine of $10 000 or imprisonment for 2 years.

[Section 5.71A inserted: No. 16 of 2019 s. 33.]

5.71B. Council or Minister may allow CEOs to provide advice or reports

(1) In this section —

relevant gift means the gift to which the interest disclosed under section 5.71A(1) relates.

(2) The council may allow the CEO to provide the advice or report to which a disclosure under section 5.71A(1) relates if —

(a) the amount of the relevant gift does not exceed the amount prescribed for the purposes of this section; and

(b) the council decides that the nature of the interest disclosed is unlikely to influence the CEO in the provision of the advice or report.

(3) A decision of the council under subsection (2) must be recorded in the minutes of the council meeting at which the decision is made.

(4) The council may apply to the Minister to allow the CEO to provide the advice or report to which a disclosure under section 5.71A(1) relates if the amount of the relevant gift exceeds the amount prescribed for the purposes of this section.

(5) An application under subsection (4) must include —

(a) details of the nature of the interest disclosed; and

(b) any other information required by the Minister for the purposes of the application.

(6) On an application under subsection (4), the Minister may allow, on any condition determined by the Minister, the CEO to provide the advice or report if the Minister is of the opinion that it is in the interests of the electors or ratepayers to do so.

(7) A decision of the Minister under subsection (6) must be recorded in the minutes of the council meeting at which the decision is considered.

(8) For the purposes of subsections (2)(a) and (4), if the relevant gift is 1 of 2 or more gifts made by 1 person to the CEO at any time during a year, the amount of the relevant gift is the sum of the amounts of those 2 or more gifts.

[Section 5.71B inserted: No. 16 of 2019 s. 33.]

5.72. Defence to prosecution

It is a defence to a prosecution under section 5.70(2), 5.71 or 5.71A(1) or (3) if the person proves that he or she did not know that he or she had an interest in the matter.

[Section 5.72 amended: No. 16 of 2019 s. 34.]

5.73. Disclosures to be minuted

A disclosure under section 5.65, 5.70 or 5.71A(3) is to be recorded in the minutes of the meeting relating to the disclosure.

[Section 5.73 amended: No. 16 of 2019 s. 35.]

Subdivision 2 — Disclosure of financial interests in returns

5.74. Terms used

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

address means —

(a) in relation to a person other than a corporation, the last residential or business address of the person known to the person disclosing the address in a return; or

(b) in relation to a corporation, the address of the registered office or principal place of business of the corporation in the State or, where there is no such office or place, the address of the principal office or place of business of the corporation in the place in which it is incorporated or taken to be registered; or

(c) in relation to any real property, the postal address of the property or the particulars of title of the property;

annual return means a return required by section 5.76;

corporation means any body corporate, whether formed or incorporated within or outside the State, and includes any ***company*** or ***foreign company*** (as those terms are defined in the *Corporations Act 2001* of the Commonwealth) but does not include —

(a) a body corporate that is incorporated within Australia or an external Territory and is a public authority or an instrumentality or agency of the Crown; or

(b) a corporation sole; or

[(c), (d) deleted]

(e) an association, society, institution or body incorporated, or taken to be incorporated, under the *Associations Incorporation Act 2015*;

designated employee means —

(a) a CEO; and

(b) an employee, other than the CEO, to whom any power or duty has been delegated under Division 4; and

(c) an employee who is a member of a committee comprising council members and employees; and

(d) an employee nominated by the local government to be a designated employee;

primary return means a return required by section 5.75;

relative, in relation to a relevant person, means any of the following —

(a) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant of the relevant person or of the relevant person's spouse or de facto partner;

(b) the relevant person's spouse or de facto partner or the spouse or de facto partner of any relative specified in paragraph (a),

whether or not the relationship is traced through, or to, a person whose parents were not actually married to each other at the time of the person's birth or subsequently, and whether the relationship is a natural relationship or a relationship established by a written law;

relevant person means a person who is a council member or a designated employee;

return means a primary or an annual return;

return period, in relation to an annual return required to be lodged by a relevant person in a particular year, means —

(a) if the last return lodged by the relevant person was a primary return, the period commencing on the day after the start day for the primary return and ending on 30 June in that year; or

(b) if the last return lodged by the relevant person was an annual return, the period of 12 months ending on 30 June in that year;

start day means —

(a) in the case of a council member, the day on which he or she made the declaration referred to in section 2.29; or

(b) in the case of a designated employee, the day on which the person became a designated employee.

(2) A reference in this Subdivision to a disclosure concerning any income, corporation or any other thing (not being real property), includes a reference to a disclosure concerning any income derived, corporation incorporated (or taken to be registered), or other thing arising or received, outside this State.

(3) For the purposes of this Subdivision, loans made, or goods or services supplied, to a relevant person by 2 or more related bodies corporate (as defined in the *Corporations Act 2001* of the Commonwealth) are taken to have been made or supplied by a single corporation.

[Section 5.74 amended: No. 1 of 1998 s. 17; No. 26 of 1999 s. 92(2); No. 10 of 2001 s. 122; No. 28 of 2003 s. 113; No. 24 of 2009 s. 516; No. 30 of 2015 s. 223; No. 16 of 2019 s. 36 .]

5.75. Primary returns

(1) A relevant person other than the CEO must lodge with the CEO a primary return in the prescribed form within 3 months of the start day.

(2) A CEO must lodge with the mayor or president a primary return in the prescribed form within 3 months of the start day.

(3) This section does not apply to a person who —

(a) has lodged a return within the previous year; or

(b) has, within 3 months of the start day, ceased to be a relevant person.

Penalty: $10 000 or imprisonment for 2 years.

5.76. Annual returns

(1) Each year, a relevant person other than the CEO must lodge with the CEO an annual return in the prescribed form by 31 August of that year.

(2) Each year, a CEO must lodge with the mayor or president an annual return in the prescribed form by 31 August of that year.

Penalty applicable to subsections (1) and (2): $10 000 or imprisonment for 2 years.

[Section 5.76 amended: No. 1 of 1998 s. 18; No. 66 of 2006 s. 12.]

5.77. Acknowledging receipt of returns

On receipt of a return under section 5.75 or 5.76 from a person, the CEO or the mayor or president, as the case may be, is to give the person written acknowledgment of having received the return.

5.78. Information to be disclosed in returns

(1) A relevant person must comply with the requirements of sections 5.79, 5.80, 5.81, 5.84, 5.85 and 5.86 in relation to the disclosure of information in a return.

Penalty: $10 000 or imprisonment for 2 years.

(2) Nothing in this Subdivision requires a relevant person to —

(a) include in a return any information which has been disclosed in a previous return made by the relevant person; or

(b) disclose the actual value, amount or extent of any asset, income, interest, debt or disposition referred to in section 5.79, 5.80, 5.81, 5.84, 5.85 or 5.86.

[Section 5.78 amended: No. 17 of 2009 s. 28; No. 2 of 2016 s. 34.]

5.79. Real property

(1) A relevant person is to disclose in a primary return and an annual return —

(a) the address of each parcel of real property, located in the district or in an adjoining district, in which the person had an interest —

(i) in the case of a primary return, on the start day; and

(ii) in the case of an annual return, at any time during the return period;

and

(b) the nature of the interest in each parcel of real property to which paragraph (a) applies.

(2) Nothing in this Subdivision requires a relevant person to disclose in a return an interest in a parcel of real property to which subsection (1) applies if the person had the interest only —

(a) in the capacity of executor or administrator of the estate of a deceased person and the person was not a beneficiary under the will or did not have an entitlement under the intestacy; or

(b) in the capacity of trustee and the person acquired the interest in the ordinary course of an occupation of the person which is not related to his or her duties as a council member or employee; or

(c) by way of security for a debt.

(3) In this section —

interest means any estate, interest, right or power whatever, whether at law or in equity, in or over real property.

5.80. Source of income

(1) A relevant person is to disclose —

(a) in a primary return, each source from which the person reasonably expects to receive income in the period commencing on the start day and ending on the next 30 June; and

(b) in an annual return, each source from which income was received by the person at any time during the return period.

(2) A reference in subsection (1) to each source from which income was received, or is reasonably expected to be received, by a person is a reference to —

(a) in relation to income from an occupation of the person —

(i) a description of the occupation; and

(ii) if the person is employed or the holder of an office, the name and address of his or her employer or a description of the office; and

(iii) if the person has entered into a partnership with other persons, the name (if any) under which the partnership is conducted;

and

(b) in relation to income from a trust, the name and address of the settlor and the trustee; and

(c) in relation to any other income, a description sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received.

(3) Nothing in this Subdivision requires a relevant person to disclose in a return the source of any income if the amount of the income received, or reasonably expected to be received, by the person from that source did not exceed the prescribed

amount, or is not reasonably expected to exceed the prescribed amount.

(4) In this section —

income means assessable income within the meaning of the *Income Tax Assessment Act 1936* of the Commonwealth, but does not include fees, reimbursement of expenses or allowances referred to in Division 8.

5.81. Trusts

A relevant person is to disclose in a primary return and in an annual return the name and address of the settlor and the trustee of any trust in which the person held a beneficial interest, or of any discretionary trust of which the person was a trustee or object, other than a trust to which section 5.80(2)(b) applies, in the case of —

(a) a primary return, on the start day; and

(b) an annual return, at any time during the return period.

*[**5.82, 5.83.** Deleted: No. 16 of 2019 s. 37*

5.84. Interests and positions in corporations

(1) A relevant person is to disclose in a primary return and in an annual return —

(a) the name of each corporation of which the person was a member or in which he or she otherwise had an interest or held any position (whether remunerated or not) in the case of —

(i) a primary return, on the start day; and

(ii) an annual return, at any time during the return period;

and

(b) the nature of the interest, or the description of the position held, in each corporation to which paragraph (a) applies; and

(c) for each corporation to which paragraph (a) applies, other than corporations whose shares are quoted on a prescribed financial market in Australia —

(i) its address; and

(ii) a description of its principal business.

(2) In this section —

interest means a relevant interest (within the meaning given by section 9 of the *Corporations Act 2001* of the Commonwealth) in any securities (within the meaning given by section 92 of that Act) issued or made available by the corporation;

prescribed financial market has the meaning given by section 9 of the *Corporations Act 2001* of the Commonwealth.

[Section 5.84 inserted: No. 64 of 1998 s. 35; amended: No. 10 of 2001 s. 123; No. 21 of 2003 s. 15(2) and (3).]

5.85. Debts

(1) A relevant person is to disclose in a primary return and an annual return the name and address of each person to whom the relevant person was liable to pay any debt —

(a) in the case of a primary return, on the start day; or

(b) in the case of an annual return, at any time during the return period,

whether or not the amount, or any part of the amount, to be paid was due and payable on the start day or at any time during the return period, as the case may be.

(2) Nothing in this Subdivision requires a relevant person to disclose in a return a liability to pay a debt if —

(a) the amount to be paid did not exceed the prescribed amount on the start day or at any time during the return period, as the case may be, unless —

(i) the debt was one of 2 or more debts which the person was liable to pay to one person on the start day or at any time during the return period, as the case may be; and

(ii) the sum of the amounts to be paid exceeded the prescribed amount;

or

(b) the person was liable to pay the debt to a relative; or

(c) in the case of a debt arising from a loan of money, the person was liable to pay the debt to an ADI (authorised deposit-taking institution) as defined in section 5 of the *Banking Act 1959* of the Commonwealth or other person whose ordinary business includes the lending of money and the loan was made in the ordinary course of business of the lender; or

(d) in the case of a debt arising from the supply of goods or services —

(i) the goods or services were supplied in the period of 18 months immediately preceding the start day or were supplied during the return period, as the case may be; or

(ii) the goods or services were supplied in the ordinary course of an occupation of the person which is not related to his or her duties as a council member or employee.

(3) In subsections (1) and (2) —

debt means a debt arising from —

(a) a loan of money; or

(b) the supply of goods or services.

[Section 5.85 amended: No. 26 of 1999 s. 92(3).]

5.86. Dispositions of property

(1) A relevant person is to disclose in an annual return particulars of each disposition by the person of real property —

(a) located in the district or in an adjoining district, in which property the person had an interest;

(b) by which disposition the relevant person retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time,

which was made at any time during the return period.

(2) A relevant person is to disclose in an annual return particulars of each disposition of real property —

(a) located in the district or in an adjoining district, in which property the relevant person had an interest; and

(b) to a person by any person other than the relevant person under arrangements made by the relevant person; and

(c) by which disposition the relevant person obtained, either wholly or in part, the use and benefit of the property,

which was made at any time during the return period.

(3) In this section —

disposition of real property means any conveyance, transfer, assignment, settlement, payment or other alienation of real property, and includes —

(a) the creation of a trust in respect of real property; and

(b) the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in respect of real property; and

(c) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of any debt, contract,

chose in action or any other interest in respect of real property; and

(d) the exercise by a person of a general power of appointment over real property in favour of any other person; and

(e) any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of his own real property and to increase the value of the property of any other person.

5.87. Discretionary disclosures generally

A relevant person may, at his or her discretion, disclose in any return any direct or indirect benefits, advantages or liabilities, whether financial or not —

(a) which are not required to be disclosed by any other provision of this Subdivision; and

(b) which the person considers might appear to raise a conflict between the person's private interests and the person's duty as a council member or a designated employee or which he or she otherwise desires to disclose.

Subdivision 2A — Disclosure of gifts

[Heading inserted: No. 16 of 2019 s. 38.]

5.87A. Council members to disclose gifts

(1) A council member must disclose, in accordance with subsection (2) and section 5.87C, a gift received by the council member.

Penalty for this subsection: a fine of $10 000 or imprisonment for 2 years.

(2) The disclosure must be made in writing to the CEO.

(3) A person does not commit an offence against subsection (1) if —

(a) the amount of the gift does not exceed the amount prescribed for the purposes of this paragraph; or

(b) the gift is not received by the person in their capacity as a council member.

(4) For the purposes of subsection (3)(a), if the gift is 1 of 2 or more gifts made by 1 person to the council member at any time during a year, the amount of the gift is the sum of the amounts of those 2 or more gifts.

(5) For the purposes of subsection (3)(b), the gift is not received by the person in their capacity as a council member if it is a gift that the person would have received even if the person were not a council member.

[Section 5.87A inserted: No. 16 of 2019 s. 38.]

5.87B. CEOs to disclose gifts

(1) A CEO must disclose, in accordance with subsection (2) and section 5.87C, a gift received by the CEO.

Penalty for this subsection: a fine of $10 000 or imprisonment for 2 years.

(2) The disclosure must be made in writing to the mayor or president.

(3) A person does not commit an offence against subsection (1) if —

(a) the amount of the gift does not exceed the amount prescribed for the purposes of this paragraph; or

(b) the gift is not received by the person in their capacity as the CEO.

(4) For the purposes of subsection (3)(a), if the gift is 1 of 2 or more gifts made by 1 person to the CEO at any time during a year, the

amount of the gift is the sum of the amounts of those 2 or more gifts.

(5) For the purposes of subsection (3)(b), the gift is not received by the person in their capacity as the CEO if it is a gift that the person would have received even if the person were not the CEO.

[Section 5.87B inserted: No. 16 of 2019 s. 38.]

5.87C. Provisions about disclosure

(1) This section applies to a disclosure under section 5.87A or 5.87B.

(2) The disclosure must be made within 10 days after receipt of the gift.

(3) The disclosure must include the following —

(a) a description of the gift;

(b) the name and address of the person who made the gift;

(c) the date on which the gift was received;

(d) the estimated value of the gift at the time it was made;

(e) the nature of the relationship between the person who made the gift and the person who received the gift;

(f) in the case of a travel contribution —

(i) a description of the travel; and

(ii) the date of the travel.

[Section 5.87C inserted: No. 16 of 2019 s. 38.]

Subdivision 3 — General

5.88. Register of financial interests

(1) A CEO is to keep a register of financial interests.

(2) The register is to contain —

(a) the returns lodged under section 5.75 and 5.76; and

(b) a record of the disclosures made under sections 5.65, 5.70, 5.71 and 5.71A,

and be in the form that is prescribed (if any).

(3) As soon as is practicable after a person ceases to be a person who is required under section 5.75 or 5.76 to lodge a return, the CEO is to remove from the register all returns relating to that person.

(4) Returns lodged under section 5.75 or 5.76 and removed from the register under subsection (3) are to be kept by the CEO for a period of at least 5 years after the person who lodged the return ceased to be a council member or designated employee.

[Section 5.88 amended: No. 16 of 2019 s. 39(1).]

5.89A. Register of gifts

(1) A CEO is to keep a register of gifts.

(2) The register is to contain a record of the disclosures made under sections 5.87A and 5.87B.

(2A) The CEO must record a disclosure made under section 5.87A or 5.87B in the register within 10 days after the disclosure is made.

(2B) If a gift disclosed under section 5.87A or 5.87B is an excluded gift under section 5.62(1B)(a), the CEO must record in the register —

(a) the date of the approval referred to in section 5.62(1B)(a)(ii); and

(b) the reasons for that approval; and

(c) any prescribed information.

(3) The register is to be in the form that is prescribed (if any).

[(4) deleted]

(5) The CEO is to publish an up-to-date version of the register on the local government's official website.

(5A) The version of the register published under subsection (5) must not, in the case of a disclosure about a gift made by an individual, include the address disclosed under section 5.87C(3)(b) and must instead include the town or suburb mentioned in the address.

(6) As soon as practicable after a person ceases to be a person who is required under section 5.87A or 5.87B to make a disclosure, the CEO is to remove from the register all records relating to that person.

(7) If records relating to a person are removed from the register under subsection (6), a copy of the records is, for a period of at least 5 years after the person ceases to be a person required under section 5.87A or 5.87B to make a disclosure —

(a) to be kept by the CEO; and

(b) to be made available for public inspection.

[Section 5.89A inserted: No. 2 of 2016 s. 37; amended: No. 16 of 2019 s. 40.]

*[**5.89B.** Deleted: No. 16 of 2019 s. 41.]*

5.89. Offence to give false or misleading information

A person must not, in relation to a disclosure under section 5.65, 5.70, 5.71, 5.71A, 5.87A or 5.87B or a return lodged under section 5.75 or 5.76, provide information in written or oral form that the person knows to be —

(a) false or misleading in a material particular; or

(b) likely to deceive in a material way.

Penalty: $10 000 or imprisonment for 2 years.

[Section 5.89 amended: No. 2 of 2016 s. 38; No. 16 of 2019 s. 42.]

5.90. Offence to publish information in certain cases

(1) A person must not publish —

(a) any information derived from a register of financial interests or register of gifts unless that information constitutes a fair or accurate report or summary of information contained in the register and is published in good faith; or

(b) any comment on the facts set forth in a register of financial interests or register of gifts unless that comment is fair and published in good faith.

Penalty: $5 000 or imprisonment for 1 year.

(2) In subsection (1) —

publish has the meaning that the term has in the law of tort (as modified by the *Defamation Act 2005*) relating to defamation.

[Section 5.90 amended: No. 16 of 2019 s. 43.]

Division 6A — Attendance at events

[Heading inserted: No. 16 of 2019 s. 44.]

5.90A. Policy for attendance at events

(1) In this section —

event includes the following —

(a) a concert;

(b) a conference;

(c) a function;

(d) a sporting event;

(e) an occasion of a kind prescribed for the purposes of this definition.

(2) A local government must prepare and adopt* a policy that deals with matters relating to the attendance of council members and the CEO at events, including —

(a) the provision of tickets to events; and

(b) payments in respect of attendance; and

(c) approval of attendance by the local government and criteria for approval; and

(d) any prescribed matter.

** Absolute majority required.*

(3) A local government may amend* the policy.

** Absolute majority required.*

(4) When preparing the policy or an amendment to the policy, the local government must comply with any prescribed requirements relating to the form or content of a policy under this section.

(5) The CEO must publish an up-to-date version of the policy on the local government's official website.

[Section 5.90A inserted: No. 16 of 2019 s. 44.]

Division 7 — Access to information

5.91. Interpretation

A reference in this Division to a council member, a committee member or an employee performing a function under a written law other than this Act does not include a reference to a council member, a committee member or an employee performing a function in a capacity other than that of council member, a committee member or an employee, as the case may be, under this Act.

5.92. Access to information by council, committee members

(1) A person who is a council member or a committee member can have access to any information held by the local government that is relevant to the performance by the person of any of his or her functions under this Act or under any other written law.

(2) Without limiting subsection (1), a council member can have access to —

(a) all written contracts entered into by the local government; and

(b) all documents relating to written contracts proposed to be entered into by the local government.

5.93. Improper use of information

A person who is a council member, a committee member or an employee must not make improper use of any information acquired in the performance by the person of any of his or her functions under this Act or any other written law —

(a) to gain directly or indirectly an advantage for the person or any other person; or

(b) to cause detriment to the local government or any other person.

Penalty: $10 000 or imprisonment for 2 years.

5.94. Public can inspect certain local government information

A person can attend the office of a local government during office hours and, unless it would be contrary to section 5.95, inspect, free of charge, in the form or medium in which it is held by the local government and whether or not it is current at the time of inspection —

(a) any code of conduct;

[(aa) deleted]

(ab) any register of complaints referred to in section 5.121;

(b) any register of financial interests;

(ba) any register of gifts;

(c) any annual report;

(d) any annual budget;

(e) any list of fees and charges imposed under section 6.16;

(f) any plan for the future of the district made in accordance with section 5.56;

(g) any proposed local law of which the local government has given local public notice under section 3.12(3);

(h) any local law made by the local government in accordance with section 3.12;

(i) any regulations made by the Governor under section 9.60 that operate as if they were local laws of the local government;

(j) any text that —

(i) is adopted (whether directly or indirectly) by a local law of the local government or by a regulation that is to operate as if it were a local law of the local government; or

(ii) would be adopted by a proposed local law of which the local government has given local public notice under section 3.12(3);

(k) any subsidiary legislation made or adopted by the local government under any written law other than under this Act;

(l) any written law having a provision in respect of which the local government has a power or duty to enforce;

(m) any rate record;

(n) any confirmed minutes of council or committee meetings;

(o) any minutes of electors' meetings;

(p) any notice papers and agenda relating to any council or committee meeting and reports and other documents that have been —

(i) tabled at a council or committee meeting; or

(ii) produced by the local government or a committee for presentation at a council or committee meeting and which have been presented at the meeting;

(q) any report of a review of a local law prepared under section 3.16(3);

(r) any business plan prepared under section 3.59;

(s) any register of owners and occupiers under section 4.32(6) and electoral rolls;

[(t) deleted]

(ta) a report on a supplementary audit prepared under section 7.12AH(1);

(u) such other information relating to the local government —

(i) required by a provision of this Act to be available for public inspection; or

(ii) as may be prescribed.

[Section 5.94 amended: No. 49 of 2004 s. 42(7); No. 1 of 2007 s. 7; No. 5 of 2017 s. 9; No. 16 of 2019 s. 45.]

[Section 5.94 modified: SL 2020/57 [1M].]

5.95. Further provisions relating to right to inspect local government information

(1) A person's right to inspect information referred to in section 5.94 does not extend to the inspection of information —

(a) which is not current at the time of inspection; and

(b) which, in the CEO's opinion, would divert a substantial and unreasonable portion of the local government's resources away from its other functions.

(2) A person's right to inspect information referred to in section 5.94 does not extend to the inspection of information referred to in paragraph (m), (n), (p) or (u) of that section if the information relates to any debt owed to the local government by a person other than the first-mentioned person.

(3) Subject to subsection (4), a person's right to inspect information referred to in section 5.94 does not extend to the inspection of information referred to in paragraph (n) or (p) of that section if the meeting or that part of the meeting to which the information refers was closed to members of the public.

(4) Subsection (3) does not apply in relation to information —

(a) that is a record of the decisions made at a meeting of a council, a committee or electors; or

(b) of a kind prescribed as being information that can be inspected by members of the public despite subsection (3).

[(5) deleted]

(6) Subject to subsection (7), a person's right to inspect information referred to in section 5.94 does not extend to the inspection of information —

(a) referred to in a paragraph of that section that is prescribed as being confidential information for the purposes of this subsection; or

(b) referred to in that section of a type prescribed as confidential for the purposes of this subsection,

for the period of time prescribed in relation to the information.

(7) Subsection (6) does not apply in respect of information in relation to a local government if —

(a) the information is prescribed as information that is confidential but that may be available for inspection if the local government so resolves; and

(b) the local government has resolved that the information is to be available for inspection.

(8) A person's right to inspect information referred to in section 5.94 does not extend to the inspection of information referred to in paragraph (m) of that section if the information is information that has been omitted by regulations made under section 4.38 from the electoral roll for the protection of an elector or his or her family.

(9) Information may be prescribed for the purposes of section 5.94(u)(ii) whether or not the information is required to be generated, obtained, provided or kept under another provision of this Act.

[Section 5.95 amended: No. 49 of 2004 s. 54; No. 16 of 2019 s. 46; No. 11 of 2023 s. 76(2).]

5.96. Copies of information to be available

If a person can inspect certain information under this Division, the person may request a copy of the information and, unless regulations prescribe otherwise, the local government is to ensure that copies are available and that the price at which it sells copies does not exceed the cost of providing the copies.

[Section 5.96 amended: No. 17 of 2009 s. 31.]

5.96A. Information published on official website

(1) The CEO must publish the following information on the local government's official website, unless it would be contrary to subsection (2) to do so —

(a) a map of the district showing the district boundaries and, if the district is divided into wards, the ward boundaries;

(b) an up-to-date consolidated version of any local law made by the local government in accordance with section 3.12 that is in force;

(c) the annual budget;

(d) an up-to-date list of fees and charges imposed under section 6.16;

(e) current plans for the future of the district made under section 5.56;

(f) confirmed minutes of council or committee meetings;

(g) minutes of electors' meetings;

(h) notice papers and agenda relating to council or committee meetings and reports and other documents that have been —

(i) tabled at a council or committee meeting; or

(ii) produced by the local government or a committee for presentation at a council or committee meeting and that have been presented at the meeting;

(i) information of a kind prescribed for the purposes of this subsection or required by another provision of this Act to be published on the website.

(2) The CEO must not publish information referred to in subsection (1)(f) or (h) if the meeting or that part of the meeting to which the information refers was closed to members of the public.

(3) Subsection (2) does not apply to information —

(a) that is a record of decisions made at a council or committee meeting; or

(b) of a kind prescribed as being information that can be published despite subsection (2).

(3B) A kind of information may be prescribed for the purposes of subsection (1) as provided for by subsection (1)(i) whether or not that kind of information is required to be generated, obtained, provided or kept under another provision of this Act.

(4) The CEO must ensure that the following information is not published on the local government's official website —

(a) rate records;

(b) the register of owners and occupiers under section 4.32(6) and electoral rolls;

(c) information of a kind prescribed for the purposes of this subsection.

(5) Regulations may specify the period for which information referred to in subsection (1) must be kept on the local government's official website, and may specify different periods for different kinds of information.

[Section 5.96A inserted: No. 16 of 2019 s. 47; amended: No. 11 of 2023 s. 77(3).]

5.97. *Freedom of Information Act 1992* not affected

Nothing in this Division affects the operation of the *Freedom of Information Act 1992*.

Division 8 — Local government payments and gifts to its members

[Heading inserted: No. 17 of 2009 s. 32.]

5.98. Fees etc. for council members

(1A) In this section —

determined means determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975* section 7B.

(1) A council member who attends a council or committee meeting is entitled to be paid —

(a) the fee determined for attending a council or committee meeting; or

(b) where the local government has set a fee within the range determined for council or committee meeting attendance fees, that fee.

(2A) A council member who attends a meeting of a prescribed type at the request of the council is entitled to be paid —

(a) the fee determined for attending a meeting of that type; or

(b) where the local government has set a fee within the range determined for meetings of that type, that fee.

(2) A council member who incurs an expense of a kind prescribed as being an expense —

(a) to be reimbursed by all local governments; or

(b) which may be approved by any local government for reimbursement by the local government and which has been approved by the local government for reimbursement,

is entitled to be reimbursed for the expense in accordance with subsection (3).

(3) A council member to whom subsection (2) applies is to be reimbursed for the expense —

(a) where the extent of reimbursement for the expense has been determined, to that extent; or

(b) where the local government has set the extent to which the expense can be reimbursed and that extent is within the range determined for reimbursement, to that extent.

(4) If an expense is of a kind that may be approved by a local government for reimbursement, then the local government may approve reimbursement of the expense either generally or in a particular case but nothing in this subsection limits the application of subsection (3) where the local government has approved reimbursement of the expense in a particular case.

(5) The mayor or president of a local government is entitled, in addition to any entitlement that he or she has under subsection (1) or (2), to be paid —

(a) the annual local government allowance determined for mayors or presidents; or

(b) where the local government has set an annual local government allowance within the range determined for annual local government allowances for mayors or presidents, that allowance.

(6) A local government cannot make any payment to, or reimburse an expense of, a person who is a council member or a mayor or president in that person's capacity as council member, mayor or president unless the payment or reimbursement is in accordance with —

(a) this Division; or

(b) a policy adopted by the local government under section 5.129.

[(7) deleted]

[Section 5.98 amended: No. 64 of 1998 s. 36; No. 17 of 2009 s. 33; No. 2 of 2012 s. 14; No. 11 of 2023 s. 79.]

5.98A. Allowance for deputy mayor or deputy president

(1) A local government may decide* to pay the deputy mayor or deputy president of the local government an allowance of up to the percentage that is determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975* section 7B of the annual local government allowance to which the mayor or president is entitled under section 5.98(5).

** Absolute majority required.*

(2) An allowance under subsection (1) is to be paid in addition to any amount to which the deputy mayor or deputy president is entitled under section 5.98.

[Section 5.98A inserted: No. 64 of 1998 s. 37; amended: No. 2 of 2012 s. 15.]

5.99. Annual fee for council members in lieu of fees for attending meetings

A local government may decide* that instead of paying council members a fee referred to in section 5.98(1), it will instead pay all council members who attend council or committee meetings —

(a) the annual fee determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975* section 7B; or

(b) where the local government has set a fee within the range for annual fees determined by that Tribunal under that section, that fee.

** Absolute majority required.*

[Section 5.99 amended: No. 2 of 2012 s. 16.]

5.99A. Allowances for council members in lieu of reimbursement of expenses

(1) A local government may decide* that instead of reimbursing council members under section 5.98(2) for all of a particular type of expense it will instead pay all eligible council members —

(a) the annual allowance determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975* section 7B for that type of expense; or

(b) where the local government has set an allowance within the range determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975* section 7B for annual allowances for that type of expense, an allowance of that amount,

and only reimburse the member for expenses of that type in excess of the amount of the allowance.

** Absolute majority required.*

(2) For the purposes of subsection (1), a council member is eligible to be paid an annual allowance under subsection (1) for a type of expense only in the following cases —

(a) in the case of an annual allowance that is paid in advance, if it is reasonably likely that the council member will incur expenses of that type during the period to which the allowance relates;

(b) in the case of an annual allowance that is not paid in advance, if the council member has incurred expenses of that type during the period to which the allowance relates.

[Section 5.99A inserted: No. 64 of 1998 s. 38; amended: No. 2 of 2012 s. 17; No. 26 of 2016 s. 13.]

5.100A. Gifts to council members

A local government cannot give a gift to a council member unless —

(a) the gift is given in prescribed circumstances; and

(b) the value of the gift is less than a prescribed amount.

[Section 5.100A inserted: No. 17 of 2009 s. 34.]

5.100. Fees paid and expenses reimbursed to committee members

(1) In this section —

committee member means a person who is a committee member but who is neither a council member nor an employee;

determined means determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975* section 7BAA.

(2) A committee member who attends a meeting of the committee is entitled to be paid —

(a) the fee determined for attending a committee meeting; or

(b) if the local government has set a fee within the range determined for committee meeting attendance fees — that fee.

(3) A committee member who attends a meeting of a prescribed type at the request of the council is entitled to be paid —

(a) the fee determined for attending a meeting of that type; or

(b) if the local government has set a fee within the range determined for meetings of that type — that fee.

(4) Subsection (5) applies if a committee member incurs —

(a) an expense that is of a kind prescribed as being an expense to be reimbursed by all local governments; or

(b) an expense —

(i) that is of a kind prescribed as being an expense which may be approved by any local government for reimbursement by the local government; and

(ii) which has been approved by the local government for reimbursement.

(5) The committee member must be reimbursed for the expense —

(a) if the extent of reimbursement for the expense has been determined — to that extent; or

(b) if the local government has set the extent to which the expense can be reimbursed and that extent is within the range determined for reimbursement — to that extent.

(6) If an expense is of a kind that may be approved by a local government for reimbursement, the local government may approve reimbursement of the expense either generally or in a particular case but nothing in this subsection limits the application of subsection (5) if the local government has approved reimbursement of the expense in a particular case.

(7) A local government cannot make any payment to, or reimburse an expense of, a person who is a committee member in that person's capacity as committee member unless the payment or reimbursement is in accordance with this section.

[Section 5.100 inserted: No. 11 of 2023 s. 80.]

5.101. Payments for employee committee members

(1) A committee member who is an employee is not to be paid a fee for attending any committee meeting.

(2) Nothing in this section prevents a local government from reimbursing an employee for an expense incurred by the employee in relation to a matter affecting the local government.

5.101A. Regulations about payment of expenses

Regulations may be made about the method of payment of an expense for which a person can be reimbursed.

[Section 5.101A inserted: No. 17 of 2009 s. 35.]

5.102. Expense may be funded before actually incurred

Nothing in this Division prevents a local government from making a cash advance to a person in respect of an expense for which the person can be reimbursed.

5.102AA. Apportionment of annual payments

A determination made by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975* section 7B may provide for the payment of a proportion of an annual allowance or annual fee payable under this Division if a person holds the office to which the allowance or fee relates for only part of a year.

[Section 5.102AA inserted: No. 26 of 2016 s. 14.]

5.102AB. Repayment of advance annual payments if recipient ceases to hold office

(1) This section applies if —

(a) a local government pays an annual allowance or annual fee under this Division to a person in advance (either wholly or in part); and

(b) the person ceases to hold the office to which the allowance or fee relates before the end of the period to which the advance payment relates.

(2) Regulations may be made —

(a) requiring the repayment to a local government, to the extent determined in accordance with the regulations, of an advance payment of an annual allowance or annual

fee in the circumstances to which this section applies; and

(b) providing for a local government to recover any amount repayable if it is not repaid.

[Section 5.102AB inserted: No. 26 of 2016 s. 14.]

5.102AC. Application of this Division to regional local governments

(1) This Division applies, and is to be taken to have always applied, in accordance with section 3.66(1) and (5) to and in relation to regional local governments, members and deputy members of the councils of regional local governments and chairmen and deputy chairmen of regional local governments.

(2) This section does not limit section 3.66.

[Section 5.102AC inserted: No. 26 of 2016 s. 14.]

Division 9 — Conduct

[Heading inserted: No. 1 of 2007 s. 8; amended: No. 16 of 2019 s. 48.]

5.102A. Terms used

In this Division —

breach means a minor breach or a serious breach;

candidate means a candidate for election as a council member;

complaints officer means the person who is the complaints officer under section 5.120 for the local government concerned;

minor breach has the meaning given in section 5.105(1), and it includes a recurrent breach;

model code means the model code of conduct prescribed for the purposes of section 5.103(1);

party, when used in connection with a complaint, means —

(a) the person who made the complaint; or

(b) the person against whom the complaint was made;

primary standards panel means the standards panel established under section 5.122(1);

recurrent breach has the meaning given in section 5.105(2);

rule of conduct means a provision of the model code that is specified in the model code to be a rule of conduct;

serious breach has the meaning given in section 5.105(3);

standards panel means a standards panel established under section 5.122(1) or (2).

[Section 5.102A inserted: No. 1 of 2007 s. 9; amended: No. 16 of 2019 s. 49.]

5.103. Model code of conduct for council members, committee members and candidates

(1) Regulations must prescribe a model code of conduct for council members, committee members and candidates.

(2) The model code of conduct must include —

(a) general principles to guide behaviour; and

(b) requirements relating to behaviour; and

(c) provisions specified to be rules of conduct.

(3) The model code of conduct may include provisions about how the following are to be dealt with —

(a) alleged breaches of the requirements referred to in subsection (2)(b);

(b) alleged breaches of the rules of conduct by committee members.

(4) The model code of conduct cannot include a rule of conduct if contravention of the rule would, in addition to being a minor breach under section 5.105(1)(a), also be a serious breach under section 5.105(3).

(5) Regulations may amend the model code of conduct.

[Section 5.103 inserted: No. 16 of 2019 s. 50.]

5.104. Adoption of model code of conduct

(1) Within 3 months after the day on which regulations prescribing the model code come into operation, a local government must prepare and adopt* a code of conduct to be observed by council members, committee members and candidates that incorporates the model code.

** Absolute majority required.*

(2) Within 3 months after the day on which regulations amending the model code come into operation, the local government must amend* the adopted code of conduct to incorporate the amendments made to the model code.

** Absolute majority required.*

(3) A local government may include in the adopted code of conduct requirements in addition to the requirements referred to in section 5.103(2)(b), but any additional requirements —

(a) can only be expressed to apply to council members or committee members; and

(b) are of no effect to the extent that they are inconsistent with the model code.

(4) A local government cannot include in the adopted code of conduct provisions in addition to the principles referred to in section 5.103(2)(a) or the rules of conduct.

(5) The model code is taken to be a local government's adopted code of conduct until the local government adopts a code of conduct.

(6) An alleged breach of a local government's adopted code of conduct by a candidate cannot be dealt with under this Division

or the adopted code of conduct unless the candidate has been elected as a council member.

(7) The CEO must publish an up-to-date version of a local government's adopted code of conduct on the local government's official website.

[Section 5.104 inserted: No. 16 of 2019 s. 50.]

5.105. Breaches by council members

(1) A council member commits a minor breach if the council member —

(a) contravenes a rule of conduct; or

(b) contravenes a local law under this Act, contravention of which the regulations specify to be a minor breach.

(1A) Subsection (1) extends to the contravention of a rule of conduct that occurred when the council member was a candidate.

(1B) Regulations cannot specify that contravention of a local law under this Act is a minor breach if contravention of the local law would, in addition to being a minor breach under subsection (1), also be a serious breach under subsection (3).

(2) A minor breach is a recurrent breach if it occurs after the council member has been found under this Division to have committed 2 or more other minor breaches.

(3) A council member who commits any offence under a written law, other than a local law made under this Act, of which it is an element that the offender is a council member or is a person of a description that specifically includes a council member commits a serious breach.

[Section 5.105 inserted: No. 1 of 2007 s. 11; amended: No. 16 of 2019 s. 51.]

5.106. Deciding whether breach occurred

A finding that a breach has occurred is to be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur.

[Section 5.106 inserted: No. 1 of 2007 s. 11.]

5.107. Complaining to complaints officer of minor breach

(1) A person who has reason to believe that a council member has committed a minor breach may complain of the breach by sending to the complaints officer a complaint in accordance with subsection (2).

(2) The complaint has to be made in writing, in a form approved by the Minister, giving details of —

(a) who is making the complaint; and

(b) who is alleged to have committed the breach; and

(c) the contravention that is alleged to have resulted in the breach; and

(d) any other information that the regulations may require.

(3) Within 14 days after the day on which the complaints officer receives the complaint, the complaints officer is required to —

(a) give to the person making the complaint an acknowledgment in writing that the complaint has been received; and

(b) give to the council member about whom the complaint is made a copy of the complaint; and

(c) send —

(i) the complaint; and

(ii) anything the complaints officer has that is relevant to the complaint including, where relevant, details of any 2 or more minor breaches

that the council member has previously been found to have committed,

to the member of the primary standards panel who is appointed under Schedule 5.1 clause 2(a).

(4) A person can make a complaint under this section within 6 months after the breach alleged in the complaint occurred, but not later.

[Section 5.107 inserted: No. 1 of 2007 s. 11; amended: No. 16 of 2019 s. 52.]

5.108. Departmental CEO may send complaint of minor breach to complaints officer

(1) If it appears to the Departmental CEO that a complaint a person seeks to make under section 5.114 discloses a minor breach, the Departmental CEO may send the complaint to the complaints officer of the local government concerned.

(2) Within 14 days after the day on which the complaints officer receives the complaint, the complaints officer is required to —

(a) give to the person who sent the complaint to the Departmental CEO written notice that the complaint is to be dealt with as a complaint of a minor breach; and

(b) give to the council member about whom the complaint is made a copy of the complaint; and

(c) send —

(i) the complaint; and

(ii) anything the complaints officer has that is relevant to the complaint including, where relevant, details of any 2 or more minor breaches that the council member has previously been found to have committed,

to the member of the primary standards panel who is appointed under Schedule 5.1 clause 2(a).

(3) The Departmental CEO can send a complaint to a complaints officer under this section within 6 months after the breach alleged in the complaint occurred, but not later.

[Section 5.108 inserted: No. 1 of 2007 s. 11; amended: No. 17 of 2009 s. 44; No. 16 of 2019 s. 53.]

5.109. Complaint initiated by complaints officer

(1) A person who is a complaints officer may make a complaint of a minor breach by —

(a) preparing the complaint in the form required under section 5.107(2); and

(b) giving the council member about whom the complaint is made a copy of the complaint; and

(c) sending —

(i) the complaint; and

(ii) anything the complaints officer has that is relevant to the complaint including, where relevant, details of any 2 or more minor breaches that the council member has previously been found to have committed,

to the member of the primary standards panel who is appointed under Schedule 5.1 clause 2(a).

(2) A complaints officer can make a complaint under this section within 6 months after the breach alleged in the complaint occurred, but not later.

[Section 5.109 inserted: No. 1 of 2007 s. 11; amended: No. 16 of 2019 s. 54.]

5.110A. Withdrawal of complaint of minor breach

(1) This section applies to the following complaints —

(a) a complaint made under section 5.107, other than a complaint that, under section 5.115, the complaints officer has sent to the Departmental CEO;

(b) a complaint made under section 5.114 that, under section 5.108, the Departmental CEO has sent to the complaints officer;

(c) a complaint made under section 5.109.

(2) A person who has made a complaint to which this section applies can withdraw the complaint at any time before a standards panel does either of the things that it is required to do under section 5.110(2) in relation to the complaint.

(3) A withdrawal of a complaint —

(a) must be in writing; and

(b) must be sent to the member of the primary standards panel who is appointed under Schedule 5.1 clause 2(a).

(4) If a complaint is withdrawn —

(a) the member of the primary standards panel who is appointed under Schedule 5.1 clause 2(a) must, as soon as practicable after receiving the withdrawal —

(i) give to the person who made the complaint an acknowledgment in writing that the withdrawal of the complaint has been received; and

(ii) notify the council member about whom the complaint was made and the complaints officer that the complaint has been withdrawn;

and

(b) neither the member of the primary standards panel who is appointed under Schedule 5.1 clause 2(a) nor a standards panel is to take any action or, as the case

requires, any further action under section 5.110 in relation to the complaint; and

(c) a further complaint about the matter that is the subject of the withdrawn complaint cannot be made (whether by the original complainant or anyone else) unless the member of the primary standards panel who is appointed under Schedule 5.1 clause 2(a) is satisfied that it is appropriate to do so in the circumstances.

(5) Without limiting subsection (2), a complaint cannot be withdrawn if, under section 5.111, a standards panel has sent the complaint to the Departmental CEO, even if the Departmental CEO subsequently decides not to make an allegation under section 5.112(2).

(6) Despite subsection (4) —

(a) even though a complaint has been withdrawn, a standards panel can deal with the complaint as if it had not been withdrawn if the member of the primary standards panel who is appointed under Schedule 5.1 clause 2(a) is satisfied that it is appropriate to do so in the circumstances; and

(b) if paragraph (a) applies, the member of the primary standards panel who is appointed under Schedule 5.1 clause 2(a) must notify the parties and the complaints officer that a standards panel is to deal with the complaint.

[Section 5.110A inserted: No. 26 of 2016 s. 15.]

5.110. Dealing with complaint of minor breach

(1) The member of the primary standards panel who receives a complaint from a complaints officer under section 5.107(3)(c), 5.108(2)(c) or 5.109(1)(c) is to —

(a) allocate that complaint to a standards panel; and

(b) send the complaint and anything received from the complaints officer to the member of that standards panel who is appointed under Schedule 5.1 clause 2(a).

(2) After receiving a complaint allocated to it under subsection (1), a standards panel is required to —

(a) make a finding as to whether the breach alleged in the complaint occurred; or

(b) send the complaint to the Departmental CEO under section 5.111.

(3A) However, a standards panel can at any stage of its proceedings refuse to deal with a complaint if the standards panel is satisfied that the complaint is frivolous, trivial, vexatious, misconceived or without substance.

(3B) A standards panel may —

(a) request the parties to participate in mediation to resolve behavioural matters related to the complaint; and

(b) if the parties agree to the request, defer the making of a finding under subsection (2) pending the outcome of the mediation.

(3) For the purpose of helping it to deal with a complaint, a standards panel may request the complaints officer to provide anything further that the standards panel requires, and the complaints officer is required to comply with the request so far as it is practicable to do so.

(4) A standards panel must give each party written notice of the reasons for —

(a) any finding it makes under subsection (2); or

(b) any refusal under subsection (3A) to deal with a complaint.

(5) If a standards panel finds that a council member has committed a minor breach, the standards panel is required to give the

council member an opportunity to make submissions about how the breach should be dealt with under subsection (6).

(5A) When determining how the breach should be dealt with under subsection (6), the standards panel may take into account —

(a) the outcome of mediation requested under subsection (3B); or

(b) a refusal by the council member to participate in mediation requested under subsection (3B).

(6) The breach is to be dealt with by —

(a) ordering that no sanction be imposed; or

(b) ordering that —

(i) the person against whom the complaint was made be publicly censured as specified in the order; or

(ii) the person against whom the complaint was made apologise publicly as specified in the order; or

(iii) the person against whom the complaint was made undertake training as specified in the order; or

(iv) the person against whom the complaint was made pay to the local government specified in the order an amount equal to the amount of remuneration and allowances payable by the local government in relation to the complaint under Schedule 5.1 clause 9;

or

(c) ordering 2 or more of the sanctions described in paragraph (b).

(7) A standards panel is required to give to each party and the complaints officer notice of how it deals with the matter under subsection (6).

(8) Regulations may provide for or regulate matters relating to mediation under this section including —

(a) the appointment of mediators; and

(b) the procedures to be followed when mediation is undertaken; and

(c) the time allowed for mediation; and

(d) payment and recovery of the costs of mediation.

[Section 5.110 inserted: No. 1 of 2007 s. 11; amended: No. 17 of 2009 s. 44; No. 26 of 2016 s. 16; No. 16 of 2019 s. 55.]

5.111. Dealing with recurrent breach

(1) If a standards panel is allocated a complaint as described in section 5.110(1) and the breach alleged, if it were found to have been committed, would be a recurrent breach, the standards panel may send the complaint to the Departmental CEO or proceed under section 5.110 to make a finding and deal with the complaint.

(2) If a standards panel sends the complaint to the Departmental CEO under subsection (1), the standards panel is required to notify —

(a) each of the parties; and

(b) the complaints officer.

[Section 5.111 inserted: No. 1 of 2007 s. 11; amended: No. 17 of 2009 s. 44.]

5.112. Allegation of recurrent breach

(1) If a standards panel sends to the Departmental CEO, under section 5.111, a complaint of a minor breach that, if it were found to have been committed, would be a recurrent breach, the Departmental CEO has to decide whether to make an allegation under subsection (2).

(2) If the Departmental CEO considers it appropriate to do so, the Departmental CEO may make an allegation to the State Administrative Tribunal that the council member committed the breach.

(3) The Departmental CEO is required to give the complaints officer and each of the parties notice in writing of the decision.

(4) If the Departmental CEO decides not to make an allegation to the State Administrative Tribunal —

(a) the Departmental CEO is required to send the complaint to the standards panel that sent the complaint to the Departmental CEO; and

(b) the standards panel is required to notify each of the parties and the complaints officer that the complaint will be dealt with by the standards panel; and

(c) the standards panel is required to deal with the complaint under section 5.110.

(5) The fact that the person who made the complaint does not want an allegation to be made to the State Administrative Tribunal does not prevent the Departmental CEO from making the allegation.

[Section 5.112 inserted: No. 1 of 2007 s. 11; amended: No. 17 of 2009 s. 44.]

5.113. Punishment for recurrent breach

If, on an allegation under section 5.112, the State Administrative Tribunal finds that a person committed a recurrent breach, it may make any of the orders described in section 5.117.

[Section 5.113 inserted: No. 1 of 2007 s. 11.]

5.114. Making complaint of serious breach

(1) A person who has reason to believe that a council member has committed a serious breach may complain to the Departmental CEO as described in subsection (2).

(2) The complaint has to be made in writing in a form approved by the Minister, giving details of —

(a) who is making the complaint; and

(b) who is alleged to have committed the breach; and

(c) the offence that is alleged to have resulted in the breach; and

(d) any other information that the regulations may require,

and sent to the Departmental CEO.

(3) If there is a limit on the time within which proceedings may be commenced for the offence to which a complaint of a serious breach relates, the complaint cannot be made after that time has elapsed.

[Section 5.114 inserted: No. 1 of 2007 s. 11; amended: No. 17 of 2009 s. 44.]

5.115. Complaints officer to send complaint of serious breach to Departmental CEO

(1) If it appears to a complaints officer that a complaint a person seeks to make under section 5.107 discloses a serious breach, the complaints officer is required to send the complaint to the Departmental CEO.

(2) If the complaints officer sends the complaint to the Departmental CEO, the complaints officer is required to notify each of the parties.

[Section 5.115 inserted: No. 1 of 2007 s. 11; amended: No. 17 of 2009 s. 44.]

5.116. Allegation by Departmental CEO of serious breach

(1) If —

(a) a person sends to the Departmental CEO a complaint under section 5.114(1) that a council member has committed a serious breach; or

(b) a complaints officer sends to the Departmental CEO, under section 5.115(1), a complaint that appears to disclose a serious breach,

the Departmental CEO has to decide whether to make an allegation under subsection (2).

(2) If the Departmental CEO considers it appropriate to do so, the Departmental CEO may, whether or not a complaint has been sent to the Departmental CEO, make an allegation to the State Administrative Tribunal that the council member committed a serious breach.

(3) In deciding whether it would be appropriate to make an allegation to the State Administrative Tribunal, the Departmental CEO has to consider whether it would be more appropriate for the matter to be dealt with in another way.

(4) The Departmental CEO cannot make an allegation under subsection (2) if the council member has already been tried by a court for the offence the commission of which is the serious breach.

(5) Within 14 days after the day on which the Departmental CEO receives a complaint that is sent to the Departmental CEO under section 5.114 or 5.115, the Departmental CEO is required to give each party notice in writing —

(a) acknowledging that the complaint is in accordance with the Act; and

(b) stating that the Departmental CEO will decide whether to make an allegation under subsection (2).

(6) The fact that a person who made a complaint does not want an allegation arising from the complaint to be made to the State Administrative Tribunal does not prevent the Departmental CEO from making the allegation.

[Section 5.116 inserted: No. 1 of 2007 s. 11; amended: No. 17 of 2009 s. 44.]

5.117. Punishment for serious breach

(1) If, on an allegation under section 5.116(2), the State Administrative Tribunal finds that a person committed a serious breach, it may —

(a) order that —

(i) the person against whom the allegation was made be publicly censured as specified in the order; or

(ii) the person against whom the allegation was made apologise publicly as specified in the order; or

(iii) the person against whom the allegation was made undertake training as specified in the order; or

(iv) the person against whom the allegation was made is suspended for a period of not more than 6 months specified in the order; or

(v) the person against whom the allegation was made is, for a period of not more than 5 years specified in the order, disqualified from holding office as a member of a council;

or

(b) order 2 or more of the sanctions described in paragraph (a).

(2) An order described in subsection (1)(a)(iv) or (v) may be expressed in such a way that the order —

(a) only takes effect if, on finding that the person subject to the order has not complied with a condition specified in

the order, the State Administrative Tribunal directs under subsection (7) that the order take effect; and

(b) lapses if it has not taken effect within a period specified in the order,

and an order so expressed is called a ***suspended order***.

(3) The period referred to in subsection (2)(b) cannot exceed 2 years.

(4) The Departmental CEO may make an allegation to the State Administrative Tribunal that a person subject to a suspended order has failed to comply with a condition specified in the order.

(5) The Departmental CEO must give a person notice in writing of a decision to make an allegation about the person under subsection (4).

(6) If the State Administrative Tribunal receives an allegation under subsection (4), it must make a finding as to whether the alleged failure occurred.

(7) If the State Administrative Tribunal finds that a person failed to comply with a condition of a suspended order, it may if it considers it appropriate to do so direct that the suspended order take effect.

(8) When a council member is suspended under subsection (1)(a)(iv), section 8.30B applies to the member.

[Section 5.117 inserted: No. 1 of 2007 s. 11; amended: No. 17 of 2009 s. 44; No. 31 of 2018 s. 10.]

5.118. Carrying out orders

(1) The CEO of the local government concerned is required to arrange the publication of any censure ordered under section 5.110(6) by a standards panel and is to refer to the State

Administrative Tribunal any failure to comply with any other order made under that subsection.

(2) The Departmental CEO is required to arrange the publication of any censure ordered under section 5.113 or 5.117(1) by the State Administrative Tribunal and is to refer to the State Administrative Tribunal any failure to comply with any other order made under either of those sections.

(3) Without limiting subsections (1) and (2), the CEO of the local government concerned must publish on the local government's official website any censure ordered under section 5.110(6), 5.113 or 5.117(1) in respect of a person who is a council member.

[Section 5.118 inserted: No. 1 of 2007 s. 11; amended: No. 17 of 2009 s. 44; No. 16 of 2019 s. 56.]

5.119. SAT's enforcement powers

(1) If, under section 5.118, the CEO of a local government or the Departmental CEO refers to the State Administrative Tribunal a failure of a person to comply with an order of a standards panel or the State Administrative Tribunal, the State Administrative Tribunal may, if satisfied that the person failed to comply with the order, make an order described in section 5.117(1)(a)(iv) or (v).

(2) Section 5.117(2) extends to an order made under subsection (1).

[Section 5.119 inserted: No. 1 of 2007 s. 11; amended: No. 17 of 2009 s. 44.]

5.120. Complaints officer

(1) The CEO may designate an employee of the local government to be its complaints officer.

(2) If an employee is not designated under subsection (1), the CEO is the local government's complaints officer.

[Section 5.120 inserted: No. 16 of 2019 s. 57.]

5.121. Register of certain complaints of minor breaches

(1) The complaints officer for each local government is required to maintain a register of complaints which records all complaints that result in a finding under section 5.110(2)(a) that a minor breach has occurred.

(2) The register of complaints is to include, for each recorded complaint —

(a) the name of the council member about whom the complaint is made; and

(b) the name of the person who makes the complaint; and

(c) a description of the minor breach that the standards panel finds has occurred; and

(d) details of the action taken under section 5.110(6).

(3) The CEO must publish an up-to-date version of the register of complaints on the local government's official website.

[Section 5.121 inserted: No. 1 of 2007 s. 11; amended: No. 16 of 2019 s. 58.]

5.122. Standards panels

(1) The Minister is to establish a standards panel (the ***primary standards panel***).

(2) The Minister may establish other standards panels.

(3) Schedule 5.1 applies to a standards panel.

[Section 5.122 inserted: No. 1 of 2007 s. 11.]

5.123. Confidentiality

(1A) Subsection (1) applies to a person —

(a) who makes a complaint; or

(b) against whom a complaint is made; or

(c) who performs a function under this Act in respect of a complaint; or

(d) who, as a result of anything done under this Division, becomes aware of any detail of a complaint knowing it to be relevant to the complaint.

(1) A person to whom this subsection applies commits an offence if the person discloses information that the complaint has been made or information about any detail of the complaint.

(2) It is not an offence against subsection (1) to disclose information if —

(a) the disclosure is made for the purposes of investigating or dealing with the complaint; or

(b) the disclosure is required under a written law; or

(ba) the disclosure is made by the Departmental CEO in circumstances where —

(i) the complaint to which the information relates is a complaint sent to the Departmental CEO under section 5.114(1) or 5.115(1); and

(ii) the Departmental CEO has made a decision about whether to make an allegation under section 5.116(2) in relation to the complaint; and

(iii) the Departmental CEO considers that the disclosure is in the public interest;

or

(c) the complaint to which the information relates is a complaint of a minor breach and a standards panel has dealt with the breach under section 5.110(6); or

(d) the complaint to which the information relates is a complaint of a recurrent breach or serious breach and the State Administrative Tribunal has made an order described in section 5.117(1) in relation to the breach.

[(3) deleted]

[Section 5.123 inserted: No. 1 of 2007 s. 11; amended: No. 16 of 2019 s. 59.]

5.124. Giving false or misleading information

(1) A person commits an offence if the person gives information, in any of the circumstances described in subsection (2), knowing the information to be false or misleading in a material particular.

(2) The circumstances in which subsection (1) applies are —

(a) when the information is given in a complaint under section 5.107 or 5.114; or

(b) when the information is given to a person for the purposes of an investigation of whether or not a breach has been committed; or

(c) when the information is given to a standards panel.

[Section 5.124 inserted: No. 1 of 2007 s. 11.]

5.125. Review of certain decisions

(1) A party may apply to the State Administrative Tribunal for a review of a decision of a standards panel.

(2) In subsection (1) —

decision means a decision to make an order under section 5.110(6).

[Section 5.125 inserted: No. 1 of 2007 s. 11; amended: No. 16 of 2019 s. 60.]

Division 10 — Training and development

[Heading inserted: No. 16 of 2019 s. 61.]

5.126. Training for council members

(1) Each council member must complete training in accordance with regulations.

(2) Regulations may —

(a) prescribe a course of training; and

(b) prescribe the period within which training must be completed; and

(c) prescribe circumstances in which a council member is exempt from the requirement in subsection (1); and

(d) provide that contravention of subsection (1) is an offence and prescribe a fine not exceeding $5 000 for the offence.

[Section 5.126 inserted: No. 16 of 2019 s. 61.]

5.127. Report on training

(1) A local government must prepare a report for each financial year on the training completed by council members in the financial year.

(2) The CEO must publish the report on the local government's official website within 1 month after the end of the financial year to which the report relates.

[Section 5.127 inserted: No. 16 of 2019 s. 61.]

5.128. Policy for continuing professional development

(1) A local government must prepare and adopt* a policy in relation to the continuing professional development of council members.

** Absolute majority required.*

(2) A local government may amend* the policy.

** Absolute majority required.*

(3) When preparing the policy or an amendment to the policy, the local government must comply with any prescribed requirements relating to the form or content of a policy under this section.

(4) The CEO must publish an up-to-date version of the policy on the local government's official website.

(5) A local government —

(a) must review the policy after each ordinary election; and

(b) may review the policy at any other time.

[Section 5.128 inserted: No. 16 of 2019 s. 61.]

5.129. Fees and expenses

(1) A local government may prepare and adopt* a policy under which the local government undertakes to do 1 or more of the following —

(a) pay a fee to a council member in relation to their participation in a course of training that they are required to complete under section 5.126;

(b) reimburse a council member for a fee or other expense incurred by the council member in relation to their participation in a course of training that they are required to complete under section 5.126;

(c) pay a fee to a council member in relation to their participation in continuing professional development under the local government's policy under section 5.128;

(d) reimburse a council member for a fee or other expense incurred by the council member in relation to their

participation in continuing professional development under the local government's policy under section 5.128.

* *Absolute majority required.*

(2) The local government may do the following —

(a) amend* the policy at any time;

(b) revoke* the policy at any time (with or without replacing it).

* *Absolute majority required.*

(3) The CEO must publish an up-to-date version of the policy on the local government's official website.

(4) Regulations may do any of the following —

(a) prescribe monetary limits or ranges in respect of amounts that may be paid or reimbursed under a policy;

(b) provide that a policy can apply only in respect of prescribed courses of training or prescribed types of continuing professional development;

(c) otherwise provide for restrictions on the amounts that may be paid or reimbursed under a policy;

(d) make other provision in relation to the content of a policy;

(e) make provision in relation to the form of a policy;

(f) otherwise make provision in relation to policies.

(5) Despite any regulations made for the purposes of subsection (4), the Departmental CEO may authorise a local government to apply its policy to a course of training, or to any continuing professional development, to which the local government would not otherwise be authorised to apply the policy because of those regulations.

(6) Neither the *Salaries and Allowances Act 1975* section 7B nor a determination made under that section limits or otherwise affects what can be done under this section.

[Section 5.129 inserted: No. 11 of 2023 s. 82.]

Part 6 — Financial management

What this Part is about

This Part deals with the financial management of local governments, including —

(a) annual budgeting; and

(b) financial accounting and reporting of the funds of local governments; and

(c) the ways (including rates and service charges, fees, charges and borrowings) in which the activities of local governments are financed.

Division 1 — Introduction

6.1. Terms used

In this Part, unless the contrary intention appears —

annual budget means the annual budget adopted by a local government under section 6.2;

budget deficiency means, in relation to a financial year, the amount referred to in section 6.2(2)(c);

differential general rate means the rate imposed under section 6.33;

general rate means a rate imposed in accordance with section 6.32(1)(a);

minimum payment means an amount imposed under section 6.35;

service charge means a service charge imposed under section 6.38;

specified area rate means a rate imposed under section 6.37;

trust fund means the trust fund established by a local government under section 6.9.

[Section 6.1 amended: No. 55 of 2004 s. 688.]

Division 2 — Annual budget

6.2. Local government to prepare annual budget

(1) During the period from 1 June in a financial year to 31 August in the next financial year, or such extended time as the Minister allows, each local government is to prepare and adopt*, in the form and manner prescribed, a budget for its municipal fund for the financial year ending on the 30 June next following that 31 August.

** Absolute majority required.*

(2) In the preparation of the annual budget the local government is to have regard to the contents of the plan for the future of the district made in accordance with section 5.56 and to prepare a detailed estimate for the current year of —

(a) the expenditure by the local government; and

(b) the revenue and income, independent of general rates, of the local government; and

(c) the amount required to make up the deficiency, if any, shown by comparing the estimated expenditure with the estimated revenue and income.

(3) For the purposes of subsections (2)(a) and (b) all expenditure, revenue and income of the local government is to be taken into account unless otherwise prescribed.

(4) The annual budget is to incorporate —

(a) particulars of the estimated expenditure proposed to be incurred by the local government; and

(b) detailed information relating to the rates and service charges which will apply to land within the district including —

(i) the amount it is estimated will be yielded by the general rate; and

(ii) the rate of interest (if any) to be charged by the local government on unpaid rates and service charges;

and

(c) the fees and charges proposed to be imposed by the local government; and

(d) the particulars of borrowings and other financial accommodation proposed to be entered into by the local government; and

(e) details of the amounts to be set aside in, or used from, reserve accounts and of the purpose for which they are to be set aside or used; and

(f) particulars of proposed land transactions and trading undertakings (as those terms are defined in and for the purpose of section 3.59) of the local government; and

(g) such other matters as are prescribed.

(5) Regulations may provide for —

(a) the form of the annual budget; and

(b) the contents of the annual budget; and

(c) the information to be contained in or to accompany the annual budget.

[Section 6.2 amended: No. 49 of 2004 s. 42(8) and 56.]

[Section 6.2 modified: SL 2020/57 [1M].]

6.3. Budget for other circumstances

A local government is required to prepare and adopt* a budget in a form and manner similar to the annual budget with such modifications as are necessary to meet the case —

(a) where required to do so in consequence of the quashing of —

(i) a general valuation; or

(ii) a rate or service charge,

by a court or by the State Administrative Tribunal; or

(b) if, at any time after the imposition of rates in a financial year it intends to impose a supplementary general rate or specified area rate for the unexpired portion of the financial year.

** Absolute majority required.*

[Section 6.3 amended: No. 55 of 2004 s. 689.]

Division 3 — Reporting on activities and finance

6.4. Financial report

(1) A local government is to prepare an annual financial report for the preceding financial year and such other financial reports as are prescribed.

(2) The financial report is to —

(a) be prepared and presented in the manner and form prescribed; and

(b) contain the prescribed information.

(3) By 30 September following each financial year or such extended time as the Minister allows, a local government is to submit to its auditor —

(a) the accounts of the local government, balanced up to the last day of the preceding financial year; and

(b) the annual financial report of the local government for the preceding financial year.

Division 4 — General financial provisions

6.5. Accounts and records

The CEO has a duty —

(a) to ensure that there are kept, in accordance with regulations, proper accounts and records of the transactions and affairs of the local government; and

(b) to keep the accounts and records up to date and ready for inspection at any time by persons authorised to do so under this Act or another written law.

6.6. Funds to be established

(1) A local government is to have —

(a) a municipal fund; and

(b) a trust fund.

(2) The municipal fund is to be kept separate and distinct from the trust fund.

6.7. Municipal fund

(1) All money and the value of all assets received or receivable by a local government are to be held and brought to account in its municipal fund unless required by this Act or any other written law to be held in the trust fund.

(2) Money held in the municipal fund may be applied towards the performance of the functions and the exercise of the powers conferred on the local government by this Act or any other written law.

6.8. Expenditure from municipal fund not included in annual budget

(1) A local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure —

(a) is incurred in a financial year before the adoption of the annual budget by the local government; or

(b) is authorised in advance by resolution*; or

(c) is authorised in advance by the mayor or president in an emergency.

** Absolute majority required.*

(1a) In subsection (1) —

additional purpose means a purpose for which no expenditure estimate is included in the local government's annual budget.

(2) Where expenditure has been incurred by a local government —

(a) pursuant to subsection (1)(a), it is to be included in the annual budget for that financial year; and

(b) pursuant to subsection (1)(c), it is to be reported to the next ordinary meeting of the council.

[Section 6.8 amended: No. 1 of 1998 s. 19.]

6.9. Trust fund

(1) A local government is to hold in the trust fund all money or the value of assets —

(a) that are required by this Act or any other written law to be credited to that fund; and

(b) held by the local government in trust.

(2) Money or other property held in the trust fund is to be applied for the purposes of, and in accordance with, the trusts affecting it.

(3) Where money or other property is held in the trust fund, the local government is to —

(a) in the case of money, pay it to the person entitled to it together with, if the money has been invested, any interest earned from that investment;

(b) in the case of property, deliver it to the person entitled to it.

(4) Where money has been held in the trust fund for 10 years it may be transferred by the local government to the municipal fund but the local government is required to repay the money, together with any interest earned from its investment, from that fund to a person claiming and establishing a right to the repayment.

[Section 6.9 amended: No. 49 of 2004 s. 57.]

6.10. Financial management regulations

Regulations may provide for —

(a) the security and banking of money received by a local government; and

(b) the keeping of financial records by a local government; and

(c) the management by a local government of its assets, liabilities and revenue; and

(d) the general management of, and the authorisation of payments out of —

(i) the municipal fund; and

(ii) the trust fund,

of a local government.

6.11. Reserve accounts

(1) Subject to subsection (5), where a local government wishes to set aside money for use for a purpose in a future financial year,

it is to establish and maintain a reserve account for each such purpose.

(2) Subject to subsection (3), before a local government —

(a) changes* the purpose of a reserve account; or

(b) uses* the money in a reserve account for another purpose,

it must give one month's local public notice of the proposed change of purpose or proposed use.

** Absolute majority required.*

(3) A local government is not required to give local public notice under subsection (2) —

(a) where the change of purpose or of proposed use of money has been disclosed in the annual budget of the local government for that financial year; or

(b) in such other circumstances as are prescribed.

(4) A change of purpose of, or use of money in, a reserve account is to be disclosed in the annual financial report for the year in which the change occurs.

(5) Regulations may prescribe the circumstances and the manner in which a local government may set aside money for use for a purpose in a future financial year without the requirement to establish and maintain a reserve account.

6.12. Power to defer, grant discounts, waive or write off debts

(1) Subject to subsection (2) and any other written law, a local government may —

(a) when adopting the annual budget, grant* a discount or other incentive for the early payment of any amount of money; or

(b) waive or grant concessions in relation to any amount of money; or

(c) write off any amount of money,

which is owed to the local government.

** Absolute majority required.*

(2) Subsection (1)(a) and (b) do not apply to an amount of money owing in respect of rates and service charges.

(3) The grant of a concession under subsection (1)(b) may be subject to any conditions determined by the local government.

(4) Regulations may prescribe circumstances in which a local government is not to exercise a power under subsection (1) or regulate the exercise of that power.

[Section 6.12 amended: No. 64 of 1998 s. 39.]

6.13. Interest on money owing to local governments

(1) Subject to any other written law, a local government may resolve* to require a person to pay interest at the rate set in its annual budget on any amount of money (other than rates and service charges) which —

(a) that person owes to the local government; and

(b) has been owed for the period of time referred to in subsection (6).

** Absolute majority required.*

(2) A resolution under subsection (1) is to be included in the annual budget.

(3) The rate of interest that may be set by the local government under this section is not to exceed the rate for the time being prescribed as the maximum rate of interest that may be set for the purposes of this section.

(4) Where a local government imposes interest under subsection (1) on any outstanding amount of money the local government is

not to also impose an additional charge in relation to that amount.

(5) Accrued interest is, for the purpose of its recovery, taken to form part of the money owed to the local government on which it is charged.

(6) A local government is not to impose interest on any amount of money under subsection (1) until the money has been owed to the local government for the period of time set by the local government in its annual budget (not being less than 35 days) after the date which is stated on the relevant account for payment as being the date the account was issued.

(7) Regulations may provide for the method of calculation of interest.

[Section 6.13 modified: SL 2020/57 [1M].]

6.14. Power to invest

(1) Money held in the municipal fund or the trust fund of a local government that is not, for the time being, required by the local government for any other purpose may be invested as trust funds may be invested under the *Trustees Act 1962* Part III.

(2A) A local government is to comply with the regulations when investing money referred to in subsection (1).

(2) Regulations in relation to investments by local governments may —

(a) make provision in respect of the investment of money referred to in subsection (1); and

[(b) deleted]

(c) prescribe circumstances in which a local government is required to invest money held by it; and

(d) provide for the application of investment earnings; and

(e) generally provide for the management of those investments.

[Section 6.14 amended: No. 49 of 2004 s. 58; No. 17 of 2009 s. 36; No. 2 of 2012 s. 19.]

Division 5 — Financing local government activities

Subdivision 1 — Introduction

6.15. Local government's ability to receive revenue and income

(1) A local government may receive revenue or income —

(a) from —

(i) rates; or

(ii) service charges; or

(iii) fees and charges; or

(iv) borrowings; or

(v) investments; or

(vi) any other source,

authorised by or under this Act or another written law; or

(b) from —

(i) dealings in property; or

(ii) grants or gifts.

(2) Nothing in subsection (1)(a) authorises the making by a local government of a local law providing for the receipt of revenue or income by the local government from a source not contemplated by or under this Act.

Subdivision 2 — Fees and charges

6.16. Imposition of fees and charges

(1) A local government may impose* and recover a fee or charge for any goods or service it provides or proposes to provide, other than a service for which a service charge is imposed.

** Absolute majority required.*

(2) A fee or charge may be imposed for the following —

(a) providing the use of, or allowing admission to, any property or facility wholly or partly owned, controlled, managed or maintained by the local government;

(b) supplying a service or carrying out work at the request of a person;

(c) subject to section 5.94, providing information from local government records;

(d) receiving an application for approval, granting an approval, making an inspection and issuing a licence, permit, authorisation or certificate;

(e) supplying goods;

(f) such other service as may be prescribed.

(3) Fees and charges are to be imposed when adopting the annual budget but may be —

(a) imposed* during a financial year; and

(b) amended* from time to time during a financial year.

** Absolute majority required.*

6.17. Setting level of fees and charges

(1) In determining the amount of a fee or charge for a service or for goods a local government is required to take into consideration the following factors —

(a) the cost to the local government of providing the service or goods; and

(b) the importance of the service or goods to the community; and

(c) the price at which the service or goods could be provided by an alternative provider.

(2) A higher fee or charge or additional fee or charge may be imposed for an expedited service or supply of goods if it is requested that the service or goods be provided urgently.

(3) The basis for determining a fee or charge is not to be limited to the cost of providing the service or goods other than a service —

(a) under section 5.96; or

(b) under section 6.16(2)(d); or

(c) prescribed under section 6.16(2)(f), where the regulation prescribing the service also specifies that such a limit is to apply to the fee or charge for the service.

(4) Regulations may —

(a) prohibit the imposition of a fee or charge in prescribed circumstances; or

(b) limit the amount of a fee or charge in prescribed circumstances.

6.18. Effect of other written laws

(1) If the amount of a fee or charge for a service or for goods is determined under another written law a local government may not —

(a) determine an amount that is inconsistent with the amount determined under the other written law; or

(b) charge a fee or charge in addition to the amount determined by or under the other written law.

(2) A local government is not to impose a fee or charge for a service or goods under this Act if the imposition of a fee or charge for the service or goods is prohibited under another written law.

6.19. Local government to give notice of fees and charges

If a local government wishes to impose any fees or charges under this Subdivision after the annual budget has been adopted it must, before introducing the fees or charges, give local public notice of —

(a) its intention to do so; and

(b) the date from which it is proposed the fees or charges will be imposed.

Subdivision 3 — Borrowings

6.20. Power to borrow

(1) Subject to this Act, a local government may —

(a) borrow or re-borrow money; or

(b) obtain credit; or

(c) arrange for financial accommodation to be extended to the local government in ways additional to or other than borrowing money or obtaining credit,

to enable the local government to perform the functions and exercise the powers conferred on it under this Act or any other written law.

(2) Where, in any financial year, a local government proposes to exercise a power under subsection (1) (***power to borrow***) and details of that proposal have not been included in the annual budget for that financial year —

(a) unless the proposal is of a prescribed kind, the local government must give one month's local public notice of the proposal; and

(b) the resolution to exercise that power is to be by absolute majority.

(3) Where a local government has exercised a power to borrow and —

(a) it does not wish to proceed with the performance of the function or the exercise of the power for which the power to borrow was exercised; or

(b) after having completed the performance of the function or the exercise of the power for which the power to borrow was exercised, any part of the money borrowed, credit obtained or financial accommodation arranged has not been expended or utilized,

the local government may resolve* to expend the money or utilize the credit or financial accommodation for another purpose if one month's local public notice is given of the proposed change of purpose.

** Absolute majority required.*

(4) A local government is not required to give local public notice under subsection (3) —

(a) where the change of purpose has been disclosed in the annual budget of the local government for the relevant financial year; or

(b) in such other circumstances as are prescribed.

(5) A change of purpose referred to in subsection (3) is to be disclosed in the annual financial report for the year in which the change occurs.

6.21. Restrictions on borrowing

(1) Where, under section 6.20(1), a regional local government borrows money, obtains credit or arranges for financial accommodation to be extended to the regional local government that money, credit or financial accommodation is to be secured only —

(a) by the regional local government giving security over the financial contributions of the participants to the regional local government's funds as set out or provided for in the establishment agreement for the regional local government; or

(b) by the regional local government giving security over Government grants which were not given to the regional local government for a specific purpose; or

(c) by a participant giving security over its general funds to the extent agreed by the participant.

(1a) Despite subsection (1)(a) and (c), security cannot be given over —

(a) the financial contributions of a particular participant to the regional local government's funds; or

(b) the general funds of a particular participant,

if the participant is not a party to the activity or transaction for which the money is to be borrowed by, the credit is to be obtained for, or the financial accommodation is to be extended to, the regional local government.

(2) Where, under section 6.20(1), a local government borrows money, obtains credit or arranges for financial accommodation to be extended to the local government that money, credit or

financial accommodation is only to be secured by giving security over the general funds of the local government.

(3) The Treasurer or a person authorised in that behalf by the Treasurer may give a direction in writing to a local government with respect to the exercise of its power under section 6.20(1) either generally or in relation to a particular proposed borrowing and the local government is to give effect to any such direction.

(4) In this section and in section 6.23 —

general funds means the revenue or income from —

(a) general rates; and

(b) Government grants which were not given to the local government for a specific purpose; and

(c) such other sources as are prescribed.

[Section 6.21 amended: No. 49 of 2004 s. 59.]

6.22. Appointment of receivers

(1) This section applies if a local government defaults in the payment of any principal money or interest secured by a security.

(2) On petition of the security holder the Supreme Court may appoint up to 3 receivers of the income of the local government.

(3) A receiver so appointed is an officer of the Supreme Court and is to act under the direction of the Court.

(4) A receiver is entitled to such remuneration as is fixed by the Supreme Court.

(5) The Supreme Court may remove a receiver and may appoint a receiver in the place of a receiver who has been removed or dies.

6.23. Powers of receivers

(1) A receiver is entitled to receive the general funds of the local government.

(2) For the purposes of subsection (1) a receiver has the powers which a local government has with respect to general rates under this Part.

(3) In relation to a regional local government a receiver is entitled to receive whichever of the following over which security has been given in a particular case —

(a) the financial contributions of the participants to the regional local government's funds as set out or provided for in the establishment agreement for the regional local government;

(b) Government grants which were not given to the regional local government for a specific purpose;

(c) the general funds of a participant to the extent that those funds secure either money borrowed by, credit obtained for, or financial accommodation extended to, the regional local government.

(4) In relation to a regional subsidiary, a receiver is entitled to receive whichever of the following over which security has been given in a particular case —

(a) the financial contributions of the participants to the regional subsidiary's funds as set out or provided for in the regional subsidiary's charter;

(b) Government grants that were not given to the regional subsidiary for a specific purpose;

(c) the general funds of a participant to the extent that those funds secure financial accommodation extended to the regional subsidiary.

[Section 6.23 amended: No. 49 of 2004 s. 60; No. 26 of 2016 s. 17.]

6.24. Application of money

A receiver holds all the money received by the receiver after payment of costs and expenses and his or her remuneration for

the benefit of the security holders according to their respective priorities and the balance for the local government.

Division 6 — Rates and service charges

Subdivision 1 — Introduction and basis of rating

6.25. Terms used

In this Division and in Schedule 6.1, unless the context requires otherwise —

Government agreement has the same meaning as under the *Government Agreements Act 1979*;

gross rental value in relation to land has the same meaning as under the *Valuation of Land Act 1978*;

interim valuation has the same meaning as under the *Valuation of Land Act 1978*;

owner —

(a) in relation to land in a retirement village as defined in the *Retirement Villages Act 1992* means —

(i) the owner, as defined in that Act section 3(1); or

(ii) a mortgagee in possession of the land; or

(iii) a trustee, executor, administrator, attorney or agent of a person mentioned in this paragraph who is in possession of the land;

(b) otherwise has the meaning given in section 1.4;

rate record means the rate record required to be kept under section 6.39;

unimproved value in relation to land has the same meaning as under the *Valuation of Land Act 1978*;

vacant land has the same meaning as under the *Valuation of Land Act 1978*.

[Section 6.25 amended: No. 17 of 2009 s. 37.]

6.26. Rateable land

(1) Except as provided in this section all land within a district is rateable land.

(2) The following land is not rateable land —

(a) land which is the property of the Crown and —

(i) is being used or held for a public purpose; or

(ii) is unoccupied, except —

(I) where any person is, under paragraph (e) of the definition of ***owner*** in section 1.4, the owner of the land other than by reason of that person being the holder of a prospecting licence held under the *Mining Act 1978* in respect of land the area of which does not exceed 10 ha or a miscellaneous licence held under that Act; or

(II) where and to the extent and manner in which a person mentioned in paragraph (f) of the definition of ***owner*** in section 1.4 occupies or makes use of the land;

and

(b) land in the district of a local government while it is owned by the local government and is used for the purposes of that local government other than for purposes of a trading undertaking (as that term is defined in and for the purpose of section 3.59) of the local government; and

(c) land in a district while it is owned by a regional local government and is used for the purposes of that regional local government other than for the purposes of a trading undertaking (as that term is defined in and for the purpose of section 3.59) of the regional local government; and

(d) land used or held exclusively by a religious body as a place of public worship or in relation to that worship, a place of residence of a minister of religion, a convent, nunnery or monastery, or occupied exclusively by a religious brotherhood or sisterhood; and

(e) land used exclusively by a religious body as a school for the religious instruction of children; and

(f) land used exclusively as a non-government school within the meaning of the *School Education Act 1999*; and

(g) land used exclusively for charitable purposes; and

(h) land vested in trustees for agricultural or horticultural show purposes; and

(i) land owned by Co-operative Bulk Handling Limited or leased from the Crown or a statutory authority (within the meaning of that term in the *Financial Management Act 2006*) by that co-operative and used solely for the storage of grain where that co-operative has agreed in writing to make a contribution to the local government; and

(j) land which is exempt from rates under any other written law; and

(k) land which is declared by the Minister to be exempt from rates.

(3) If Co-operative Bulk Handling Limited and the relevant local government cannot reach an agreement under subsection (2)(i) either that co-operative or the local government may refer the matter to the Minister for determination of the terms of the agreement and the decision of the Minister is final.

(4) The Minister may from time to time, under subsection (2)(k), declare that any land or part of any land is exempt from rates and by subsequent declaration cancel or vary the declaration.

(5) Notice of any declaration made under subsection (4) is to be published in the *Gazette*.

(6) Land does not cease to be used exclusively for a purpose mentioned in subsection (2) merely because it is used occasionally for another purpose which is of a charitable, benevolent, religious or public nature.

[Section 6.26 amended: No. 36 of 1999 s. 247; No. 77 of 2006 Sch. 1 cl. 102; No. 24 of 2009 s. 506 (correction to reprint: Gazette 7 Sep 2012 p. 4329).]

6.27. Multiple rating

Where —

(a) under the *Mining Act 1978* or a Government agreement a person holds in respect of land a mining tenement within the meaning given to that term by that Act or agreement; or

(b) in accordance with the *Mining Act 1978* a person holds, occupies, uses or enjoys in respect of land a mining tenement within the meaning given to that term by the *Mining Act 1904* [3]; or

(c) under the *Petroleum and Geothermal Energy Resources Act 1967* a person holds in respect of land a permit, drilling reservation, lease or licence,

the land the subject of that tenement, permit, drilling reservation, lease or licence is rateable land under this Act notwithstanding that the land may be rateable under this Act in the hands of the holder of another estate in that land.

[Section 6.27 amended: No. 35 of 2007 s. 99(3).]

6.28. Basis of rates

(1) The Minister is to —

(a) determine the method of valuation of land to be used by a local government as the basis for a rate; and

(b) publish a notice of the determination in the *Government Gazette*.

(2) In determining the method of valuation of land to be used by a local government the Minister is to have regard to the general principle that the basis for a rate on any land is to be —

(a) where the land is used predominantly for rural purposes, the unimproved value of the land; and

(b) where the land is used predominantly for non-rural purposes, the gross rental value of the land.

(3) The unimproved value or gross rental value, as the case requires, of rateable land in the district of a local government is to be recorded in the rate record of that local government.

(4) Subject to subsection (5), for the purposes of this section the valuation to be used by a local government is to be the valuation in force under the *Valuation of Land Act 1978* as at 1 July in each financial year.

(5) Where during a financial year —

(a) an interim valuation is made under the *Valuation of Land Act 1978*; or

(b) a valuation comes into force under the *Valuation of Land Act 1978* as a result of the amendment of a valuation under that Act; or

(c) a new valuation is made under the *Valuation of Land Act 1978* in the course of completing a general valuation that has previously come into force,

the interim valuation, amended valuation or new valuation, as the case requires, is to be used by a local government for the purposes of this section.

[Section 6.28 amended: No. 1 of 1998 s. 20.]

6.29. Valuation and rates on mining and petroleum interests

(1) In this section —

relevant interest means —

(a) a mining tenement held under the *Mining Act 1978* (whether within the meaning given to that term by that Act or by the *Mining Act 1904* [3]); or

(b) a permit, drilling reservation, lease or licence held under the *Petroleum and Geothermal Energy Resources Act 1967*.

(2) Regardless of any determination made under section 6.28(1), the basis for a rate on a relevant interest is to be the unimproved value of the land, except as provided for in subsection (3).

(3) Subsection (2) does not apply to a relevant interest in a portion of land on which capital improvements are located if —

(a) the Minister has determined under section 6.28(1) that the gross rental value of the land is to be used as the basis for a rate on that interest; and

(b) the determination expressly excludes the application of subsection (2).

(4) The Minister cannot determine under section 6.28(1) that the gross rental value of the land is to be used as the basis for a rate on a relevant interest in a portion of land if another estate in that portion of land is rateable on the basis of the gross rental value of the land.

(5) For the purpose of subsection (3)(b) a determination is to be taken to expressly exclude the application of subsection (2) if the determination —

(a) was made before the commencement of the *Local Government Amendment Act 2009* section 38; and

(b) specifically applies to the particular relevant interest.

[Section 6.29 inserted: No. 17 of 2009 s. 38.]

6.30. Valuation of and rates on certain land

(1) Subject to subsection (2), the owner of any land —

(a) held or granted pursuant to a Government agreement, which agreement provides that for the purposes of imposing rates under this Act, the land is to be assessed on the unimproved value thereof; or

(b) held under a production licence for petroleum granted under the *Petroleum Act 1967*,

and to whom this section applies by virtue of the operation of section 533AA of the *Local Government Act 1960* [4] as in force before the commencement of this Act is to have the land valued for the purpose of imposing rates under this Act on the following basis —

(c) $1.00 per 4 000 m^2 for each of the first 40 000 ha or part thereof;

(d) $0.75 per 4 000 m^2 for each of the second 40 000 ha or part thereof;

(e) $0.50 per 4 000 m^2 for each of the third and fourth 40 000 ha or part thereof;

(f) $0.25 for each 4 000 m^2 in excess of 160 000 ha.

(2) This section does not apply to any part of the land upon which —

(a) there is erected a dwelling house; or

(b) there stand any improvements that are used in connection with a commercial undertaking other than that of the person for the time being entitled to the benefit of the agreement referred to in subsection (1)(a) or the production licence for petroleum referred to in paragraph (b) of that subsection.

[Section 6.30 amended: No. 19 of 2010 s. 51.]

6.31. Phasing in of certain valuations

Schedule 6.1 which deals with the phasing in of valuations has effect.

Subdivision 2 — Categories of rates and service charges

6.32. Rates and service charges

(1) When adopting the annual budget, a local government —

(a) in order to make up the budget deficiency, is to impose* a general rate on rateable land within its district, which rate may be imposed either —

(i) uniformly; or

(ii) differentially;

and

(b) may impose* on rateable land within its district —

(i) a specified area rate; or

(ii) a minimum payment;

and

(c) may impose* a service charge on land within its district.

** Absolute majority required.*

(2) Where a local government resolves to impose a rate it is required to —

(a) set a rate which is expressed as a rate in the dollar of the gross rental value of rateable land within its district to be rated on gross rental value; and

(b) set a rate which is expressed as a rate in the dollar of the unimproved value of rateable land within its district to be rated on unimproved value.

(3) A local government —

(a) may, at any time after the imposition of rates in a financial year, in an emergency, impose* a

supplementary general rate or specified area rate for the unexpired portion of the current financial year; and

(b) is to, after a court or the State Administrative Tribunal has quashed a general valuation, rate or service charge, impose* a new general rate, specified area rate or service charge.

** Absolute majority required.*

(4) Where a court or the State Administrative Tribunal has quashed a general valuation the quashing does not render invalid a rate imposed on the basis of the quashed valuation in respect of any financial year prior to the financial year in which the proceedings which resulted in that quashing were commenced.

[Section 6.32 amended: No. 55 of 2004 s. 690.]

6.33. Differential general rates

(1) A local government may impose differential general rates according to any, or a combination, of the following characteristics —

(a) the purpose for which the land is zoned, whether or not under a planning scheme as defined in the *Planning and Development Act 2005*; or

(b) a purpose for which the land is held or used as determined by the local government; or

(c) whether or not the land is vacant land; or

(d) any other characteristic or combination of characteristics prescribed.

(2) Regulations may —

(a) specify the characteristics under subsection (1) which a local government is to use; or

(b) limit the characteristics under subsection (1) which a local government is permitted to use.

(3) In imposing a differential general rate a local government is not to, without the approval of the Minister, impose a differential general rate which is more than twice the lowest differential general rate imposed by it.

(4) If during a financial year, the characteristics of any land which form the basis for the imposition of a differential general rate have changed, the local government is not to, on account of that change, amend the assessment of rates payable on that land in respect of that financial year but this subsection does not apply in any case where section 6.40(1)(a) applies.

(5) A differential general rate that a local government purported to impose under this Act before the *Local Government Amendment Act 2009* section 39(1)(a) came into operation is to be taken to have been as valid as if the amendment made by that paragraph had been made before the purported imposition of that rate.

[Section 6.33 amended: No. 38 of 2005 s. 15; No. 17 of 2009 s. 39; No. 28 of 2010 s. 34; No. 45 of 2020 s. 113.]

[Section 6.33 modified: SL 2020/57 [1M].]

6.34. Limit on revenue or income from general rates

Unless the Minister otherwise approves, the amount shown in the annual budget as being the amount it is estimated will be yielded by the general rate is not to —

(a) be more than 110% of the amount of the budget deficiency; or

(b) be less than 90% of the amount of the budget deficiency.

[Section 6.34 modified: SL 2020/57 [1M].]

6.35. Minimum payment

(1) Subject to this section, a local government may impose on any rateable land in its district a minimum payment which is greater than the general rate which would otherwise be payable on that land.

(2) A minimum payment is to be a general minimum but, subject to subsection (3), a lesser minimum may be imposed in respect of any portion of the district.

(3) In applying subsection (2) the local government is to ensure the general minimum is imposed on not less than —

(a) 50% of the total number of separately rated properties in the district; or

(b) 50% of the number of properties in each category referred to in subsection (6),

on which a minimum payment is imposed.

(4) A minimum payment is not to be imposed on more than the prescribed percentage of —

(a) the number of separately rated properties in the district; or

(b) the number of properties in each category referred to in subsection (6),

unless the general minimum does not exceed the prescribed amount.

(5) If a local government imposes a differential general rate on any land on the basis that the land is vacant land it may, with the approval of the Minister, impose a minimum payment in a manner that does not comply with subsections (2), (3) and (4) for that land.

(6) For the purposes of this section a minimum payment is to be applied separately, in accordance with the principles set forth in subsections (2), (3) and (4) in respect of each of the following categories —

(a) to land rated on gross rental value; and

(b) to land rated on unimproved value; and

(c) to each differential rating category where a differential general rate is imposed.

[Section 6.35 amended: No. 49 of 2004 s. 61.]

[Section 6.35 modified: SL 2020/57 [1M].]

6.36. Local government to give notice of certain rates

(1) Before imposing any differential general rates or a minimum payment applying to a differential rate category under section 6.35(6)(c) a local government is to give local public notice of its intention to do so.

(2) A local government is required to ensure that a notice referred to in subsection (1) is published in sufficient time to allow compliance with the requirements specified in this section and section 6.2(1).

(3) A notice referred to in subsection (1) —

(a) may be published within the period of 2 months preceding the commencement of the financial year to which the proposed rates are to apply on the basis of the local government's estimate of the budget deficiency; and

(b) is to contain —

(i) details of each rate or minimum payment the local government intends to impose; and

(ii) an invitation for submissions to be made by an elector or a ratepayer in respect of the proposed rate or minimum payment and any related matters within 21 days (or such longer period as is specified in the notice) of the notice; and

(iii) any further information in relation to the matters specified in subparagraphs (i) and (ii) which may be prescribed;

and

(c) is to advise electors and ratepayers that the document referred to in subsection (3A) —

(i) may be inspected at a time and place specified in the notice; and

(ii) is published on the local government's official website.

(3A) The local government is required to prepare a document describing the objects of, and reasons for, each proposed rate and minimum payment and to publish the document on the local government's official website.

(4) The local government is required to consider any submissions received before imposing the proposed rate or minimum payment with or without modification.

(5) Where a local government —

(a) in an emergency, proposes to impose a supplementary general rate or specified area rate under section 6.32(3)(a); or

(b) proposes to modify the proposed rates or minimum payments after considering any submissions under subsection (4),

it is not required to give local public notice of that proposed supplementary general rate, specified area rate, modified rate or minimum payment.

[Section 6.36 amended: No. 16 of 2019 s. 62.]

[Section 6.36 modified: SL 2020/57 [1M].]

6.37. Specified area rates

(1) A local government may impose a specified area rate on rateable land within a portion of its district for the purpose of meeting the cost of the provision by it of a specific work,

service or facility if the local government considers that the ratepayers or residents within that area —

(a) have benefited or will benefit from; or

(b) have access to or will have access to; or

(c) have contributed or will contribute to the need for,

that work, service or facility.

(2) A local government is required to —

(a) use the money from a specified area rate for the purpose for which the rate is imposed in the financial year in which the rate is imposed; or

(b) to place it in a reserve account established under section 6.11 for that purpose.

(3) Where money has been placed in a reserve account under subsection (2)(b), the local government is not to —

(a) change the purpose of the reserve account; or

(b) use the money in the reserve account for a purpose other than the service for which the specified area rate was imposed,

and section 6.11(2), (3) and (4) do not apply to such a reserve account.

(4) A local government may only use the money raised from a specified area rate —

(a) to meet the cost of providing the specific work, service or facility for which the rate was imposed; or

(b) to repay money borrowed for anything referred to in paragraph (a) and interest on that money.

(5) If a local government receives more money than it requires from a specified area rate on any land or if the money received from

the rate is no longer required for the work, service or facility the local government —

(a) may, and if so requested by the owner of the land is required to, make a refund to that owner which is proportionate to the contributions received by the local government; or

(b) is required to allow a credit of an amount proportionate to the contribution received by the local government in relation to the land on which the rate was imposed against future liabilities for rates or service charges in respect of that land.

(6) Where —

(a) before the coming into operation of the *Local Government Amendment Act 2012* Part 2 Division 5, a specified area rate was imposed, or purportedly imposed, under this section by a local government for the purpose of the provision of underground electricity; and

(b) the underground electricity was not, or will not, be provided, or not wholly provided, by the local government,

the rate is, and is taken always to have been, as validly imposed under this section as it would have been if, at the time of the imposition of the rate, the local government were to provide the underground electricity.

[Section 6.37 amended: No. 2 of 2012 s. 20.]

6.38. Service charges

(1) A local government may impose on —

(a) owners; or

(b) occupiers,

of land within the district or a defined part of the district a service charge for a financial year to meet the cost to the local government in the provision of a prescribed work, service or facility in relation to the land.

(2) A local government is required to —

(a) use the money from a service charge in the financial year in which the charge is imposed; or

(b) to place it in a reserve account established under section 6.11 for the purpose of that work, service or facility.

(3) Where money has been placed in a reserve account under subsection (2)(b), the local government is not to —

(a) change the purpose of the reserve account; or

(b) use the money in the reserve account for a purpose other than the work, service or facility for which the charge was imposed,

and subsections (2), (3) and (4) of section 6.11 do not apply to such a reserve account.

(4) A local government may only use the money raised from a service charge —

(a) to meet the cost of providing the specific service for which the work, service or facility charge was imposed; or

(b) to repay money borrowed for anything referred to in paragraph (a) and interest on that money.

(5) If a local government receives more money than it requires from the service charge imposed under subsection (1)(a) it —

(a) may, and if so requested by the owner of the land, is required to, make a refund to the owner of the

land which is proportionate to the contributions received by the local government; or

(b) is required to allow a credit of an amount proportionate to the contribution received by the local government in relation to any land on which the service charge was imposed against future liabilities for rates or service charges in respect of that land.

(6) If a local government receives more money than it requires from the service charge imposed under subsection (1)(b) it is required to make a refund to the person who paid the service charge which is proportionate to the contributions received by the local government.

(7) This section applies in respect of a prescribed work, service or facility even if the work, service or facility is not provided, or not wholly provided, by a local government if the local government has facilitated or participated in the provision of the work, service or facility.

(8) Where —

(a) before the coming into operation of the *Local Government Amendment Act 2012* Part 2 Division 5, a service charge was imposed, or purportedly imposed, under this section by a local government for the purpose of the provision of underground electricity; and

(b) the underground electricity was not, or will not, be provided, or not wholly provided, by the local government,

the charge is, and is taken always to have been, as validly imposed under this section as it would have been if, at the time of the imposition of the charge, the amendments effected by *Local Government Amendment Act 2012* Part 2 Division 5 had been in effect and the provision of underground electricity had been a prescribed work.

[Section 6.38 amended: No. 2 of 2012 s. 21.]

Subdivision 3 — Imposition of rates and service charges

6.39. Rate record

(1) As soon as practicable after a local government has resolved to impose rates in a financial year it is to ensure that a record is compiled, at the time and in the form and manner prescribed, for that financial year of —

(a) all rateable land in its district; and

(b) all land in its district on which a service charge is imposed.

(2) A local government —

(a) is required, from time to time, to amend a rate record for the current financial year to ensure that the information contained in the record is current and correct and that the record is in accordance with this Act; and

(b) may amend the rate record for the 5 years preceding the current financial year.

6.40. Effect of amendment of rate record

(1) Where the rate record in relation to any land is amended under section 6.39(2) as a result of a change in —

(a) the rateable value of; or

(b) the rateability of; or

(c) the rate imposed on,

that land, the local government is to reassess the rates payable on the land and to give notice to the owner of the land of any change in the amount of rates payable on the land.

(2) Where the rate record in relation to any land is amended under section 6.39(2) as a result of a change in a service charge imposed on that land, the local government is to reassess that service charge and to give notice to the owner or occupier of the

land, as the case requires, of any change in the amount of the service charge payable on the land.

(3) If, as a result of a reassessment of rates under subsection (1), a rate on any land is —

(a) reduced, and that rate has already been paid to a local government, the local government —

(i) may, and if so requested by the current owner of the land is required to, make a refund to that owner of the amount overpaid; or

(ii) is required to allow a credit of the amount overpaid in relation to the land against future liabilities for rates or service charges in respect of that land;

or

(b) increased, that increased rate is the rate to which section 6.44 applies.

(4) If, as a result of a reassessment of a service charge under subsection (2), a service charge on any land is —

(a) reduced, and that service charge has already been paid to a local government —

(i) by the owner, the local government —

(I) may, and if so requested by the current owner of the land is required to, make a refund to that owner of the amount overpaid; or

(II) is required to allow a credit of the amount overpaid in relation to the land against future liabilities for rates or service charges in respect of that land;

or

(ii) by the occupier, the local government is required to make a refund to the person who paid the service charge;

or

(b) increased, and that service charge was imposed on —

(i) the owner, that increased service charge is the service charge to which section 6.44 applies; or

(ii) the occupier, that increased service charge is a debt due to the local government by the person on whom the service charge was imposed.

6.41. Service of rate notice

(1) A local government is required to give to —

(a) the owner of rateable land; and

(b) the owner or occupier, as the case requires, of land on which a service charge is imposed,

a rate notice stating the date the rate notice was issued and incorporating or accompanied by the details and particulars prescribed.

(2) The rate notice is to be given —

(a) as soon as practicable after —

(i) the rate record of the land is completed; or

(ii) the rate record of the land is amended, if that amendment results in a change in the amount of rates or service charges payable on that land;

or

(b) where an election has been made under section 6.45 to pay rates or service charges by instalments, not less than 28 days before each instalment is due.

(3) Notwithstanding sections 75 and 76 of the *Interpretation Act 1984* service of the rate notice is deemed to have been

effected if delivered to the address shown in the rate record for the owner at the time of delivery.

(4) The rate notice may be given by email if the local government has obtained the consent of the owner or occupier, as the case requires, to giving the rate notice in that way.

[Section 6.41 amended: No. 16 of 2019 s. 63.]

Subdivision 4 — Payment of rates and service charges

6.42. Term used: service charge

In sections 6.43, 6.44 and 6.52(1) —

service charge does not include a service charge imposed under section 6.38(1)(b) on the occupier of land who is not the owner of that land.

6.43. Rates and service charges are a charge on land

Subject to the *Rates and Charges (Rebates and Deferments) Act 1992*, rates and service charges imposed under this Act, together with the costs of proceedings, if any, for the recovery of the rates or service charges, are a charge on the land rated or in relation to which the service charge is imposed.

6.44. Liability for rates or service charges

(1) The owner for the time being of land on which a rate or service charge has been imposed is liable to pay the rate or service charge to the local government.

(2) If there are 2 or more owners of the land they are jointly and severally liable to pay the rate or service charge, as the case requires.

6.45. Options for payment of rates or service charges

(1) A rate or service charge is ordinarily payable to a local government by a single payment but the person liable for the

payment of a rate or service charge may elect to make that payment to a local government, subject to subsection (3), by —

(a) 4 equal or nearly equal instalments; or

(b) such other method of payment by instalments as is set forth in the local government's annual budget.

(2) Where, during a financial year, a rate notice is given after a reassessment of rates under section 6.40 the person to whom the notice is given may pay the rate or service charge —

(a) by a single payment; or

(b) by such instalments as are remaining under subsection (1)(a) or (b) for the remainder of that financial year.

(3) A local government may impose an additional charge (including an amount by way of interest) where payment of a rate or service charge is made by instalments and that additional charge is, for the purpose of its recovery, taken to be a rate or service charge, as the case requires, that is due and payable.

(4) Regulations may —

(a) provide for the manner of making an election to pay by instalments under subsection (1) or (2); and

(b) prescribe circumstances in which payments may or may not be made by instalments; and

(c) prohibit or regulate any matters relating to payments by instalments; and

(d) provide for the time when, and manner in which, instalments are to be paid; and

(e) prescribe the maximum amount (including the maximum interest component) which may be imposed under subsection (3) by way of an additional charge; and

(f) provide for any other matter relating to the payment of rates or service charges.

[Section 6.45 modified: SL 2020/57 [1M].]

6.46. Discounts

Subject to the *Rates and Charges (Rebates and Deferments) Act 1992*, a local government may, when imposing a rate or service charge, resolve* to grant a discount or other incentive for the early payment of any rate or service charge.

** Absolute majority required.*

6.47. Concessions

Subject to the *Rates and Charges (Rebates and Deferments) Act 1992*, a local government may at the time of imposing a rate or service charge or at a later date resolve to waive* a rate or service charge or resolve to grant other concessions in relation to a rate or service charge.

** Absolute majority required.*

6.48. Regulation of grant of discounts and concessions

Regulations may prescribe circumstances in which a local government is not to exercise a power under section 6.46 or 6.47 or regulate the exercise of the power.

6.49. Agreement as to payment of rates and service charges

A local government may accept payment of a rate or service charge due and payable by a person in accordance with an agreement made with the person.

6.50. Rates or service charges due and payable

(1) Subject to —

(a) subsections (2) and (3); and

(b) any concession granted under section 6.47; and

(c) the *Rates and Charges (Rebates and Deferments) Act 1992*,

a rate or service charge becomes due and payable on such date as is determined by the local government.

(2) The date determined by a local government under subsection (1) is not to be earlier than 35 days after the date noted on the rate notice as the date the rate notice was issued.

(3) Where a person elects to pay a rate or service charge by instalments the second and each subsequent instalment does not become due and payable at intervals of less than 2 months.

6.51. Accrual of interest on overdue rates or service charges

(1) A local government may at the time of imposing a rate or service charge resolve* to impose interest (at the rate set in its annual budget) on —

(a) a rate or service charge (or any instalment of a rate or service charge); and

(b) any costs of proceedings to recover any such charge,

that remains unpaid after becoming due and payable.

** Absolute majority required.*

(2) The rate of interest that may be set by the local government under this section is not to exceed the rate for the time being prescribed as the maximum rate of interest that may be set for the purposes of this section.

(3) Accrued interest is, for the purpose of its recovery, taken to be a rate or service charge, as the case requires, that is due and payable.

(4) If a person is entitled under the *Rates and Charges (Rebates and Deferments) Act 1992* or under this Act (if the local government

in a particular case so resolves) to a rebate or deferment in respect of a rate or service charge —

(a) no interest is to accrue in respect of that rate or service charge payable by that person; and

(b) no additional charge is to be imposed under section 6.45(3) on that person.

(5) Regulations may provide for the method of calculation of interest.

[Section 6.51 amended: No. 1 of 1998 s. 21(1); No. 49 of 2004 s. 62.]

[Section 6.51 modified: SL 2020/57 [1M].]

6.52. Rates and service charges may be apportioned

(1) Rates and service charges recoverable under this Act —

(a) are apportionable between successive owners in respect of time as if they accrued due from day to day during the period for which they were imposed; and

(b) are apportionable between owners of several portions of the land rated or in relation to which the service charge is imposed, as the case requires, according to the respective values of the portions.

(2) Where, in accordance with this Act, any portion of a rate or service charge (other than a service charge imposed on an occupier under section 6.38(1)(b)) in respect of any land has been paid by a person other than the owner of the land, whether during or after the period for which the rates were imposed, the owner is liable, if there is no agreement between them to the contrary, to reimburse that other person the amount so paid.

(3) This section does not affect the liability of a person to the local government.

(4) An unsatisfied judgment or order of a court for the recovery of rates or service charges from a person is not a bar to the

recovery of them from another person liable under this Act to pay them.

6.53. Land becoming or ceasing to be rateable land

Where during a financial year —

(a) land that was not rateable becomes rateable land; or

(b) rateable land becomes land that is not liable to rates,

the owner of that land —

(c) is liable for rates proportionate to the portion of the year during which the land is rateable land; or

(d) is entitled to a refund of an amount proportionate to the portion of the year during which the land is not rateable land,

as the case requires.

Subdivision 5 — Recovery of unpaid rates and service charges

6.54. Term used: service charge

In sections 6.55, 6.60 and 6.62 —

service charge does not include a service charge imposed under section 6.38(1)(b) on the occupier of land who is not the owner of that land.

6.55. Recovery of rates and service charges

(1) Subject to subsection (2) and the *Rates and Charges (Rebates and Deferments) Act 1992* rates and service charges on land are recoverable by a local government from —

(i) the owner at the time of the compilation of the rate record; or

(ii) a person who whilst the rates or service charges are unpaid becomes the owner of the land.

(2) A person who, by virtue of an Act relating to bankruptcy or insolvency or to the winding up of companies, has become the owner of land in the capacity of a trustee or liquidator, is not on that account personally liable to pay, out of the person's own money, rates or service charges which are already due on, or become due on that land while that person is the owner in that capacity.

6.56. Rates or service charges recoverable in court

(1) If a rate or service charge remains unpaid after it becomes due and payable, the local government may recover it, as well as the costs of proceedings, if any, for that recovery, in a court of competent jurisdiction.

(2) Rates or service charges due by the same person to the local government may be included in one writ, summons, or other process.

[Section 6.56 amended: No. 84 of 2004 s. 80.]

6.57. Non-compliance with procedure in Act not to prevent recovery of rate or service charge

In proceedings by or on behalf of a local government for the recovery of an amount due in respect of a rate or service charge, failure by the local government to comply in respect of the rate or service charge with the provisions of this Act, is not a defence, if it appears that it had the power to impose, and did in fact assent to the imposition of, the rate or service charge.

6.58. Defence in special cases

If a person sued or proceeded against proves that a notice required to be given under Subdivision 3 has not been given, the claim of the local government does not on that account fail, but such objections as would have been competent on an application under Subdivision 7 for a review may be raised as a defence to the whole or part of the claim, unless they have already been

unsuccessfully raised by the person on an application under that Subdivision for a review.

[Section 6.58 amended: No. 55 of 2004 s. 691.]

6.59. Question of title to land not to affect jurisdiction

A jurisdiction otherwise competent to entertain proceedings to recover rates or service charges, or consequent on the recovery of rates or service charges, or to hear an application for review or an appeal relating to the payment of rates or service charges is not affected on the ground that a question of title to land is raised in the proceedings, but an order or judgment in the matter is not evidence of title.

[Section 6.59 amended: No. 55 of 2004 s. 692.]

6.60. Local government may require lessee to pay rent

(1) In this section —

lease includes an agreement whether made orally or in writing for the leasing or subleasing of land and includes a licence or arrangement for the use of land;

lessor and ***lessee*** mean the parties to a lease and their respective successors in title.

(2) If payment of a rate or service charge imposed in respect of any land is due and payable, notice may be given to the lessee of the land requiring the lessee to pay to the local government any rent as it falls due in satisfaction of the rate or service charge.

(3) The local government is to give to the lessor a copy of the notice with an endorsement that the original of it has been given to the lessee.

(4) The local government may recover the amount of the rate or service charge as a debt from the lessee if rent is not paid in accordance with the notice.

(5) Where an amount is paid under this section to the local government —

(a) the payment discharges the payer from any liability to any person to pay that amount as rent; and

(b) where as between a lessor and lessee the lessor is liable to pay the rate or service charge, the amount paid may be set off by the lessee against the rent payable to the lessor; and

(c) if the amount exceeds the rent due, or if there is no rent due, the amount may be set off by the lessee against accruing rent, or the balance recovered from the lessor in a court of competent jurisdiction.

(6) To the extent that an agreement purports to preclude a lessee from setting off or recovering payments made to a local government under this section, the agreement is of no effect.

6.61. Requirement to give name of person liable

(1) On the request of a local government —

(a) the occupier of property, or an agent of the owner of property, is required to disclose to the local government the name and address of the owner or of the person receiving or authorised to receive the rent of the property; and

(b) the person receiving or authorised to receive the rent of the property is required to disclose the name and address of the owner of the property.

(2) A person from whom information is requested in accordance with subsection (1) commits an offence if the person —

(a) fails to give the information requested; or

(b) gives information that is false or misleading in any material particular.

6.62. Application of money paid for rates and service charges

Where money is paid to a local government in respect of rates or service charges imposed on land, the local government is to apply the money for or towards —

(a) the rates or services charges due on the land in the order in which they become due; and

(b) any outstanding costs of proceedings for the recovery of any such rates or charges.

[Section 6.62 amended: No. 49 of 2004 s. 63.]

Subdivision 6 — Actions against land where rates or service charges unpaid

6.63. Term used: service charge

In this Subdivision —

service charge does not include a service charge imposed under section 6.38(1)(b) on the occupier of land who is not the owner of that land.

6.64. Actions to be taken

(1) If any rates or service charges which are due to a local government in respect of any rateable land have been unpaid for at least 3 years the local government may, in accordance with the appropriate provisions of this Subdivision take possession of the land and hold the land as against a person having an estate or interest in the land and —

(a) from time to time lease the land; or

(b) sell the land; or

(c) cause the land to be transferred to the Crown; or

(d) cause the land to be transferred to itself.

(2) On taking possession of any land under this section, the local government is to give to the owner of the land such notification

as is prescribed and then to affix on a conspicuous part of the land a notice, in the form or substantially in the form prescribed.

(3) Where payment of rates or service charges imposed in respect of any land is in arrears the local government has an interest in the land in respect of which it may lodge a caveat to preclude dealings in respect of the land, and may withdraw caveats so lodged by it.

6.65. Power to lease: procedure

Schedule 6.2 has effect in relation to the exercise of a power under section 6.64(1)(a) (in this Subdivision and that Schedule referred to as the ***power to lease***).

6.66. Effect of lease

(1) Where a local government exercises the power to lease in relation to any land that land does not cease to be rateable land because of the exercise of that power.

(2) A lessee from a local government is entitled, during the term of the lease, to possession of the land as against persons who have an estate or interest in the land, but this subsection does not affect —

(a) the rights of the local government under the lease; or

(b) easements in favour of the public which affect the land; or

(c) the rights of the Crown in right of the State or Commonwealth or a department, agency, or instrumentality of the Crown in right of the State or Commonwealth.

(3) The exercise by a local government of a power to lease any land does not prejudice or affect the recovery of rates or taxes if any, due to the Crown in right of the State or Commonwealth, or a department or agency of the Crown in right of the State or Commonwealth.

6.67. Release of property after payment of arrears

(1) Where, within 12 years of the taking of possession of any land by a local government under section 6.64, an entitled person pays to the local government all rates and service charges due and payable in respect of the land, the local government is required to give up possession of that land to the person unless it has exercised a power under section 6.64(1)(b), (c) or (d) in relation to the land.

(2) If the local government has granted a lease of the land referred to in subsection (1) and the term of the lease has not expired, the lease subsists for the balance of the term as if it had been made between the lessee and the entitled person.

(3) In this section —

entitled person means the person who, if the local government had not taken possession of the land under section 6.64, would be entitled to possession of that land.

6.68. Exercise of power to sell land

(1) Subject to subsection (2), a local government is not to exercise its power under section 6.64(1)(b) (in this Subdivision and Schedule 6.3 referred to as the ***power of sale***) in relation to any land unless, within the period of 3 years prior to the exercise of the power of sale, the local government has at least once attempted under section 6.56 to recover money due to it.

(2) A local government is not required to attempt under section 6.56 to recover money due to it before exercising the power of sale where the local government —

(a) has a reasonable belief that the cost of the proceedings under that section will equal or exceed the value of the land; or

(b) having made reasonable efforts to locate the owner of the property is unable to do so.

(3A) A local government is to ensure that a decision to exercise a power of sale without having, within the period of 3 years prior to the exercise of the power of sale, attempted under section 6.56 to recover the money due to it and the reasons for the decision are recorded in the minutes of the meeting at which the decision was made.

(3) Schedule 6.3 has effect in relation to the exercise of the power of sale.

[Section 6.68 amended: No. 17 of 2009 s. 40.]

6.69. Right to pay rates, service charges and costs, and stay proceedings

(1) Up to 7 days prior to the time of the actual sale of any land for non-payment of rates or service charges a person having an estate or interest in the land may pay the rates or service charges and the costs and expenses incurred to that time in proceedings relating to the proposed sale.

(2) At any time after the 7 days referred to in subsection (1) but prior to the time of the actual sale of any land the local government may, upon such terms and conditions as are agreed between the parties, accept payment of the outstanding rates or service charges.

(3) On payment being made under subsection (1) or (2) the proceedings relating to the proposed sale are stayed and the local government is required to make such notifications and take such measures as are prescribed in relation to the payment and the cancellation of the proposed sale.

6.70. Effect of changes in boundaries of local government area

An alteration in —

(a) the boundaries of a district of a local government; or

(b) the constitution of the local government or its council; or

(c) its name or status,

does not preclude the local government from exercising in respect of any land on which rates or service charges were lawfully imposed by it under this Division, the powers conferred by this Subdivision.

6.71. Power to transfer land to Crown or to local government

(1) If under this Subdivision land is offered for sale but at the expiration of 12 months a contract for the sale of the land has not been entered into by the local government, it may by transfer, where the land is subject to the provisions of the *Transfer of Land Act 1893*, and by deed, where the land is not subject to the provisions of that Act, transfer or convey the estate in fee simple in the land to —

(a) the Crown in right of the State; or

(b) the local government.

(2) When a local government exercises the power referred to in subsection (1)(a) in relation to any land all encumbrances affecting the land are, by virtue of this section of no further force or effect against that land and the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires, is to give effect to this section.

(3) When exercising the power referred to in subsection (1)(b) the local government is required to pay the sum secured by, or payable under, a mortgage, lease, tenancy, encumbrance or charge in favour of the Crown in right of the State or a department, agency, or instrumentality of the Crown in right of the State.

(4) Schedule 6.3 has effect in relation to the exercise of the power referred to in subsection (1).

[Section 6.71 amended: No. 47 of 2011 s. 16.]

6.72. Title to land sold or transferred

Where a transfer or conveyance of an estate in fee simple in land is made in purported exercise of a power under section 6.64(1)(b), (c) or (d) the title transferred or conveyed is not impeachable on the ground that —

(a) no case had arisen to authorise the sale; or

(b) the proper procedures were not followed; or

(c) the power was otherwise improperly or irregularly exercised,

and a person who claims there has been an unauthorised or improper or irregular exercise of the power has a remedy in damages against the relevant local government but not against the Crown or the State with the Registrar as the nominal defendant under the *Transfer of Land Act 1893*.

[Section 6.72 amended: No. 81 of 1996 s. 153(1).]

6.73. Discharge of liability on sale of land

A sale of land by a local government or a transfer or conveyance of land to the Crown or a local government under this Subdivision discharges —

(a) the land; and

(b) the owners (present and past) of the land,

from any liability to the local government for rates, service charges or other money due to the local government which were, at the time of the sale, transfer or conveyance —

(c) secured by a charge over the land; or

(d) otherwise recoverable, whether under this Act or another written law, by the local government in respect of the land.

6.74. Power to have land revested in Crown if rates in arrears 3 years

(1) If land is —

(a) rateable land; and

(b) vacant land; and

(c) land in respect of which any rates or service charges have been unpaid for a period of at least 3 years,

the local government in whose district the land is situated may apply in the form and manner prescribed to the Minister to have the land revested in the Crown in right of the State.

(2) The Minister is to consider the application and the circumstances surrounding the application and may grant or refuse the application.

(3) If the application is granted the Minister is to execute a transfer or conveyance of the land to the Crown and is to deliver the transfer or conveyance to the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires, for registration.

(4) Upon the delivery of the transfer or conveyance Schedule 6.3 clause 8 has effect in relation to the exercise of the power referred to in subsection (1).

[Section 6.74 amended: No. 49 of 2004 s. 64(1); No. 47 of 2011 s. 16.]

6.75. Land to be vested in local government

(1) Where, at the expiration of 12 years from the taking of possession of any rateable land by a local government under section 6.64 —

(a) all rates and service charges due and payable in respect of the land have not been paid; and

(b) the land has not, under the provisions of this Subdivision, been —

(i) sold by the local government; or

(ii) transferred to the local government; or

(iii) transferred to the Crown,

by operation of this section the fee simple in the land is to be transferred to the local government subject to —

(c) easements in favour of the public which affect the land; and

(d) the rights of the Crown in right of the State or Commonwealth or a department, agency, or instrumentality of the Crown in right of the State or Commonwealth; and

(e) rates and taxes (other than local government rates and service charges) due on the land,

but free from other encumbrances.

(2) Schedule 6.3 has effect in relation to a transfer under this section.

Subdivision 7 — Objections and review

[Heading amended: No. 55 of 2004 s. 693.]

6.76. Grounds of objection

(1) A person may, in accordance with this section, object to the rate record of a local government on the ground —

(a) that there is an error in the rate record —

(i) with respect to the identity of the owner or occupier of any land; or

(ii) on the basis that the land or part of the land is not rateable land;

or

(b) if the local government imposes a differential general rate, that the characteristics of the land recorded in the rate record as the basis for imposing that rate should be deleted and other characteristics substituted.

(2) An objection under subsection (1) is to —

(a) be made to the local government in writing within 42 days of the service of a rate notice under section 6.41; and

(b) identify the relevant land; and

(c) set out fully and in detail the grounds of objection.

(3) An objection under subsection (1) may be made by the person named in the rate record as the owner of land or by the agent or attorney of that person.

(4) The local government may, on application by a person proposing to make an objection, extend the time for making the objection for such period as it thinks fit.

(5) The local government is to promptly consider any objection and may either disallow it or allow it, wholly or in part.

(6) After making a decision on the objection the local government is to promptly serve upon the person by whom the objection was made written notice of its decision on the objection and a statement of its reason for that decision.

6.77. Review of decision of local government on objection

Any person who is dissatisfied with the decision of a local government on an objection by that person under section 6.76 may, within 42 days (or such further period as the State Administrative Tribunal, for reasonable cause shown by the person, allows) after service of notice of the decision, apply to the State Administrative Tribunal for a review of the decision.

[Section 6.77 amended: No. 55 of 2004 s. 694.]

6.78. Review of decision to refuse to extend time for objection

A person who is dissatisfied with a decision of the local government to refuse to extend the time for making an objection against the rate record may apply to the State Administrative Tribunal for a review of the decision.

[Section 6.78 amended: No. 55 of 2004 s. 695.]

6.79. New matters raised on review

(1) Upon a review by the State Administrative Tribunal under section 6.77 or 6.78, the State Administrative Tribunal may consider —

(a) grounds in addition to those stated in the notice of objection; and

(b) reasons in addition to any reasons previously given for the local government's decision that is under review.

(2) The State Administrative Tribunal is to ensure, by adjournment or otherwise, that each party and any other person entitled to be heard has a reasonable opportunity of properly considering and responding to any new ground or reason that the State Administrative Tribunal proposes to consider in accordance with subsection (1).

[Section 6.79 inserted: No. 55 of 2004 s. 696.]

6.79B. Written reasons for certain determinations to be given and published

If the State Administrative Tribunal considers that an order it makes determining a matter coming before it on a reference under section 6.77 or 6.78 is of general interest or significance, it is to prepare written reasons for its order and give a copy of the reasons to each party and publish the written reasons.

[Section 6.79B inserted: No. 55 of 2004 s. 696.]

6.80. Objections and reviews against valuations

There is not to be an objection or review in respect of a valuation of rateable land appearing in a rate record except in accordance with the *Valuation of Land Act 1978*.

[Section 6.80 amended: No. 55 of 2004 s. 697.]

6.81. Objection not to affect liability to pay rates or service charges

The making of an objection under this Subdivision does not affect the liability to pay any rate or service charge imposed under this Act pending determination of the objection.

[Section 6.81 amended: No. 55 of 2004 s. 698.]

6.82. General review of imposition of rate or service charge

(1) Where there is a question of general interest as to whether a rate or service charge was imposed in accordance with this Act, the local government or any person may refer the question to the State Administrative Tribunal to have it resolved.

(2) Subsection (1) does not enable a person to have a question relating to that person's own individual case resolved under this section if it could be, or could have been, resolved under section 6.76.

(3) The State Administrative Tribunal dealing with a matter referred to it under this section may make an order quashing a rate or service charge which in its opinion has been improperly made or imposed.

[Section 6.82 amended: No. 55 of 2004 s. 699.]

Part 7 — Audit

What this Part is about

This Part deals with the audit of the financial accounts of local governments, including —

(a) the appointment of auditors; and

(b) the conduct of audits.

Division 1 — Introduction

7.1. Terms used [28]

In this Part, unless the contrary intention appears —

approved auditor means a person who is approved by the Minister under section 7.5;

audit has the meaning given in the Auditor General Act section 4(1);

audit committee means an audit committee established under section 7.1A;

audit contract means an agreement in writing that —

(a) was made under section 7.8(1); and

(b) was in force immediately before commencement day;

Auditor General Act means the *Auditor General Act 2006*;

audit report means a report prepared by an auditor on a local government audit;

commencement day means the day on which the *Local Government Amendment (Auditing) Act 2017* section 10 comes into operation;

disqualified person has the meaning given by section 7.4(2);

financial audit means an audit conducted under section 7.12AB;

local government audit means —

(a) an audit conducted under this Part; or

(b) a performance audit;

performance audit means an examination or investigation carried out under the Auditor General Act section 18 (as applied by section 7.12AJ(1) of this Act);

qualified person means a person who is an approved auditor or a registered company auditor and who is not a disqualified person;

registered company auditor means a person who is for the time being registered as an auditor or taken to be registered as an auditor under Part 9.2 of the *Corporations Act 2001* of the Commonwealth;

regulations means regulations made for the purposes of this Part;

supplementary audit means an audit conducted under section 7.12AG.

[Section 7.1 amended: No. 10 of 2001 s. 124; No. 49 of 2004 s. 4; No. 5 of 2017 s. 10.]

Division 1A — Audit committee

[Heading inserted: No. 49 of 2004 s. 5.]

7.1A. Audit committee

(1) A local government is to establish an audit committee of 3 or more persons to exercise the powers and discharge the duties conferred on it.

(2) The members of the audit committee of a local government are to be appointed* by the local government and at least 3 of the members, and the majority of the members, are to be council members.

** Absolute majority required.*

(3) A CEO is not to be a member of an audit committee and may not nominate a person to be a member of an audit committee or have a person to represent the CEO as a member of an audit committee.

(4) An employee is not to be a member of an audit committee.

[Section 7.1A inserted: No. 49 of 2004 s. 5; amended: No. 5 of 2017 s. 11.]

7.1B. Delegation of some powers and duties to audit committees

(1) Despite section 5.16, the only powers and duties that a local government may delegate* to its audit committee are any of its powers and duties under this Part other than this power of delegation.

** Absolute majority required.*

(2) A delegation to an audit committee is not subject to section 5.17.

[Section 7.1B inserted: No. 49 of 2004 s. 5.]

7.1C. Decisions of audit committees

Despite section 5.20, a decision of an audit committee is to be made by a simple majority.

[Section 7.1C inserted: No. 49 of 2004 s. 5.]

Division 2 — Appointment of auditors [28]

7.1D. Application

This Division applies in relation to a local government that has an audit contract that is in force.

[Section 7.1D inserted: No. 5 of 2017 s. 12.]

7.2. Audit

The accounts and annual financial report of a local government for each financial year are required to be audited by an auditor appointed by the local government.

7.3. Appointment of auditors

(1) Subject to subsection (1A), a local government is to, from time to time whenever such an appointment is necessary or expedient, appoint* a person, on the recommendation of the audit committee, to be its auditor.

** Absolute majority required.*

(1A) A local government cannot appoint a person to be its auditor after commencement day.

(2) The local government may appoint one or more persons as its auditor.

(3) The local government's auditor is to be a person who is —

(a) a registered company auditor; or

(b) an approved auditor.

[Section 7.3 amended: No. 49 of 2004 s. 6; No. 5 of 2017 s. 13.]

7.4. Disqualified person not to be auditor

(1) A person may not be appointed as a local government's auditor if that person is a disqualified person.

(2) In this section —

disqualified person means a person who —

(a) is a councillor or an employee of the local government; or

(b) is a person who is in debt for more than the prescribed amount to the local government for a period of more than 35 days after —

(i) in the case of that part of the debt which is for a rate or service charge under Part 6, the date the rate notice was issued; or

(ii) in the case of that part of the debt which is not for a rate or service charge, the date an account was rendered to the person by the local government;

or

(c) is an employee of, or a member of the governing body of, an entity of a kind prescribed for the purposes of this paragraph; or

(d) is a member of a class of persons prescribed for the purposes of this subsection.

7.5. Approval of auditors

The Minister may approve a person who, immediately before the commencement of this Act —

(a) was a registered local government auditor within the meaning of that term in Part XXVII of the *Local Government Act 1960* [4] as in force before that commencement; and

(b) was the auditor of a local government,

as an approved auditor for the purposes of this Act.

7.6. Term of office of auditor

(1) The appointment of a local government's auditor is to have effect in respect of the audit of the accounts and annual financial report of the local government for a term of not more than 5 financial years, but an auditor is eligible for re-appointment.

(2) The appointment of an auditor of a local government ceases to have effect if —

(a) his or her registration as a registered company auditor is cancelled; or

(b) his or her approval as an approved auditor is withdrawn; or

(c) he or she dies; or

(d) the auditor ceases to be qualified to hold office as auditor or becomes a disqualified person; or

(e) the auditor resigns by notice in writing addressed to the local government; or

(f) the appointment is terminated by the local government by notice in writing.

(3) Where —

(a) the registration of a local government's auditor as a registered company auditor is suspended; or

(b) a local government's auditor becomes unable or unwilling to carry out all or part of his or her duties,

the local government is to appoint* a person to conduct the audit or to complete that part of the audit which remains to be conducted, as the case requires.

** Absolute majority required.*

7.7. Departmental CEO may appoint auditor

(1) Subject to subsection (2), if by 30 November in any year a local government has not appointed an auditor the Departmental CEO may appoint —

(a) a qualified person; or

(b) in default of an appointment under paragraph (a), the Auditor General,

to be the auditor of the local government's accounts and annual financial report for the relevant financial year.

(2) The Departmental CEO cannot appoint a person to be the auditor of a local government after commencement day.

[Section 7.7 amended: No. 28 of 2006 s. 364; No. 5 of 2017 s. 14.]

7.8. Terms of appointment of auditors

(1) Subject to this Part and to any regulations, the appointment of a person as auditor of a local government is to be made by agreement in writing on such terms and conditions, including the remuneration and expenses of the person to be appointed, as are agreed between that person and the local government.

(2) The remuneration and expenses payable to the auditor of a local government (whether appointed by the local government or by the Departmental CEO under section 7.7) are payable by the local government.

[Section 7.8 amended: No. 28 of 2006 s. 364.]

Division 3 — Conduct of audit [28]

7.8A. Application

This Division applies in relation to a local government that has an audit contract that is in force.

[Section 7.8A inserted: No. 5 of 2017 s. 15.]

7.9. Audit to be conducted

(1) An auditor is required to examine the accounts and annual financial report submitted for audit and, by the 31 December next following the financial year to which the accounts and report relate or such later date as may be prescribed, to prepare a report thereon and forward a copy of that report to —

(a) the mayor or president; and

(b) the CEO of the local government; and

(c) the Minister.

(2) Without limiting the generality of subsection (1), where the auditor considers that —

(a) there is any error or deficiency in an account or financial report submitted for audit; or

(b) any money paid from, or due to, any fund or account of a local government has been or may have been misapplied to purposes not authorised by law; or

(c) there is a matter arising from the examination of the accounts and annual financial report that needs to be addressed by the local government,

details of that error, deficiency, misapplication or matter, are to be included in the report by the auditor.

(3) The Minister may direct the auditor of a local government to examine a particular aspect of the accounts and the annual financial report submitted for audit by that local government and to —

(a) prepare a report thereon; and

(b) forward a copy of that report to the Minister,

and that direction has effect according to its terms.

(4) If the Minister considers it appropriate to do so, the Minister is to forward a copy of the report referred to in subsection (3), or part of that report, to the CEO of the local government.

[Section 7.9 amended: No. 49 of 2004 s. 7; No. 5 of 2017 s. 16.]

7.10. Powers of auditor

(1) An auditor —

(a) has a right of access at all reasonable times to such books, accounts, documents and assets of the local government as are, in the opinion of the auditor, necessary to allow the audit to be conducted; and

(b) may require from a member or an employee of the local government —

(i) any book, account, document or asset of the local government; or

(ii) any information, assistance or explanation,

necessary for the performance of the duty of the auditor in relation to the audit; and

(c) may, at the expense of the local government obtain and act upon a legal opinion on a question arising in the course of an audit.

(2) In this section and in section 7.11 ***employee*** includes a person who has a contract for services with the local government.

7.11. Power to demand production of books etc.

For the purpose of an audit, an auditor has authority at all reasonable times and without notice to demand from the local government and its employees, the production of books, accounts, vouchers, papers, documents, records, assets and cash in hand, belonging to the local government or being in the custody or control of it or any of its employees.

[Section 7.11 amended: No. 5 of 2017 s. 17.]

7.12. Employees and financial institutions to furnish particulars of money received

(1) An employee of a local government is to furnish to an auditor, as and when required, a statement in writing of all money received in his or her official capacity by the employee whether on account of the local government or otherwise.

(2) A bank or other financial institution at which a local government has an account is required to furnish to an auditor, as and when required, full particulars of the account.

Division 3A — Financial audit

[Heading inserted: No. 5 of 2017 s. 18.]

7.12AA. Application [28]

This Division applies in relation to a local government that does not have an audit contract that is in force.

[Section 7.12AA inserted: No. 5 of 2017 s. 18.]

7.12AB. Conducting a financial audit

The auditor must audit the accounts and annual financial report of a local government at least once in respect of each financial year.

[Section 7.12AB inserted: No. 5 of 2017 s. 18.]

7.12AC. Dispensing with a financial audit

(1) Despite section 7.12AB, the auditor may dispense with all or any part of a financial audit if the auditor considers that the dispensation is appropriate in the circumstances.

(2) The auditor must consult the Minister before exercising the power conferred by subsection (1).

(3) If the auditor exercises the power conferred by subsection (1), the auditor must notify —

(a) the Public Accounts Committee as defined in the Auditor General Act section 4(1); and

(b) the Estimates and Financial Operations Committee as defined in the Auditor General Act section 4(1).

[Section 7.12AC inserted: No. 5 of 2017 s. 18.]

7.12AD. Reporting on a financial audit

(1) The auditor must prepare and sign a report on a financial audit.

(2) The auditor must give the report to —

(a) the mayor, president or chairperson of the local government; and

(b) the CEO of the local government; and

(c) the Minister.

[Section 7.12AD inserted: No. 5 of 2017 s. 18.]

7.12AE. Fees for a financial audit

(1) The auditor must determine whether a fee is to be charged for a financial audit of a local government and if so, the amount of that fee.

(2) A fee determined under subsection (1) must be paid by the local government.

[Section 7.12AE inserted: No. 5 of 2017 s. 18.]

Division 3B — Supplementary audit

[Heading inserted: No. 5 of 2017 s. 18.]

7.12AF. Application [28]

This Division applies in relation to a local government that does not have an audit contract that is in force.

[Section 7.12AF inserted: No. 5 of 2017 s. 18.]

7.12AG. Conducting a supplementary audit

The auditor may audit any particular aspect of the accounts of a local government that the Minister requests the auditor to audit.

[Section 7.12AG inserted: No. 5 of 2017 s. 18.]

7.12AH. Reporting on a supplementary audit

(1) The auditor must prepare and sign a report on a supplementary audit.

(2) The auditor must give the report to the Minister.

(3) The Minister —

(a) may give a copy of the report to the mayor, president or chairperson of the local government, and to the CEO of the local government; and

(b) may request the CEO of the local government to publish the report on the local government's official website.

(4) The CEO must publish a copy of the report on the local government's official website within 14 days after receiving a request under subsection (3)(b).

[Section 7.12AH inserted: No. 5 of 2017 s. 18.]

7.12AI. Fees for a supplementary audit

(1) The auditor must determine whether a fee is to be charged for a supplementary audit of a local government and if so, the amount of that fee.

(2) A fee determined under subsection (1) must be paid by the local government.

[Section 7.12AI inserted: No. 5 of 2017 s. 18.]

Division 3C — Performance audit

[Heading inserted: No. 5 of 2017 s. 18.]

7.12AJ. Conducting a performance audit

(1) The Auditor General Act section 18 applies in relation to a local government as if —

(a) the local government were an agency; and

(b) money collected, received or held by any person for or on behalf of the local government were public money; and

(c) money collected, received or held by the local government for or on behalf of a person other than the local government were other money; and

(d) property held for or on behalf of the local government, other than money referred to in paragraph (b), were public property; and

(e) property held by the local government for or on behalf of a person other than the local government were other property; and

(f) the reference in the Auditor General Act section 18(2)(d) to "legislative provisions, public sector policies or its own internal policies;" were a reference to "legislative provisions or its own internal policies;".

(2) A performance audit is taken for the purposes of the Auditor General Act to have been carried out under the Auditor General Act Part 3 Division 1.

[Section 7.12AJ inserted: No. 5 of 2017 s. 18.]

7.12AK. Reporting on a performance audit

(1) The Auditor General Act section 25 applies in relation to a performance audit as if —

(a) a local government were an agency; and

(b) the council of the local government were its accountable authority.

(2) The auditor must give a report on a performance audit to the local government.

[Section 7.12AK inserted: No. 5 of 2017 s. 18.]

Division 3D — Other audits

[Heading inserted: No. 5 of 2017 s. 18.]

7.12AL. Audits of accounts of related entities and certain subsidiary bodies

The Auditor General Act sections 16 and 17 apply in relation to a local government as if —

(a) the local government were an agency; and

(b) the council of the local government were its accountable authority.

[Section 7.12AL inserted: No. 5 of 2017 s. 18.]

Division 4 — General

7.12A. Duties of local government with respect to audits

(1) A local government is to do everything in its power to —

(a) assist the auditor of the local government to conduct an audit and carry out the auditor's other duties under this Act in respect of the local government; and

(b) ensure that audits are conducted successfully and expeditiously.

(2) Without limiting the generality of subsection (1), a local government is to meet with the auditor of the local government at least once in every year.

(3) A local government must —

(aa) examine an audit report received by the local government; and

(a) determine if any matters raised by the audit report, require action to be taken by the local government; and

(b) ensure that appropriate action is taken in respect of those matters.

(4) A local government must —

(a) prepare a report addressing any matters identified as significant by the auditor in the audit report, and stating what action the local government has taken or intends to take with respect to each of those matters; and

(b) give a copy of that report to the Minister within 3 months after the audit report is received by the local government.

(5) Within 14 days after a local government gives a report to the Minister under subsection (4)(b), the CEO must publish a copy of the report on the local government's official website.

[Section 7.12A inserted: No. 49 of 2004 s. 8; amended: No. 5 of 2017 s. 19.]

7.13. Regulations as to audits [28]

(1) Regulations may make provision as follows —

(aa) as to the functions of a CEO in relation to —

(i) a local government audit; and

(ii) a report (an ***action report***) prepared by a local government under section 7.12A(4)(a); and

(iii) an audit report; and

(iv) a report on an audit conducted by a local government under this Act or any other written law;

(ab) as to the functions of an audit committee, including in relation to —

(i) the selection and recommendation of an auditor under Division 2; and

(ii) a local government audit; and

(iii) an action report; and

(iv) an audit report; and

(v) a report on an audit conducted by a local government under this Act or any other written law;

(ac) as to the procedure to be followed in selecting an auditor under Division 2;

[(ad) deleted]

(ae) as to monitoring action taken in respect of any matters raised in an audit report;

(a) with respect to matters to be included in an agreement in writing (***agreement***) made under section 7.8(1);

(b) for notifications and reports to be given in relation to an agreement, including any variations to, or termination of an agreement;

(ba) as to a copy of an agreement being provided to the Department;

(c) as to the manner in which an application may be made to the Minister for approval as an auditor under section 7.5;

(d) in relation to approved auditors, for the following —

(i) reviews of, and reports on, the quality of audits conducted;

(ii) the withdrawal by the Minister of approval as an auditor;

(iii) applications to the State Administrative Tribunal for the review of decisions to withdraw approval;

(e) for the exercise or performance by auditors of their powers and duties under this Part;

(f) as to the matters to be addressed in an audit report;

(g) requiring an auditor (other than the Auditor General) to provide the Minister with prescribed information as to an audit conducted by the auditor;

(h) prescribing the circumstances in which an auditor (other than the Auditor General) is to be considered to have a

conflict of interest and requiring an auditor (other than the Auditor General) to disclose in an audit report such information as to a possible conflict of interest as is prescribed;

(i) requiring local governments to carry out, in the prescribed manner and in a form approved by the Minister, an audit of compliance with such statutory requirements as are prescribed whether those requirements are —

(i) of a financial nature or not; or

(ii) under this Act or another written law.

(2) Regulations may also make any provision about audit committees that may be made under section 5.25 in relation to committees.

[Section 7.13 amended: No. 64 of 1998 s. 40; No. 49 of 2004 s. 9; No. 55 of 2004 s. 700; No. 5 of 2017 s. 20.]

Part 8 — Scrutiny of the affairs of local governments

What this Part is about

This Part deals with —

(a) inquiring into the affairs and performance of local governments; and

(b) suspending and dismissing councils and members of councils; and

(c) making members or local government employees accountable for the misapplication of property.

Division 1 — Inquiries by the Minister or an authorised person

8.1. Terms used

In this Division —

authorised person means the Departmental CEO or any other person authorised to conduct an inquiry;

inquiry means an inquiry under section 8.3.

[Section 8.1 amended: No. 28 of 2006 s. 364.]

8.2. Minister or Departmental CEO may require information

(1) The Minister or Departmental CEO may in a written notice require a local government, a member of a council, a CEO or an employee to provide information of a kind specified in the notice concerning the local government or its operations or affairs.

(2) A person who fails to comply with a notice under subsection (1) commits an offence.

[Section 8.2 amended: No. 28 of 2006 s. 364; No. 17 of 2009 s. 41.]

8.3. Inquiries by, or authorised by, Departmental CEO

(1) The Departmental CEO has authority to inquire into all local governments and their operations and affairs.

(2) The Departmental CEO may, by written authorisation, authorise a person to inquire into and report on any aspect of a local government or its operations or affairs.

(3) The Minister may direct the Departmental CEO to authorise an inquiry under this section.

(4) The Departmental CEO is to advise the Minister if and when an inquiry is authorised under this section.

(5) An election (within the meaning of Part 4) is not to be the subject of an inquiry under this section if the Electoral Commissioner was responsible for the conduct of the election.

(6) If 2 or more people are authorised to conduct an inquiry —

(a) a reference in section 8.4, 8.12, 8.13, 8.14 or 8.15A to ***the authorised person*** or ***an authorised person*** is a reference to those people; and

(b) a reference in section 8.5, 8.6, 8.8, 8.9, 8.10 or 8.11 to ***an authorised person*** is a reference to any of those people.

[Section 8.3 amended: No. 64 of 1998 s. 41, No. 28 of 2006 s. 364.]

8.4. Scope and duration of authorisation

(1) An authorisation under section 8.3(2) may confer a general power to conduct inquiries or a power to conduct a specific inquiry.

(2) Even though a specific inquiry is authorised, the authorised person may inquire into any other matter that comes to the person's attention during the inquiry if the person considers it

necessary or expedient to inquire into that matter and notifies the Departmental CEO accordingly.

(3) The authorisation is to set out —

(a) the name of the authorised person; and

(b) the functions of the authorised person; and

(c) any limit imposed on the duration of the authorisation.

(4) The authorisation may be withdrawn by the Departmental CEO by written notice given to the authorised person.

[Section 8.4 amended: No. 28 of 2006 s. 364.]

8.5. Powers of authorised person

(1) So as to perform his or her functions an authorised person may direct a person to do any one or more of the following —

(a) to appear in person before the authorised person at a time and place specified in the direction;

(b) to give evidence (including evidence on oath);

(c) to produce to the authorised person, or allow the authorised person to have access to, any document, information or property that is in or under the person's custody or control;

(d) to do anything necessary to enable the authorised person to have access to any document, information or property in or under the custody or control of another person.

(2) An authorised person may administer an oath for the purposes of this section.

(3) Subsection (1)(c) and (d) extend to documents and information in or under the custody or control of banks or other financial institutions.

(4) An authorised person may —

(a) take copies of or extracts from any document to which he or she gains access under this section; or

(b) take custody or control of any document or property to which he or she gains access under this section on local government property.

(5) Evidence given by a person as directed under subsection (1) is not admissible in any civil or criminal proceedings against the person other than proceedings under section 8.11.

8.6. Power to enter property

(1) For the purpose of performing his or her functions an authorised person may enter land, premises or things in accordance with this section.

(2) An authorised person may enter local government property with or without the consent of the local government.

(3) An authorised person may, with assistants if necessary, enter land, premises or things other than local government property if —

(a) the consent of the owner or occupier has been obtained; or

(b) the owner or occupier has been given notice of the entry and does not object to the entry; or

(c) the entry is authorised by the warrant of a justice.

8.7. Notice of entry

(1) A notice of entry under section 8.6(3)(b) is to specify the purpose for which the entry is required and continues to have effect for so long as that requirement continues.

(2) The notice is to be given not less than 24 hours before the power of entry is exercised.

(3) Successive entries for the purpose specified in the notice are to be regarded as entries to which that notice relates.

8.8. Entry under warrant

(1) In the circumstances described in subsection (2), a justice may by warrant authorise an authorised person, together with such other persons as are named or described in the warrant, or a police officer, to enter any land, premises or thing using such force as is necessary.

(2) A warrant may be granted under subsection (1) where a justice is satisfied that the entry is reasonably required by an authorised person for the purpose of performing any of his or her functions, but —

(a) entry has been refused or is opposed or prevented; or

(b) entry cannot be obtained; or

(c) notice cannot be given under section 8.6(3)(b) without unreasonable difficulty or without unreasonably delaying entry.

(3) A warrant granted under subsection (1) —

(a) is to be in the prescribed form; and

(b) is to specify the purpose for which the land, premises or thing may be entered; and

(c) continues to have effect until the purpose for which it was granted has been satisfied.

8.9. Exercise of powers

An authorised person's powers can be exercised in relation to —

(a) a person who is or has been a council member, or member of a committee, or employee of the local government concerned; or

(b) a person or body with whom the local government or a person referred to in paragraph (a) has, has had, may have or may have had a financial or other association.

8.10. Protection from liability

(1) An action in tort does not lie against an authorised person for anything that the person has done, in good faith, in the exercise or purported exercise of a power under this Division.

(2) This section does not relieve the State of any liability that it might have for the doing of anything by an authorised person.

8.11. Failure to comply with directions

A person who —

(a) hinders or obstructs an authorised person in the performance of his or her functions; or

(b) fails to comply with a direction lawfully given by an authorised person; or

(c) knowingly gives false or misleading evidence to an authorised person,

commits an offence.

8.12. Referral to other authorities

An authorised person may refer any matter arising out of an inquiry to an authority of the State, the Commonwealth, another State or a Territory that has power under a law to investigate or take action in relation to a matter of that kind, and may pass to that authority any document or property that he or she has obtained under this Division.

8.13. Authorised person's report

(1) An authorised person is to compile a report on the outcome of any inquiry he or she conducts.

(2) The report is to contain any recommendations that the authorised person considers appropriate.

(3) The report of an authorised person other than the Departmental CEO is to be given to the Departmental CEO.

(4) The Departmental CEO is to give a copy of the report to the Minister.

[Section 8.13 amended: No. 28 of 2006 s. 364.]

8.14. Copies to be given to local government and suspended council members

(1) Unless the Minister directs otherwise, the Departmental CEO is to give a copy of a report under section 8.13 to —

(a) the local government concerned; and

(b) if the council of the local government is suspended — each council member; and

(c) if a council member is suspended — that member.

(2) Before giving the report, as required under subsection (1), the Departmental CEO may remove from the report anything that —

(a) could prejudice any legal action arising from the inquiry; or

(b) could prejudice any inquiry that the Minister may wish to institute under Division 2; or

(c) could be considered defamatory; or

(d) the Departmental CEO considers ought, for any other reason, to be removed.

(3) Within 35 days after receiving the report or such longer period as the Minister allows, the local government is to give the Minister written advice setting out the things that it has done or proposes to do to give effect to the recommendations of the authorised person.

(4) A council member who is suspended or who is a member of a council that is suspended may, within 35 days after receiving the report or such longer period as the Minister allows, give the

Minister written advice setting out the member's comments on the recommendations in the report.

[Section 8.14 amended: No. 64 of 1998 s. 42; No. 28 of 2006 s. 364; No. 31 of 2018 s. 11.]

8.15. Minister can take action to ensure that recommendations are put into effect

(1) The Minister may, if he or she thinks fit —

(a) after receiving advice under section 8.14(3) or (4); or

(b) after the time allowed by or under section 8.14(3) or (4) runs out, if no advice has been received by then,

order the local government, or any of its council members or employees, to give effect to any one or more of the recommendations in the report in a manner and within a time ordered by the Minister.

(2) If the Minister's order under subsection (1) is not complied with according to its terms the Minister may, by order, suspend the council of the local government.

[Section 8.15 amended: No. 31 of 2018 s. 12.]

8.15A. Local government may have to meet inquiry costs

If —

(a) an authorised person makes findings adverse to a local government, or to its council or any member, or to any of its employees; or

(b) an inquiry by an authorised person was instituted at the request of a local government,

the Minister may order the local government to pay all or part of the costs of the inquiry and the local government is to comply with that order.

[Section 8.15A inserted: No. 64 of 1998 s. 43.]

Division 1A — Intervention by the Minister in certain circumstances

[Heading inserted: No. 31 of 2018 s. 13.]

Subdivision 1 — Council may be suspended or required to undertake remedial action

[Heading inserted: No. 31 of 2018 s. 13.]

8.15B. Notice that council may be peremptorily suspended or required to undertake remedial action

(1) Before the Minister makes an order under section 8.15C(2), the Minister is to give a notice (a ***show cause notice***) in writing to the local government of the intention to do one or both of the following —

(a) suspend the council of the local government;

(b) require the council, or one or more of the members of the council, to undertake such remedial action as is specified in the notice.

(2) Within 21 days of receiving a show cause notice, or such longer period as the Minister allows, the local government is to give the Minister a written response to the notice.

[Section 8.15B inserted: No. 2 of 2012 s. 22.]

8.15C. Minister may order that council be peremptorily suspended or required to undertake remedial action

(1) This section applies if the Minister thinks that —

(a) the seriousness or duration of a suspected failure of the council of a local government to ensure that the local government performs its functions properly; or

(b) such other factors as the Minister considers relevant,

make it inappropriate for the council to act, or to continue to act, without intervention under this section, as the governing body of

the local government, whether or not there has been an inquiry under Division 1.

(2) The Minister may —

(a) after receiving the local government's response under section 8.15B(2); or

(b) after the time allowed by or under section 8.15B(2) runs out, if no response has been received by then,

by order, do one or more of the following —

(c) suspend the council;

(d) require the council, or one or more of the members of the council, to undertake such remedial action as is specified in the order within the time specified in the order.

(3) An order under this section suspending a council ceases to have effect when —

(a) an Inquiry Panel is appointed to conduct an inquiry and make a report about the local government; or

(b) the council is reinstated by the Minister under section 8.28(3); or

(c) the period of 6 months from when the order was made ends,

whichever happens soonest.

[Section 8.15C inserted: No. 2 of 2012 s. 22; amended: No. 31 of 2018 s. 14.]

Subdivision 2 — Council member may be suspended or required to undertake remedial action

[Heading inserted: No. 31 of 2018 s. 15.]

8.15D. Terms used

In this Subdivision —

disqualification offence means —

(a) a serious local government offence, as defined in section 2.22(3); or

(b) an offence against a law of this State, the Commonwealth, another State or a Territory, for which the indictable penalty, as defined in section 2.22(3), is —

(i) imprisonment for life; or

(ii) imprisonment for more than 5 years;

on which the order is based, in relation to —

(a) a factor — means a factor set out in section 8.15E(2) specified in an order in accordance with section 8.15E(4)(a); and

(b) a type of failure or conduct — means a type of failure or conduct set out in section 8.15E(3)(a) specified in an order in accordance with section 8.15E(4)(b);

reinstatement, of a member, means the reinstatement of the member under section 8.15H, 8.24(4B) or 8.30D.

[Section 8.15D inserted: No. 31 of 2018 s. 15.]

8.15E. Minister may suspend council member or require member to undertake remedial action

(1) If satisfied that it is appropriate to intervene under this section, the Minister may, by order, do either or both of the following —

(a) suspend a council member;

(b) require a council member to undertake any remedial action specified in the order within the time specified in the order.

(2) The Minister can only be satisfied that it is appropriate to intervene under this section if one or more of the following factors exist —

(a) the member has been charged with a disqualification offence;

(b) the Departmental CEO has, under Part 5 Division 9, made an allegation to the State Administrative Tribunal that the member has committed a serious breach or a recurrent breach, as those terms are defined in section 5.102A;

(c) the circumstances set out in subsection (3) have occurred.

(3) The circumstances referred to in subsection (2)(c) are that —

(a) the Departmental CEO has advised the Minister in writing that the Departmental CEO suspects on reasonable grounds that at least one of the following apply —

(i) the member has failed, or is failing, to perform the member's role, functions or duties under this Act;

(ii) the member's conduct has adversely affected, or is adversely affecting, the ability of another person to perform their role, functions or duties under this Act;

(iii) the member's conduct has adversely affected, or is adversely affecting, the ability of the local government to comply with the principles that apply to it under section 5.40;

and

(b) the Minister is satisfied that the seriousness or duration of the suspected failure or conduct requires intervention under this section.

(4) An order made under subsection (1) must specify —

(a) each paragraph of subsection (2) that sets out a factor on which the order is based; and

(b) if subsection (2)(c) is a factor on which the order is based — each subparagraph of subsection (3)(a) that sets out a type of failure or conduct about which the Minister has received advice from the Departmental CEO.

(5) Before making an order under subsection (1) the Minister must —

(a) give to the member written notice of the proposed order that provides a description of the facts of —

(i) each factor on which it is proposed that the order be based; and

(ii) if relevant, each type of failure or conduct on which it is proposed that the order be based;

and

(b) give the member the opportunity to show cause in writing, within 21 days of receiving the notice or such longer period as the Minister allows, as to why the Minister should not make the proposed order; and

(c) take into consideration the member's response, if any.

[Section 8.15E inserted: No. 31 of 2018 s. 15.]

8.15F. Period of suspension: order under section 8.15E

(1) An order under section 8.15E(1) suspending a council member ceases to have effect on whichever of the following occurs first —

(a) the term of office of the member ends, or the member's office becomes vacant;

(b) the member is reinstated by the Minister;

(c) if section 8.15E(2)(a) or (b) is a factor on which the order is based — the matter is resolved as described in subsection (2);

(d) if section 8.15E(2)(c) is the only factor on which the order is based — the period of suspension described in subsection (3) expires.

(2) A matter is resolved for the purposes of subsection (1)(c) when —

(a) if section 8.15E(2)(a) is a factor on which the order is based — one of the following has occurred in respect of each charge for a disqualification offence —

(i) the member is convicted of the offence and any appeal has been determined, or any period for appeal has expired;

(ii) the member is acquitted of the offence and any appeal has been determined, or any period for appeal has expired;

(iii) the prosecution for the offence is discontinued;

(b) if section 8.15E(2)(b) is a factor on which the order is based — one of the following has occurred in respect of each allegation to the State Administrative Tribunal that the member has committed a serious breach or a recurrent breach —

(i) the Tribunal makes an order described in section 5.117 and any appeal has been determined, or any period for appeal has expired;

(ii) the Tribunal decides that the member did not commit the breach and any appeal has been determined, or any period for appeal has expired.

(3) The period of suspension for the purposes of subsection (1)(d) is —

(a) the period of not more than 6 months specified in the order, or if no period is specified in the order, the period of 6 months from when the order was made; and

(b) if the period of suspension has been extended by an order under section 8.15G(1) (an ***extension order***), the additional period of not more than 6 months specified in the extension order, or if no period is specified in the extension order, the additional period of 6 months.

[Section 8.15F inserted: No. 31 of 2018 s. 15.]

8.15G. Suspension of certain council members may be extended while inquiry conducted

(1) The Minister may, by order, extend the suspension of a council member who is already suspended by an order (the ***original order***) under section 8.15E(1) if section 8.15E(2)(c) is the only factor on which the order is based where —

(a) an inquiry is being conducted under Division 1 or 2 into any failure or conduct on which the original order was based; and

(b) the Departmental CEO has advised the Minister that, in the CEO's opinion, the original order suspending the member will cease to have effect under section 8.15F(1)(d) and (3)(a) before the inquiry is completed; and

(c) the Minister is satisfied that each type of failure or conduct on which the original order was based still exists.

(2) For the purposes of this Act, the extended suspension of a member the subject of an order under subsection (1) is to be taken to have effect under the original order.

[Section 8.15G inserted: No. 31 of 2018 s. 15.]

8.15H. Reinstatement of council member whose suspension was extended under section 8.15G

The Minister must, by order, reinstate a council member the subject of an order under section 8.15G(1) if the Departmental CEO advises the Minister in writing that, taking into account the recommendations in the report on the outcome of the inquiry, the CEO considers that it is not appropriate —

(a) that the member be charged with a serious local government offence, as defined in section 2.22(3); or

(b) to make an allegation to the State Administrative Tribunal under section 5.116(2) that the member has committed a serious breach.

[Section 8.15H inserted: No. 31 of 2018 s. 15.]

8.15I. Minister may suspend council member if member fails to undertake remedial action as ordered

(1) If the Minister is satisfied that an order by the Minister under section 8.15C(2)(d) or 8.15E(1)(b), requiring a member of a council to take remedial action, has not been complied with according to its terms, the Minister may, by order, suspend the member.

(2) Before making an order under subsection (1) the Minister must —

(a) give to the member written notice of the proposed order and provide information, and if available, evidence as to why the Minister is satisfied that the order has not been complied with; and

(b) give the member the opportunity to show cause in writing, within 21 days of receiving the notice or such longer period as the Minister allows, as to why the Minister should not make the proposed order; and

(c) take into consideration the member's response, if any.

(3) If a member is already suspended, then an order may be made under subsection (1) extending the suspension of the member and, for the purpose of this Act, such an order is to be taken to be an order suspending the member made under this section.

[Section 8.15I inserted: No. 31 of 2018 s. 15.]

8.15J. Council member must inform CEO if charged with disqualification offence

(1) A member of a council of a local government who has been charged with a disqualification offence and does not advise the CEO of the local government in writing of the charge without delay commits an offence.

(2) If a CEO receives a notice under subsection (1), or becomes aware by other means that a council member has been charged with a disqualifying offence, the CEO must, as soon as is practicable, give the Departmental CEO written notice that the member has been so charged.

[Section 8.15J inserted: No. 31 of 2018 s. 15.]

Subdivision 3 — Council member may be dismissed

[Heading inserted: No. 31 of 2018 s. 15.]

8.15K. Minister may recommend that council member be dismissed

(1) If satisfied that it is appropriate to intervene under this section, the Minister may recommend that the Governor dismiss a council member.

(2) The Minister can only be satisfied that it is appropriate to intervene under this section if the Minister —

(a) is of the opinion, based on the advice in writing of the Departmental CEO, that either or both of the following apply —

(i) the member is impeding the ability of the local government to perform its functions and duties under this Act;

(ii) it is in the best interests of the local government that the member be dismissed;

and

(b) is satisfied that the seriousness of the situation for the local government requires intervention under this section.

(3) Before making a recommendation under subsection (1) the Minister must —

(a) give to the member a report that contains —

(i) the proposed recommendation; and

(ii) the grounds on which the Minister proposes to make the recommendation;

and

(b) give the member the opportunity to show cause in writing, within 21 days of receiving the report or such longer period as the Minister allows, as to why the Minister should not make the proposed recommendation; and

(c) take into consideration the member's response, if any.

(4) The power conferred on the Minister under subsection (1) is in addition to, and does not derogate from, the power conferred on the Minister under section 8.24(4A) to take action in respect of an Inquiry Panel's report under Division 2.

[Section 8.15K inserted: No. 31 of 2018 s. 15.]

8.15L. Governor may dismiss council member on recommendation of the Minister

The Governor may, by order made on the recommendation of the Minister under section 8.15K(1), dismiss a member of a council.

[Section 8.15L inserted: No. 31 of 2018 s. 15.]

8.15M. Report setting out grounds to be made available to the public

(1) On the day an order dismissing a council member under section 8.15L takes effect, the Minister is to make available to the public in any manner that the Minister thinks fit a report that contains the grounds on which the Minister made the recommendation to dismiss the member under section 8.15K(1).

(2) Despite subsection (1), the Minister may withhold the report, or any part of its contents, to the extent that the Minister considers that making it available might prejudice a matter that is likely to come before a court of law or to be the subject of an allegation to the State Administrative Tribunal.

[Section 8.15M inserted: No. 31 of 2018 s. 15.]

Division 2 — Inquiries by Inquiry Panels

8.16. Minister may institute inquiry

(1) The Minister may by written notice appoint an Inquiry Panel consisting of one person or 3 people to inquire into and report on any aspect of a local government or its operations or affairs.

(2) Schedule 8.1 (which contains provisions about Inquiry Panels) has effect.

[Section 8.16 amended: No. 64 of 1998 s. 44(1).]

8.17. Scope and duration of inquiry

The notice appointing an Inquiry Panel is to set out —

(a) the nature of the inquiry to be conducted; and

(b) the functions of the Inquiry Panel; and

(c) any limit imposed on the duration of the inquiry.

8.18. Local government to be informed

The Minister is to give a copy of the notice appointing an Inquiry Panel to the local government concerned as soon as is practicable after the members of the panel have been notified of their appointments.

8.19. Suspension of council while inquiry is held

(1) Before or after appointing an Inquiry Panel to conduct an inquiry and make a report about a local government the Minister may, by order, suspend the council —

(a) if the Minister thinks that —

(i) the seriousness or duration of a suspected failure of the council to ensure that the local government performs its functions properly; or

(ii) such other factors as the Minister considers relevant,

make it inappropriate for the council to act, or to continue to act, as the governing body of the local government; or

(b) if the Minister thinks that the conduct of the inquiry would be likely to be seriously prejudiced if the council were to act, or to continue to act, as the governing body of the local government.

(2) If an Inquiry Panel has not been appointed when the suspension under an order made under this section takes place the Minister is to appoint one within 6 months after the suspension.

(3) If a council is already suspended under section 8.15C, then an order may be made under subsection (1) extending the suspension of the council and, for the purpose of this Act, such an order is to be taken to be an order suspending the council made under this section.

[Section 8.19 amended: No. 2 of 2012 s. 23.]

8.19A. Suspension of council member while inquiry is held

(1) Before or after appointing an Inquiry Panel to conduct an inquiry and make a report about a local government, the Minister may, by order, suspend a member of the council of the local government if the Minister thinks that the conduct of the inquiry would be likely to be seriously prejudiced if the member were not suspended.

(2) If an Inquiry Panel has not been appointed when the suspension under an order made under this section takes place the Minister is to appoint one within 6 months after the suspension.

(3) Before making an order under subsection (1) the Minister must —

(a) give to the member written notice of the proposed order and the reasons why the Minister thinks that the conduct of the inquiry would be likely to be seriously prejudiced if the member were not suspended; and

(b) give the member the opportunity to show cause in writing, within 21 days of receiving the notice or such longer period as the Minister allows, as to why the Minister should not make the proposed order; and

(c) take into consideration the member's response, if any.

(4) If a member is already suspended, then an order may be made under subsection (1) extending the suspension of the member and, for the purpose of this Act, such an order is to be taken to be an order suspending the member made under this section.

[Section 8.19A inserted: No. 31 of 2018 s. 16.]

8.20. Powers of Inquiry Panel

For the purposes of an inquiry and report under this Division —

(a) an Inquiry Panel has the powers of a Royal Commission; and

(b) the person appointed to preside at meetings of the Inquiry Panel, or if the Inquiry Panel consists of one person that person, has the powers of the chairman of a Royal Commission,

whether under the *Royal Commissions Act 1968* or otherwise, and the provisions of that Act have effect as if they were enacted in this Act with such modifications as are required and in terms made applicable to the inquiry and report by the Inquiry Panel.

[Section 8.20 inserted: No. 64 of 1998 s. 45.]

8.21. Referral to other authorities

An Inquiry Panel may refer any matter arising out of an inquiry to an authority of the State, the Commonwealth, another State or a Territory that has power under a law to investigate or take action in relation to a matter of that kind, and may pass to that authority any document that it has obtained in the course of the inquiry.

[Section 8.21 amended: No. 64 of 1998 s. 46.]

8.22. Report of Inquiry Panel

(1) An Inquiry Panel's report is to contain any recommendations that the Inquiry Panel considers appropriate.

(2) Without limiting subsection (1) the Inquiry Panel may recommend —

(a) that a council be dismissed; or

(b) that a council that has been suspended be reinstated; or

(c) if subsection (2A) applies, that a council member be dismissed; or

(d) that a council member who has been suspended be reinstated.

(2A) The Inquiry Panel can only recommend that a council member be dismissed if the Inquiry Panel is satisfied, on reasonable grounds, that —

(a) at least one of the following apply —

(i) the member has failed, or is failing, to perform the member's role, functions or duties under this Act;

(ii) the member's conduct has impeded, or is impeding, the ability of another person to perform their role, functions or duties under this Act;

(iii) the member's conduct has impeded, or is impeding, the ability of the local government to comply with the principles that apply to it under section 5.40;

and

(b) the seriousness or duration of that failure or conduct make it inappropriate for the member to continue to be a member of the governing body of the local government.

(3) The report is to be given to the Minister.

[Section 8.22 amended: No. 31 of 2018 s. 17.]

8.23. Copies to be given to local government and suspended council members, and made available to public

(1) If the Minister receives a report from an Inquiry Panel under section 8.22(3), the Minister is to give a copy of the report to —

(a) the local government concerned; and

(b) if the council of the local government is suspended — each council member; and

(c) if a council member is suspended — that member.

(2) After subsection (1) has been complied with, the Minister is to make the report of an Inquiry Panel available to the public in any manner that the Minister thinks fit.

(3) Despite subsections (1) and (2), the Minister may withhold a report, or its contents, to the extent that the Inquiry Panel has indicated that it considers that making it available might prejudice a matter that is likely to come before a court of law or to be the subject of an allegation to the State Administrative Tribunal.

(4) Within 35 days after receiving the report or such longer period as the Minister allows, the local government is to give the Minister written advice setting out —

(a) the things that it has done or proposes to do to give effect to the recommendations in the report; or

(b) if the report recommends that the council be dismissed, its comments on that recommendation.

(5) A council member who is suspended, or who is a member of a council that is suspended, may, within 35 days after receiving the report or such longer period as the Minister allows, give the Minister written advice setting out the member's comments on the recommendations in the report.

[Section 8.23 amended: No. 64 of 1998 s. 47; No. 31 of 2018 s. 18.]

8.24. Minister to decide what action to take on Inquiry Panel's report

(1) The Minister is to decide what action (if any) to take under this section in respect of an Inquiry Panel's report.

(2) If the Minister has given the local government concerned a copy of the report, the decision is to be made —

(a) after receiving advice under section 8.23(4) or (5); or

(b) after the time allowed by or under section 8.23(4) or (5) runs out, if no advice has been received by then.

(3) If, and only if, the Inquiry Panel has recommended that the council be dismissed, the Minister may recommend that the Governor dismiss the council, but the Minister does not have to so recommend.

(4) If the council has been suspended the Minister —

(a) must, by order, reinstate the council if the Inquiry Panel has not recommended its dismissal; and

(b) may, by order under section 8.28(3), reinstate the council even if the Inquiry Panel has recommended its dismissal.

(4A) If, and only if, the Inquiry Panel has recommended that a council member be dismissed, the Minister may recommend that the Governor dismiss the member, but the Minister does not have to so recommend.

(4B) If a council member has been suspended the Minister —

(a) must, by order, reinstate the member if the Inquiry Panel has not recommended the member's dismissal; and

(b) may, by order under section 8.30D, reinstate the member even if the Inquiry Panel has recommended the member's dismissal.

(4C) Subsection (4B)(a) does not apply in respect of a member the subject of an order under section 8.15G(1) unless there is also a duty to reinstate the member under section 8.15H.

(5) The Minister may order the local government, or any member of its council (if the council, or the member, is not suspended or dismissed) or any of its employees to give effect to any one or more of the recommendations of the Inquiry Panel in a manner and within a time ordered by the Minister.

[Section 8.24 amended: No. 31 of 2018 s. 19.]

8.25. Dismissal of council or council member by Governor

(1) The Governor may, by order made on the recommendation of the Minister under section 8.24(3), dismiss a council.

(2) The Governor may, by order made on the recommendation of the Minister under section 8.24(4A), dismiss a member of a council.

[Section 8.25 amended: No. 31 of 2018 s. 20.]

8.26. Suspension of council if Minister's order not complied with

If an order by the Minister under section 8.24(5) is not complied with according to its terms and the council has not already been suspended, the Minister may, by order, suspend the council.

8.27. Local government may have to meet inquiry costs

If —

(a) an Inquiry Panel makes findings adverse to a local government, or to its council or any member, or to any of its employees; or

(b) an inquiry by an Inquiry Panel was instituted at the request of a local government,

the Minister may order the local government to pay all or part of the costs of the inquiry and the local government is to comply with that order.

Division 3 — General provisions about suspension and dismissal of councils and council members

[Heading amended: No. 31 of 2018 s. 21.]

Subdivision 1 — Provisions about suspension of councils

[Heading amended: No. 31 of 2018 s. 22.]

8.28. Period of suspension: reinstatement of council

(1) An order suspending a council, other than an order made under section 8.15C(2), has effect for the period, not exceeding 2 years, specified in the order or, if no period is so specified, for the period of 2 years from when the order was made.

(2) An order suspending a council, other than an order made under section 8.15C(2), ceases to have effect when —

(a) the period of suspension expires; or

(b) the council is dismissed under Division 2; or

(c) the council is reinstated by the Minister under subsection (3) or section 8.24(4)(a),

whichever happens soonest.

(3) The Minister may by order, if the Minister thinks fit, reinstate a suspended council with effect from the time specified in the order.

[Section 8.28 amended: No. 2 of 2012 s. 24; No. 31 of 2018 s. 23.]

8.29. Effect of suspension of council

(1) While a council is suspended, the powers and duties of the council or of any member cannot be performed by the council or member.

(2) The suspension of a council does not prevent the term of office of any member from continuing to run while the council is suspended.

(3) Despite Part 4, Divisions 3 and 4, an office of member that becomes vacant while a council is suspended is not to be filled for a term that begins before the suspension ceases to have effect.

(4) An order reinstating a suspended council is to fix a day for any poll needed for an election to fill any offices of member that are vacant.

(5) Despite Part 5 Division 8 —

(a) while a council member is suspended that member is not entitled to be paid any fee or allowance to which they would otherwise be entitled to be paid under Part 5 Division 8; and

(b) if a local government pays an annual allowance or annual fee under Part 5 Division 8 to the member in advance then section 5.102AB applies in respect of that member as if the member had, during the period of suspension, ceased to hold the office to which the allowance or fee relates.

[Section 8.29 amended: No. 31 of 2018 s. 24.]

8.30. Appointment of commissioner while council is suspended

An order suspending a council is to include an order appointing a person as commissioner of the local government while the council is suspended and, if it is reinstated, until it holds its first meeting after being reinstated.

Subdivision 2 — Provisions about suspension of council members

[Heading inserted: No. 31 of 2018 s. 25.]

8.30A. Period of suspension: orders under sections 8.15I and 8.19A

(1) An order under section 8.15I(1) or 8.19A(1) suspending a council member has effect for the period, not exceeding 2 years, specified in the order or, if no period is so specified, for the period of 2 years from when the order was made.

(2) An order under section 8.15I(1) or 8.19A(1) suspending a council member ceases to have effect on whichever of the following occurs first —

(a) the period of suspension expires;

(b) the term of office of the member ends, or the member's office becomes vacant;

(c) the member is reinstated by the Minister under section 8.24(4B) or 8.30D.

[Section 8.30A inserted: No. 31 of 2018 s. 25.]

8.30B. Effect of suspension of council member

(1) While a council member is suspended, the powers and duties of the member cannot be performed by the member.

(2) The suspension of a council member does not prevent the term of office of the member from continuing to run while the member is suspended.

(3) The suspension of a council member does not affect —

(a) the application of Part 4 Divisions 3 and 4, in relation to the member's office; or

(b) the eligibility of the member to be a candidate to be elected as a member of a council, including to fill the office vacated by the member.

(4) Despite Part 5 Division 8 —

(a) while a council member is suspended that member is not entitled to be paid any fee or allowance to which they would otherwise be entitled to be paid under Part 5 Division 8; and

(b) if a local government pays an annual allowance or annual fee under Part 5 Division 8 to the member in advance then section 5.102AB applies in respect of that member as if the member had, during the period of suspension, ceased to hold the office to which the allowance or fee relates.

[Section 8.30B inserted: No. 31 of 2018 s. 25.]

8.30C. Continuing effect of suspension

(1) This section applies if —

(a) an order under Division 1A Subdivision 2 or section 8.19A(1) suspending a council member ceases to have effect under section 8.15F(1)(a) or 8.30A(2)(b) because —

(i) the term of office of the member ended under the Table to section 2.28; or

(ii) the member's office became vacant under section 2.32(b), (e) or (f), 2.36A(1) or 2.37(1) or (2);

and

(b) the suspended council member is elected as a member of a council, including to fill the office vacated by the suspended member.

(2) Despite anything else in this Act —

(a) an order described in subsection (1)(a) is taken to continue to have effect in respect of the suspended council member as if the term of office of the member

had not ended or the office of the member had not become vacant; and

(b) for that purpose, the order is taken to extend to the member holding office as a member of a council, as described in subsection (1)(b).

[Section 8.30C inserted: No. 31 of 2018 s. 25.]

8.30D. Reinstatement of suspended council member

The Minister may by order, if the Minister thinks fit, reinstate a suspended council member with effect from the time specified in the order.

[Section 8.30D inserted: No. 31 of 2018 s. 25.]

Subdivision 3 — Provisions about dismissal of councils

[Heading inserted: No. 31 of 2018 s. 26]

8.31. No dismissal of council except on Inquiry Panel's recommendation

(1) A council cannot be dismissed otherwise than under section 8.25(1).

(2) Subsection (1) does not affect the operation of section 2.36A or 2.37.

[Section 8.31 amended: No. 64 of 1998 s. 4(5); No. 31 of 2018 s. 27.]

8.32. When dismissal of council takes effect

An order dismissing a council has effect from the day specified in the order.

8.33. Appointment of commissioner on dismissal of council

An order dismissing a council is to include an order appointing a person as commissioner of the local government until a new council is elected and holds its first meeting.

8.34. Elections following dismissal of council

(1) An order dismissing a council is to fix a day for any poll needed for the election of a new council.

(2) The day fixed is to be a day that is as soon as practicable after the dismissal has effect and allows enough time for the electoral requirements to be complied with, but is not to be later than 2 years after the dismissal has effect.

[Section 8.34 amended: No. 1 of 1998 s. 22.]

Subdivision 4 — Provisions about dismissal of council members

[Heading inserted: No. 31 of 2018 s. 28]

8.34A. No dismissal of council member except on recommendation of Minister or Inquiry Panel

(1) A council member cannot be dismissed otherwise than under section 8.15L or 8.25(2).

(2) Subsection (1) does not affect the operation of section 2.36A or 2.37.

[Section 8.34A inserted: No. 31 of 2018 s. 28.]

8.34B. When dismissal of council member takes effect

An order dismissing a council member has effect from the day specified in the order.

[Section 8.34B inserted: No. 31 of 2018 s. 28.]

Division 4 — Misapplication of funds and property

8.35. Interpretation

(1) For the purposes of this Division, funds of a local government are misapplied if any moneys paid from, or due to, any fund or account of the local government are misapplied to purposes not authorised by law.

(2) For the purposes of this Division, local government property is misapplied if anything that belongs to the local government is dealt with in a way that is not authorised by law and causes the local government to suffer loss.

(3) In this Division —

amount misapplied means —

(a) an amount of money misapplied as referred to in subsection (1); or

(b) the amount of a loss suffered as referred to in subsection (2);

authorised person means —

(a) the Departmental CEO; or

(b) any other person authorised to conduct an inquiry under section 8.3; or

(c) any person authorised under section 8.36.

[Section 8.35 amended: No. 28 of 2006 s. 364.]

8.36. Authorisation

(1) The Departmental CEO may, by written authorisation, authorise a person to take actions under and subject to this Division.

(2) An authorisation under subsection (1) may confer a general power to take actions or a power to take actions in respect of a specific matter.

(3) The authorisation is to set out —

(a) the name of the authorised person; and

(b) any limit imposed on the duration of the authorisation.

[Section 8.36 amended: No. 28 of 2006 s. 364.]

8.37. Powers related to inquiries

The authorisation conferred by this Division on a person authorised to conduct an inquiry under section 8.3 is limited to matters to

which the inquiry relates and is subject to any limit imposed on the duration of the authorisation under section 8.4(3).

8.38. Liability for misapplication of funds or property

(1) If —

(a) there has been a misapplication of funds of a local government or of local government property; and

(b) any council member or employee of the local government, has wilfully or through culpable negligence misapplied the funds or property or connived at or concurred in the misapplication,

that council member or employee is personally liable to pay the amount misapplied to the local government.

(2) If 2 or more people are liable to pay the amount misapplied, their liability is joint and several.

(3) A person's liability to pay the amount misapplied continues whether or not the person is still a council member or employee of the local government.

8.39. Action to recover amounts misapplied

If a person is liable under section 8.38 to pay an amount misapplied, an authorised person may, subject to sections 8.40 and 8.41, recover that amount by action in a court of competent jurisdiction.

8.40. Notice to be given before action is taken

(1) Before taking action under section 8.39 to recover an amount misapplied, an authorised person is to give the person against whom he or she proposes to take that action notice that the person may, within 30 days after the notice is given, advance written reasons why that action should not be taken.

(2) A notice under subsection (1) is to —

(a) be in writing; and

(b) include details of the grounds upon which the authorised person proposes to take action; and

(c) state the amount in question.

8.41. Decision whether or not to proceed with action

(1) After considering any reasons advanced by a person to whom notice has been given under section 8.40(1) and all the circumstances of the case, the authorised person is to decide whether or not to proceed with the action.

(2) An authorised person other than the Departmental CEO cannot decide to proceed with the action without the express approval of the Departmental CEO.

(3) If the authorised person decides to proceed with the action, he or she is to give written notice of the decision to the local government concerned.

(4) If the authorised person decides not to proceed with the action, he or she is to give written notice of the decision to the local government concerned and to any person to whom notice has been given under section 8.40(1).

[Section 8.41 amended: No. 28 of 2006 s. 364.]

8.42. Power of court to order payment

(1) If in any proceedings brought under this Division, the court before which the proceedings are brought is satisfied that the person against whom the proceedings have been brought is personally liable, under section 8.38, to pay an amount misapplied to a local government, that court may order that person to pay an amount of money stated in the order of the court and that order is enforceable in all respects as a final judgment of the court.

(2) If an authorised person recovers money in proceedings under this Division, he or she is to pay it to the local government concerned.

8.43. Disqualification of person who has misapplied funds or property

(1) If an order has been made under section 8.42(1), the person against whom the order is made is disqualified from being a member of a council for a period of 5 years beginning on the date of the order, but the court making that order may, if it is satisfied that in the circumstances of the case it is appropriate to do so —

(a) order that the period of disqualification will be a period of less than 5 years that is specified in the order and begins on a date specified in the order; or

(b) order that the person is not disqualified.

(2) If at any time after a notice is given under section 8.40(1) but before a court makes an order under section 8.42(1), the person to whom the notice is given pays to the local government concerned or an authorised person part or all of the amount stated in the notice, the Departmental CEO may apply to a court before which an action to recover the amount so paid has been or could have been brought for an order that the person be disqualified from being a member of a council.

(3) A court to which an application is made under subsection (2) may, if it is satisfied that in the circumstances of the case it is appropriate to do so, order that the person is disqualified from being a member of a council for a period (not exceeding 5 years) that is specified in the order and begins on a date specified in the order.

[Section 8.43 amended: No. 28 of 2006 s. 364.]

8.44. Evidence of authorisation

In proceedings brought under this Division, a document purporting to be an authorisation or approval given by the Departmental CEO to a person, is *prima facie* evidence of the

authorisation or approval having been given, and of the signature of the Departmental CEO.

[Section 8.44 amended: No. 28 of 2006 s. 364.]

Part 9 — Miscellaneous provisions

What this Part is about

This Part contains provisions about —

(a) objections and review;

(b) legal proceedings;

(c) regulations and orders,

and various other matters.

[Notes to Pt. 9 amended: No. 55 of 2004 s. 700.]

Division 1 — Objections and review

[Heading amended: No. 55 of 2004 s. 701.]

9.1. When this Division applies

(1) This Division applies when a local government makes a decision under this Act as to whether it will —

(a) grant a person an authorisation under Part 3 or under any local law or regulation that is to operate as if it were a local law; or

(b) renew, vary, or cancel an authorisation that a person has under any of those provisions.

(2) This Division also applies whenever a local government gives a person a notice under section 3.25, and for the purposes of this Division the giving of a notice under that section is to be regarded as the making of a decision.

(3) This Division also applies whenever a local law, or regulation that is to operate as if it were a local law, states that a decision under it is one to which this Division applies and that a person specified in it is an affected person for the purposes of this Division.

[Section 9.1 amended: No. 1 of 1998 s. 23.]

9.2. Terms used

In this Division, unless the contrary intention appears —

affected person, in relation to —

(a) a decision to which this Division applies because of subsection (1) or (3) of section 9.1, means a person referred to in that subsection; and

(b) a decision to which this Division applies because of subsection (2) of section 9.1, means —

(i) a person referred to in that subsection; or

(ii) a person made an affected person by section 9.3;

authorisation means a licence, permit, approval, or other means of authorising a person to do anything, other than one that has been excluded by regulations from being an authorisation for the purposes of this definition;

decision means a decision or notice that, in accordance with section 9.1, causes this Division to apply.

[Section 9.2 amended: No. 64 of 1998 s. 48.]

9.3. Rights of affected person extended to certain owners

If the person to whom a local government gives a notice under section 3.25 is not the owner of the land to which the notice relates, the owner is also an affected person, and a reference in this Division to the affected person includes each of the owner and the person to whom the notice was given.

9.4. Advice of objection and review rights

Whenever a decision is made that the affected person could consider to be unfavourable, the person making it is to ensure that, as soon as practicable after the decision is made, the affected person is given written reasons for the decision and

informed of the person's rights under this Division to object against, and apply for a review of, the decision.

[Section 9.4 amended: No. 55 of 2004 s. 702.]

9.5. Objection may be lodged

(1) An affected person may object to a decision if the person has not applied under this Division for a review of the decision.

(2) The objection is made by preparing it in the prescribed form and lodging it with the local government in the prescribed manner within 28 days after the right of objection arose *[i.e. within 28 days after the decision]*, or within such further time as the local government may allow.

[Section 9.5 amended: No. 55 of 2004 s. 703.]

9.6. Dealing with objection

(1) The objection is to be dealt with by the council of the local government or by a committee authorised by the council to deal with it.

(2) A committee cannot deal with an objection against a decision that it made or a decision that the council made.

(3) The person who made the objection is to be given a reasonable opportunity to make submissions on how to dispose of the objection.

(4) The objection may be disposed of by —

(a) dismissing the objection; or

(b) varying the decision objected to; or

(c) revoking the decision objected to, with or without —

(i) substituting for it another decision; or

(ii) referring the matter, with or without directions, for another decision by a committee or person whose function it is to make such a decision.

(5) The local government is to ensure that the person who made the objection is given notice in writing of how it has been decided to dispose of the objection and the reasons for disposing of it in that way.

9.7. Review

(1) An affected person may apply to the State Administrative Tribunal for a review of a decision if the person —

(a) has not lodged an objection to the decision; or

(b) has lodged an objection but, at the expiration of 35 days after it was lodged, has not been given notice in writing of how it has been decided to dispose of the objection.

(2) If the person lodged an objection and has been given notice in writing of how it has been decided to dispose of the objection, the person may apply to the State Administrative Tribunal for a review of the decision on the objection.

(3) The application is to be made within 42 days after the right to make it arose *[i.e. —*

within 42 days after the original decision, for an application under subsection (1)(a); or

more than 35 days, but within 77 days, after the objection was lodged, for an application under subsection (1)(b); or

within 42 days after the objection was decided, for an application under subsection (2)].

[Section 9.7 amended: No. 55 of 2004 s. 704.]

*[**9.8.** Deleted: No. 55 of 2004 s. 705.]*

9.9. Suspension of effect of decision

(1) If an objection has been lodged against a decision or an application has been made under this Division for a review of the decision, the effect of the decision is suspended until the person or tribunal authorised to deal with the objection or application has decided how to dispose of it unless —

(a) the person or tribunal orders that the suspension be revoked; or

(b) the local government considers that —

(i) there are urgent reasons why the effect of the decision should not be suspended; or

(ii) suspension of the effect of the decision is reasonably likely to endanger the safety of any person, cause damage to property, or to create a serious public nuisance.

(2) A council or committee cannot order, under subsection (1)(a), that the suspension of a decision be revoked unless it considers that —

(a) there are urgent reasons why the effect of the decision should not be suspended; or

(b) suspension of the effect of the decision is reasonably likely to endanger the safety of any person, cause damage to property, or to create a serious public nuisance.

(3) As soon as a local government makes a decision under subsection (1)(b), it is to give the affected person notice in writing stating its reasons.

[Section 9.9 amended: No. 64 of 1998 s. 50; No. 55 of 2004 s. 706.]

Division 2 — Enforcement and legal proceedings

Subdivision 1 — Miscellaneous provisions about enforcement

9.10. Appointment of authorised persons

(1) In this section —

law means any of the following —

(a) this Act;

(b) the *Caravan Parks and Camping Grounds Act 1995*;

(c) the *Cat Act 2011*;

(d) the *Cemeteries Act 1986*;

(e) the *Control of Vehicles (Off-road Areas) Act 1978*;

(f) the *Dog Act 1976*;

(g) subsidiary legislation made under an Act referred to in any of paragraphs (a) to (f);

(h) a written law prescribed for the purposes of this section;

specified means specified in the instrument of appointment.

(2) The CEO may, in writing, appoint persons or classes of persons to be authorised persons for the purposes of 1 or more specified laws or specified provisions of 1 or more specified laws.

(3) An appointment under subsection (2) is subject to any specified conditions or limitations.

(4) The CEO must give to each person appointed under subsection (2) an identity card that —

(a) on the front of the card, sets out —

(i) the name and official insignia of the local government; and

(ii) the name of the person; and

(iii) a recent photograph of the person;

and

(b) on the back of the card, specifies each law to which the person's appointment relates.

(5) A person appointed under subsection (2) (the ***authorised person***) must —

(a) carry their identity card at all times when performing functions under a specified law; and

(b) produce their identity card for inspection when required to do so by a person in respect of whom the authorised person has performed or is about to perform a function under a specified law.

(6) A person who, without reasonable excuse, fails to return their identity card to the CEO within 14 days after their appointment ceases to have effect commits an offence.

[Section 9.10 inserted: No. 16 of 2019 s. 64.]

9.11. Persons found committing breach of Act to give name on demand

(1) An employee of a local government who is authorised by the local government for the purposes of this section may, upon —

(a) finding a person committing; or

(b) on reasonable grounds suspecting a person of having committed,

an offence against this Act, demand from the person the person's name, place of residence and date of birth.

(2) An employee of a local government who is authorised by the local government for the purposes of this section may, for the purpose of investigating the suspected commission of an offence against this Act, examine a vehicle and demand from the person apparently in charge of it —

(a) the person's name, place of residence and date of birth; and

(b) the name and address of the owner of the vehicle (as defined in section 9.13(1)); and

(c) whether the vehicle is licensed.

(3) A person from whom information is demanded in accordance with this section commits an offence if the person —

(a) refuses without lawful excuse to give the information; or

(b) gives information that is false or misleading in any material particular.

(4) If, when a person's name, place of residence and date of birth is demanded under subsection (1), the person commits an offence against subsection (3), the person who made the demand may, without other warrant than this section, arrest the offender.

[Section 9.11 amended: No. 49 of 2004 s. 65.]

9.12. Obstructing person acting under written law, offence

(1) A person who obstructs anything that a local government, or a person acting on behalf of a local government, is trying to do under this Act or any other written law commits an offence.

(2) A person who, without committing an offence against subsection (1), obstructs anything that a person is trying to do under this Act commits an offence against this subsection.

9.13. Onus of proof in vehicle offences may be shifted

(1) In this section —

authorised person means a person appointed under section 9.10(2) to be an authorised person for the purposes of this section;

owner, in relation to a vehicle means the person to whom a licence in respect of the vehicle has been granted under the *Road Traffic (Vehicles) Act 2012*, or, if there is not such a

person, the person who owns the vehicle or is entitled to its possession;

prescribed means prescribed by a local law or, if the alleged offence is under a regulation, prescribed by regulations or by a local law;

vehicle offence means an offence against this Act of which the use, driving, parking, standing or leaving of a vehicle is an element.

(2) Where a vehicle offence is alleged to have been committed and the identity of the person committing the alleged offence is not known and cannot immediately be ascertained an authorised person may give the owner of the vehicle a notice under this section.

(3) The notice is to be in the prescribed form and is to contain particulars of the alleged offence and require the owner to identify the person who was the driver or person in charge of the vehicle at the time when the offence is alleged to have been committed.

(4) The notice may be addressed to the owner of the vehicle without naming, or stating the address of, the owner and may be given by —

(a) attaching it to the vehicle or leaving it in or on the vehicle at or about the time that the alleged offence is believed to have been committed; or

(b) giving it to the owner within 28 days after the alleged offence is believed to have been committed.

(5) The notice is to include a short statement of the effect of subsection (6).

(6) Unless, within 28 days after being served with the notice, the owner of the vehicle —

(a) informs the CEO or an employee authorised for the purposes of this paragraph as to the identity and address of the person who was the driver or person in charge of

the vehicle at the time the offence is alleged to have been committed; or

(b) satisfies the CEO that the vehicle had been stolen or unlawfully taken, or was being unlawfully used, at the time the offence is alleged to have been committed,

the owner is, in the absence of proof to the contrary, deemed to have committed the offence.

[Section 9.13 amended: No. 8 of 2012 s. 123; No. 16 of 2019 s. 65.]

9.13A. Notice to prevent continuing contravention

(1) If the Minister considers that a local government, a member of a council, a CEO, an employee or an authorised person is contravening a provision of this Act contravention of which is not an offence, the Minister may give the person a notice directing the person to cease contravening that provision.

(2) A person who continues to contravene a provision of this Act after being given a notice under subsection (1) in relation to that contravention commits an offence.

[Section 9.13A inserted: No. 64 of 1998 s. 51.]

9.14. Penalty for offence when not otherwise specified

If the penalty to which a person is liable for committing an offence against this Act, other than an offence against regulations or a local law, is not specified, the penalty is —

(a) a fine of $5 000; and

(b) if the offence is of a continuing nature, a further fine of $500 in respect of each day or part of a day during which the offence has continued.

Subdivision 2 — Infringement notices

9.15. Terms used

In this Subdivision —

authorised person means a person appointed under section 9.10(2) to be an authorised person for the purposes of section 9.16;

local government means the local government that could, or an employee of which could, prosecute for the offence concerned;

owner in relation to a vehicle means the person to whom a licence in respect of the vehicle has been granted under the *Road Traffic (Vehicles) Act 2012*, or, if there is not such a person, the person who owns the vehicle or is entitled to its possession;

prescribed means prescribed by a local law or, if the alleged offence is against a regulation, prescribed by regulations or by a local law.

[Section 9.15 amended: No. 8 of 2012 s. 124; No. 26 of 2016 s. 18; No. 16 of 2019 s. 66.]

9.16. Notice, giving of to alleged offender

(1) An authorised person who has reason to believe that a person has committed a prescribed offence against a regulation or local law made under this Act may, within 28 days after the alleged offence is believed to have been committed, give an infringement notice to the alleged offender.

(2A) If a person who is given a notice under section 9.13 about an alleged offence involving a vehicle gives information in accordance with section 9.13(6) about another person who was the driver or person in charge of the vehicle at the time of the alleged offence, the period of 28 days for giving that other person an infringement notice runs from the time the information was given.

(2) A local government can only prescribe an offence for the purposes of subsection (1) if a prosecution for the offence could be commenced by the local government or any of its employees and the local government is satisfied that —

(a) commission of the offence would be a relatively minor matter; and

(b) only straightforward issues of law and fact would be involved in determining whether the offence was committed, and the facts in issue would be readily ascertainable.

(3) An infringement notice given before the commencement of the *Local Government Amendment Act 2009* section 42(1) and purporting to be under this section is to be taken to have been as valid as if the amendment made by that subsection had been made before the notice was given.

[Section 9.16 amended: No. 17 of 2009 s. 42.]

9.17. Notice, content of

(1) An infringement notice is to be in the prescribed form and is to —

(a) contain a description of the alleged offence; and

(b) advise that if the alleged offender does not wish to be prosecuted for the alleged offence in a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to the CEO of the local government within a period of 28 days after the giving of the notice; and

(c) inform the alleged offender how and where the money may be paid.

(2) In an infringement notice the amount specified as being the modified penalty for the offence referred to in the notice is to be the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.

(3) Unless otherwise prescribed by regulation, the modified penalty that a local law may prescribe for an offence is not to exceed 10% of the maximum fine that could be imposed for that offence by a court.

[Section 9.17 amended: No. 1 of 1998 s. 24; No. 84 of 2004 s. 80; No. 26 of 2016 s. 19.]

9.18. Notice placing onus on vehicle owner

(1) If the alleged offence is one for which a notice under section 9.13 can be given to the owner of a vehicle involved in the commission of the offence, that notice can be included in the same document as an infringement notice to the owner for the alleged offence.

(2) For the purpose of giving the vehicle owner an infringement notice that is with a notice under section 9.13 —

(a) it is a sufficient ground for believing the owner to have committed the alleged offence that the person is the owner; and

(b) the infringement notice may be addressed and given as specified in section 9.13(4).

(3) Where the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed, section 9.13(6) does not have effect to deem the owner to have committed the offence.

(4) The statement required by section 9.13(5) is to include a description of the effect of subsection (3) if an infringement notice is given with a notice under section 9.13.

9.19. Extension of time

The CEO of a local government may, in a particular case, extend the period of 28 days within which the modified penalty

may be paid and the extension may be allowed whether or not the period of 28 days has elapsed.

[Section 9.19 amended: No. 26 of 2016 s. 20.]

9.20. Withdrawal of notice

(1) Within one year after the notice was given the CEO of the local government may, whether or not the modified penalty has been paid, withdraw an infringement notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.

(2) Where an infringement notice is withdrawn after the modified penalty has been paid, the amount is to be refunded.

[Section 9.20 amended: No. 26 of 2016 s. 21.]

9.21. Benefit of paying modified penalty

(1) Subsection (2) applies if the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn.

(2) If this subsection applies it prevents the bringing of proceedings and the imposition of penalties to the same extent that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

(3) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

9.22. Application of penalties collected

An amount paid as a modified penalty is, subject to section 9.20(2), to be dealt with as if it were a fine imposed by a court as a penalty for an offence.

*[**9.23.** Deleted: No. 26 of 2016 s. 22.]*

Subdivision 3 — General provisions about legal proceedings

9.24. Prosecutions, commencing

(1) A prosecution for an offence against this Act may be commenced by —

(a) the Departmental CEO or a person authorised by the Departmental CEO to do so; or

(b) a person who is acting in the course of his or her duties as an employee of a local government or a regional local government; or

(c) a person who is authorised to do so by a local government or a regional local government.

(2) A prosecution for an offence against a local law may be commenced by —

(a) a person who is acting in the course of his or her duties as an employee of the local government or regional local government that made the local law; or

(b) a person who is authorised to do so by the local government or regional local government that made the local law.

[Section 9.24 inserted: No. 84 of 2004 s. 54.]

9.25. Prosecutions, time limit for

(1) Proceedings for an offence against a provision of this Act listed in the Table may be commenced at any time.

Table

s. 4.85(1) and (2)	s. 4.86
s. 4.91(1)	s. 5.65(1)
s. 5.67	s. 5.69(4)

s. 4.85(1) and (2)	s. 4.86
s. 5.69A(4)	s. 5.70(2) and (3)
s. 5.71	s. 5.71A(1), (2) and (3)
s. 5.75	s. 5.76
s. 5.78(1)	s. 5.87A(1)
s. 5.87B(1)	s. 5.89
s. 5.93	

(2) Proceedings for any other offence against this Act may be commenced within 2 years after the offence was committed, but not later.

[Section 9.25 amended: No. 64 of 1998 s. 34(2); No. 2 of 2016 s. 39; No. 16 of 2019 s. 67.]

9.26. Prosecuting accused whose name unknown

A prosecution notice for an offence under this Act against a person as an owner or occupier of land may, if the person's name is unknown, refer to the person by the description of "the owner" or "the occupier" of the land, describing it, without further name or description.

[Section 9.26 amended: No. 84 of 2004 s. 80.]

9.27. Civil remedy not affected by proceedings for offence

The liability of a person in civil proceedings is not affected by the commencement of proceedings against the person for an offence or the conviction of the person in proceedings for an offence.

9.28. Interests of public

(1) In any case in which the Attorney General might take proceedings on the relation, or on behalf, or for the benefit of a local government for or with respect to enforcing, securing the observance of, or preventing the breach of a statutory provision administered by the local government, the local government sufficiently represents the interests of the public and may take the proceedings in its own name.

(2) In subsection (1) —

statutory provision administered by the local government means a provision of —

(a) this Act; or

(b) another Act conferring any function on the local government.

9.29. Representing local government in court

(1) In this section —

proceedings means —

(a) proceedings in the Magistrates Court, the Children's Court or the State Administrative Tribunal; or

(b) proceedings in respect of a claim against a person who takes the benefit of an Act for the relief of bankrupt debtors.

(2) In proceedings a person who is —

(a) the CEO; or

(b) an employee of the local government appointed in writing signed by the CEO to represent the local government generally or in a particular case,

may represent the local government in all respects as though the person were the local government.

(3) The person representing the local government in the proceedings is entitled to be reimbursed by the local government for any money paid or required to be paid by the person as a result of representing the local government in the proceedings.

[Section 9.29 amended: No. 55 of 2004 s. 707; No. 59 of 2004 s. 141.]

Subdivision 4 — Evidence in legal proceedings

9.30. When this Subdivision applies

This Subdivision applies in relation to any legal proceedings unless a provision is expressed to apply in relation to particular proceedings.

9.31. Terms used

In this Subdivision, unless the contrary intention appears —

authorised employee, in the context of certifying a copy of —

(a) a local law of a local government; or

(b) any other document of or adopted by it,

to be a true copy, means an employee of the local government who is authorised to so certify either by the CEO, or a person acting with CEO's authority;

certified copy means a copy that is certified by an authorised employee to be a true copy.

9.32. *Evidence Act 1906* not excluded

This Subdivision is in addition to the *Evidence Act 1906* and not in place of it.

9.33. Presumptions about certificates

It is to be presumed, unless the contrary is proved, that what purports to be a certificate under this Subdivision is the

certificate that it purports to be, without proof of the signature or proof that the person signing was a person who could give the certificate.

9.34. Evidence of local laws

(1) Evidence of a local law may be given by tendering —

(a) a copy of the *Gazette* in which the local law was published; or

(b) a document purporting to be a certified copy of the local law.

(2) It is to be presumed, unless the contrary is proved, that the local law was properly made and that every requirement for it to be made and have effect has been satisfied.

(3) Subsection (2) does not make valid a local law that has been disallowed under section 42 of the *Interpretation Act 1984* or that has not been properly made.

9.35. Evidence of text adopted by local laws

(1) Evidence of the text of a model local law, or an amendment to it, may be given by tendering a copy of the *Gazette* in which the local law or the amendment was published.

(2) Evidence of any other text adopted by a local law may be given by tendering a document purporting to be a certified copy of the text adopted.

9.36. Using *Gazette* notice as evidence

(1) Evidence that anything was done under this Act may be given by tendering a copy of the *Gazette* in which notice was published that it was done.

(2) It is to be presumed, unless the contrary is proved, that what was done was done properly and that every requirement for it to be done was satisfied and, if the notice indicates when it was done,

it is to be presumed to have been done when indicated by the notice.

9.37. Using meeting minutes as evidence

(1) Evidence of a matter that is recorded in a document purporting to be a certified copy of all or any part of confirmed meeting minutes may be given by tendering the document.

(2) In subsection (1) —

meeting minutes means the minutes of a meeting of a council or committee in which the matter is recorded.

9.38. Evidence of documents coming from local government

Evidence that a document has been given or written by or on behalf of a local government may be given by tendering what purports to be the document and purports to be signed by the mayor or president, the CEO, or any other person authorised to sign it, without proof of the signature or proof that the person signing was a person who could sign the document.

9.39. Proving document given to another party

(1) In proceedings in which a document that was given to a person who is a party to the proceedings has to be proved, the person against whom it is sought to prove the document is to be regarded as having received notice to produce it.

(2) Evidence of the contents of the document may be given by tendering what purports to be a copy of it, bearing what purports to be a certificate of the person who it is claimed was the author of the document stating that the copy is a true copy of the original.

(3) Evidence of the giving of the document may be given by tendering what purports to be a certificate of the person who gave the document stating where, when, and how, the document was given.

9.40. Using copy of rate record as evidence

(1) Evidence of a matter recorded in a document purporting to be a certified copy of all or any part of the rate record may be given by tendering the document.

(2) If evidence of the imposition of rates is given under subsection (1), it is to be presumed, unless the contrary is proved, that the rates were properly imposed and that the person charged with the amount payable in respect of the rate is obliged to pay it.

(3) In subsection (2) —

rate includes a service charge imposed under section 6.38.

9.41. Proving ownership, occupancy, and other things by certificate

(1) Evidence that a person is the owner of land may be given by tendering a document purporting to be —

(a) a certificate signed by the Registrar of Deeds and Transfers or an assistant registrar of deeds and transfers, stating that the person appears from a memorial of registration of a deed, conveyance, or other instrument to be the owner of the land; or

(b) a certificate signed by the Registrar of Titles or an Assistant Registrar stating that the person's name appears in a register kept under the *Transfer of Land Act 1893* as that of the owner of the land.

(2) Evidence that a person is the lessee or occupier, as the case requires, of land may be given by tendering a document purporting to be a certificate signed by the chief executive officer of the Department principally assisting with the administration of the *Land Administration Act 1997* or the *Mining Act 1978* stating that the person is registered in that Department as the lessee or occupier of the land.

(3) Evidence as to whether anything —

(a) is within a local government's district; or

(b) belongs to a local government; or

(c) is vested in, or is under the care, control, or management of, a local government,

may be given by tendering a certificate signed by the CEO of the local government, or an employee of the local government who purports to be authorised by the CEO to so sign, and containing a statement as to the matter about which evidence is sought to be given.

[Section 9.41 amended: No. 49 of 2004 s. 74(4); No. 60 of 2006 s. 144(2); No. 47 of 2011 s. 16.]

9.42. Person may be alleged to be owner or occupier of land

A person may be alleged to be, or at a stated time to have been, the owner or the occupier of land and, unless the contrary is proved, the person is to be presumed to be or have been the owner or occupier of the land, as alleged.

9.43. Certificate of returning officer about election

(1) In proceedings relating to an offence against Part 4 or regulations made for the purposes of that Part, evidence that —

(a) an election was duly held; and

(b) a person was a candidate at the election,

may be given by tendering a certificate signed by the returning officer and containing a statement as to the matters about which evidence is sought to be given.

(2) Expressions used in subsection (1) have the meanings they would have if they were in Part 4.

9.44. Spouses and de facto partners presumed to be living with one another

(1) In proceedings under Part 5, Division 6, Subdivision 1, it is to be presumed, unless the contrary is proved, that a person who is a person's spouse or de facto partner is living with the person.

[(2) deleted]

[Section 9.44 amended: No. 28 of 2003 s. 114.]

9.45. Evidence of authorisation or approval

In proceedings brought under Part 8, Division 4, evidence that any authorisation or approval was given by the Departmental CEO to a person may be given by tendering a document by which the authorisation or approval purports to have been given, without proof of the signature or proof that the person signing was the Departmental CEO.

[Section 9.45 amended: No. 28 of 2006 s. 364.]

9.46. Things may be alleged to be property of local government

(1) Land or anything else, that —

(a) belongs or belonged to a local government; or

(b) is or was vested in or under the control or management of a local government,

may be alleged to be or have been the property of the local government, as the case requires.

(2) The property in —

(a) materials of, and matters and things appurtenant to, public facilities; and

(b) buildings, fences, gates, posts, boards, and stones placed on, and anything else erected on a public facility by a person for the time being having the control or management of the public facility; and

(c) the scrapings, soils, sand, and materials of public thoroughfares and other public places,

that are in, or regarded under this Act as being in, a local government's district may be alleged to be the property of the local government.

(3) Anything alleged under this section to be the property of the local government is to be presumed to be the property of the local government unless the contrary is proved.

(4) In subsection (2) —

public facility means a public thoroughfare, bridge, culvert, ford, ferry, wharf, jetty, drain, or other public place.

9.47. Proof of certain matters not required

In proceedings under this Act instituted by or under the direction of a local government, until evidence is given to the contrary, proof is not required of —

(a) the persons constituting the council or any committee of it; or

(b) the authority of a local government or any of its employees to prosecute, or the authority of an employee or other person to represent the local government in the proceedings; or

(c) the election, appointment, or employment of the mayor or president, the CEO, or any other employee of the local government; or

(d) the presence of a quorum of the council or a committee when a resolution was passed, an order was made, or anything else was done; or

(e) the fact that a place is within a parking region; or

(f) the establishment or provision of a parking facility.

9.48. Evidence of thoroughfare

(1) Evidence of the existence of a thoroughfare or its alignment or width at a particular time may be given by tendering a document purporting to —

(a) be a copy of an official plan; and

(b) be officially certified to be a true copy and to represent with reasonable accuracy the thoroughfare and its alignment and width.

(2) In subsection (1) —

official plan means a plan which is retained —

(a) under the *Land Administration Act 1997*; or

(b) under Part IIIB or VIII of the *Transfer of Land Act 1893*;

officially certified means certified by an officer who purports to be authorised to so certify.

[Section 9.48 amended: No. 49 of 2004 s. 74(1) and (4).]

Division 3 — Documents

9.49A. Execution of documents

(1) A document is duly executed by a local government if —

(a) the common seal of the local government is affixed to it in accordance with subsections (2) and (3); or

(b) it is signed on behalf of the local government by a person or persons authorised under subsection (4) to do so.

(2) The common seal of a local government is not to be affixed to any document except as authorised by the local government.

(3) The common seal of the local government is to be affixed to a document in the presence of —

(a) the mayor or president; and

(b) the CEO,

each of whom is to sign the document to attest that the common seal was so affixed.

(4) A local government may, by resolution, authorise the CEO, another employee or an agent of the local government to sign documents on behalf of the local government, either generally or subject to conditions or restrictions specified in the authorisation.

(5) A document executed by a person under an authority under subsection (4) is not to be regarded as a deed unless the person executes it as a deed and is permitted to do so by the authorisation.

(6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed unless the contrary is shown.

(7) When a document is produced bearing a seal purporting to be the common seal of the local government, it is to be presumed that the seal is the common seal of the local government unless the contrary is shown.

[Section 9.49A inserted: No. 17 of 2009 s. 43; amended: No. 16 of 2019 s. 68.]

9.49B. Contract formalities

(1) Insofar as the formalities of making, varying or discharging a contract are concerned, a person acting under the authority of a local government may make, vary or discharge a contract in the name of or on behalf of the local government in the same manner as if that contract was made, varied or discharged by a natural person.

(2) The making, variation or discharge of a contract in accordance with subsection (1) is effectual in law and binds the local government concerned and other parties to the contract.

(3) Subsection (1) does not prevent a local government from making, varying or discharging a contract under its common seal.

[Section 9.49B inserted: No. 17 of 2009 s. 43.]

9.49. Documents, how authenticated

A document, is, unless this Act requires otherwise, sufficiently authenticated by a local government without its common seal if signed by the CEO or an employee of the local government who purports to be authorised by the CEO to so sign.

9.50. Giving documents to persons, generally

Unless otherwise stated in this Act, a document may be given to a person in any of the ways provided for by sections 75 and 76 of the *Interpretation Act 1984*.

9.51. Giving documents to local government

Unless otherwise stated in this Act, a document may be given to a local government by —

(a) giving it personally to an employee of the local government at its office; or

(b) sending it by post to the local government at its postal address.

[Section 9.51 modified: SL 2020/57 [1M].]

9.52. Giving documents in difficult cases

(1) This section only applies if it is not reasonably practicable to give the document in any of the ways provided for by sections 75 and 76 of the *Interpretation Act 1984*, and this Act does not otherwise state how the document is to be given.

(2) If a document is to be given to a person because the person is the owner of land, the document may be given to the person by addressing it to the owner and giving it under the *Interpretation Act 1984* to the occupier, if any, of the land.

(3) If a document is to be given to a person because the person is the owner or the occupier of land, the document may be given to the person by addressing it to the person and affixing it to a conspicuous part of the land.

(4) If a document is to be given to a person because the person is the owner of anything other than land, the document may be given to the person by addressing it to the person and affixing it conspicuously to that thing.

9.53. Other provisions about giving documents

(1) A document given to a person because the person is the owner or the occupier of any land or thing may be addressed to the person by the description of "the owner" or "the occupier" of the relevant land or thing, naming it, without further name or description.

(2) If there are more owners or occupiers than one a document is sufficiently given to all of them if it is given to one of them, and is addressed to that one with the addition of the words "and others" or "and another", as the case requires.

(3) Failure to properly give a document to one person does not affect whether or not it was properly given to another person.

9.54. Defects in documents

A document is not ineffective, nor is it to be regarded as having been not properly given, only because of an error, misdescription, or irregularity in the document or the way it is addressed that is not likely to mislead or does not in fact mislead.

9.55. Effect of document on persons deriving title

(1) A document required under this Act to be given to an owner or occupier of land —

(a) is, if it has been given to an owner or occupier of the land, binding on subsequent owners or occupiers to the same extent as if it had been given to the subsequent owners or occupiers; and

(b) is binding on persons deriving title, whether beneficially or in a fiduciary capacity, by, from, or under, the owner or occupier served.

(2) Subsection (1) does not apply to a rate notice for a service charge imposed on an occupier under section 6.38(1)(b).

Division 4 — Protection from liability

9.56. Certain persons protected from liability for wrongdoing

(1) A person who is —

(a) a member of the council, or of a committee of the council, of a local government; or

(b) an employee of a local government; or

(c) a person appointed or engaged by a local government to perform functions of a prescribed office or functions of a prescribed class,

is a protected person for the purposes of this section.

(2) An action in tort does not lie against a protected person for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act or under any other written law.

(3) The protection given by this section applies even though the thing done in the performance or purported performance of a function under this Act or under any other written law may have

been capable of being done whether or not this Act or that law had been enacted.

(4) This section does not relieve the local government of any liability that it might have for the doing of anything by a protected person.

(5) In this section —

(a) a reference to the doing of anything includes a reference to the omission to do anything;

(b) a reference to the doing of anything by a protected person in the performance or purported performance of a function under any written law other than this Act is limited to a reference to the doing of anything by that person in a capacity described in subsection (1)(a), (b) or (c), as the case may be.

9.57. Local government protected from certain liability

(1) A person cannot recover damages against a local government in respect of loss or injury sustained either to that person or to another person or to property by reason of a mishap upon or while using a portion of a thoroughfare, which portion has not been interfered with by the local government, merely because some other portion of that thoroughfare, whether distant laterally or longitudinally, has been taken over or improved by the local government.

(2) Subsection (1) does not relieve a local government from liability where the mishap is caused by the negligence of the local government in the execution of works then in progress, or which have been completed by the local government in a thoroughfare.

9.57A. Local government protected from liability for defamation: council proceedings on website

(1) In this section —

council proceedings means proceedings at a meeting of the council or a committee of the council;

matter has the meaning given in the *Defamation Act 2005* section 4.

(2) A local government is not liable to an action for defamation in relation to matter published on its official website as part of a broadcast, audio recording, or video recording, of council proceedings.

[Section 9.57A inserted: No. 16 of 2019 s. 69.]

Division 5 — Associations of local government

9.58. Constitution of associations of local government

(1) The Western Australian Local Government Association ("WALGA") is constituted as a body corporate with perpetual succession and a common seal.

(2) Proceedings may be taken by or against WALGA in its corporate name.

(3) WALGA has the objects and functions set out in its constitution.

(4) Subject to subsection (5), WALGA may, at any time, amend its constitution and, whenever it does, it is to forthwith —

(a) give to the Minister; and

(b) lodge with the Commissioner as defined in the *Fair Trading Act 2010* section 6,

a copy of the amendment to the constitution.

(5) WALGA is not to change the objects for which it is constituted without the approval of the Minister.

(6) Without limiting the generality of subsection (3), WALGA may —

(a) of its own motion, make representations and submissions to the Minister on any matter or thing relating to or affecting its members; and

(b) with the approval of the affected members, arrange contracts of insurance on behalf of all or any of its members for any purpose.

(7) WALGA may do all things necessary or convenient to be done to enable it to achieve its objects and perform its functions.

[Section 9.58 amended: No. 20 of 2003 s. 34; No. 49 of 2004 s. 10; No. 28 of 2006 s. 362; No. 58 of 2010 s. 182.]

Division 6 — Regulations, directions and orders

9.59. General regulations

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

(2) Without limiting subsection (1), regulations may be made as to —

(a) the selection, employment and functions of employees of local governments; and

(b) the keeping of documents and records by a local government; and

(c) the procedures to be followed by a local government or any other person in carrying out functions under this Act.

(3) Regulations may require —

(a) a power conferred on a local government by regulations to be exercised by or in accordance with a decision of a

majority of the council of the kind specified in the regulations; or

(b) a power conferred by regulations on any other body to be exercised by or in accordance with a decision of a majority of the body of the kind specified in the regulations.

[Section 9.59 amended: No. 49 of 2004 s. 66.]

9.60. Regulations that operate as local laws

(1) The Governor may make regulations that are to operate as if they were local laws for each district to which they apply.

(2) Regulations under this section may deal with any matter specified in Schedule 9.1.

(3) Regulations under this section, other than those that only repeal or amend other regulations under this section, are to contain a statement to the effect that they apply as if they were local laws.

(4) A local government is to administer any regulation made under this section to the extent that it relates to any place where the local government may perform functions, as if the regulation were a local law.

(5) Unless the contrary intention appears, a reference to an offence against a local law includes a reference to an offence against a regulation made under this section.

(6) The existence of a power to make regulations under this section in respect of a matter does not imply that a local law cannot be made in respect of the matter.

9.61. Provisions about regulations

Regulations, whether under section 9.59 or 9.60, may —

(a) adopt any text that could be adopted by a local law;

(b) provide that contravention of a provision of regulations is an offence, and provide for the offence to be

punishable on conviction by the imposition of a fine not exceeding $5 000;

(c) make a person who commits an offence of a continuing nature liable to a further fine not exceeding $500 in respect of each day or part of a day during which the offence has continued;

(d) provide for the imposition of a minimum fine for the offence;

(e) relate the level of the fine to —

(i) the circumstances or extent of the offence;

(ii) whether the offender has committed previous offences and, if so, the number of previous offences that the offender has committed;

(f) prescribe the method and the means by which any fines imposed are to be paid and collected, or recovered;

(g) contain provisions that are necessary or convenient for dealing with matters concerning the transition from the *Local Government (Miscellaneous Provisions) Act 1960* sections 375, 377, 378, 379 and 380, before they were deleted by the *Building Act 2011* section 153(2), to the provisions of this Act, including the regulations.

[Section 9.61 amended: No. 24 of 2011 s. 166(3).]

9.61A. Further provisions about regulations

(1) Any power to make regulations may be exercised in either or both of the following ways —

(a) it may be exercised in relation to —

(i) only certain local governments or districts; or

(ii) only a certain class of local government or district;

(b) it may be exercised so as to make different provisions for —

(i) different local governments or districts; or

(ii) different classes of local government or district.

(2) For the purposes of subsection (1)(a) and (b), regulations may confer a power on the Minister, by order, to specify, or to make provision for determining, the local governments or districts, or class of local government or district, to which a provision of regulations applies.

(3) Either of the following may (without limitation) adopt or otherwise apply classifications of local governments or districts used in a determination made under the *Salaries and Allowances Act 1975* section 7A or 7B —

(a) regulations made as referred to in subsection (1)(a) or (b);

(b) an order made in the exercise of a power conferred under subsection (2).

(4) This section does not limit the *Interpretation Act 1984* section 43(7) or (8).

[Section 9.61A inserted: No. 11 of 2023 s. 86.]

9.62. Governor may give directions as consequence of making order

(1) Where under this Act the Governor makes an order, the Governor may, either then or subsequently, by order, give any directions the Governor thinks necessary to give effect to the order.

(2) Without limiting the operation of subsection (1), directions given under that subsection may modify the operation of this Act.

9.63. Minister may give directions to resolve disputes between local governments

(1) If a dispute arises between 2 or more local governments and this Act does not provide any other means of resolving the dispute, the local governments may refer the dispute to the Minister for resolution.

(2) The Minister is to hear and determine the dispute as the Minister thinks fit, and may give such directions to the local governments as the Minister considers appropriate for disposing of the matter in dispute.

(3) The decision of the Minister is final and effect is to be given to any direction given by the Minister under this section.

9.63A. Minister may grant exemptions from compliance with Act

(1) In this section —

emergency means —

(a) the occurrence, or imminent occurrence, of an event, situation or condition that is a hazard under the definition of that term in the *Emergency Management Act 2005* section 3; or

(b) a public health emergency as defined in the *Public Health Act 2016* section 4(1);

excluded provision means —

(a) Part 2 or a provision of that Part; or

(b) Schedule 2.1, 2.2, 2.3, 2.4 or 2.5 or a provision of any of those Schedules; or

(c) Part 3 Division 2 or a provision of that Division; or

(d) Part 4 or a provision of that Part; or

(e) Schedule 4.1A, 4.1B, 4.1 or 4.2 or a provision of any of those Schedules; or

(f) an order or regulations, or a provision of an order or regulations, if the order or regulations or provision is

made under, or for the purposes of, anything referred to in paragraphs (a) to (e).

(2) A local government may apply to the Minister for an exemption under this section if the local government is satisfied that the exemption is reasonably necessary for either of the following purposes —

(a) to enable the local government to respond urgently to an emergency;

(b) to enable the local government to respond, on a temporary basis, to unusual circumstances.

(3) An exemption under this section is an exemption from a provision of this Act, or a requirement of a provision of this Act, as specified in the local government's application.

Note for this subsection:

References to this Act include any subsidiary legislation made under this Act — see the *Interpretation Act 1984* section 46.

(4) If the Minister receives an application, the Minister may, by written notice to the local government, grant the exemption if the Minister is satisfied —

(a) that the exemption is not from an excluded provision or a requirement of an excluded provision; and

(b) that the exemption is reasonably necessary to enable the local government —

(i) to respond urgently to an emergency; or

(ii) to respond, on a temporary basis, to unusual circumstances;

and

(c) in the case of an exemption for an emergency — that the application was made as soon as was reasonably practicable; and

(d) that the exemption will not undermine good government in the local government's district; and

(e) that the exemption is in the public interest.

(5) The exemption must be granted for a specified period.

(6) In the case of an exemption for an emergency, the specified period may be a period that began, or that began and ended, before the exemption is granted.

(7) The exemption may be expressed to apply —

(a) only for specified activities; and

(b) subject to any other type of limitation.

(8) The exemption may be granted subject to specified conditions.

(9) If the exemption is granted subject to a specified condition, the exemption has no effect at any time when the condition is being contravened.

(10) The local government must give local public notice of the exemption.

[Section 9.63A inserted: No. 11 of 2023 s. 87; amended: No. 11 of 2023 s. 88.]

9.64. Governor may rectify omissions and irregularities

(1) This section applies if through an impediment or accidental omission anything required to be done by or under this Act is not done, or is not done in the prescribed time, manner or form.

(2) If this section applies, the Governor for the purpose of giving effect to the intention and purposes of this Act, may by order take such measures as are necessary for rectifying the omission or removing the impediment.

(3) The order may validate anything which has been done otherwise than in the prescribed time, manner, or form.

9.65. Orders made by Governor or Minister

(1) An order made under this Act by the Governor or the Minister is required to be published in the *Gazette* and takes effect on the day of publication or, if another day is specified in the order, on the day specified.

(2) Power given by this Act to the Governor or the Minister to make an order includes power from time to time —

(a) to revoke or cancel the order wholly or in part, with or without substituting another order; and

(b) to otherwise vary the order,

unless the terms used in conferring that power, or the nature of the subject matter, or the objects, of that power indicate that it is intended to be exercised finally and irrevocably in the first instance.

(3) An order which purports to be made under this Act, and which is within the powers conferred on the Governor or the Minister by this Act, is not invalid because of non-compliance with a matter required by this Act to be complied with before making the order.

Division 7 — Other miscellaneous provisions

9.66. Delegation by Minister

(1) The Minister may, in writing and either generally or as otherwise provided by the instrument of delegation, delegate to the Departmental CEO or any other person any of the Minister's functions under this Act that is prescribed to be delegable.

(2) The power of delegation given by this section cannot be prescribed to be delegable.

[Section 9.66 amended: No. 28 of 2006 s. 364.]

9.67. Delegation by Departmental CEO

(1) The Departmental CEO may, in writing and either generally or as otherwise provided by the instrument of delegation, delegate to any person any of the Departmental CEO's functions under this Act that is prescribed to be delegable.

(2) The power of delegation given by this section cannot be prescribed to be delegable.

[Section 9.67 amended: No. 28 of 2006 s. 363 and 364.]

9.68. Local government to be notified of disposal of land

(1) When a person, whether as principal or agent, sells or otherwise disposes of rateable land in the district of a local government, the principal or the agent, is required to give to the local government, within 21 days after the sale or disposal, written notice of the sale or disposal.

(2) The notice is to include a plan or description of the land and the name and address of the person to whom the person giving the notice disposed of the land.

(3) If the sale or disposal is effected by an agent, the principal is not required to give notice under subsection (1) if the agent has done so, but the principal is to ensure that the notice is given.

(4) A person who does not comply with the requirements of this section commits an offence.

(5) If the notice is not given as required by this section, the local government may recover rates accruing until the required notice is given as if the sale or disposal had not taken place but this subsection does not affect —

(a) the principal's liability to be punished for an offence against this section; or

(b) the liability of the principal or of the new owner for rates under section 6.55.

9.69. Land descriptions

(1) In this section —

authorised land officer has the same meaning as in the *Land Administration Act 1997*;

Authority means the Western Australian Land Information Authority established by the *Land Information Authority Act 2006* section 5;

judicial proceedings means proceedings in any court or before any person having by law or the consent of parties authority to hear, receive and examine evidence.

(2) For the purposes of this Act a description of land may be made by reference to a plan or diagram relating to the land that is deposited with the Authority and certified under the hand of an authorised land officer.

(3) A plan or diagram referred to in subsection (2) is to be open to public inspection on payment of the fee, if any, prescribed under the *Transfer of Land Act 1893*.

(4) In judicial proceedings a document certified under the hand of an authorised land officer to be a copy of all or part of an original plan or diagram deposited with the Authority is admissible in evidence for any purpose for which the original would be admissible, and is to be given the same weight as if it were the original.

[Section 9.69 amended: No. 49 of 2004 s. 74(2) and (3); No. 60 of 2006 s. 144(3).]

9.69A. Notification under *Corruption, Crime and Misconduct Act 2003*

Nothing in Part 5 or Part 8 affects the duty of the Departmental CEO to notify as required by the *Corruption, Crime and Misconduct Act 2003* section 28 or 45H.

[Section 9.69A inserted: No. 1 of 2007 s. 12; amended: No. 17 of 2009 s. 44; No. 35 of 2014 s. 35.]

Division 8 — Amendments to 1960 Act and transitional provisions

*[**9.70.** Omitted under the Reprints Act 1984 s. 7(4)(e) [2].]*

9.71. Transitional provisions

(1) Schedule 9.3 has effect for the purpose of the transition to this Act from the provisions it amends.

(2) If there is no sufficient provision in this Act for dealing with a matter that needs to be dealt with for the purpose mentioned in subsection (1), regulations may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with the matter.

(3) Regulations under subsection (2) may provide that specific provisions of this Act or the *Local Government (Miscellaneous Provisions) Act 1960* as in force on or after the commencement of this Act, or of subsidiary legislation made under either this Act or that Act —

(a) do not apply; or

(b) apply with or without specified modifications,

to or in relation to any matter or thing.

(4) Regulations under subsection (2) may have effect before the day on which they are published in the *Gazette*.

(5) To the extent that a regulation under subsection (2) has effect before the day of its publication in the *Gazette*, it does not —

(a) affect in a manner prejudicial to any person (other than the State or a local government), the rights of that person existing before the day of its publication; or

(b) impose liabilities on any person (other than the State or a local government) in respect of anything done or omitted to be done before the day of its publication.

(6) Schedule 9.3 also has effect for the purpose of the transition to —

(a) this Act as enacted after the coming into operation of an enactment amending it; from

(b) this Act as enacted before the coming into operation of that enactment.

[Section 9.71 amended: No. 66 of 2006 s. 13.]

Part 10 — Provisions for COVID-19 pandemic

[Heading inserted: No. 17 of 2020 s. 4.]

10.1. Term used: COVID emergency declaration

In this Part —

COVID emergency declaration means —

(a) a state of emergency declaration made under the *Emergency Management Act 2005* section 56 in relation to the COVID-19 pandemic; or

(b) a COVID-19 declaration made under Part 6A of that Act (as that Part is in force before the coming into operation of the *Emergency Management Amendment (Temporary COVID-19 Provisions) Act 2022* section 30).

[Section 10.1 inserted: No. 17 of 2020 s. 4; amended: No. 33 of 2022 s. 15.]

10.2. Part overrides other provisions of Act

The provisions of this Part have effect despite any other provisions of this Act.

[Section 10.2 inserted: No. 17 of 2020 s. 4.]

10.3. Modification or suspension of provisions of Act or regulations

(1) The Minister may, by order, modify or suspend the operation of —

(a) specified provisions of this Act (other than provisions of this Part); or

(b) specified provisions of regulations made under this Act.

(2) The Minister can make an order under subsection (1) only if each of the following conditions is satisfied —

(a) the order is made while a COVID emergency declaration is in force;

(b) the Minister considers that the order is necessary to deal with consequences of the COVID-19 pandemic.

(3) Unless sooner revoked under section 9.65(2), an order made under subsection (1) is revoked at the end of —

(a) the last day of the period of 3 months beginning on the day on which the COVID emergency declaration referred to in subsection (2)(a) is revoked or otherwise ceases to have effect; or

(b) any earlier day specified in the order.

(4) The *Interpretation Act 1984* section 42 applies to an order made under subsection (1) as if the order were regulations made under this Act.

(5) Without limiting the *Interpretation Act 1984* section 43(7), an order made under subsection (1) may modify or suspend the operation of specified provisions of this Act, or of regulations made under this Act, in relation to all local governments, local governments of a specified class or a specified local government.

[Section 10.3 inserted: No. 17 of 2020 s. 4.]

10.4. Suspension of local law

(1) A local government may, by resolution*, suspend the operation of a specified local law, or specified provisions of a local law, made by the local government under this Act or any other Act.

* *Absolute majority required.*

(2) Subsection (1) applies despite the provisions of any other Act under which a local law is made.

(3) A local government can make a resolution under subsection (1) only if each of the following conditions is satisfied —

(a) the resolution is made while a COVID emergency declaration is in force;

(b) the local government considers that the resolution is necessary to deal with consequences of the COVID-19 pandemic.

(4) A local government may, by resolution*, revoke a resolution made by it under subsection (1).

** Absolute majority required.*

(5) After making a resolution under subsection (1) or (4), a local government must —

(a) publish it on the local government's official website; and

(b) give a copy of it to the Minister.

(6) A resolution made under subsection (1) or (4) takes effect on —

(a) the day after the day on which it is first published under subsection (5)(a); or

(b) any later day specified in the resolution.

(7) Unless sooner revoked under subsection (4), a resolution made under subsection (1) is revoked at the end of —

(a) the last day of the period of 6 months beginning on the day on which the COVID emergency declaration referred to in subsection (3)(a) is revoked or otherwise ceases to have effect; or

(b) any earlier day specified in the resolution.

[Section 10.4 inserted: No. 17 of 2020 s. 4.]

Schedule 2.1 — Provisions about creating, changing the boundaries of, and abolishing districts

[Section 2.1(2)]

1. Terms used

In this Schedule, unless the contrary intention appears —

affected electors, in relation to a proposal, means —

(a) electors whose eligibility as electors comes from residence, or ownership or occupation of property, in the area directly affected by the proposal; or

(b) where an area of the State is not within or is not declared to be a district, people who could be electors if it were because of residence, or ownership or occupation of property, in the area directly affected by the proposal;

affected local government means a local government directly affected by a proposal;

notice means notice given or published in such manner as the Advisory Board considers appropriate in the circumstances;

proposal means a proposal made under clause 2 that an order be made as to any or all of the matters referred to in section 2.1.

2. Making a proposal

(1) A proposal may be made to the Advisory Board by —

(a) the Minister; or

(b) an affected local government; or

(c) 2 or more affected local governments, jointly; or

(d) affected electors who —

(i) are at least 250 in number; or

(ii) are at least 10% of the total number of affected electors.

(2) A proposal is to —

(a) set out clearly the nature of the proposal, the reasons for making the proposal and the effects of the proposal on local governments; and

(b) be accompanied by a plan illustrating any proposed changes to the boundaries of a district; and

(c) comply with any regulations about proposals.

[Clause 2 amended: No. 49 of 2004 s. 67(2).]

3. Dealing with proposals

(1) The Advisory Board is to consider any proposal.

(2) The Advisory Board may, in a written report to the Minister, recommend* that the Minister reject a proposal if, in the Board's opinion —

(a) the proposal is substantially similar in effect to a proposal on which the Board has made a recommendation to the Minister within the period of 2 years immediately before the proposal is made; or

(aa) where the proposal was made by affected electors under clause 2(1)(d), that the majority of those electors no longer support the proposal; or

(b) the proposal is frivolous or otherwise not in the interests of good government.

** Absolute majority required.*

(3) If, in the Advisory Board's opinion, the proposal is —

(a) one of a minor nature; and

(b) not one about which public submissions need be invited,

the Board may, in a written report to the Minister, recommend* that the Minister reject the proposal or that an order be made in accordance with the proposal.

** Absolute majority required.*

(4) Unless it makes a recommendation under subclause (2) or (3), the Advisory Board is to formally inquire into the proposal.

[Clause 3 amended: No. 64 of 1998 s. 52(2); No. 49 of 2004 s. 67(3).]

4. Notice of inquiry

(1) Where a formal inquiry is required the Advisory Board is to give —

(a) notice to affected local governments, affected electors and the other electors of districts directly affected by the proposal; and

(b) a report to the Minister.

(2) The notice and report under subclause (1) are to —

(a) advise that there will be a formal inquiry into the proposal; and

(b) set out details of the inquiry and its proposed scope; and

(c) advise that submissions may be made to the Board not later than 6 weeks after the date the notice is first given about —

(i) the proposal; or

(ii) the scope of the inquiry.

(3) If, after considering submissions made under subclause (2)(c), the Advisory Board decides* that the scope of the formal inquiry is to be significantly different from that set out in the notice and report under subclause (1), it is to give —

(a) another notice to affected local governments, affected electors and the other electors of districts directly affected by the proposal; and

(b) another report to the Minister.

(4) The notice and report under subclause (3) are to —

(a) set out the revised scope of the inquiry; and

(b) advise that further submissions about the proposal, or submissions about matters relevant to the revised scope of the inquiry, may be made to the Board within the time set out in the notice.

** Absolute majority required.*

5. Conduct of inquiry

(1) A formal inquiry is to be carried out, and any hearing for the purposes of the inquiry is to be conducted, in a way that makes it as easy as possible for interested parties to participate fully.

(2) In carrying out a formal inquiry the Advisory Board is to consider submissions made to it under clause 4(2)(c) and (4)(b) and have regard, where applicable, to —

(a) community of interests; and

(b) physical and topographic features; and

(c) demographic trends; and

(d) economic factors; and

(e) the history of the area; and

(f) transport and communication; and

(g) matters affecting the viability of local governments; and

(h) the effective delivery of local government services,

but this does not limit the matters that it may take into consideration.

6. Recommendation by Advisory Board

(1) After formally inquiring into a proposal, the Advisory Board, in a written report to the Minister, is to recommend* —

(a) that the Minister reject the proposal; or

(b) that an order be made in accordance with the proposal; or

(c) if it thinks fit after complying with subclause (2), the making of some other order that may be made under section 2.1.

** Absolute majority required.*

(2) The Advisory Board is not to recommend to the Minister the making of an order that is significantly different from the proposal into which it formally inquired unless the Board has —

(a) given* notice to affected local governments, affected electors and the other electors of districts directly affected by the recommendation of its intention to do so; and

(b) afforded adequate opportunity for submissions to be made about the intended order; and

(c) considered any submissions made.

** Absolute majority required.*

7. Minister may require poll of electors

In order to assist in deciding whether or not to accept a recommendation of the Advisory Board made under clause 6, the Minister may require that the Board's recommendation be put to a poll of the electors of districts directly affected by the recommendation.

8. Electors may demand poll on recommended amalgamation

(1) Where the Advisory Board recommends to the Minister the making of an order to abolish 2 or more districts (the ***districts***) and amalgamate them into one or more districts, the Board is to give notice to affected local governments, affected electors and the other electors of districts directly affected by the recommendation about the recommendation.

(2) The notice to affected electors has to notify them of their right to request a poll about the recommendation under subclause (3).

(3) If, within one month after the notice is given, the Minister receives a request made in accordance with regulations and signed by at least 250, or at least 10%, of the electors of one of the districts asking for the recommendation to be put to a poll of electors of that district, the Minister is to require that the Board's recommendation be put to a poll accordingly.

(4) This clause does not limit the Minister's power under clause 7 to require a recommendation to be put to a poll in any case.

[Clause 8 amended: No. 64 of 1998 s. 52(3).]

9. Procedure for holding poll

(1) Where, under clause 7 or 8, the Minister requires that a recommendation be put to a poll —

(a) the Advisory Board is to —

(i) determine the question or questions to be answered by electors; and

(ii) prepare a summary of the case for each way of answering the question or questions;

and

(b) any local government directed by the Minister to do so is to —

(i) in accordance with directions by the Minister, make the summary available to the electors before the poll is conducted; and

(ii) subject to subclause (2), declare* the Electoral Commissioner, or a person approved by the Electoral Commissioner, to be responsible for the conduct of the poll under Part 4, and return the results to the Minister.

** Absolute majority required.*

(2) Before making a declaration under subclause (1)(b)(ii), the local government is to obtain the written agreement of the Electoral Commissioner.

[Clause 9 amended: No. 49 of 2004 s. 67(4) and (5).]

10. Minister may accept or reject recommendation

(1) Subject to subclause (2), the Minister may accept or reject a recommendation of the Advisory Board made under clause 3 or 6.

(2) If at a poll held as required by clause 8 —

(a) at least 50% of the electors of one of the districts vote; and

(b) of those electors of that district who vote, a majority vote against the recommendation,

the Minister is to reject the recommendation.

(3) If the recommendation is that an order be made and it is accepted, the Minister can make an appropriate recommendation to the Governor under section 2.1.

10A. Recommendations regarding names, wards and representation

(1) The Advisory Board may —

(a) when it makes its recommendations under clause 3 or 6; or

(b) after the Minister has accepted its recommendations under clause 10,

in a written report to the Minister, recommend the making of an order to do any of the things referred to in section 2.2(1), 2.3(1) or (2) or 2.18(1) or (3) that the Board considers appropriate.

(2) In making its recommendations under subclause (1) the Advisory Board —

(a) may consult with the public and interested parties to such extent as it considers appropriate; and

(b) is to take into account the matters referred to in clause 8(c) to (g) of Schedule 2.2 so far as they are applicable.

[Clause 10A inserted: No. 64 of 1998 s. 52(4).]

11. Transitional arrangements for orders about districts

(1) Regulations may provide for matters to give effect to orders made under section 2.1 including —

(a) the vesting, transfer, assumption or adjustment of property, rights and liabilities of a local government;

(b) the extinguishment of rights of a local government;

(c) the winding up of the affairs of a local government;

(d) the continuation of actions and other proceedings brought by or against a local government before the taking effect of an order under section 2.1;

(e) the bringing of actions and other proceedings that could have been brought by or against a local government before the taking effect of an order under section 2.1;

(f) if the effect of an order under section 2.1 is to unite 2 or more districts, the determination of the persons who are to be the first mayor or president, and deputy mayor or deputy president, of the new local government;

(g) the continuation of any act, matter or thing being done under another written law by, or involving, a local government.

(2) Subject to regulations referred to in subclause (1), where an order is made under section 2.1 any local governments affected by the order (including any new local government created as a result of the order) are to negotiate as to any adjustment or transfer between them of property, rights and liabilities.

(3) Where an order is made under section 2.1 the Governor may, by order under section 9.62(1), give directions as to any of the matters set out in subclause (1) if, and to the extent that, those matters are not resolved by regulations referred to in that subclause or by negotiation under subclause (2).

(4) A contract of employment that a person has with a local government is not to be terminated or varied as a result (wholly or partly) of an order under section 2.1 so as to make it less favourable to that person unless —

(a) compensation acceptable to the person is made; or

(b) a period of at least 2 years has elapsed since the order had effect.

(5A) The value of compensation required to be made under subclause (4)(a) to a person whose contract of employment with a local government is terminated or varied is not to exceed in total —

(a) in the case of a person whose contract of employment is terminated —

(i) if the person's employment is governed by a written contract in accordance with section 5.39, the maximum amount of money to which the person is entitled, under that contract, if the contract is terminated before the expiry date; or

(ii) in any other case, the value of the person's final annual remuneration, as calculated in accordance with regulations made for the purposes of section 5.50(3);

or

(b) in the case of a person whose contract of employment is varied, the lesser of —

(i) the amount that the person would have been entitled to if the person's contract of employment had been terminated before the expiry date; or

(ii) the value of the person's annual remuneration for the year ending on the date of the variation, calculated in accordance with regulations made for the purposes of section 5.50(3) as if the person's contract of employment had terminated on that date.

(5B) For the purposes of subclause (5A), the total value of the compensation required to be made to a person includes all amounts to which the person is entitled under a contract of employment or award relating to the person as an employee of the local government.

(5) The rights and entitlements of a person whose contract of employment is transferred from one local government to another, whether arising under the contract or by reason of it, are to be no less favourable to that person after the transfer than they would have been had the person's employment been continuous with the first local government.

(6) If land ceases to be in a particular district as a result of an order under section 2.1, any written law that would have applied in respect of it if the order had not been made continues to apply in respect of the land to the extent that its continued application would be consistent with —

(a) any written law made after the order was made; and

(b) any order made by the Governor under subclause (8).

(7) Regulations may make provision as to whether or not, or the modifications subject to which, a written law continues to apply in respect of land under subclause (6).

(8) The Governor may, in a particular case, by order, vary the effect of subclause (6) and regulations made in accordance with subclause (7).

[Clause 11 amended: No. 64 of 1998 s. 52(5); No. 26 of 2016 s. 23.]

12. Registration of documents

(1) In this clause —

relevant official means —

(a) the Registrar of Titles under the *Transfer of Land Act 1893*; or

(b) the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856*; or

(c) the Minister administering the *Land Administration Act 1997*; or

(d) any other person authorised by a written law to record and give effect to the registration of documents relating to transactions affecting any estate or interest in land or any other property.

(2) The relevant officials are —

(a) to take notice of an order of the kind referred to in clause 11(3) relating to property, rights and liabilities; and

(b) to record and register in the appropriate manner the documents necessary to show the effect of the order as it relates to those matters.

[Clause 12 inserted: No. 26 of 2016 s. 24.]

Schedule 2.2 — Provisions about names, wards and representation

[Section 2.2(3)]

[Heading amended: No. 64 of 1998 s. 53.]

1. Terms used

In this Schedule, unless the contrary intention appears —

affected electors, in relation to a submission, means electors whose eligibility as electors comes from residence, or ownership or occupation of property, in the area directly affected by the submission;

review means a review required by clause 4(4) or 6 or authorised by clause 5(a);

submission means a submission under clause 3 that an order be made to do any or all of the things referred to in section 2.2(1), 2.3(3) or 2.18(3).

2. Advisory Board to make recommendations relating to new district

(1) When a local government is newly established, the Advisory Board —

(a) at the direction of the Minister; or

(b) after receiving a report made by a commissioner appointed under section 2.6(4) after carrying out a review,

is, in a written report to the Minister, to recommend the making of an order to do all or any of the things referred to in section 2.2(1)(a), 2.3(2) or 2.18(1).

(2) In making its recommendations under subclause (1) the Advisory Board is to take into account the matters referred to in clause 8(c) to (g) so far as they are applicable.

3. Who may make submissions about ward changes etc.

(1) A submission may be made to a local government by affected electors who —

(a) are at least 250 in number; or

(b) are at least 10% of the total number of affected electors.

(2) A submission is to comply with any regulations about the making of submissions.

(3) A submission that an order be made to do any or all of the things referred to in section 2.2(1) cannot be made to a local government if the district is a district which, under regulations made for the purposes of section 2.2A(1)(a), cannot be divided into wards.

[Clause 3 amended: No. 11 of 2023 s. 89.]

4. Dealing with submissions

(1) The local government is to consider any submission made under clause 3.

(2) If, in the council's opinion, a submission is —

(a) one of a minor nature; and

(b) not one about which public submissions need be invited,

the local government may either propose* to the Advisory Board that the submission be rejected or deal with it under clause 5(b).

** Absolute majority required.*

(3) If, in the council's opinion —

(a) a submission is substantially similar in effect to a submission about which the local government has made a decision (whether an approval or otherwise) within the period of 2 years immediately before the submission is made; or

(b) the majority of effected electors who made the submission no longer support the submission,

the local government may reject the submission.

(4) Unless, under subclause (2) or (3), the local government rejects, or proposes to reject, the submission or decides to deal with it under clause 5(b), the local government is to carry out a review of whether or not the order sought should, in the council's opinion, be made.

[Clause 4 amended: No. 49 of 2004 s. 68(2)-(4).]

5. Local government may propose ward changes or make minor proposals

A local government may, whether or not it has received a submission —

(a) carry out a review of whether or not an order under section 2.2, 2.3(3) or 2.18 should, in the council's opinion, be made; or

(b) propose* to the Advisory Board the making of an order under section 2.2(1), 2.3(3) or 2.18(3) if, in the opinion of the council, the proposal is —

(i) one of a minor nature; and

(ii) not one about which public submissions need be invited;

or

(c) propose* to the Minister the making of an order changing the name of the district or a ward.

** Absolute majority required.*

6. Local government with wards to review periodically

(1) A local government the district of which is divided into wards is to carry out reviews of —

(a) its ward boundaries; and

(b) the number of offices of councillor for each ward,

from time to time so that not more than 10 years elapse between successive reviews.

(1A) If an order under section 2.2(1) establishes a ward system for a district, the local government must carry out its first review of the ward system as described in subclause (1) within 10 years after the establishment of the ward system.

[(2) deleted]

(3) A local government is to carry out a review described in subclause (1) at any time if the Advisory Board requires the local government in writing to do so.

[Clause 6 amended: No. 49 of 2004 s. 68(5) and (6); No. 11 of 2023 s. 90.]

7. Reviews

(1) Before carrying out a review a local government has to give local public notice advising —

(a) that the review is to be carried out; and

(b) that submissions may be made to the local government before a day fixed by the notice, being a day that is not less than 6 weeks after the notice is first given.

(2) In carrying out the review the local government is to consider submissions made to it before the day fixed by the notice.

8. Matters to be considered in respect of wards

Before a local government proposes that an order be made —

(a) to do any of the matters in section 2.2(1), other than discontinuing a ward system; or

(b) to specify or change the number of offices of councillor for a ward,

or proposes under clause 4(2) that a submission be rejected, its council is to have regard, where applicable, to —

(c) community of interests; and

(d) physical and topographic features; and

(e) demographic trends; and

(f) economic factors; and

(g) the ratio of councillors to electors in the various wards.

[Clause 8 amended: No. 49 of 2004 s. 68(7).]

9. Proposal by local government

On completing a review, the local government is to make a report in writing to the Advisory Board and may propose* to the Board the making of any order under section 2.2(1), 2.3(3) or 2.18(3) it thinks fit.

** Absolute majority required.*

10. Recommendation by Advisory Board

(1) Where under clause 5(b) a local government proposes to the Advisory Board the making of an order under section 2.2(1), 2.3(3) or 2.18(3), and the Board is of the opinion that the proposal is —

(a) one of a minor nature; and

(b) not one about which public submissions need be invited,

the Board, in a written report to the Minister, is to recommend the making of the order but otherwise is to inform the local government accordingly and the local government is to carry out a review.

(2) Where under clause 9 a local government proposes to the Advisory Board the making of an order of a kind referred to in clause 8 that, in the Board's opinion, correctly takes into account the matters referred to in clause 8(c) to (g), the Board, in a written report to the Minister, is to recommend the making of the order.

(3) Where a local government proposes to the Advisory Board the making of an order of a kind referred to in clause 8, or that a submission under clause 4(2) be rejected, that, in the Board's opinion, does not correctly take into account the matters referred to in that clause —

(a) the Board may inform the local government accordingly and notify the local government that a proposal that does correctly take those matters into account is to be made within such time as is set out in the notice; and

(b) if the local government does not make a proposal as required by a notice under paragraph (a), the Board may, in a written report to the Minister, recommend* the making of any order

under section 2.2(1), 2.3(3) or 2.18(3) it thinks fit that would correctly take into account those matters.

* *Absolute majority required.*

(4) Where a local government fails to carry out a review as required by clause 6, the Advisory Board, in a written report to the Minister, may recommend* the making of any order under section 2.2(1), 2.3(3) or 2.18(3) it thinks fit that would correctly take into account the matters referred to in clause 8.

* *Absolute majority required.*

[Clause 10 amended: No. 49 of 2004 s. 68(8).]

11. Inquiry by Advisory Board

(1) For the purposes of deciding on the recommendation, if any, it is to make under clause 10(3)(b) or (4), the Advisory Board may carry out any inquiry it thinks necessary.

(2) The Advisory Board may recover the amount of the costs connected with an inquiry under subclause (1) from the local government concerned as if it were for a debt due.

12. Minister may accept or reject recommendation

(1) The Minister may accept or reject a recommendation of the Advisory Board made under clause 10.

(2) If the recommendation is accepted the Minister can make a recommendation to the Governor for the making of the appropriate order.

Schedule 2.3 — When and how mayors, presidents, deputy mayors and deputy presidents are elected by the council

[Sections 2.11(1)(b) and 2.15]

Division 1 — Mayors and presidents

1. Terms used

In this Division —

extraordinary vacancy means a vacancy that occurs under section 2.34(1);

office means the office of councillor mayor or president.

2. When council elects mayor or president

(1) The office is to be filled as the first matter dealt with —

(a) at the first meeting of the council after an inaugural election or a section 4.13 or 4.14 election or after an ordinary elections day; and

(b) at the first meeting of the council after an extraordinary vacancy occurs in the office.

(2) If the first ordinary meeting of the council is more than 3 weeks after an extraordinary vacancy occurs in the office, a special meeting of the council is to be held within that period for the purpose of filling the office.

3. CEO to preside

The CEO is to preside at the meeting until the office is filled.

4. How mayor or president is elected

(1) The council is to elect a councillor to fill the office.

(2) The election is to be conducted by the CEO in accordance with the procedure prescribed.

(3) Nominations for the office are to be given to the CEO in writing before the meeting or during the meeting before the close of nominations.

(3a) Nominations close at the meeting at a time announced by the CEO, which is to be a sufficient time after the announcement by the CEO that nominations are about to close to allow for any nominations made to be dealt with.

(4) If a councillor is nominated by another councillor the CEO is not to accept the nomination unless the nominee has advised the CEO, orally or in writing, that he or she is willing to be nominated for the office.

(5) The councillors are to vote on the matter by secret ballot as if they were electors voting at an election.

(6) Subject to clause 5(1), the votes cast under subclause (5) are to be counted, and the successful candidate determined, in accordance with Schedule 4.1 (which deals with determining the result of an election) as if those votes were votes cast at an election.

(7) As soon as is practicable after the result of the election is known, the CEO is to declare and give notice of the result in accordance with regulations, if any.

[Clause 4 amended: No. 49 of 2004 s. 69(2)-(5); No. 66 of 2006 s. 14.]

5. Votes may be cast a second time

(1) If when the votes cast under clause 4(5) are counted there is an equality of votes between 2 or more candidates who are the only candidates in, or remaining in, the count, the count is to be discontinued and the meeting is to be adjourned for not more than 7 days.

(2) Any nomination for the office may be withdrawn, and further nominations may be made, before or when the meeting resumes.

(3) When the meeting resumes the councillors are to vote again on the matter by secret ballot as if they were electors voting at an election.

(4) The votes cast under subclause (3) are to be counted, and the successful candidate determined, in accordance with Schedule 4.1 as if those votes were votes cast at an election.

Division 2 — Deputy mayors and deputy presidents

6. Terms used

In this Division —

extraordinary vacancy means a vacancy that occurs under section 2.34(1);

office means the office of deputy mayor or deputy president.

7. When council elects deputy mayor or deputy president

(1) If the local government has an elector mayor or president the office of deputy mayor or deputy president is to be filled as the first matter dealt with —

(a) at the first meeting of the council after an inaugural election or a section 4.13 or 4.14 election or after an ordinary elections day; and

(b) at the first meeting of the council after an extraordinary vacancy occurs in the office.

(2) If the local government has a councillor mayor or president the office of deputy mayor or deputy president is to be filled —

(a) as the next matter dealt with after the mayor or president is elected at the first meeting of the council after an inaugural election or a section 4.13 or 4.14 election or after an ordinary elections day; and

(b) subject to subclause (3), as the first matter dealt with at the first meeting of the council after an extraordinary vacancy occurs in the office.

(3) If at a meeting referred to in clause 2(1)(b) the deputy mayor or deputy president is elected to be the mayor or president, the resulting extraordinary vacancy in the office is to be filled as the next matter dealt with at the same meeting.

8. How deputy mayor or deputy president is elected

(1) The council is to elect a councillor (other than the mayor or president) to fill the office.

(2) The election is to be conducted in accordance with the procedure prescribed by the mayor or president, or if he or she is not present, by the CEO.

(3) Nominations for the office are to be given to the person conducting the election in writing before the meeting or during the meeting before the close of nominations.

(3a) Nominations close at the meeting at a time announced by the person conducting the election, which is to be a sufficient time after the announcement by that person that nominations are about to close to allow for any nominations made to be dealt with.

(4) If a councillor is nominated by another councillor the person conducting the election is not to accept the nomination unless the nominee has advised the person conducting the election, orally or in writing, that he or she is willing to be nominated for the office.

(5) The council members are to vote on the matter by secret ballot as if they were electors voting at an election.

(6) Subject to clause 9(1) the votes cast under subclause (5) are to be counted, and the successful candidate determined, in accordance with Schedule 4.1 as if those votes were votes cast at an election.

(7) As soon as is practicable after the result of the election is known, the person conducting the election is to declare and give notice of the result in accordance with regulations, if any.

[Clause 8 amended: No. 64 of 1998 s. 54(2)-(4); No. 49 of 2004 s. 69(6)-(9).]

9. Votes may be cast a second time

(1) If, when the votes cast under clause 8(5) are counted, there is an equality of votes between 2 or more candidates who are the only candidates in, or remaining in, the count, the count is to be discontinued and, not more than 7 days later, a special meeting of the council is to be held.

(2) Any nomination for the office may be withdrawn, and further nominations may be made, before or when the special meeting is held.

(3) When the special meeting is held the council members are to vote again on the matter by secret ballot as if they were voting at an election.

(4) The votes cast under subclause (3) are to be counted, and the successful candidate determined, under Schedule 4.1 as if those votes were votes cast at an election.

[Clause 9 amended: No. 49 of 2004 s. 69(10).]

Division 3 — Validity of elections

[Heading inserted: No. 49 of 2004 s. 69(11).]

10. Term used: election

In this Division —

election means an election under this Schedule.

[Clause 10 inserted: No. 49 of 2004 s. 69(11).]

11. Complaints about validity of election

(1) A councillor who is dissatisfied with the result of an election or with the way in which an election was conducted may make an invalidity complaint.

(2) An ***invalidity complaint*** is a complaint that an election is invalid, or that another person should be declared elected.

[Clause 11 inserted: No. 49 of 2004 s. 69(11).]

12. Complaints to go to Court of Disputed Returns

(1) An invalidity complaint is to be made to a Court of Disputed Returns, constituted by a magistrate, but can only be made within 28 days after notice is given of the result of the election.

(2) Regulations made under section 4.81(2) apply in respect of an invalidity complaint made under this Division in so far as they are capable of being so applied.

(3) If the court declares the election to have been invalid —

(a) the election is null and void; and

(b) any office filled at the election is vacant; and

(c) the court is to fix a day for holding any poll needed for a fresh election; and

(d) the CEO is to prepare for, conduct and ascertain and declare the result of the fresh election.

(4) If the court declares that a person (***candidate A***) ought to have been elected to an office in place of another person (***candidate B***) —

(a) candidate B is not to act in that office; and

(b) candidate A is to be regarded as having been elected; and

(c) notice of candidate A's election is to be published in accordance with regulations.

[Clause 12 inserted: No. 49 of 2004 s. 69(11).]

13. No appeal

There is no appeal from a decision of a Court of Disputed Returns.

[Clause 13 inserted: No. 49 of 2004 s. 69(11).]

14. Certain defects do not affect election

An election is not invalid because of —

(a) a failure to do something in connection with the election within the time, or for the period or before the date allowed or required under this Act, so long as the failure does not affect the result of the election; or

(b) a formal omission, irregularity or defect in a document, declaration, publication or other thing that a person has made, issued or done in good faith.

[Clause 14 inserted: No. 49 of 2004 s. 69(11).]

15. Regulations about retention and availability of electoral papers

Regulations made under section 4.84 apply in respect of elections in so far as they are capable of being so applied.

[Clause 15 inserted: No. 49 of 2004 s. 69(11).]

Schedule 2.4 — Provisions about commissioners

[Section 2.41]

1. Eligibility for appointment

(1) Any person is eligible for appointment as a commissioner if he or she is qualified to be elected as a member of the council of the local government concerned or would be so qualified if he or she were an elector of the district.

(2) Nothing in this Act prevents a person from being a commissioner of more than one local government or a member or former member of a council of a local government from being a commissioner of a local government.

[Clause 1 amended: No. 1 of 1998 s. 25; No. 49 of 2004 s. 70.]

2. Tenure

Subject to clause 3, a commissioner holds office for the period set out in section 2.6(4), 2.36A(3), 2.37(4), 2.37A(1), 8.30 or 8.33, whichever is applicable.

[Clause 2 amended: No. 1 of 1998 s. 6(4); No. 64 of 1998 s. 4(6).]

3. Vacancies

The office of a commissioner becomes vacant if —

(a) the commissioner dies; or

(b) the Governor receives the written resignation of the commissioner; or

(c) the commissioner is absent, without leave and without reasonable excuse, from 3 consecutive meetings of the joint commissioners of which he or she has had notice; or

(d) the commissioner ceases to be eligible for appointment as a commissioner; or

(e) the Governor terminates the commissioner's appointment.

4. Vacancies may be filled

If the office of a commissioner becomes vacant the Governor may appoint a person to fill the vacancy.

5. Payment of commissioners

(1) A commissioner is to be paid remuneration and allowances, and reimbursed for expenses, in accordance with determinations made by the Minister from time to time.

(2) Payments and reimbursements under subclause (1) are to be made out of the funds of the local government concerned.

6. Procedure at meetings of joint commissioners

(1) At a meeting of joint commissioners —

(a) if 3 commissioners are appointed, 2 of them constitute a quorum; and

(b) if 5 commissioners are appointed, 3 of them constitute a quorum; and

(c) the chairperson, or in his or her absence the deputy chairperson, is to preside; and

(d) if 5 commissioners are appointed and the chairperson and the deputy chairperson are both absent, a commissioner chosen by those present is to preside.

(2) When a question arises at a meeting of joint commissioners —

(a) a decision on the question is to be made by simple majority unless subclause (3) applies; and

(b) each commissioner who is present is entitled to one vote; and

(c) if the votes are equally divided, the person presiding may cast a second vote.

(3) If 5 commissioners are appointed and a decision to be made on a question is one that would require an absolute majority of a council, the decision is to be made by an absolute majority of those commissioners.

[Clause 6 amended: No. 64 of 1998 s. 55; No. 16 of 2019 s. 70.]

Schedule 2.5 — Provisions about the Local Government Advisory Board

[Section 2.44(2)]

1. Term used: member

In this Schedule, unless the contrary intention appears —

member means a member of the Advisory Board.

2. Membership of Advisory Board

The Advisory Board consists of 5 members appointed by the Governor of whom —

(a) one person is nominated by the Minister; and

(b) 2 persons are to be persons having experience as a member of a council appointed from a list submitted to the Minister by WALGA under clause 4(1); and

(c) one person is to be a person having experience as the chief executive officer of a local government appointed from a list submitted to the Minister by the Local Government Professionals Australia (WA) under clause 4(2); and

(d) one person is to be an officer of the Department nominated by the Minister.

[Clause 2 amended: No. 1 of 1998 s. 26(1); No. 49 of 2004 s. 12 and 71(2); No. 16 of 2019 s. 71(1).]

3. Deputies

(1) The Governor may appoint a deputy for any member appointed under clause 2(b), (c) or (d).

(2) A person is not eligible to be appointed as a deputy for a member unless that person is eligible to be appointed to the office of that member.

(3) The deputy for a member appointed under clause 2(b) or (c) is to be a person chosen from a list as would be required if the person were to be appointed as the member.

(4) The deputy for a member is —

(a) in the absence of the member from a meeting of the Advisory Board, entitled to attend the meeting in place of the member; and

(aa) if the member is the member appointed under clause 2(d) and is presiding at a meeting under clause 7(2), entitled to attend the meeting even though the member is also present; and

(b) where the member disqualifies himself or herself from acting as a member on a matter arising at a meeting of the Advisory Board, entitled to act in the place of the member; and

(c) if the member vacates office before the term of office expires, entitled to attend meetings and otherwise act in place of the member,

and a deputy attending a meeting or acting in place of a member under this subclause has all the functions and protection of a member.

[Clause 3 amended: No. 1 of 1998 s. 26(2) and (3).]

4. Submission of lists

(1) Before a person is appointed as a member under clause 2(b), or as the deputy for such a member, the Minister is to invite WALGA to submit a list of 9 persons eligible for appointment within 28 days of the invitation.

(2) Before a person is appointed as a member under clause 2(c), or as the deputy for such a member, the Minister is to invite the Local Government Professionals Australia (WA) to submit a list of 6 persons eligible for appointment within 28 days of the invitation.

(3) Where a list is not submitted in writing in accordance with the invitation of the Minister, the Minister may recommend any eligible person for appointment, and that person may be appointed as if chosen from a list as required.

[Clause 4 amended: No. 49 of 2004 s. 12 and 71(2); No. 16 of 2019 s. 71(2).]

5. Term of office

(1) The term of office of a member is the period specified in the instrument of appointment and is not to exceed 4 years.

(2) Subclause (1) does not prevent a person who has held office as a member from being appointed for a subsequent term.

6. Vacation of office

(1) The office of a member becomes vacant if the term for which the member is appointed expires or the member —

(a) dies; or

(b) by notice in writing to the Minister, resigns; or

(c) is removed from office under subclause (2).

(2) The Governor may remove a person from office as a member on the grounds of —

(a) incapacity to carry out satisfactorily the duties of the office; or

(b) neglect of duty; or

(c) misconduct; or

(d) in the case of a person appointed under clause 2(d), the person ceasing to be an officer of the Department; or

(e) any other cause for which it appears to the Governor that the person should be removed from office.

7. Meetings

(1) The member appointed under clause 2(a) is to preside at all meetings of the Advisory Board at which he or she is present.

(2) If the member appointed under clause 2(a) is not present at a meeting the member appointed under clause 2(d) is to preside at the meeting.

(3) The quorum at a meeting is 3 one of whom must be the member appointed under clause 2(a) or the member appointed under clause 2(d).

(4) Subject to subclause (7), each member present at a meeting of the Advisory Board is entitled to one vote.

(5) Unless a question arising at a meeting is one that is required to be decided by an absolute majority, the question is to be decided by a majority of the votes of the members present and voting.

(6) Each member is to have regard to the general interests of local government in the State.

(7) Subject to any order under subclause (8), a member is disqualified from acting where the matter being considered or inquired into by the Advisory Board is a matter relating to a local government of which the member is a member, employee or elector.

(8) The Minister may, by order, declare that subclause (7) does not apply in relation to a matter or class of matters specified in the order, and that order has effect according to its terms.

(9) An order is not to be made under subclause (8) unless the Minister considers the order to be necessary to enable the Advisory Board to perform its functions properly.

(10) To the extent that it is not prescribed the Advisory Board may determine its own meeting procedure, and other procedure and practice.

[Clause 7 amended: No. 1 of 1998 s. 26(4); No. 49 of 2004 s. 71(3); No. 17 of 2009 s. 45.]

8. Remuneration and allowances

(1) Members are entitled to such remuneration and allowances as the Minister from time to time determines on the recommendation of the Public Sector Commissioner.

(2) Subclause (1) does not apply to a member who is an officer of the Public Service.

[Clause 8 amended: No. 39 of 2010 s. 89.]

9. Protection

No liability attaches to a member for any act or omission by the member or on the member's part by the Advisory Board that occurred in good faith and in the performance of the member's or the Board's functions under this Act.

10. Staff

The Departmental CEO is to make an officer of the Department available to the Advisory Board to act as its executive officer.

[Clause 10 amended: No. 28 of 2006 s. 364.]

11. Delegation

(1) The Advisory Board may, with the approval of the Minister, appoint a committee and delegate to the committee a particular matter that is before the Advisory Board for consideration.

(2) A committee appointed under subclause (1) is to consist of —

(a) the person appointed as a member under clause 2(a); and

(b) 2 persons chosen from the list submitted by WALGA for the purposes of the most recent appointment of a person as a member under clause 2(b); and

(c) one person chosen from the list submitted by the Local Government Professionals Australia (WA) for the purposes of the most recent appointment of a person as a member under clause 2(c); and

(d) one person who is an officer of the Department.

(3) The member appointed under clause 2(a) is to preside at committee meetings at which he or she is present.

(3a) If the member appointed under clause 2(a) is not present at a committee meeting, the member appointed under subclause (2)(d) is to preside at the meeting.

(3b) The quorum at a meeting of a committee is 3, one of whom must be the member appointed under clause 2(a) or the member appointed under subclause (2)(d).

(4) In exercising its functions, a committee has the same powers as the Advisory Board.

(5) Members of a committee have the same entitlements to remuneration, allowances and protection as members of the Advisory Board.

[(6) deleted]

(7) The Advisory Board may, with the approval of the Minister, appoint a deputy for any member of the committee appointed under subclause (2)(b), (c) or (d) and clause 3 applies with such modifications as are necessary to such deputies.

(8) When a committee appointed under subclause (1) has dealt with the matter delegated to it, it is dissolved.

[Clause 11 amended: No. 1 of 1998 s. 26(5)-(7); No. 49 of 2004 s. 12 and 71(2); No. 16 of 2019 s. 71(3).]

12. Powers of inquiry

(1) For the purposes of carrying out an inquiry under this Act, the Advisory Board may —

(a) by summons signed on behalf of the Advisory Board by its executive officer, require —

(i) the attendance before the Advisory Board of any person;

(ii) the production before the Advisory Board of any document;

(b) inspect any document produced before it, and retain it for such reasonable period as it thinks fit, and make copies of the document or any of its contents;

(c) require any person to swear to truly answer all questions relating to a matter being inquired into by the Advisory Board that are put by or before the Advisory Board (and for that purpose a member of the Advisory Board or its executive officer may administer any oath or affirmation);

(d) require any person appearing before the Advisory Board to answer any relevant question.

(2) A person is not excused from complying with a requirement under subclause (1) on the ground that the answer to a question or the production of a document might be incriminating or render the person liable to a penalty, but an answer given by a person that was required under subclause (1) to be given is not admissible in evidence against the person in any civil or criminal proceedings other than proceedings for perjury or for an offence against this Act arising out of the false or misleading nature of the answer.

13. Investigations

The Advisory Board may cause such investigations to be made as it sees fit for the purposes of its inquiry into a matter.

14. Annual report

(1) By 31 August in each year, the Advisory Board is to prepare and provide to the Minister a report on the proposals made to it and the inquiries and recommendations made by it during the previous financial year.

(2) The Advisory Board may apply to the Minister before 31 August for an extension of time in which to lodge the annual report and the Minister may grant an extension on such terms as the Minister thinks fit.

(3) As soon as practicable after receiving the annual report, the Minister is to cause a copy of it to be laid before each House of Parliament.

15. Offences

A person who —

(a) having been served with a summons to attend before the Advisory Board, fails without reasonable excuse (proof of which lies on him or her) to attend in obedience to the summons; or

(b) having been served with a summons to produce any document before the Advisory Board, fails without reasonable excuse (proof of which lies on him or her) to produce a document in obedience to the summons; or

(c) fails without reasonable excuse (proof of which lies on him or her) to swear, or to answer any question, when required to do so by the Advisory Board; or

(d) misbehaves before the Advisory Board, insults the Advisory Board or a member of it, or interrupts the proceedings of the Advisory Board,

commits an offence.

Schedule 3.1 — Powers under notices to owners or occupiers of land

[Section 3.25(1)]

Division 1 — Things a notice may require to be done

1. Prevent water from dripping or running from a building on the land onto any other land.

2. Place in a prominent position on the land a number to indicate the address.

3. Modify or repair, in the interests of the convenience or safety of the public, anything constructed as mentioned in Schedule 9.1, clause 8, or repair any damage caused to the public thoroughfare or other public place mentioned in that clause.

4. (1) Ensure that land that adjoins a public thoroughfare or other public place that is specified for the purposes of this item by a local law —

   (a) is suitably enclosed to separate it from the public place; and

   (b) where applicable, is enclosed with a close fence, to the satisfaction of the local government, suitable to prevent sand or other matter coming from the land onto the public place.

   (2) The notice cannot be given to an occupier who is not an owner.

5. (1) Ensure that unsightly land is enclosed, to the satisfaction of the local government, with a fence or other means suitable to prevent the land, so far as is practicable, from being unsightly.

   (2) In this item —

   unsightly, in relation to land, means having an appearance that, because of the way in which the land is used, does not conform with the general appearance of other land in the locality.

   (3) The notice cannot be given to an occupier who is not an owner.

5A. (1) Ensure that overgrown vegetation, rubbish, or disused material, as specified, is removed from land that the local government considers to be untidy.

(2) In this item —

disused material includes disused motor vehicles, old motor vehicle bodies and old machinery.

[5B. Deleted: No. 16 of 2016 s. 41.]

6. Take specified measures for preventing or minimising the movement of sand, silt, clay or rocks on or from the land if, in the opinion of the local government, that movement would be likely to adversely affect other land.

7. Ensure that land that adjoins a public thoroughfare or other public place that is specified for the purposes of this item by a local law is not overgrown.

8. Remove all or part of a tree that is obstructing or otherwise prejudicially affecting a thoroughfare that is under the local government's control or management and adjoins the land where the tree is situated.

9. Ensure that a tree on the land that endangers any person or thing on adjoining land is made safe.

10. Take specified measures for preventing or minimizing —

    (a) danger to the public; or

    (b) damage to property,

    which might result from cyclonic activity.

11. Remove bees that are likely to endanger the safety of any person or create a serious public nuisance.

12. Ensure that an unsightly, dilapidated or dangerous fence or gate that separates the land from land that is local government property is modified or repaired.

13. Take specific measures to prevent —

    (a) artificial light being emitted from the land; or

    (b) natural or artificial light being reflected from something on the land,

    creating a nuisance.

14. (1) Remove or make safe anything that is obstructing or otherwise prejudicially affecting a private thoroughfare so that danger to anyone using the thoroughfare is prevented or minimised.

(2) In this item —

private thoroughfare has the same meaning as in Schedule 9.1 clause 7(1).

[Division 1 amended: Gazette 29 Apr 1997 p. 2144; amended: No. 49 of 2004 s. 72; No. 17 of 2009 s. 46; No. 16 of 2016 s. 41.]

Division 2 — Provisions contraventions of which may lead to a notice requiring things to be done

1. Regulations under Schedule 9.1, clause 3 (Obstructing or encroaching on public thoroughfare).

1A. Regulations under Schedule 9.1, clause 5(1) (Gates and other devices across public thoroughfares) requiring a person to remove a gate or other device from across a public thoroughfare when requested by a local government to do so.

2. Regulations under Schedule 9.1, clause 6 (Dangerous excavation in or near public thoroughfare).

2A. Regulations under Schedule 9.1, clause 7(2) (Crossings from public thoroughfares to private land or to private thoroughfares) that —

(a) prohibit a person from constructing a crossing; or

(b) by means of a notice in writing given to a person by the Commissioner of Main Roads, require the person to bring a crossing into accordance with an approval by the Commissioner of Main Roads or to remove a crossing and restore the place where it was to its former condition.

3. Regulations under Schedule 9.1, clause 8(1) (Constructing private works on, over, or under public places).

4. Regulations under Schedule 9.1, clause 9 (Protection of watercourses, drains, tunnels and bridges).

5. Regulations under Schedule 9.1, clause 10 (Protection of thoroughfares from water damage).

6. Regulations under Schedule 9.1, clause 12 (Wind erosion and sand drifts).

[Division 2 amended: Gazette 24 Jun 1996 p. 2862.]

Schedule 3.2 — Particular things local governments can do on land even though it is not local government property

[Section 3.27(1)]

1. Carry out works for the drainage of land.
2. Do earthworks or other works on land for preventing or reducing flooding.
3. Take from land any native growing or dead timber, earth, stone, sand, or gravel that, in its opinion, the local government requires for making or repairing a thoroughfare, bridge, culvert, fence, or gate.

   Section 3.36 applies.
   Section 3.27(3) applies.
4. Deposit and leave on land adjoining a thoroughfare any timber, earth, stone, sand, gravel, and other material that persons engaged in making or repairing a thoroughfare, bridge, culvert, fence, or gate do not, in the local government's opinion, require.

   Section 3.36 applies.
   Section 3.27(3) applies.
5. Make a temporary thoroughfare through land for use by the public as a detour while work is being done on a public thoroughfare.

   Section 3.36 applies.
   Section 3.27(3) applies.
6. Place on land signs to indicate the names of public thoroughfares.
7. Make safe a tree that presents serious and immediate danger, without having given the owner the notice otherwise required by regulations.

[8. Deleted: No. 16 of 2016 s. 42.]

[Schedule 3.2 amended: No. 17 of 2009 s. 47; No. 16 of 2016 s. 42.]

Schedule 4.1A — Filling extraordinary vacancy without extraordinary election

[s. 4.8]

[Heading inserted: No. 11 of 2023 s. 91.]

Division 1 — Preliminary

[Heading inserted: No. 11 of 2023 s. 91.]

1. Terms used

In this Schedule —

former member means the councillor or elector mayor or president referred to in clause 2(1)(a);

vacancy day has the meaning given in clause 2(1)(c);

working day means a day other than —

(a) a Saturday or Sunday; or

(b) a public holiday throughout the State; or

(c) a public holiday in an area that is or includes the district or any part of the district.

[Clause 1 inserted: No. 11 of 2023 s. 91.]

Division 2 — Application of Schedule

[Heading inserted: No. 11 of 2023 s. 91.]

2. Certain extraordinary vacancies to be filled under Schedule instead of by extraordinary election

(1) Subclauses (2) to (5) apply if —

(a) the office of a councillor, or of an elector mayor or president, becomes vacant under section 2.32; and

(b) the former member —

(i) was elected under Schedule 4.1 clause 2, 4 or 5 or under Schedule 4.1 Division 3; or

(ii) was elected under clause 6, 9 or 12 of this Schedule;

and

(c) the office becomes vacant on a day (the ***vacancy day***) that is within the period of 12 months beginning on the day on which the former member's term began; and

(d) none of the following applies —

(i) any poll needed for the extraordinary election to fill the vacancy must be held on an ordinary elections day under section 4.16(2) or (3);

(ii) the council may, with the approval of the Electoral Commissioner, fix an ordinary elections day as the day for the holding of any poll needed for the extraordinary election to fill the vacancy under section 4.16(4);

(iii) the vacancy must remain unfilled under section 4.17(1);

(iv) the council may, with the approval of the Electoral Commissioner, allow the vacancy to remain unfilled under section 4.17(2);

and

(e) the vacancy is not required to be filled under Schedule 4.1B.

(2) The CEO must proceed under the applicable provisions of Division 3, 4 or 5 to determine whether the vacancy can be filled under this Schedule.

(3) In so proceeding, the CEO is bound by any applicable declaration made under clause 19.

(4) If the vacancy is filled, the CEO must declare, and give notice of, the election in accordance with regulations.

(5) If the vacancy cannot be filled, the CEO must notify the council.

(6) For the purposes of this Schedule, an office is taken to become vacant under section 2.32(b) when the CEO receives notice of the resignation —

(a) even if the resignation takes effect on a later day; but

(b) not if that later day is after the 12-month period referred to in subclause (1)(c).

Note for this clause:

If a person who is a councillor on a council is elected under this Schedule to fill the office of elector mayor or president on the council, the person's office as councillor becomes vacant under section 2.32(f) accordingly.

[Clause 2 inserted: No. 11 of 2023 s. 91.]

Division 3 — One office elections

[Heading inserted: No. 11 of 2023 s. 91.]

Subdivision 1 — One office election: 2 candidates

[Heading inserted: No. 11 of 2023 s. 91.]

3. Application of Subdivision

This Subdivision applies if the former member was elected under Schedule 4.1 clause 2.

[Clause 3 inserted: No. 11 of 2023 s. 91.]

4. Filling of vacancy by unsuccessful candidate

(1) Within 5 working days after the vacancy day, the CEO must notify the candidate who was not elected at the election (the ***unsuccessful candidate***) —

(a) that the office has become vacant; and

(b) that the unsuccessful candidate may fill the vacancy.

(2) If the unsuccessful candidate is notified under subclause (1), the unsuccessful candidate may, within 5 working days after the day on which they are notified, notify the CEO —

(a) that they want to fill the vacancy; and

(b) that they consider that they are qualified to be elected to the council under section 2.19.

(3) If the unsuccessful candidate notifies the CEO under subclause (2), the unsuccessful candidate is elected to the vacant office on the day after —

(a) the day on which the CEO is notified; or

(b) if later in the case of a vacancy under section 2.32(b) — the day on which the resignation takes effect.

(4) Despite subclauses (1) to (3), the vacancy cannot be filled under this clause —

(a) if any of the following applies —

(i) the unsuccessful candidate was elected to a vacant office under Schedule 4.1B clause 2;

(ii) on the vacancy day, the unsuccessful candidate is a member of the council, unless the vacant office is that of elector mayor or president;

(iii) the unsuccessful candidate has died before the vacancy day;

(iv) the unsuccessful candidate does not notify the CEO under subclause (2);

(v) the unsuccessful candidate dies before the day on which they are elected under subclause (3);

or

(b) in any prescribed circumstances.

[Clause 4 inserted: No. 11 of 2023 s. 91.]

Subdivision 2 — One office election: 3 or more candidates where former member elected under Schedule 4.1 clause 4

[Heading inserted: No. 11 of 2023 s. 91.]

5. Application of Subdivision

(1) This Subdivision applies if the former member was elected under Schedule 4.1 clause 4.

(2) In this Subdivision —

candidate —

(a) means a candidate in the election at which the former member was elected; but

(b) does not include —

(i) the former member; or

(ii) a candidate who was elected to a vacant office under Schedule 4.1B clause 3;

first-preference vote has the meaning given in Schedule 4.1 clause 1;

second placed candidate, subject to subclause (3), means the candidate —

(a) who is the only candidate; or

(b) who had the highest number of first-preference votes of all the candidates;

third placed candidate, subject to subclause (3), means the candidate who had the second highest number of first-preference votes of all the candidates.

(3) If 2 or more candidates had the same number of first-preference votes and if the case requires it to be done, lots must be drawn, in accordance with regulations, to determine either or both of the following as the case requires —

(a) the candidate who is the second placed candidate;

(b) the candidate who is the third placed candidate.

[Clause 5 inserted: No. 11 of 2023 s. 91.]

6. Filling of vacancy by second placed candidate

(1) Within 5 working days after the vacancy day, the CEO must notify the second placed candidate —

(a) that the office has become vacant; and

(b) that the second placed candidate may fill the vacancy.

(2) If the second placed candidate is notified under subclause (1), the second placed candidate may, within 5 working days after the day on which they are notified, notify the CEO —

(a) that they want to fill the vacancy; and

(b) that they consider that they are qualified to be elected to the council under section 2.19.

(3) If the second placed candidate notifies the CEO under subclause (2), the second placed candidate is elected to the vacant office on the day after —

(a) the day on which the CEO is notified; or

(b) if later in the case of a vacancy under section 2.32(b) — the day on which the resignation takes effect.

(4) Despite subclauses (1) to (3), the vacancy cannot be filled under this clause —

(a) if any of the following applies —

(i) on the vacancy day, the second placed candidate is a member of the council, unless the vacant office is that of elector mayor or president;

(ii) the second placed candidate has died before the vacancy day;

(iii) the second placed candidate does not notify the CEO under subclause (2);

(iv) the second placed candidate dies before the day on which they are elected under subclause (3);

or

(b) in any prescribed circumstances.

[Clause 6 inserted: No. 11 of 2023 s. 91.]

7. Filling of vacancy by third placed candidate

(1) This clause applies only if the vacancy cannot be filled under clause 6.

(2) Within 15 working days after the vacancy day, the CEO must notify the third placed candidate —

(a) that the office has become vacant; and

(b) that the third placed candidate may fill the vacancy.

(3) If the third placed candidate is notified under subclause (2), the third placed candidate may, within 5 working days after the day on which they are notified, notify the CEO —

(a) that they want to fill the vacancy; and

(b) that they consider that they are qualified to be elected to the council under section 2.19.

(4) If the third placed candidate notifies the CEO under subclause (3), the third placed candidate is elected to the vacant office on the day after —

(a) the day on which the CEO is notified; or

(b) if later in the case of a vacancy under section 2.32(b) — the day on which the resignation takes effect.

(5) Despite subclauses (2) to (4), the vacancy cannot be filled under this clause —

(a) if any of the following applies —

(i) there is no third placed candidate;

(ii) on the vacancy day, the third placed candidate is a member of the council, unless the vacant office is that of elector mayor or president;

(iii) the third placed candidate has died before the vacancy day;

(iv) the third placed candidate does not notify the CEO under subclause (3);

(v) the third placed candidate dies before the day on which they are elected under subclause (4);

or

(b) in any prescribed circumstances.

[Clause 7 inserted: No. 11 of 2023 s. 91.]

Subdivision 3 — One office election: 3 or more candidates where former member elected under Schedule 4.1 clause 5

[Heading inserted: No. 11 of 2023 s. 91.]

8. Application of Subdivision

(1) This Subdivision applies if the former member was elected under Schedule 4.1 clause 5.

(2) In this Subdivision —

continuing candidate —

(a) means a candidate in the election who was a continuing candidate under Schedule 4.1 clause 5(8) for the purposes of the last count; but

(b) does not include —

(i) the former member; or

(ii) a candidate who was elected to a vacant office under Schedule 4.1B clause 4;

election means the election at which the former member was elected;

last count means the count under Schedule 4.1 clause 5(2)(d) on which the former member was elected;

second placed candidate, subject to subclauses (3) to (5), means the continuing candidate —

(a) who is the only continuing candidate; or

(b) who, on the last count, had the highest number of votes of all the continuing candidates;

third placed candidate, subject to subclauses (3) to (5), means the continuing candidate who, on the last count, had the second highest number of votes of all the continuing candidates.

(3) If 2 or more continuing candidates had the same number of votes on the last count and if the case requires it to be done, lots must be drawn, in accordance with regulations, to determine either or both of the following as the case requires —

(a) the continuing candidate who is the second placed candidate;

(b) the continuing candidate who is the third placed candidate.

(4) If there are no continuing candidates —

(a) the candidate in the election who was the last candidate to be excluded under Schedule 4.1 clause 5(2)(a) is to be the second placed candidate; and

(b) the candidate in the election who was the second last candidate to be excluded under Schedule 4.1 clause 5(2)(a) is to be the third placed candidate.

(5) If there is only 1 continuing candidate, the candidate at the election who was the last candidate to be excluded under Schedule 4.1 clause 5(2)(a) is to be the third placed candidate.

[Clause 8 inserted: No. 11 of 2023 s. 91.]

9. Filling of vacancy by second placed candidate

(1) Within 5 working days after the vacancy day, the CEO must notify the second placed candidate —

(a) that the office has become vacant; and

(b) that the second placed candidate may fill the vacancy.

(2) If the second placed candidate is notified under subclause (1), the second placed candidate may, within 5 working days after the day on which they are notified, notify the CEO —

(a) that they want to fill the vacancy; and

(b) that they consider that they are qualified to be elected to the council under section 2.19.

(3) If the second placed candidate notifies the CEO under subclause (2), the second placed candidate is elected to the vacant office on the day after —

(a) the day on which the CEO is notified; or

(b) if later in the case of a vacancy under section 2.32(b) — the day on which the resignation takes effect.

(4) Despite subclauses (1) to (3), the vacancy cannot be filled under this clause —

(a) if any of the following applies —

(i) on the vacancy day, the second placed candidate is a member of the council, unless the vacant office is that of elector mayor or president;

(ii) the second placed candidate has died before the vacancy day;

(iii) the second placed candidate does not notify the CEO under subclause (2);

(iv) the second placed candidate dies before the day on which they are elected under subclause (3);

or

(b) in any prescribed circumstances.

[Clause 9 inserted: No. 11 of 2023 s. 91.]

10. Filling of vacancy by third placed candidate

(1) This clause applies only if the vacancy cannot be filled under clause 9.

(2) Within 15 working days after the vacancy day, the CEO must notify the third placed candidate —

(a) that the office has become vacant; and

(b) that the third placed candidate may fill the vacancy.

(3) If the third placed candidate is notified under subclause (2), the third placed candidate may, within 5 working days after the day on which they are notified, notify the CEO —

(a) that they want to fill the vacancy; and

(b) that they consider that they are qualified to be elected to the council under section 2.19.

(4) If the third placed candidate notifies the CEO under subclause (3), the third placed candidate is elected to the vacant office on the day after —

(a) the day on which the CEO is notified; or

(b) if later in the case of a vacancy under section 2.32(b) — the day on which the resignation takes effect.

(5) Despite subclauses (2) to (4), the vacancy cannot be filled under this clause —

(a) if any of the following applies —

(i) there is no third placed candidate;

(ii) on the vacancy day, the third placed candidate is a member of the council, unless the vacant office is that of elector mayor or president;

(iii) the third placed candidate has died before the vacancy day;

(iv) the third placed candidate does not notify the CEO under subclause (3);

(v) the third placed candidate dies before the day on which they are elected under subclause (4);

or

(b) in any prescribed circumstances.

[Clause 10 inserted: No. 11 of 2023 s. 91.]

Division 4 — Elections of 2 or more councillors

[Heading inserted: No. 11 of 2023 s. 91.]

11. Application of Division

(1) This Division applies if the former member was elected under Schedule 4.1 Division 3.

(2) In this Division —

candidate —

(a) means a candidate in the election; but

(b) does not include a candidate who was elected to a vacant office under Schedule 4.1B clause 5;

election means the election at which the former member was elected;

first unelected candidate, subject to subclauses (3) to (6), means the unelected candidate —

(a) who is the only unelected candidate; or

(b) who, when the last office to be filled at the election was filled, had the highest number of votes of all the unelected candidates;

second unelected candidate, subject to subclauses (3) to (6), means the unelected candidate who, when the last office to be filled at the election was filled, had the second highest number of votes of all the unelected candidates;

unelected candidate means a candidate who was neither elected nor excluded under Schedule 4.1 Division 3;

votes has the meaning given in Schedule 4.1 clause 7.

(3) If 2 or more unelected candidates had the same number of votes when the last office to be filled at the election was filled and if the case requires it to be done, subclause (4) must be applied for the purpose of determining either or both of the following as the case requires —

(a) the unelected candidate who is the first unelected candidate;

(b) the unelected candidate who is the second unelected candidate.

(4) For the purposes of subclause (3), the first unelected candidate or the second unelected candidate or both —

(a) must be determined by reference to the number of votes that each of the 2 or more unelected candidates referred to in subclause (3) had at the last count or transfer of votes under Schedule 4.1 Division 3 at which each of those unelected candidates had a different number of votes; but

(b) if there was no such count or transfer — must be determined by the drawing of lots in accordance with regulations.

(5) If there are no unelected candidates —

(a) the candidate who was the last candidate to be excluded under Schedule 4.1 clause 11 is to be the first unelected candidate; and

(b) the candidate who was the second last candidate to be excluded under Schedule 4.1 clause 11 is to be the second unelected candidate.

(6) If there is only 1 unelected candidate, the candidate who was the last candidate to be excluded under Schedule 4.1 clause 11 is to be the second unelected candidate.

[Clause 11 inserted: No. 11 of 2023 s. 91.]

12. Filling of vacancy by first unelected candidate

(1) Within 5 working days after the vacancy day, the CEO must notify the first unelected candidate —

(a) that the office has become vacant; and

(b) that the first unelected candidate may fill the vacancy.

(2) If the first unelected candidate is notified under subclause (1), the first unelected candidate may, within 5 working days after the day on which they are notified, notify the CEO —

(a) that they want to fill the vacancy; and

(b) that they consider that they are qualified to be elected to the council under section 2.19.

(3) If the first unelected candidate notifies the CEO under subclause (2), the first unelected candidate is elected to the vacant office on the day after —

(a) the day on which the CEO is notified; or

(b) if later in the case of a vacancy under section 2.32(b) — the day on which the resignation takes effect.

(4) Despite subclauses (1) to (3), the vacancy cannot be filled under this clause —

(a) if any of the following applies —

(i) there is no first unelected candidate;

(ii) on the vacancy day, the first unelected candidate is a member of the council;

(iii) the first unelected candidate has died before the vacancy day;

(iv) the first unelected candidate does not, or cannot because of subclause (5), notify the CEO under subclause (2);

(v) the first unelected candidate dies before the day on which they are elected under subclause (3);

or

(b) in any prescribed circumstances.

(5) The first unelected candidate cannot notify the CEO under subclause (2) if the first unelected candidate notifies, or has notified, the CEO under that subclause in relation to another vacancy.

[Clause 12 inserted: No. 11 of 2023 s. 91.]

13. Filling of vacancy by second unelected candidate

(1) This clause applies only if the vacancy cannot be filled under clause 12.

(2) Within 15 working days after the vacancy day, the CEO must notify the second unelected candidate —

(a) that the office has become vacant; and

(b) that the second unelected candidate may fill the vacancy.

(3) If the second unelected candidate is notified under subclause (2), the second unelected candidate may, within 5 working days after the day on which they are notified, notify the CEO —

(a) that they want to fill the vacancy; and

(b) that they consider that they are qualified to be elected to the council under section 2.19.

(4) If the second unelected candidate notifies the CEO under subclause (3), the second unelected candidate is elected to the vacant office on the day after —

(a) the day on which the CEO is notified; or

(b) if later in the case of a vacancy under section 2.32(b) — the day on which the resignation takes effect.

(5) Despite subclauses (2) to (4), the vacancy cannot be filled under this clause —

(a) if any of the following applies —

(i) there is no second unelected candidate;

(ii) on the vacancy day, the second unelected candidate is a member of the council;

(iii) the second unelected candidate has died before the vacancy day;

(iv) the second unelected candidate does not, or cannot because of subclause (6), notify the CEO under subclause (3);

(v) the second unelected candidate dies before the day on which they are elected under subclause (4);

or

(b) in any prescribed circumstances.

(6) The second unelected candidate cannot notify the CEO under subclause (3) if the second unelected candidate notifies, or has notified, the CEO under that subclause in relation to another vacancy.

[Clause 13 inserted: No. 11 of 2023 s. 91.]

Division 5 — Former member elected under cl. 6, 9 or 12

[Heading inserted: No. 11 of 2023 s. 91.]

14. Terms used

In this Division —

original former member means the person to whose vacant office the former member was elected under clause 6, 9 or 12 (as the case requires);

original vacancy means the vacancy in the office of the original former member.

[Clause 14 inserted: No. 11 of 2023 s. 91.]

15. Former member elected under cl. 6

(1) This clause applies if the former member was elected under clause 6.

(2) Clause 7 applies in relation to the filling of the vacancy as follows —

(a) as if the original vacancy could not be filled under clause 6;

(b) as if references to the vacancy day were to the vacancy day in relation to the former member (rather than the original former member);

(c) as if the number of working days referred to in subclause (2) were 5;

(d) subclause (4)(b) applies —

(i) by reference to whether the former member's vacancy is under section 2.32(b) (rather than the original former member's vacancy); and

(ii) accordingly, as if the reference to the resignation were to the former member's resignation (rather than that of the original former member).

[Clause 15 inserted: No. 11 of 2023 s. 91.]

16. Former member elected under cl. 9

(1) This clause applies if the former member was elected under clause 9.

(2) Clause 10 applies in relation to the filling of the vacancy as follows —

(a) as if the original vacancy could not be filled under clause 9;

(b) as if references to the vacancy day were to the vacancy day in relation to the former member (rather than the original former member);

(c) as if the number of working days referred to in subclause (2) were 5;

(d) subclause (4)(b) applies —

(i) by reference to whether the former member's vacancy is under section 2.32(b) (rather than the original former member's vacancy); and

(ii) accordingly, as if the reference to the resignation were to the former member's resignation (rather than that of the original former member).

[Clause 16 inserted: No. 11 of 2023 s. 91.]

17. Former member elected under cl. 12

(1) This clause applies if the former member was elected under clause 12.

(2) Clause 13 applies in relation to the filling of the vacancy as follows —

(a) as if the original vacancy could not be filled under clause 12;

(b) as if references to the vacancy day were to the vacancy day in relation to the former member (rather than the original former member);

(c) as if the number of working days referred to in subclause (2) were 5;

(d) subclause (4)(b) applies —

(i) by reference to whether the former member's vacancy is under section 2.32(b) (rather than the original former member's vacancy); and

(ii) accordingly, as if the reference to the resignation were to the former member's resignation (rather than that of the original former member).

[Clause 17 inserted: No. 11 of 2023 s. 91.]

Division 6 — Final provisions

[Heading inserted: No. 11 of 2023 s. 91.]

18. Regulations about notifications and time periods

(1) Regulations may make provision in relation to notifications under this Schedule.

(2) Without limiting subclause (1), regulations made for the purposes of that subclause may do any of the following —

(a) prescribe the form or content of notifications;

(b) require notifications to be accompanied by statutory declarations or other prescribed information, documents or items;

(c) make provision in relation to the giving of notifications (including by email or other electronic means);

(d) provide for the CEO to be able to give local public notice of a vacancy instead of notifying a candidate;

(e) prescribe the time at which a candidate or the CEO is taken to be notified, including in cases where —

(i) local public notice is given as referred to in paragraph (d); or

(ii) the candidate or CEO is not actually notified.

(3) Except as otherwise provided in regulations, regulations made for the purposes of subclause (1) apply instead of sections 9.50 to 9.53.

(4) Regulations may provide for the extension of any time period provided for in this Schedule.

[Clause 18 inserted: No. 11 of 2023 s. 91.]

19. Declarations and notices under section 4.77 for purposes of Schedule

(1) The requirement under section 4.77 to declare and give notice of the result of an election that was ascertained under Schedule 4.1 clause 4 includes a requirement to declare and give notice of the following for the purposes of Division 3 Subdivision 2 of this Schedule —

(a) the second placed candidate;

(b) the third placed candidate or that there is no third placed candidate.

(2) The requirement under section 4.77 to declare and give notice of the result of an election that was ascertained under Schedule 4.1 clause 5 includes a requirement to declare and give notice of the following for the purposes of Division 3 Subdivision 3 of this Schedule —

(a) the second placed candidate;

(b) the third placed candidate or that there is no third placed candidate.

(3) The requirement under section 4.77 to declare and give notice of the result of an election that was ascertained under Schedule 4.1

Division 3 includes a requirement to declare and give notice of the following for the purposes of Division 4 of this Schedule —

(a) the first unelected candidate or that there is no first unelected candidate;

(b) the second unelected candidate or that there is no second unelected candidate.

(4) For the purposes of subclauses (1) to (3), the returning officer must, if necessary, draw lots as required under clause 5(3), 8(3) or 11(4)(b).

[Clause 19 inserted: No. 11 of 2023 s. 91.]

Schedule 4.1B — Filling office of councillor who is elected elector mayor or president

[s. 4.8]

[Heading inserted: No. 11 of 2023 s. 91.]

1. Vacancy caused by councillor becoming elector mayor or president not to be filled by extraordinary election in certain circumstances

(1) Subclause (3) applies if —

(a) there is an election to fill the office of elector mayor or president (the ***mayor or president election***); and

(b) the candidate (the ***former member***) who is elected at the mayor or president election to be the elector mayor or president is a councillor on the council whose office, because of their election, becomes vacant under section 2.32(f); and

(c) there is an election (the ***concurrent election***) that has the same election day as the mayor or president election and that is —

(i) if the district is not divided into wards — an election to fill an office or offices of councillor on the council; or

(ii) if the district is divided into wards — an election to fill an office or offices of councillor for the ward for which the former member was a councillor;

and

(d) the result of the concurrent election is ascertained under Schedule 4.1 clause 2, 4 or 5 or under Schedule 4.1 Division 3.

(2) In subclause (1)(c) —

election day has the meaning given in section 4.1.

(3) The vacancy caused by the former member's election as elector mayor or president must be filled under this Schedule.

(4) Despite subclause (3), regulations may prescribe circumstances in which the vacancy cannot be filled under this Schedule.

(5) If the vacancy is filled under this Schedule, the requirement under section 4.77 to declare and give notice of the result of the concurrent election includes a requirement to declare and give notice of the election filling the vacancy.

[Clause 1 inserted: No. 11 of 2023 s. 91.]

2. Concurrent election ascertained under Schedule 4.1 clause 2

(1) This clause applies if the result of the concurrent election is ascertained under Schedule 4.1 clause 2.

(2) The candidate who is not elected at the concurrent election is elected to the former member's vacant office.

[Clause 2 inserted: No. 11 of 2023 s. 91.]

3. Concurrent election ascertained under Schedule 4.1 clause 4

(1) This clause applies if the result of the concurrent election is ascertained under Schedule 4.1 clause 4.

(2) The candidate who finishes second in the concurrent election is elected to the former member's vacant office.

(3) For the purposes of subclause (2) —

(a) the question of which candidate finishes second must be determined by reference to the number of first-preference votes received by each candidate in the concurrent election who is not elected at the concurrent election; and

(b) if 2 or more candidates received the same number of first-preference votes and if the case requires it to be done — the returning officer for the concurrent election must, in accordance with regulations, draw lots to determine the candidate who finishes second.

(4) In subclause (3) —

first-preference vote has the meaning given in Schedule 4.1 clause 1.

[Clause 3 inserted: No. 11 of 2023 s. 91.]

4. Concurrent election ascertained under Schedule 4.1 clause 5

(1) In this clause —

continuing candidate means a candidate in the concurrent election who is a continuing candidate under Schedule 4.1 clause 5(8) for the purposes of the last count but is not elected;

last count means the last count under Schedule 4.1 clause 5(2)(d) for the concurrent election;

second placed candidate, subject to subclause (4), means the continuing candidate —

(a) who is the only continuing candidate; or

(b) who, on the last count, had the highest number of votes of all the continuing candidates.

(2) This clause applies if the result of the concurrent election is ascertained under Schedule 4.1 clause 5.

(3) The second placed candidate is elected to the former member's vacant office.

(4) If 2 or more continuing candidates had the same number of votes on the last count and if the case requires it to be done, the returning officer for the concurrent election must, in accordance with regulations, draw lots to determine the continuing candidate who is the second placed candidate.

[Clause 4 inserted: No. 11 of 2023 s. 91.]

5. Concurrent election ascertained under Schedule 4.1 Division 3

(1) In this clause —

first unelected candidate, subject to subclauses (4) to (6), means the unelected candidate who, when the last office to be filled at the concurrent election is filled —

(a) is the only unelected candidate; or

(b) has the highest number of votes of all the unelected candidates;

unelected candidate means a candidate in the concurrent election who is neither elected nor excluded under Schedule 4.1 Division 3;

votes has the meaning given in Schedule 4.1 clause 7.

(2) This clause applies if the result of the concurrent election is ascertained under Schedule 4.1 Division 3.

(3) The first unelected candidate is elected to the former member's vacant office.

(4) If 2 or more unelected candidates have the same number of votes when the last office to be filled at the concurrent election is filled and if the case requires it to be done, the returning officer for the concurrent election must apply subclause (5) for the purpose of determining the unelected candidate who is the first unelected candidate.

(5) For the purposes of subclause (4) —

(a) the first unelected candidate must be determined by reference to the number of votes that each of the 2 or more unelected candidates referred to in subclause (4) had at the last count or transfer of votes under Schedule 4.1 Division 3 at which each of those unelected candidates had a different number of votes; but

(b) if there was no such count or transfer — the returning officer for the concurrent election must draw lots in accordance with regulations to determine the first unelected candidate.

(6) If there are no unelected candidates, the candidate in the concurrent election who was the last candidate to be excluded under Schedule 4.1 clause 11 is to be the first unelected candidate.

[Clause 5 inserted: No. 11 of 2023 s. 91.]

Schedule 4.1 — How to count votes and ascertain the result of an election

[s. 4.74]

[Heading inserted: No. 11 of 2023 s. 92.]

Division 1 — Preliminary

[Heading inserted: No. 11 of 2023 s. 92.]

1. Terms used

In this Schedule —

first-preference vote —

(a) means a vote cast under section 4.69(2); and

(b) includes a vote accepted by the returning officer as a first-preference vote under section 4.75(1) or under regulations made for the purposes of section 4.75(3)(a);

one office election means an election to fill the office of mayor or president or to fill 1 office of councillor;

preference vote —

(a) means a vote cast under section 4.69(3); and

(b) includes a vote accepted by the returning officer as a preference vote under section 4.75(1) or under regulations made for the purposes of section 4.75(3)(a).

Note for this clause:

For the purposes of the definitions of ***first-preference vote*** and ***preference vote***, see also section 4.73(5) which provides for a ballot paper to be treated as if a numeral indicating a preference had been altered.

[Clause 1 inserted: No. 11 of 2023 s. 92.]

Division 2 — One office elections

[Heading inserted: No. 11 of 2023 s. 92.]

2. One office election: 2 candidates

(1) If there are only 2 candidates in a one office election —

(a) the first-preference votes for each candidate must be counted; and

(b) the candidate who has the greater number of first-preference votes is elected.

(2) If the candidates have the same number of first-preference votes, the returning officer must draw lots in accordance with regulations to determine which candidate is elected.

[Clause 2 inserted: No. 11 of 2023 s. 92.]

3. One office election: 3 or more candidates

Clauses 4 and 5 apply if there are 3 or more candidates in a one office election.

[Clause 3 inserted: No. 11 of 2023 s. 92.]

4. Count of first-preference votes

(1) The first-preference votes for each candidate must be counted.

(2) A candidate is elected if the number of first-preference votes for the candidate exceeds 50% of the total number of all the first-preference votes for candidates.

[Clause 4 inserted: No. 11 of 2023 s. 92.]

5. Process if no candidate elected under clause 4

(1) The process in subclause (2) —

(a) must be followed if no candidate is elected under clause 4; and

(b) as necessary, must be repeated until a candidate is elected under subclause (3).

Notes for this subclause:

1. Subclauses (4) to (6) supplement subclauses (2) and (3) for cases where candidates have the same number of votes.
2. Subclauses (7) and (8) explain how the terms ballot paper and continuing candidate are used in this clause.

(2) The process is as follows —

(a) exclude the candidate (the ***excluded candidate***) with —

(i) if this process is being followed for the first time — the fewest first-preference votes; or

(ii) if this process is being repeated — the fewest votes on the last count under paragraph (d);

(b) set aside as exhausted any ballot paper of the excluded candidate that contains —

(i) no preference votes at all; or

(ii) no preference votes for any continuing candidates;

(c) transfer any remaining ballot papers of the excluded candidate that indicate the next available preference for a particular continuing candidate to that continuing candidate;

(d) count the number of votes for each of the continuing candidates by totalling the following —

(i) the number of first-preference votes for the continuing candidate;

(ii) if this process is being followed for the first time — the total number of ballot papers transferred to the continuing candidate under paragraph (c);

(iii) if this process is being repeated — the total number of ballot papers transferred to the continuing candidate under paragraph (c) on this or a previous occasion.

(3) A continuing candidate is elected if, on a count under subclause (2)(d), the number of votes for the continuing candidate exceeds 50% of the total number of all the votes for continuing candidates.

(4) Subclause (6) applies if subclause (2)(a) cannot otherwise be applied because, as the case requires —

(a) 2 or more candidates have the same number of first-preference votes (no other candidates having fewer first-preference votes); or

(b) 2 or more candidates have the same number of votes on the last count under subclause (2)(d) (no other candidates having fewer votes).

(5) Subclause (6) also applies if subclause (3) cannot otherwise be applied because —

(a) there are only 2 continuing candidates in a count under subclause (2)(d); and

(b) on the count, the continuing candidates have the same number of votes.

(6) The returning officer must draw lots in accordance with regulations to determine, as the case requires —

(a) the candidate to be excluded; or

(b) the continuing candidate to be elected.

(7) For the purposes of the process in subclause (2), a ballot paper is a ballot paper of the excluded candidate if either of the following applies —

(a) the ballot paper contains a first-preference vote for the excluded candidate;

(b) the process is being repeated and the ballot paper was transferred to the excluded candidate under subclause (2)(c) on a previous occasion.

(8) For the purposes of the process in subclause (2), a continuing candidate is a candidate to whom neither of the following applies —

(a) the candidate is the excluded candidate;

(b) the process is being repeated and the candidate was excluded under subclause (2)(a) on a previous occasion.

[Clause 5 inserted: No. 11 of 2023 s. 92.]

Division 3 — Elections for 2 or more councillors

[Heading inserted: No. 11 of 2023 s. 92.]

Subdivision 1 — Preliminary

[Heading inserted: No. 11 of 2023 s. 92.]

6. Application of Division

This Division applies to an election that is not a one office election.

[Clause 6 inserted: No. 11 of 2023 s. 92.]

7. Terms used

In this Division —

ballot paper, of a candidate, means a first-preference ballot paper, or a transferred ballot paper, of the candidate;

continuing candidate means a candidate who has not already been elected or excluded under this Division;

first-preference ballot paper, of a candidate, means a ballot paper that contains a first-preference vote for the candidate;

quota means the quota determined under clause 8;

surplus votes, for a candidate who has been elected under this Division, means the votes for the candidate in excess of the quota (if any);

transferred ballot paper, of a candidate, means a ballot paper that has been transferred to the candidate under this Division;

transfer value, in relation to a ballot paper — see clauses 9(3)(a), 10(3)(b) and 11(3)(b) and (4)(c);

votes, for a candidate, means —

(a) the first-preference votes for the candidate; and

(b) the preference votes for the candidate as added (at the applicable transfer value) to the votes for the candidate under clause 9(3)(c), 10(3)(c)(iv) or 11(3)(b) or (4)(d).

[Clause 7 inserted: No. 11 of 2023 s. 92.]

Subdivision 2 — Counting and transferring votes

[Heading inserted: No. 11 of 2023 s. 92.]

Note for this Subdivision:

Subdivision 3 contains provisions that explain how certain things are to be done under this Subdivision and that otherwise supplement this Subdivision.

8. Count of first-preference votes and determination of quota

(1) The first-preference votes for each candidate must be counted.

(2) A quota must then be determined in accordance with subclauses (3) and (4).

(3) Divide amount A by amount B, where —

(a) amount A is the total number of all the first-preference votes for candidates; and

(b) amount B is the number of offices to be filled plus 1.

(4) The quota is the resulting number (disregarding any remainder) plus 1.

(5) A candidate is elected if the number of first-preference votes for the candidate is equal to, or exceeds, the quota.

(6) Go to clause 9 if 1 or more, but not all, of the offices are filled under this clause.

(7) Go to clause 11 if none of the offices is filled under this clause.

[Clause 8 inserted: No. 11 of 2023 s. 92.]

9. Transfer of surplus votes (1)

(1) In this clause —

elected candidate means a candidate elected under clause 8.

(2) This clause applies if 1 or more, but not all, of the offices are filled under clause 8.

(3) The surplus votes for each elected candidate who has surplus votes must be transferred to the continuing candidates as follows —

(a) determine the ***transfer value*** that applies to each first-preference ballot paper of the elected candidate, being the fraction calculated by dividing amount C by amount D, where —

(i) amount C is the number of surplus votes for the elected candidate; and

(ii) amount D is the number of first-preference votes for the elected candidate;

(b) multiply, by the transfer value, the number of first-preference ballot papers of the elected candidate that indicate the next available preference for a particular continuing candidate;

(c) add the resulting number (disregarding any fraction) to the votes for that continuing candidate;

(d) transfer the ballot papers referred to in paragraph (b) to that continuing candidate.

(4) A continuing candidate is elected if, on the completion of a transfer under this clause of the surplus votes for an elected candidate, the number of votes for the continuing candidate is equal to, or exceeds, the quota.

(5) Go to clause 10 if 1 or more, but not all, of the remaining offices are filled under this clause.

(6) Go to clause 11 if none of the remaining offices is filled under this clause.

[Clause 9 inserted: No. 11 of 2023 s. 92.]

10. Transfer of surplus votes (2)

(1) In this clause —

elected candidate means a candidate elected under clause 9, this clause or clause 11.

(2) This clause applies —

(a) if 1 or more, but not all, of the remaining offices are filled under clause 9; and

(b) as otherwise provided under clause 11(7).

(3) The surplus votes for each elected candidate who has surplus votes must be transferred to the continuing candidates as follows —

(a) determine the ***surplus fraction*** for the elected candidate, being the fraction calculated by dividing amount E by amount F, where —

(i) amount E is the number of surplus votes for the elected candidate; and

(ii) amount F is the number of votes for the elected candidate;

(b) determine the ***transfer value*** that applies to each ballot paper of the elected candidate, being —

(i) if the ballot paper is a first-preference ballot paper of the elected candidate — the surplus fraction; or

(ii) if the ballot paper is a transferred ballot paper of the elected candidate — the fraction calculated by multiplying the surplus fraction by the transfer value that applied to the ballot paper when the ballot paper was transferred to the elected candidate;

(c) do the following —

(i) identify the ballot papers of the elected candidate that indicate the next available preference for a particular continuing candidate;

(ii) take the number of those ballot papers to which a particular transfer value applies;

(iii) multiply that number by that transfer value;

(iv) add the resulting number (disregarding any fraction) to the votes for that continuing candidate;

(v) transfer the ballot papers referred to in subparagraph (ii) to that continuing candidate.

(4) A continuing candidate is elected if, on the completion of a transfer under this clause of the surplus votes for an elected candidate, the number of votes for the continuing candidate is equal to, or exceeds, the quota.

(5) Go, or go back, to clause 11 if not all of the remaining offices are filled under this clause.

[Clause 10 inserted: No. 11 of 2023 s. 92.]

11. Exclusion of candidates

(1) This clause applies if, after the counting of first-preference votes or the transfer of surplus votes (if any) under clauses 8 to 10, 1 or more of the offices remain unfilled as referred to in clause 8(7), 9(6) or 10(5).

(2) The candidate with the fewest votes is excluded.

(3) If there are first-preference votes for the excluded candidate, the first-preference votes must be transferred to the continuing candidates as follows —

(a) take the number of first-preference ballot papers of the excluded candidate that indicate the next available preference for a particular continuing candidate;

(b) add that number to the votes for that continuing candidate (the ***transfer value*** that applies to each of those ballot papers being 1);

(c) transfer those ballot papers to that continuing candidate.

(4) If there are preference votes for the excluded candidate, the preference votes must be transferred to the continuing candidates as follows in the order of the transfers on which the excluded candidate received them, the preference votes received on the earliest transfer being transferred first —

(a) identify the transferred ballot papers of the excluded candidate that were transferred to the excluded candidate from a particular candidate;

(b) take the number of those ballot papers that indicate the next available preference for a particular continuing candidate;

(c) multiply that number by the ***transfer value*** that applies to the ballot papers referred to in paragraph (b), being the transfer value that applied to the ballot papers when the ballot papers were transferred to the excluded candidate;

(d) add the resulting number (disregarding any fraction) to the votes for that continuing candidate;

(e) transfer the ballot papers referred to in paragraph (b) to that continuing candidate.

(5) If there are both first-preference votes and preference votes for the excluded candidate, the first-preference votes must be transferred under subclause (3) before the preference votes are transferred under subclause (4).

(6) A continuing candidate is elected if, on the completion of a transfer under this clause of votes for an excluded candidate, the number of votes for the continuing candidate is equal to, or exceeds, the quota.

(7) If there are surplus votes for that candidate and 1 or more offices remain unfilled, the surplus votes must be transferred under clause 10, but not before all the votes for the excluded candidate that remain to be transferred (if any) have been transferred to continuing candidates.

(8) If, after the transfer under this clause of all the votes for an excluded candidate, no candidate is elected under subclause (6) with a number of votes that exceeds the quota and 1 or more offices remain unfilled —

(a) the continuing candidate with the fewest votes is excluded; and

(b) that candidate's votes must be transferred under subclauses (3) to (5).

[Clause 11 inserted: No. 11 of 2023 s. 92.]

Subdivision 3 — Supplementary provisions

[Heading inserted: No. 11 of 2023 s. 92.]

12. No further transfers to elected candidates

(1) If a candidate is elected under clause 9 or 10 on the completion of a transfer under clause 9 or 10 of the surplus votes for a candidate, no surplus votes for any other candidate may be transferred to the candidate so elected.

(2) If a candidate is elected under clause 11 on the completion of a transfer under clause 11 of votes for an excluded candidate, no other votes for the excluded candidate may be transferred to the candidate so elected.

[Clause 12 inserted: No. 11 of 2023 s. 92.]

13. Filling last office

(1) This clause applies, despite any other provision of this Division, to the last office to be filled if there are only 2 continuing candidates left.

(2) The candidate with the greater number of votes is elected even if that number is less than the quota.

(3) If the candidates have the same number of votes, the returning officer must draw lots in accordance with regulations to determine which candidate is elected.

[Clause 13 inserted: No. 11 of 2023 s. 92.]

14. No need for further transfers of votes if number of continuing candidates equals number of vacancies

Despite any other provision of this Division, if the number of continuing candidates is equal to the number of remaining unfilled offices, those candidates are elected.

[Clause 14 inserted: No. 11 of 2023 s. 92.]

15. Order of transfers of surpluses

(1) If, after any count or transfer under this Division, 2 or more candidates have surplus votes, the order of any transfers of the surplus votes of those candidates is to be in accordance with the relative sizes of the surpluses, the larger or largest surplus being transferred first.

(2) If 2 or more of the candidates referred to in subclause (1) have equal surpluses —

(a) the order of any transfers of the surplus votes of those candidates is to be in accordance with the relative numbers of votes of those candidates at the last count or transfer at which each of those candidates had a different number of votes, the

surplus of the candidate with the larger or largest number of votes at that count or transfer being transferred first; but

(b) if there has been no such count or transfer — the returning officer must draw lots in accordance with regulations to determine which candidate is, as between those candidates, taken to have had the larger or largest surplus.

(3) Despite subclauses (1) and (2), if a candidate is elected on the completion of a transfer under this Division (the ***later transfer***), the surplus votes for the candidate must not be transferred before the transfer of the surplus votes for any other candidate who was elected before the later transfer.

[Clause 15 inserted: No. 11 of 2023 s. 92.]

16. Procedure to determine excluded candidates if votes equal

(1) This clause applies if —

(a) the continuing candidate with the fewest votes is to be excluded under clause 11(2) or (8); and

(b) 2 or more continuing candidates (the ***tied candidates***) have an equal number of votes (no other continuing candidate having fewer votes).

(2) Whichever of the tied candidates had the fewer or fewest votes at the last count or transfer at which each of the tied candidates had a different number of votes is excluded.

(3) If there has been no such count or transfer, the returning officer must draw lots in accordance with regulations to determine which of the tied candidates is excluded.

[Clause 16 inserted: No. 11 of 2023 s. 92.]

17. Setting aside ballot papers as finally dealt with or exhausted

(1) If a candidate is elected under this Division with a number of votes equal to the quota, all the ballot papers of that candidate must be set aside as finally dealt with.

(2) Subclause (3) applies to any ballot paper of a candidate who is elected under this Division with a number of votes in excess of the quota.

(3) The ballot paper must be set aside as exhausted if the ballot paper contains —

(a) no preference votes at all; or

(b) no preference vote for any continuing candidate.

[Clause 17 inserted: No. 11 of 2023 s. 92.]

18. Transfers to be treated separately

Each of the following constitutes a separate transfer for the purposes of this Division —

(a) a transfer under clause 9 or 10 of all the surplus votes for an elected candidate;

(b) a transfer under clause 11(3) of all the first-preference votes for an excluded candidate;

(c) a transfer under clause 11(4) of all the preference votes for an excluded candidate that were transferred to the excluded candidate from a particular candidate.

[Clause 18 inserted: No. 11 of 2023 s. 92.]

Schedule 4.2 — Order of retirement from office of councillors

[Section 4.78(2)]

1. As near as practicable to ½ of the total number of councillors as the returning officer determines are to retire every 2 years.

2. Unless clause 3 applies, if the district is divided into wards, as near as practicable to ½ of the councillors representing each ward as the returning officer determines are to retire every 2 years in an election year.

3. If it is not practicable for any reason for clause 2 to operate consistently with clause 1, clause 1 prevails to the extent of any inconsistency between them.

4. Councillors are only to retire in an election year.

5. In determining the order of retirement from office the returning officer is, so far as practicable, to ensure that each councillor has a term of 4 years but in order to apply clauses 1, 2, 3 and 4, the returning officer may fix a term of less than 4 years.

6. If the district is not divided into wards, the retirement from office of councillors is to be in inverse order to that in which they were elected, and where there are 2 or more councillors who were elected unopposed, the returning officer is to draw lots in accordance with regulations to determine the order of their retirement.

7. If the district is divided into wards, the retirement of councillors representing each ward is to be in inverse order to that in which they were elected, and where there are 2 or more councillors who were elected unopposed, the returning officer is to draw lots in accordance with regulations to determine the order of their retirement.

7A. For the purposes of clauses 6 and 7 —

(a) if 2 or more councillors were elected under Schedule 4.1 clause 8(5) —

(i) the order of their election is to be determined by reference to the number of first-preference votes that each had, with the councillor having the highest number of first-preference votes being regarded as having been elected first and so on; and

(ii) if 2 or more of those councillors had the same number of first-preference votes — the returning officer must draw lots in accordance with regulations to determine the order in which the councillors with the same number of first-preference votes were elected;

and

(b) if 2 or more councillors were elected under Schedule 4.1 clause 9(4), 10(4) or 11(6) on the completion of the same transfer of votes —

(i) the order of their election is to be determined by reference to the number of votes that each had on the completion of that transfer, with the councillor having the highest number of votes being regarded as having been elected first and so on; and

(ii) if 2 or more of those councillors had the same number of votes on the completion of that transfer — clause 7B applies for the purpose of determining the order in which the councillors with the same number of votes were elected;

and

(c) if 2 or more councillors were elected under Schedule 4.1 clause 14 —

(i) the order of their election is to be determined by reference to the number of votes that each had when they were elected, with the councillor having the highest number of votes being regarded as having been elected first and so on; and

(ii) if 2 or more of those councillors had the same number of votes when they were elected — clause 7B applies for the purpose of determining the order in which the councillors with the same number of votes were elected;

and

(d) if section 4.73(3)(b) applies —

(i) the order of the election of the councillors who are elected unopposed is to be determined by reference to the number of first-preference votes that each had

(after any alterations required under section 4.73(5)(a)), with the councillor having the highest number of first-preference votes being regarded as having been elected first and so on; and

(ii) if 2 or more of those councillors had the same number of first-preference votes (after any alterations required under section 4.73(5)(a)) — the returning officer must draw lots in accordance with regulations to determine the order in which the councillors with the same number of first-preference votes were elected.

7B. For the purposes of clause 7A(b)(ii) and (c)(ii), the order in which the councillors with the same number of votes were elected —

(a) is to be determined by reference to the votes that each had on the completion of the last count or transfer of votes under Schedule 4.1 Division 3 at which each had a different number of votes, with the councillor having the highest number of votes being regarded as having been elected first and so on; but

(b) if there was no such count or transfer — is to be determined by the returning officer drawing lots in accordance with regulations.

8. If it is necessary to determine the order of retirement as between councillors representing different wards, the councillor who receives the highest percentage of first-preference votes cast on his or her election is to retire last and —

(a) where a councillor has been elected unopposed he or she is to be regarded as having received 100% of the first-preference votes cast; and

(b) where 2 or more councillors have an equality of the percentage of first-preference votes cast the returning officer is to draw lots in accordance with regulations to determine the order of their retirement.

9. If a question arises as to the order of retirement of persons occupying the office of councillor, the order of retirement as between a person appointed under section 4.57(3) and another person or other persons —

    (a) so appointed to the office of councillor on the same day, is that determined on the drawing of lots in accordance with regulations by the returning officer; or

    (b) so appointed to the office of councillor on different days, is in inverse order of the date of appointment; or

    (c) elected to the office of councillor, is such that persons so elected retire after persons so appointed.

10. In this Schedule —

first-preference vote has the meaning given in Schedule 4.1 clause 1;

votes has the meaning given in Schedule 4.1 clause 7.

[Schedule 4.2 amended: No. 9 of 2007 s. 6; No. 15 of 2009 s. 6; No. 11 of 2023 s. 93-98.]

Schedule 5.1 — Provisions about standards panels

[Section 5.122]

[Heading inserted: No. 1 of 2007 s. 13.]

1. Term used: member

In this Schedule, unless the contrary intention appears —

member means a member of a standards panel.

[Clause 1 inserted: No. 1 of 2007 s. 13.]

2. Membership of standards panel

A standards panel consists of 3 members appointed by the Minister of whom —

(a) one person is to be an officer of the Department; and

(b) one person is to be a person who has experience as a member of a council; and

(c) one person is to be a person having relevant legal knowledge.

[Clause 2 inserted: No. 1 of 2007 s. 13.]

3. Deputies

(1) The Minister may appoint a deputy for any member.

(2) A person is not eligible to be appointed as the deputy for a member unless that person is eligible to be appointed to the office of that member.

(3) The deputy for a member is —

(a) in the absence of the member from a meeting of the standards panel, entitled to attend the meeting in place of the member; and

(b) where the member is disqualified from acting as a member on a matter arising at a meeting of a standards panel, entitled to act in the place of the member; and

(c) if the member vacates office before the term of office expires, entitled to attend meetings and otherwise act in place of the member,

and a deputy attending a meeting or acting in place of a member under this subclause has all the functions and protection of a member.

[Clause 3 inserted: No. 1 of 2007 s. 13.]

4. Submission of lists

(1) Before a person is appointed as, or as the deputy for, a member under clause 2(b) the Minister is to invite WALGA to submit, within 28 days of the invitation, a list of 9 persons eligible for appointment.

(2) The person appointed is to be one of the persons named on the list submitted under subclause (1) but if a list is not submitted in writing in accordance with the invitation of the Minister, the Minister may appoint any person who would have been eligible for inclusion on the list.

[Clause 4 inserted: No. 1 of 2007 s. 13.]

5. Term of office

(1) The term of office of a member is the period specified in the instrument of appointment and is not to exceed 4 years.

(2) Subclause (1) does not prevent a person who has held office as a member of a standards panel from being appointed for a subsequent term to the same or a different standards panel.

[Clause 5 inserted: No. 1 of 2007 s. 13.]

6. Vacation of office

(1) The office of a member becomes vacant if the term for which the member is appointed expires or the member —

(a) dies; or

(b) by notice in writing to the Minister, resigns; or

(c) is removed from office under subclause (2).

(2) The Minister may remove a person from office as a member on the grounds of —

(a) incapacity to carry out satisfactorily the duties of the office; or

(b) neglect of duty; or

(c) misconduct; or

(d) in the case of a person appointed under clause 2(a), the person ceasing to be an officer of the Department; or

(e) any other cause for which it appears to the Minister that the person should be removed from office.

[Clause 6 inserted: No. 1 of 2007 s. 13.]

7. Dissolution of standards panel

The Minister may dissolve a standards panel established under section 5.122(2) if that standards panel has finally dealt with all complaints allocated to it.

[Clause 7 inserted: No. 1 of 2007 s. 13.]

8. Meetings

(1) The member appointed under clause 2(a) is to preside at all meetings of the standards panel at which the member is present.

(2) If the member appointed under clause 2(a) is not present at a meeting the member appointed under clause 2(c) is to preside at the meeting.

(3) The quorum at a meeting is 3.

(4) Subject to subclause (7), each member present at a meeting of a standards panel is entitled to one vote.

(5) A question arising at a meeting is to be decided by a majority of the votes.

(6) Each member is to have regard to the general interests of local government in the State.

(7) Subject to any order under subclause (8), a member is disqualified from acting where the matter being considered or inquired into by a standards panel is a matter relating to a local government of which the

member was or is a council member, a committee member or an employee.

(8) The Minister may, by order, declare that subclause (7) does not apply in relation to a matter or class of matters specified in the order, and that order has effect according to its terms.

(9) An order is not to be made under subclause (8) unless the Minister considers the order to be necessary to enable a standards panel to properly function.

(10) To the extent that it is not prescribed by regulations a standards panel may determine its own meeting procedure, and other procedure and practice.

[Clause 8 inserted: No. 1 of 2007 s. 13.]

9. Remuneration and allowances

(1) Members are entitled to any remuneration and allowances that the Minister from time to time determines on the recommendation of the Public Sector Commissioner.

(2) Subclause (1) does not apply to a member who is an officer of the Public Service.

(3) To the extent that a member's remuneration and allowances relate to a particular complaint, they are to be paid by the local government of the council member who is the subject of that complaint.

(4) If the remuneration and allowances for members of a standards panel relate to 2 or more complaints dealt with by that standards panel on the same occasion, liability for payment is to be apportioned between the relevant local governments as the standards panel determines.

[Clause 9 inserted: No. 1 of 2007 s. 13; amended: No. 39 of 2010 s. 89.]

10. Protection

No liability attaches to a member for any act or omission by the member or on the member's part by a standards panel that occurred in

good faith and in the performance of the member's or the panel's functions under this Act.

[Clause 10 inserted: No. 1 of 2007 s. 13.]

11. Annual report

(1) By 31 August in each year, the primary standards panel is to prepare and provide to the Minister a report on the complaints dealt with by all standards panels during the previous financial year.

(2) The annual report must not include information that identifies or enables the identification of a council member against whom a complaint was made if the complaint was not dealt with under section 5.110(6).

(3) The primary standards panel may apply to the Minister before 31 August for an extension of time in which to lodge the annual report and the Minister may grant an extension on such terms as the Minister thinks fit.

(4) As soon as practicable after receiving the annual report, the Minister is to cause a copy of it to be laid before each House of Parliament.

[Clause 11 inserted: No. 1 of 2007 s. 13; amended by No. 16 of 2019 s. 72.]

Schedule 6.1 — Provisions relating to the phasing in of valuations

[Section 6.31]

1. Phasing in of certain valuations

(1) Where a general valuation under the *Valuation of Land Act 1978* in respect of gross rental values comes into force in a district, the local government of the district may, when imposing the general rate, resolve that that general valuation, in relation to all land where an increased valuation thereby results, is to be phased in over a 3 year period, and effect is to be given to that resolution over that period by the local government —

(a) in the first year of assessment for which the new valuation would otherwise be used, applying instead as the valuation of the land for the purposes of rating, a phased in valuation (being the former valuation plus $^{1}/_{3}$ of the difference between the former valuation and the new valuation); and

(b) in the second such year, applying the former valuation plus $^{2}/_{3}$ of that difference; and

(c) in the third year, applying the new valuation,

but where in relation to any land that general valuation results in a new valuation which is the same as or less than the former valuation, the local government is to apply the new valuation.

(2) For the purposes of subclause (1) —

former valuation means —

(a) the valuation that was in force immediately prior to the coming into force of the general valuation to which the phasing in applies; or

(b) in relation to rateable land where an interim valuation of the land under the *Valuation of Land Act 1978* comes into force, the valuation determined for the purposes of this clause in accordance with subclause (6); and

new valuation —

(a) means the valuation determined or assessed for the purposes of the general valuation to which the phasing in applies; or

(b) in relation to rateable land in respect of which an interim valuation under the *Valuation of Land Act 1978* comes into force after the general valuation referred to in paragraph (a) comes into force, means that interim valuation.

(3) Where, during the phasing in of a valuation of any rateable land under subclause (1) the system of valuation is changed to valuation on the unimproved value of rateable land, subclause (1) is to cease to apply to that valuation.

(4) Where an interim valuation of rateable land in a district comes into force during the period when a general valuation of rateable land in that district is being phased in under this clause, subclause (1) is to be construed so that the interim valuation is phased in in a like manner under this clause for the remainder of the phasing in period.

(5) Where a local government resolves under subclause (1) that a general valuation is to be phased in over a 3 year period, it is to immediately request the Valuer-General, at the same time as the Valuer-General determines an interim valuation of rateable land that will come into force in the district during the first 2 years of the phasing in period, to determine a valuation of that land in accordance with subclause (6) and the local government is to give notice in writing immediately to the Valuer-General when such last-mentioned valuations are no longer required for the purposes of this clause.

(6) A valuation of land that is requested to be made by the Valuer-General for the purposes of this clause under subclause (5) is to be determined in accordance with the level of values prevailing in relation to land of the same or a similar character as the level used for the valuations that were last used by the local government for rating purposes prior to the coming into force of the general valuation that is currently in force in the district.

2. Phasing in of rating based on gross rental values

(1) Where, in respect of a financial year, a local government is required by a determination made by the Minister under section 6.28 to change in respect of the whole or a part of its district, from valuations on unimproved value to valuations on gross rental value, the local government may, when imposing the general rate for that financial year, resolve that the change to rating on the basis of valuations on

gross rental value, in relation to rateable land in the district or that part of the district, is to be phased in over a 3 year period and effect is to be given to that resolution over that period by the local government —

(a) when imposing a general rate on the land in the first year of assessment for which rating would otherwise be wholly on the basis of valuations on gross rental value, rating the land on the basis of valuations on gross rental value in order to yield $^1/_3$ of the estimated revenue from the rate and rating the same land on the basis of original valuations in order to yield $^2/_3$ of the estimated revenue from the rate; and

(b) when imposing a general rate on the land in the second year, rating the land on the first-mentioned basis in order to yield $^2/_3$ of the estimated revenue from the rate and rating the same land on the second-mentioned basis in order to yield $^1/_3$ of the estimated revenue from the rate; and

(c) when imposing a general rate on such land in the third year, rating the land on the first-mentioned basis in order to yield the whole of the estimated revenue from the rate.

(2) In subclause (1) —

original valuations means the valuations on unimproved value last used by the local government for rating purposes in respect of the financial year immediately preceding the year mentioned in subclause (1)(a) and in relation to rateable land where an interim valuation of the land under the *Valuation of Land Act 1978* comes into force, means the valuation determined for the purposes of this clause in accordance with subclause (6).

(3) Where, during the phasing in of a change to rating on the basis of valuations on gross rental value in a district or part of a district under subclause (1), a general valuation under the *Valuation of Land Act 1978* in respect of gross rental values comes into force in that district or part of a district, subclause (1) is to cease to apply to that change in the basis of rating.

(4) Where an interim valuation of rateable land in a district or part of a district comes into force during the period when a change to rating on the basis of valuation on gross rental value in that district or portion of a district is being phased in under this clause, subclause (1) is to be

construed so that the interim valuation is phased in in a like manner under this clause for the remainder of the phasing in period.

(5) Where the local government resolves under subclause (1) that a change to rating on the basis of valuation on gross rental value in a district or part of a district is to be phased in over a 3 year period, it is to immediately request the Valuer-General, at the same time as the Valuer-General determines an interim valuation of rateable land that will come into force in that district or part of a district during the first 2 years of the phasing in period, to determine a valuation of that land in accordance with subclause (6) and is to give notice in writing immediately to the Valuer-General when such last-mentioned valuations are no longer required for the purposes of this clause.

(6) A valuation of land that is requested to be made by the Valuer-General for the purposes of this clause under subclause (5) is to be determined as a valuation on unimproved value in accordance with the level of values prevailing in relation to land of the same or a similar character as the level of valuations on unimproved value used for the valuations that were last used by the local government for rating purposes in respect of the financial year immediately preceding the year of assessment for which rating would otherwise be wholly on the basis of valuation on gross rental value.

Schedule 6.2 — Provisions relating to lease of land where rates or service charges unpaid

[Section 6.65]

1. Form of lease

(1) The local government —

(a) may lease the land for such term, not exceeding 7 years at one time, as it thinks fit; and

(b) may make such reservations and such exceptions, covenants and conditions in the lease, except a covenant for renewal of the term of the lease if the renewal would extend the term beyond 7 years, as it thinks fit.

(2) The Registrar of Titles, upon production of the lease, must register it if —

(a) the lease is of land that is subject to the provisions of the *Transfer of Land Act 1893*; and

(b) the term of the lease exceeds 3 years.

[Clause 1 amended: No. 81 of 1996 s. 153(1); No. 21 of 2022 s. 59.]

2. Application of rent received

Where a local government has exercised its power to lease, it is required to apply the rent and other money received by it under the lease in the following manner —

(a) firstly — in defraying the expenses of and incidental to the giving of the notices required by this Act to be given by the local government, the execution of the lease, the preparation of the property for lease and the collection of the rents; and

(b) secondly — in payment of unpaid rates or service charges, for the time being due to or imposed by the local government in respect of the land; and

(c) thirdly — in payment of unpaid rates and taxes for the time being due to or imposed in favour of the Crown in right of the State or a department or agency of the Crown in right of the State; and

(d) fourthly — in payment of the residue to the person who would, when the rents and other money were received, have been entitled to receive the rents and profits of the land if the local government had not taken possession of the land, or in case of doubt, in payment of the residue into the Supreme Court under section 99 of the *Trustees Act 1962*.

Schedule 6.3 — Provisions relating to sale or transfer of land where rates or service charges unpaid

[Section 6.68(3)]

1. Conditions for exercise of power of sale of land

(1) A local government is not to exercise the power of sale until it has caused notice requiring payment of the rates or service charges owing in respect of the land —

(a) to be served on the owner of the land by being given to him or her or by being sent by certified mail to the address, if any, appearing in a register kept under the *Transfer of Land Act 1893* or in a memorial or record kept under the *Registration of Deeds Act 1856* relating to the land or by being advertised under subclause (3); and

(b) to be served on such other persons as appear by the records which relate to estates and interests in land to have an estate or interest in the land, by being given to, or by being sent by certified mail to, each of them at their address, if any, appearing in the record, or by being so advertised; and

(c) to be published on the local government's official website and kept on the website for not less than 35 days.

(2) The local government is to cause the notice requiring payment —

(a) to be in writing and be dated and signed by the CEO; and

(b) to specify the land in respect of which the rates or service charges are owing; and

(c) to specify the total amounts owing in respect of rates or service charges of which payment is required; and

(d) to include a statement that in default of payment of the amounts specified in the notice, the land will be offered for sale by public auction after the expiration of 3 months from the date of the notice at a time appointed by the local government; and

(e) to be in, or substantially in, the form prescribed unless subclause (3) applies.

(3) If in the case of a person required by this clause to be served, no sufficient address appears in a register kept under the *Transfer of Land Act 1893* or in a memorial or record kept under the *Registration of Deeds Act 1856*, the local government is to cause the notice requiring payment in, or substantially in, the prescribed form to be served on that person by local public notice and may include in that notice land belonging to more than one owner.

(4) The local government is to appoint a time not less than 3 months and not more than 12 months from the service of the notices required by this clause as the time at which the land may be offered for sale by public auction.

[Clause 1 amended: No. 81 of 1996 s. 153(1); No. 60 of 2006 s. 144(4); No. 16 of 2019 s. 73.]

2. Advertisement for sale

(1) The local government is to give Statewide public notice of the sale —

(a) in, or substantially in, the prescribed form; and

(b) by such other means, if any, as the local government considers is necessary or desirable.

(2) In the Statewide public notice the local government —

(a) may include land owned by more than one owner; and

(b) is to so describe the land and improvements, if any, on the land, as to identify the land and to convey to persons likely to be interested in the sale the condition of the land and improvements.

(3) The local government is to deliver a memorial of the Statewide public notice to the Registrar of Titles or to the Registrar of Deeds and Transfers, as the case requires, who is to register the memorial and endorse or note the title and land register or record, in respect of each piece of land comprised in the memorial.

(4) When the memorial is registered the Registrar of Titles, or the Registrar of Deeds and Transfers, as the case requires, is prohibited from registering and from accepting for registration an instrument affecting the land without the consent of the local government, until the land ceases under section 6.69 or clause 7 to be bound by this

subclause but that prohibition does not extend beyond 12 months from the day on which the memorial is so delivered.

[Clause 2 amended: No. 47 of 2011 s. 16.]

3. Power of sale

The power of sale includes —

(a) power to sell the whole or part of the land either together or in lots —

(i) by public auction; or

(ii) by private contract, if having been offered for sale by public auction, it has not been sold,

subject to such terms and conditions with respect to the payment of the purchase money or any other matter, including power to fix a reserve price, as the local government thinks fit; and

(b) power to vary a contract of sale by agreement with the other party to the contract, and to buy in at auction; and

(c) power to rescind a contract for sale on default by the other party to the contract, and to resell without being answerable for loss occasioned by the rescission and resale; and

(d) power to make such thoroughfares and to grant such easements of right-of-way or drainage over the land as the circumstances of the case require and the local government thinks fit.

4. Power of local government to transfer or convey land

(1) A local government exercising the power of sale of any land has power —

(a) by transfer, where the land is under the *Transfer of Land Act 1893*; and

(b) by deed or transfer, where the land is not under that Act,

to transfer or convey to the purchaser an indefeasible estate in fee simple subject only to the encumbrances specified in section 6.75(1)(c), (d) or (e).

(2) The Registrar of Titles or the Registrar of Deeds and Transfers may register a transfer or conveyance of land by a local government under this clause if the transfer is in the approved form and the conveyance is acceptable to the Registrar of Deeds and Transfers.

[(3) deleted]

[Clause 4 amended: No. 81 of 1996 s. 153(1); No. 47 of 2011 s. 16; No. 21 of 2022 s. 60.]

5. Application of purchase money

Where a local government has exercised its power of sale it is required to apply the proceeds of sale in the following manner —

(a) firstly — in payment of the costs, charges and expenses properly incurred by the local government in or incidental to the sale or attempted sale or the exercise of any other power conferred upon the local government by Part 6, Division 6, Subdivision 6 or this Schedule; and

(b) secondly — in payment of —

(i) unpaid rates or service charges, for the time being due to or imposed by the local government in respect of the land; and

(ii) costs and other money, if any, due to or imposed in favour of the Crown in right of the State or a department, agency, or instrumentality of the Crown in right of the State; and

(iii) other amounts due to the local government under this or another written law,

in respect of the land at the time of the sale, but where the payments required by paragraph (a) to be made have been made, and the balance of the money then remaining is not sufficient for the payment in full of the items required by this paragraph to be made, the local government is to distribute the balance of the money so remaining, between the Crown, the department, the agency, the instrumentality, and the local government, *pro rata* with the amounts of their claims, respectively, unless the Governor, or the Minister controlling

the department, agency, instrumentality as the case requires, consents to rank after the local government; and

(c) thirdly — in payment of the vendor's costs and expenses of and incidental to conferring upon the purchaser a title to the land; and

(d) fourthly — in or towards the discharge of a charge, if any, on the land under a written law relating to the construction of drains and fittings to connect the land with a sewer; and

(e) fifthly — in or towards the discharge of other mortgages and encumbrances on the land, both registered and unregistered, according to their priorities at law so far as they can be ascertained by the local government; and

(f) sixthly — in payment of the residue of the money within 12 months after the local government has received it to —

(i) the person who would, but for the proceedings for sale, be entitled to the land; or

(ii) if there are several persons who would be so entitled, then to those persons in the proportions in which they would be respectively so entitled,

but if —

(I) a person is entitled to an estate in reversion or remainder in the land, the local government may pay that residue into the Supreme Court under section 99 of the *Trustees Act 1962*; and

(II) within that period of 12 months the local government has not paid the residue to the person entitled to it, it is to, on the expiration of that period, pay that residue into the Supreme Court under that section of that Act; and

(III) at the expiration of 6 years after the money is so paid into the Supreme Court, proceedings have not been commenced or are not pending and the Court has not made an order to the contrary the money is to be paid into the Consolidated Account.

[Clause 5 amended: No. 77 of 2006 s. 4.]

6. Receipt by local government sufficient discharge

A receipt in writing issued by the local government is a sufficient discharge for money paid to the local government on the exercise by it of the power of sale and a person paying it is not bound to inquire whether money remains due to the local government for rates or service charges or otherwise in respect of the land sold.

7. If sale not completed within 12 months after commencement, proceedings lapse

(1) If at the expiration of 12 months from the date the land is offered for sale pursuant to the power of sale a contract for sale has not been entered into the proceedings for the exercise of the power of sale cease to have effect.

(2) Where, under subclause (1), proceedings have ceased to have effect, the local government may again commence proceedings for sale of the land and the provisions of this Schedule relating to the procedure for the exercise of the power of sale again apply.

8. Transfer of land to Crown or local government under s. 6.71

(1) The Registrar of Titles or the Registrar of Deeds and Transfers may register a transfer or conveyance of land by a local government under section 6.71, or by the Minister under section 6.74(3), if the transfer is in the approved form or the conveyance is acceptable to the Registrar of Deeds and Transfers.

[(2) deleted]

(3) Notwithstanding the provisions of the *Transfer of Land Act 1893*, or any other written law —

(a) upon the registration of a transfer or conveyance pursuant to the power referred to in section 6.64(1)(c), the land becomes, and may be dealt with as, Crown land free from mortgages, leases, tenancies, encumbrances, charges and reservations of every kind; and

(b) the registration of the transfer or conveyance pursuant to the power referred to in section 6.64(1)(d) vests in a local government an indefeasible estate in fee simple in

the land subject only to the encumbrances specified in section 6.75(1)(c), (d) or (e).

(4) If the land referred to in subclause 3(a) is under the *Transfer of Land Act 1893*, the Registrar of Titles is to cancel the certificate of title to the land and remove the land from the operation of that Act and thereafter the land may be dealt with as if it had never been alienated from the Crown.

(5) Duty under the *Duties Act 2008* is not chargeable on the transfer or conveyance.

(6) The procedure for the exercise of the powers referred to in sections 6.71, 6.74 and 6.75 is to be as prescribed.

[Clause 8 amended: No. 81 of 1996 s. 153(1); No. 49 of 2004 s. 64(2) and (3); No. 12 of 2008 Sch. 1 cl. 21; No. 47 of 2011 s. 16; No. 21 of 2022 s. 61.]

Schedule 8.1 — Provisions about Inquiry Panels

[Section 8.16(2)]

1. Constitution of Inquiry Panel

(1) If an Inquiry Panel consists of 3 people then of the people appointed as members of the Panel —

(a) one person is to be appointed to be a member of, and to preside at the meetings of, the Inquiry Panel; and

(b) another person is to be a legal practitioner who the Minister and WALGA agree should be appointed; and

(c) another person, not being a member of the council of the local government to which the inquiry relates or an employee of that local government, is to be appointed from a list submitted to the Minister by WALGA under subclause (3).

(1a) If an Inquiry Panel consists of one person, that person is to be a legal practitioner who the Minister and WALGA agree should be appointed.

(2) If under subclause (1)(b) or (1a) no agreement is reached within 28 days after the invitation referred to in subclause (3), the Minister is to invite the President of The Law Society of Western Australia Inc. to submit a list of 3 legal practitioners within 28 days of the invitation and is to appoint one person from that list.

(3) Before a person is appointed under subclause (1)(c), the Minister is to invite WALGA to submit a list of 3 persons eligible for appointment within 28 days of the invitation.

(4) Where a list is not submitted in accordance with the invitation of the Minister under subclause (2) or (3), the Minister may appoint any person who would have been eligible for appointment if a list had been submitted.

[Clause 1 amended: No. 64 of 1998 s. 44(2)(a)-(c); No. 49 of 2004 s. 12.]

2. Term of appointment

(1) A member of an Inquiry Panel holds office for the duration of the inquiry unless —

(a) he or she dies; or

(b) he or she resigns by written notice to the Minister; or

(c) his or her appointment is terminated by the Minister by written notice,

in which case the Minister may appoint a replacement member.

(2) Clause 1 applies to the appointment of a replacement member except that the Minister may, if he or she thinks fit, use the most recent list submitted under clause 1(3) instead of inviting WALGA to submit a new list.

[Clause 2 amended: No. 49 of 2004 s. 12.]

3. Procedures and remuneration

(1) If an Inquiry Panel consists of 3 people, all 3 members are required to be present to constitute a quorum.

(2) The members of an Inquiry Panel are entitled to such remuneration and allowances as the Minister from time to time determines.

(3) Subclause (2) does not apply to a member who is an officer of the Public Service.

[Clause 3 amended: No. 64 of 1998 s. 44(2)(d).]

Schedule 9.1 — Certain matters for which Governor may make regulations

[Section 9.60(2)]

1. Parking for disabled

(1) In this clause —

park means to permit a vehicle, whether attended or not, to remain stationary, except for the purpose of avoiding conflict with other traffic, or complying with the provisions of any law, or of immediately taking up or setting down persons or goods;

parking facilities includes land, buildings, shelters, spaces, signs, notices, and other facilities for the parking of vehicles by members of the public, generally, with or without charge;

parking region means a place where a local law to control parking applies;

stand in relation to a vehicle means to stop a vehicle and permit it to remain stationary, except for the purposes of avoiding conflict with other traffic or of complying with the provisions of any law when the vehicle is being driven.

(2) Regulations may —

(a) prohibit the parking or standing of a vehicle within a parking region on any land, whether or not the land is a road or parking facility, that is identified in the specified manner, unless that vehicle is identified in the specified manner as the vehicle of a disabled person;

(b) prescribe the authority by which and the means by which land may be identified for the purposes of paragraph (a);

(c) prescribe the authority by which and the means by which the vehicle of a disabled person may be identified for the purposes of paragraph (a);

(d) prohibit persons not authorised under paragraph (b) or (c) to identify land or vehicles for the purposes of paragraph (a), or to authorise such identification, from purporting to do those things.

[Clause 1 amended: No. 16 of 1999 s. 7(3).]

2. Disturbing local government land or anything on it

Regulations may prohibit or regulate —

(a) interference with the soil of, or anything on, land that is local government property; or

(b) the taking of anything from land that is local government property.

3. Obstructing or encroaching on public thoroughfare

(1) Regulations may be made about the obstruction of public thoroughfares by things that —

(a) have been placed on the thoroughfare; or

(b) have fallen from land or fallen from anything on land.

(2) Regulations may be made to ensure that structures and plants do not encroach on a public thoroughfare.

4. Separating land from public thoroughfare

Regulations may require the owner or occupier of land to keep in good repair any fence or gate that separates the land from a public thoroughfare.

5. Gates across public thoroughfares

(1) Regulations may be made under which a local government may authorise a person to have across a public thoroughfare that is under its control or management a gate or other device that enables motor traffic to pass and prevents the straying of livestock.

(2) Regulations may include provisions for ensuring that a gate that has been placed across a public thoroughfare with the authority of a local government is not left open.

6. Dangerous excavation in or near public thoroughfare

Regulations may be made about dangerous excavations in public thoroughfares or land adjoining public thoroughfares.

7. Crossing from public thoroughfare to private land or private thoroughfare

(1) In this clause —

private land means land that is neither vacant Crown land nor local government land;

private thoroughfare means a thoroughfare that is principally used for access to private land that abuts the thoroughfare and, for the purposes of this clause, that land is land served by the thoroughfare.

(2) Regulations may be made about crossings from public thoroughfares to private land or to private thoroughfares.

(3) Regulations may authorise a local government to require a person to make or repair a crossing from a public thoroughfare to —

(a) private land that the person owns or occupies; or

(b) a private thoroughfare serving private land that the person owns or occupies,

and, if the person fails to do so, to do so itself and recover 50% of the cost as a debt due from the person.

(4) Regulations may provide for the local government to bear some of the cost of making a crossing in certain circumstances.

(5) Regulations may make provision about the proportion in which the cost is attributable to each of several parcels of land that are served by a private thoroughfare.

8. Private works on, over, or under public places

(1) Regulations may be made to prohibit or control the construction of anything on, over, or under a public thoroughfare or other public place that is local government property.

(2) Subclause (1) does not apply to the construction of things by or on behalf of the Crown or under the authority of an Act.

(3) Regulations cannot authorise permanent or unreasonable obstruction of the ordinary and reasonable use of the public thoroughfare or other public place for the purpose to which it is dedicated.

(4) Section 3.25 applies as if anything constructed as mentioned in this clause were land owned by the person who constructed it and occupied by the persons entitled to use it.

(5) Regulations may require anything constructed in accordance with regulations to be maintained and may require the person who constructs it to insure against any liability that the local government may incur in connection with its construction, maintenance, or use.

9. Protection of watercourses, drains, tunnels and bridges

Regulations may be made for regulating or preventing the alteration or obstruction of, or interference with, any watercourse, drain, tunnel, or bridge that is local government property.

10. Protection of thoroughfares from water damage

Regulations may be made for regulating or preventing the alteration or obstruction of, or interference with, the natural flow of surface water across any thoroughfare or other land in such a way as is likely to damage any thoroughfare that is local government property.

11. Works required for supply of gas or water

(1) Regulations may authorise a local government that is responsible for supplying water or gas to do certain works for the purposes of providing, maintaining, or modifying the supply system.

(2) Regulations cannot authorise a local government to interfere with a supply system that is not local government property without the consent of a person who has authority to consent.

(3) Regulations may authorise a local government to do works in a public place that is not local government property but, unless there are exceptional circumstances, only after the prescribed notice has been given to the person having the management or control of the place and only if that person, or that person's representative —

(a) is present while the work is being done; or

(b) has notified the local government that the work may be done without the person, or the person's representative, being present.

[Clause 11 amended: No. 1 of 1998 s. 27.]

12. Wind erosion and sand drifts

(1) Regulations may be made for preventing or minimizing sand drifts on land that are likely to adversely affect other land.

(2) Regulations may authorise a local government, by notice in writing, to forbid an owner or occupier of land, without the consent of the local government, to clear land of vegetation to any extent within such a distance as is specified in the notice of its common boundary with land that is local government property that it considers might be adversely affected by wind erosion or sand drift as a result of the clearing.

(3) Regulations under subclause (2) are to state that a person who is forbidden to clear land is an affected person for the purposes of Part 9 Division 1 and that Part 9 Division 1 applies to the notice.

[Clause 12 amended: No. 1 of 1998 s. 27; No. 55 of 2004 s. 708.]

[Schedule 9.2, as amended: No. 11 of 2007 s. 13, omitted under the Reprints Act 1984 s. 7(4)(e).]

Schedule 9.3 — Transitional provisions

[Section 9.71]

[Heading amended: No. 2 of 2012 s. 25.]

Division 1 — Provisions for *Local Government Act 1995*

[Heading inserted: No. 2 of 2012 s. 26.]

Subdivision 1 — Preliminary

[Heading inserted: No. 2 of 2012 s. 26.]

1. Terms used

In this Schedule unless the contrary intention appears —

commencement day means the day on which this Act comes into operation;

continuing authority means a former municipality that, on the commencement day, continues in existence as a local government;

designated employee has the meaning given by section 5.74;

former district means a district that existed under the former provisions immediately before the commencement day;

former municipality means a municipality that, under the former provisions, was constituted by the inhabitants of a former district immediately before the commencement day;

former provisions means the *Local Government Act 1960* [4] as in force before the commencement day.

[Clause 1 amended: No. 16 of 2019 s. 74(1).]

2. Interpretation Act 1984 applies

This Schedule does not limit the operation of the *Interpretation Act 1984*.

3. Construction of references in written laws

(1) Unless the context otherwise requires, a reference in a written law to an enactment repealed by this Act includes a reference to the corresponding provision, if any, of this Act.

(2) A reference in a written law to a municipality under the *Local Government Act 1960* [4] may, where the context so requires, be read as if it had been amended to include or be a reference to a local government under this Act.

(3) A reference in a written law to a regional council under the *Local Government Act 1960* [4] may, where the context so requires, be read as if it had been amended to include or be a reference to a regional local government under this Act.

(4) A reference in a written law to the town clerk or shire clerk of a municipality may, where the context so requires, be read as if it had been amended to include or be a reference to the CEO of a local government.

(5) A reference in a written law to the secretary of a regional council may, where the context so requires, be read as if it had been amended to include or be a reference to the CEO of a regional local government.

Subdivision 2 — Continuation of constitutional arrangements, membership and appointments

[Heading inserted: No. 2 of 2012 s. 27.]

4. Former districts continue as districts

(1) On the commencement day —

(a) a former district becomes a district as if it had been declared to be a district under section 2.1; and

(b) its name is to be derived from the name of the former municipality by omitting "Town of ", "City of " or "Shire of ", as the case requires, unless subclause (2) applies.

(2) If subclause (1)(b) would result in 2 or more districts having the same name, the name of each of those districts is to be derived by adding after the name they would have either "(Town)", "(City)", or "(Shire)", as is appropriate.

(3) The former district becomes a city, town or shire under this Act according to which of those the former municipality was under the

former provisions even if it does not meet the relevant requirements under section 2.4.

5. Former municipalities continue as local governments

The local government of a former district that becomes a district under this Act is a continuation of, and the same legal entity as, the former municipality, and has the same name.

6. Former councils continue as previously constituted

(1) On and after the commencement day, the council of a continuing authority continues as if it had been constituted, and its members had been elected, under this Act.

(2) Without limiting subclause (1), the number of offices of councillor on the council of a continuing authority remains the same until changed under this Act even if the number does not meet the relevant requirements under section 2.17.

(3) The Advisory Board, in a written report to the Minister, is to recommend the making of an order under section 2.18(3)(a) or (c) if in the opinion of the Advisory Board that order is necessary to ensure that the ordinary elections of a continuing authority held on 7 May 2005 are held on the basis of there being a number of offices of councillor on the council that meets the relevant requirements under section 2.17.

(4) The Advisory Board can make a recommendation under subclause (3) whether or not the continuing authority has made a proposal to it under Schedule 2.2.

(5) For the purposes of deciding on any recommendation it is to make under subclause (3), the Advisory Board may carry out any inquiry it thinks necessary.

(6) The Advisory Board may recover the amount of the costs connected with an inquiry under subclause (5) from the continuing authority as if it were for a debt due.

7. Wards and representation

(1) If, immediately before the commencement day, a former district had a ward system under the former provisions that system (including the

boundaries of the wards and the numbers of offices of councillor for the wards) continues to apply on and after the commencement day until it is changed or discontinued under this Act.

(2) If subclause (1) applies to the district of a continuing authority, the continuing authority is to carry out the first review of its ward system under Schedule 2.2, clause 6 within 8 years after the commencement day.

8. Former method of electing mayor or president continued

The method of filling the office of mayor or president of a continuing authority which had effect under the former provisions immediately before the commencement day continues to have effect on and after the commencement day until a decision under section 2.11(2) to change to the other method mentioned in section 2.11(1)(a) or (b) takes effect.

9. Commissioners continued

If, immediately before the commencement day, the functions of the council and the mayor or president of a continuing authority were being performed by a commissioner appointed under the former provisions, that appointment continues to have effect, subject to its terms, under this Act.

10. Regional councils continued

A regional council constituted under the former provisions that was in existence immediately before the commencement day continues in existence as a regional local government on and after that day as if —

(a) it had been constituted as a regional local government under this Act; and

(b) the regional councillors had been appointed as members of the regional local government under this Act; and

(c) the constitution agreement included the provisions of sections 699 to 702, 704 to 707 and 709 of the former provisions and had been approved by the Minister as an establishment agreement under this Act.

11. Local Government Associations continued

The associations constituted by Part 9, Division 5, are the same legal entities as the associations that were constituted under Part XXX of the former provisions.

Subdivision 3 — Electoral matters

[Heading inserted: No. 2 of 2012 s. 28.]

12. Enrolment of certain electors may continue

(1) In this clause —

existing roll means an owners and occupiers roll prepared in respect of a district or ward under section 43 of the former provisions and not superseded by another owners and occupiers roll prepared under that section.

(2) Despite section 4.30(1)(a) if a person who is not enrolled as an elector for the Legislative Assembly or the House of Representatives —

(a) owns or occupies rateable property within a district or ward (the ***electorate***); and

(b) was named as an elector in respect of that property or any other property on an existing roll for the district, or a ward of the district, or would have been so named if his or her name had not been omitted in error; and

(c) has owned or occupied rateable property within the district continuously since that existing roll was prepared,

the person is to be regarded for the purposes of this Act as being eligible under section 4.30(1)(a) and (b) to be enrolled to vote at elections for the electorate.

(3) The CEO of a continuing authority is to ensure that copies of the existing roll or existing rolls relating to the former municipality are retained on a permanent basis after the commencement of this Act.

13. Existing provisions continue for elections before 1997 ordinary elections

Despite the commencement of this Act, if an election is held to fill a vacancy in the office of a councillor or a mayor or president elected

by the electors and the poll for the election takes place (or would, if needed, have taken place) before 3 May 1997, the former provisions, as in force immediately before the commencement day, continue to apply in relation to the election and the filling of the vacancy as if this Act had not commenced.

14. Transition from annual to biennial election system

(1) This clause applies to a continuing authority if, immediately before the commencement day, it was under the annual election system under the former provisions.

(2) A continuing authority to which this clause applies may decide —

(a) that the terms of office of each councillor, and the mayor or president where the mode of election is by the electors, will expire on 3 May 1997 and, in that case, any of those terms of office that would, but for this clause, continue beyond that day is, by operation of this clause, reduced to the extent necessary to make it expire on that day; or

(b) that the terms of office of each councillor, and the mayor or president where the mode of election is by the electors, will continue unaffected by this Act and, in that case —

(i) the term of office of a councillor, or mayor or president, where the mode of election is by the electors, elected to fill an office that becomes vacant on 3 May 1997, is 4 years; and

(ii) the term of office of a mayor or president, where the mode of election is by the electors, elected to fill an office that becomes vacant on 2 May 1998, is 3 years; and

(iii) a term of office of either one year or 3 years shall be fixed by the returning officer for any councillor elected to fill an office that becomes vacant on 2 May 1998 so as to give effect to clauses 1 and 2 of Schedule 4.2 in relation to the years 1999 and 2001.

(3) A decision made under subclause (2)(a) or (b) on or after 14 February 1997 has no effect.

(4) A decision made under subclause (2)(b) has no effect unless it is approved by the Minister.

(5) If a continuing authority to which this clause applies does not make an effective decision under subclause (2)(a) or (b) —

(a) the term of office of a councillor, or the mayor or president where the mode of election is by the electors, that would, but for this clause, expire on 2 May 1998 is, by operation of this clause, reduced so that it expires on 3 May 1997; and

(b) the term of office of a councillor, or the mayor or president where the mode of election is by the electors, that expires on 3 May 1997 or 1 May 1999 continues unaffected by this clause; and

(c) without limiting clause 5 of Schedule 4.2, a term of office of 2 years may be fixed for a councillor or councillors elected at the ordinary elections held during 1997 so as to give effect to clauses 1 and 2 of Schedule 4.2 in relation to the year 1999.

[Clause 14 amended: No. 57 of 1997 s. 81(2) and (3).]

14A. Transition to October elections

(1) In this clause —

amending Act means the *Local Government Amendment Act 2006*;

new ordinary election day provisions means section 4.7 as amended by section 6 of the amending Act.

(2) If by operation of —

(a) item 3, 8, 9 or 10 of the Table to section 2.28; and

(b) a determination made by the returning officer under section 4.78 before the coming into operation of section 6 of the amending Act,

the term of office of a councillor would end on the first Saturday in May in a year, that term of office is to end on the third Saturday in October in that year (but note section 2.30).

(3) Despite section 3.64(e), the establishment agreement for a regional local government may be amended under section 3.65 in consequence of the new ordinary election day provisions even though the

amendments result in the current chairman and deputy chairman of the regional local government holding office for terms exceeding 2 years.

[Clause 14A inserted: No. 66 of 2006 s. 15.]

Subdivision 4 — Administration

[Heading inserted: No. 2 of 2012 s. 29.]

15. Employees

(1) A person employed or engaged by a continuing authority who was working for it immediately before the commencement day is to be taken as being employed by it on the same terms and conditions, including as to remuneration, as those which applied to the person immediately before the commencement day.

(2) Under subclause (1) the person who was formerly the clerk of the continuing authority becomes its CEO.

(3) A person to whom this clause applies retains all existing and accruing rights and benefits as if employment under this Act were a continuation of the person's employment or engagement immediately before the commencement day.

16. Superannuation schemes: transitional and savings

(1) Despite the repeal of Part VIA (**Employee Superannuation**) of the former provisions, the provisions of that Part [8] that applied to a municipality or to the City of Perth (within the meanings of that Part) continue to apply to the continuing authorities in respect of each such municipality or the City of Perth as if this Act had not commenced and so apply until regulations are made under section 5.47 in relation to that continuing authority.

(2) Regulations under this Act may amend the former provisions as continued by subclause (1).

17. Long service benefits: transitional and savings

(1) Despite the repeal of section 161 of the former provisions, the provisions of that section and regulations made under it that, immediately before the commencement day, applied to an employee

as defined in that section continue to apply in respect of that person as if this Act had not commenced and so apply until regulations are made under section 5.48 in relation to that person.

(2) Regulations under this Act may amend the provisions of section 161 of the former provisions, and regulations made under that section, as continued by subclause (1).

18. Committees continue until first ordinary elections

(1) On and after the commencement day, any committee of a continuing authority existing under the former provisions continues as if it had been established, its members had been appointed and its presiding member had been elected, under this Act.

(2) A committee to which subclause (1) applies is dissolved on 3 May 1997.

(3) A committee to which subclause (1) applies —

(a) has, and can be delegated, the powers which it would have had, or could have been delegated, if it had been established under this Act;

(b) does not have, and cannot be delegated, any powers other than those referred to in paragraph (a).

19. Delegations continue for up to a year

(1) If a delegation under the former provisions of a power or duty of a kind that can be delegated under this Act has effect immediately before the commencement day, that delegation continues to have effect on and after the commencement day as if it had taken place under this Act.

(2) A delegation to which subclause (1) applies continues to have effect until —

(a) it is revoked in accordance with the terms of the relevant power under which the delegation took place; or

(b) the expiration of one year from the commencement day,

whichever happens first.

20. First annual report

A continuing authority is to prepare its first annual report under section 5.53 in relation to the financial year that ends on 30 June next following the commencement day.

21. First plan for principal activities

A continuing authority is to prepare its first plan for principal activities under section 5.56 for the period that begins on 1 July next following the commencement day.

22. First code of conduct

A continuing authority is to prepare or adopt its first code of conduct within one year of the commencement day.

23. First declaration by certain designated employees

If a person is or has become a designated employee of a continuing authority before 3 May 1997 then, for the purposes of Part 5, Division 6, Subdivision 2, a reference to the start day in relation to that person is a reference to 3 May 1997.

24. Previous records to be kept by continuing authorities

All registers, records and documents which a former municipality was required under the former provisions to keep are to be kept by the continuing authority for the purposes for which the registers, records or documents were required to be kept under those provisions.

Subdivision 5 — Financial management and audit

[Heading inserted: No. 2 of 2012 s. 30.]

25. Rateable land exemptions

If a notice published by a continuing authority under section 532(3d) of the former provisions is in force immediately before the commencement day —

(a) that notice continues to have effect after the commencement day according to its terms; and

(b) section 532(3e) and (3f) of the former provisions continue to apply to that notice while the notice is in effect as if the

reference in section 532(3f)(a) to subsection (3)(c) were a reference to section 6.26(2)(g).

26. Land declared to be exempt from payment of rates

(1) If land has been declared by the Governor under section 532(8) or (10) of the former provisions to be exempt from municipal rates and that declaration is in force immediately before the commencement day, the land is to be treated as land declared by the Minister under section 6.26(4) to be exempt from rates and the Minister may by declaration made under that subsection cancel or vary that declaration.

(2) If land has been declared by a council under section 532(12) (as read with section 532(11)) of the former provisions to be exempt from municipal rates and that declaration is in force immediately before the commencement day, the land is to continue to be exempt from rates under this Act until the continuing authority cancels that declaration, and those subsections continue to have effect for the purposes of this clause.

27. Basis of rates

(1) Until a determination is made by the Minister under section 6.28 a continuing authority is to continue to use the system of valuation that was applicable to it, immediately before the commencement day, under section 533 of the former provisions.

(2) If an Order under section 533(17) of the former provisions is in force immediately before the commencement day that Order continues to have effect on and after the commencement day according to its terms but is to be taken to be a determination by the Minister under section 6.28 and may be amended by the Minister under that section.

[Clause 27 amended: No. 57 of 1997 s. 81(4).]

28. Recovery of rates

If, before the commencement day, a continuing authority has commenced proceedings under Part XXV, Subdivision B or C, of the former provisions, the former provisions continue to have effect in relation to those proceedings until such time as they are completed.

29. Continuation of debentures issued

If a continuing authority has —

(a) issued a debenture under Part XXVI of the former provisions; and

(b) established a sinking fund under section 615 of the former provisions,

sections 615 to 624 of the former provisions continue to have effect in respect of that debenture until such time as the debenture reaches maturity.

30. Reserve accounts

(1) If a continuing authority has established a general reserve account under section 528 of the former provisions, the continuing authority is to, not later than 2 years from the commencement day —

(a) use the money for an authorised purpose; or

(b) transfer the money to a reserve account maintained for a purpose in accordance with section 6.11.

(2) The continuing authority is to —

(a) disclose in its annual budget any action to be taken under subclause (1); or

(b) where it is proposed to take any action under subclause (1) after the adoption of the annual budget, give one month's local public notice of the proposal.

(3) The continuing authority is to disclose action taken under subclause (1) in the annual financial report for the year in which the action is taken.

31. Borrowing: loan polls

If a continuing authority has given notice of a proposal to borrow money by the issue of debentures under Division 3 of Part XXVI of the former provisions but the notice period required under section 610 of the former provisions has not expired before the commencement day —

(a) subject to paragraph (b), the former provisions continue to apply in relation to that proposed borrowing as if this Act had not commenced; but

(b) the continuing authority is not required to conduct a loan poll under section 611 of the former provisions unless a demand for such a poll was delivered in accordance with that section to the local government before the commencement day.

*[**32.** Deleted: No. 5 of 2017 s. 21(1).]*

Subdivision 6 — Former by-laws, uniform general by-laws and regulations

[Heading inserted: No. 2 of 2012 s. 31.]

33. Former by-laws continued

(1) Unless otherwise provided, a provision of an Act that, immediately before the commencement day, gave a former municipality power to make by-laws is to be read, on and after the commencement day, as if it had been amended to give a power to a local government to make local laws.

(2) Without limiting Part 3, Division 2, Subdivision 2, any provision relating to the exercise of the former power to make by-laws applies to the exercise of the power to make local laws.

(3) On the commencement day a by-law of a continuing authority under another Act (other than the former provisions) becomes a local law of the continuing authority under that other Act.

(4) On the commencement day a by-law of a continuing authority under the former provisions becomes a local law of the continuing authority under this Act, but in construing terms used in it account is to be taken of the meanings those terms had before the commencement day.

(4a) An order made under section 190(8) of the former provisions continues to have effect in respect of the application to the relevant area of —

(a) by-laws which applied to the area under the order immediately before the commencement day; and

(b) local laws amending those by-laws.

(4b) An order made under section 190(8) of the former provisions may be revoked under section 3.6(3) as if it was an approval given under section 3.6(1).

(5) On the commencement day a by-law of a continuing authority that was made under or for the purposes of a former provision about infringement notices is to be read, unless the context otherwise requires, as if it had been amended to the extent necessary for it to apply for the purposes of Part 9, Division 2, Subdivision 2.

(6) In any other written law, apart from section 42 of the *Interpretation Act 1984*, a reference to a by-law of a former municipality is to be read as if it had been amended to be a reference to a local law.

(7) The citation of by-laws that, under this Act or section 7 of the *Local Government (Consequential Amendments) Act 1996*, become local laws (in the provision assigning the citation to the by-laws and in a reference in a written law to that citation) is to be read as if "*By-law*" or "*By-laws*", where it occurs in that citation, had been amended to be "*Local laws*".

[Clause 33 amended: No. 14 of 1996 s. 4; No. 49 of 2004 s. 73(2).]

34. First periodic review as a local law

For the purposes of section 3.16(1) a written law that was already in force before being continued under this Act as a local law is to be regarded as having commenced when it became a local law.

35. Former uniform general by-laws continued

(1) A provision of the *Dog Act 1976* or the *Control of Vehicles (Off-road Areas) Act 1978* that, immediately before the commencement day, gave the Governor power to make uniform general by-laws is to be read, after the commencement day, as if it had been amended to give a power to make regulations.

(2) Any provision relating to the exercise of the former power to make uniform general by-laws applies to the exercise of the power to make regulations.

(3) On the commencement day a uniform general by-law made by the Governor under the *Dog Act 1976* or the *Control of Vehicles (Off-road Areas) Act 1978* becomes a regulation under that Act.

(4) On the commencement day a uniform general by-law made by the Governor under the former provisions becomes a regulation under

section 9.60, but in construing terms used in it account is to be taken of the meanings those terms had before the commencement day.

(5) In any other written law a reference to a uniform general by-law is to be read as if it had been amended to be a reference to a regulation.

36. Former regulations continued

On the commencement day a regulation under section 245A or 433A of the former provisions becomes a regulation under section 9.60, but in construing terms used in it account is to be taken of the meanings those terms had before the commencement day.

Subdivision 7 — Miscellaneous

[Heading inserted: No. 2 of 2012 s. 32.]

37. Townsites

Land that was, under the former provisions, a townsite because it was declared to be a townsite under those provisions or under an Act repealed by the *Local Government Act 1960* [4] is to be regarded as having been constituted a townsite, and given its name, under section 10 of the *Land Act 1933* [5].

38. Gates across thoroughfares in cities or towns

(1) A licence under section 333 of the former provisions continues in force after the repeal of that section if it would have done so had that section not been repealed, and that section (in subclause (2) called the ***former section***) continues in operation after its repeal for the purposes of the cancellation of such a licence.

(2) Section 9.65(1) applies to an order under the former section cancelling the order under which the licence was granted.

39. Deferments under *Rates and Charges (Rebates and Deferments) Act 1992*

The *Rates and Charges (Rebates and Deferments) Act 1992* continues to apply to the payment of an amount that had been deferred under the former provisions if, under those provisions, it applied to that payment.

40. Commercial enterprises

(1) Section 3.59(8) does not apply in relation to an activity that —

(a) was commenced before the commencement day; and

(b) would have been a major trading undertaking before the commencement day if this Act had already been in operation,

if it is not intended to carry the activity on beyond the period of 2 years after the commencement day.

(2) If it is intended to carry the activity on beyond the period of 2 years after the commencement day, section 3.59(8) does not apply until one year after the commencement day.

(3) Where an agreement that is a part of a land transaction was entered into before the commencement day, section 3.59(9) does not apply in relation to the doing of anything as a result of which the transaction would become a major land transaction if it is intended that the purpose of the transaction will be fulfilled within the period of 2 years after the commencement day.

(4) If it is not intended that the purpose of the transaction will be fulfilled within the period of 2 years after the commencement day, the application of section 3.59(9) in relation to the doing of anything during the first year after the commencement day is modified to allow the local government to comply with the requirements referred to in that subsection after the thing has been done but not later than the end of that year.

41. Evidence in proceedings under former provisions

The provisions in Part XXVIII, Division 1, Subdivision B of the former provisions continue to apply in relation to legal and other proceedings about matters that arose under the former provisions before the commencement day.

Division 2 — Provisions for the *Local Government Amendment Act 2012*

[Heading inserted: No. 2 of 2012 s. 33.]

42. Term used: amending Act

In this Division —

amending Act means the *Local Government Amendment Act 2012*.

[Clause 42 inserted: No. 2 of 2012 s. 33.]

43. Saving provisions for CEOs

(1) In this clause —

preserved CEO, in relation to a local government, means a person who is employed, other than in an acting or temporary capacity, as the CEO of the local government on 19 October 2011.

(2) Section 5.39(7) does not apply in respect of —

(a) a CEO for such time as that person is employed under a contract of employment —

(i) that was entered into or renewed before section 13 of the amending Act came into operation; or

(ii) for a position that was advertised before section 13 of the amending Act came into operation;

or

(b) a preserved CEO of a local government if —

(i) the remuneration paid or provided to the CEO on 19 October 2011 under a contract of employment was more than the amount recommended by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975* section 7A to be paid or provided to the CEO at that time; and

(ii) the CEO continues to be employed as the CEO of that local government.

(3) Section 5.39(8) does not apply to a local government that is renewing a contract of employment with its preserved CEO in the circumstances set out in subsection (2)(b).

(4) Before a local government renews a contract with its preserved CEO in circumstances set out in subsection (2)(b), the local government must take into account any determination by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975* section 7A as to the remuneration to be paid or provided to a CEO of a local government that is of a comparable size and location.

[Clause 43 inserted: No. 2 of 2012 s. 33.]

44. Section 6.14(1) does not apply to existing investments

Section 6.14(1) as in force immediately before the coming into operation of section 19(1) of the amending Act (the ***amending provision***) continues to operate in respect of any investment made under section 6.14(1) before the coming into operation of the amending provision but does not operate so as to allow any reinvestment under that provision.

[Clause 44 inserted: No. 2 of 2012 s. 33.]

Division 3 — Provisions for *Local Government Legislation Amendment Act 2016*

[Heading inserted: No. 26 of 2016 s. 25.]

45. Term used: amending Act

In this Division —

amending Act means the *Local Government Legislation Amendment Act 2016*.

[Clause 45 inserted: No. 26 of 2016 s. 25.]

46. Part 5 Division 9: complaints

Sections 5.110A and 5.110 (as amended by the amending Act) apply to and in relation to a complaint whether made before or after the amending Act section 15 comes into operation.

[Clause 46 inserted: No. 26 of 2016 s. 25.]

47. Part 9 Division 2 Subdivision 2

(1) An infringement notice given under section 9.16 before the amending Act section 19 comes into operation is not invalid, and is to be taken never to have been invalid, just because the notice provided that the amount of the modified penalty may be paid to an authorised person at a particular place and did not state who are authorised persons for the purposes of receiving payment of modified penalties.

(2) Any extension of time for payment given under section 9.19 before the amending Act section 20 comes into operation is to be taken to have been given by the CEO of the relevant local government.

(3) Any withdrawal of an infringement notice before the amending Act section 21 comes into operation is to be taken to have been done by the CEO of the relevant local government.

[Clause 47 inserted: No. 26 of 2016 s. 25.]

48. Schedule 2.1: transitional arrangements

Schedule 2.1 clause 11(5A) and (5B) apply to and in relation to the termination or variation of a contract of employment whether entered into before or after the amending Act section 23 comes into operation.

[Clause 48 inserted: No. 26 of 2016 s. 25.]

Division 4 — Provisions for the *Local Government Amendment (Auditing) Act 2017*

[Heading inserted: No. 5 of 2017 s. 21(2).]

49. Terms used

In this Division —

audit contract has the meaning given in section 7.1;

commencement day has the meaning given in section 7.1.

[Clause 49 inserted: No. 5 of 2017 s. 21(2).]

50. Minister to publish status of audit contracts

During the period beginning on commencement day and ending on the day fixed by proclamation under the *Local Government*

Amendment (Auditing) Act 2017 section 22(2), the Minister must publish on a website maintained by the Department a list of —

(a) local governments that have an audit contract that is in force; and

(b) local governments that do not have an audit contract that is in force.

[Clause 50 inserted: No. 5 of 2017 s. 21(2).]

51. Audit contracts may be terminated after completion of FY17/18 audit

(1) In this clause —

FY17/18 audit, in relation to a local government, means an audit of the local government conducted under section 7.9(1) in respect of the financial year ending on 30 June 2018.

(2) This clause applies in relation to a local government after the completion of the FY17/18 audit for the local government.

(3) The Departmental CEO may give notice (a ***notice***) to a local government specifying the date (the ***termination date***) on which the audit contract for the local government is to terminate.

(4) An audit contract in relation to which a notice is given is terminated by force of this provision on the termination date.

(5) The Departmental CEO may give a notice on the Departmental CEO's own initiative.

(6) The Minister may —

(a) request the Departmental CEO to give a notice to a local government; and

(b) nominate the termination date to be specified in the notice.

(7) On request by the Minister, the Departmental CEO must give a notice to the local government specifying the termination date nominated by the Minister.

(8) A notice given or request made under this clause must be in writing.

[Clause 51 inserted: No. 5 of 2017 s. 21(2).]

52. Audit contracts are terminated after completion of FY19/20 audit

(1) In this clause —

FY19/20 audit, in relation to a local government, means an audit of the local government conducted under section 7.9(1) in respect of the financial year ending on 30 June 2020.

(2) An audit contract for a local government, unless earlier lawfully terminated, is terminated by force of this provision on completion of the FY19/20 audit for the local government.

[Clause 52 inserted: No. 5 of 2017 s. 21(2).]

53. No breach of contract

Anything that occurs by operation of this Division is not to be regarded as a breach of contract.

[Clause 53 inserted: No. 5 of 2017 s. 21(2).]

54. Transitional regulations

(1) In this clause —

specified means specified or described in the regulations;

transitional matter —

(a) means a matter or issue of a transitional nature that arises as a result of the enactment of the *Local Government Amendment (Auditing) Act 2017*; and

(b) includes a saving or application matter.

(2) If there is not sufficient provision in this Division for dealing with a transitional matter, regulations under this Act may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with the matter.

(3) Regulations made under subclause (2) may provide that specified provisions of a written law —

(a) do not apply to or in relation to any matter; or

(b) apply with specified modifications to or in relation to any matter.

(4) If regulations made under subclause (2) provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the day this clause comes into operation, the regulations have effect according to their terms.

(5) If regulations made under subclause (2) contain a provision referred to in subclause (4), the provision does not operate so as —

(a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the day of publication of those regulations; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

(6) Regulations made under subclause (2) in relation to a matter referred to in subclause (3) must be made within whatever period is reasonably and practicably necessary to deal with a transitional matter.

[Clause 54 inserted: No. 5 of 2017 s. 21(2).]

Division 5 — Provisions for the *Local Government Legislation Amendment Act 2019*

[Heading inserted: No. 16 of 2019 s. 74(2).]

55. Authorised persons

(1) This clause applies to a person who, immediately before the day on which the *Local Government Legislation Amendment Act 2019* section 64 comes into operation, was a person appointed under section 9.10(1) for the purposes of performing particular functions.

(2) The person is taken to be an authorised person appointed under section 9.10(2) for the purposes of this Act on the terms and conditions that were applicable to the person's appointment under section 9.10(1) immediately before the day referred to in subclause (1).

[Clause 55 inserted: No. 16 of 2019 s. 74(2).]

56. Register of gifts

(1) In this clause —

commencement day means the day on which the *Local Government Legislation Amendment Act 2019* section 40 comes into operation;

former provisions means sections 5.82 and 5.83 as in force immediately before the day on which the *Local Government Legislation Amendment Act 2019* section 37 comes into operation;

former section 5.89A(7) means section 5.89A(7) as in force immediately before commencement day.

(2) In addition to the record required by section 5.89A(2), the register of gifts kept under section 5.89A(1) must contain a record of disclosures made under the former provisions that were recorded in the register immediately before commencement day.

(3) Former section 5.89A(7) continues to apply in relation to disclosures made under the former provisions that, immediately before commencement day, were being kept by the CEO and made available for public inspection under that subsection.

[Clause 56 inserted: No. 16 of 2019 s. 74(3).]

Division 6 — Provisions for *Local Government Amendment Act 2023*

[Heading inserted: No. 11 of 2023 s. 99.]

57. Term used: 2023 amendment Act

In this Division —

2023 amendment Act means the *Local Government Amendment Act 2023*.

[Clause 57 inserted: No. 11 of 2023 s. 99.]

58. Continued application of repealed provisions relating to membership and size of councils

(1) In this clause —

amendment day means the day on which section 13 of the 2023 amendment Act comes into operation;

transitional time, in relation to a local government, means any time that falls —

(a) on or after amendment day; and

(b) before —

(i) an order has been made under section 2.16B, as inserted by section 13 of the 2023 amendment Act, specifying an estimate of the district's population for the first time; and

(ii) the provision made by the order under section 2.16B(1)(b) in respect of the specified estimate has taken effect in accordance with the provision made under section 2.16B(2).

(2) Despite the amendment made by section 13 of the 2023 amendment Act, section 2.17, as in force immediately before amendment day, continues to apply in relation to a local government at all transitional times.

(3) This clause does not apply to the City of Perth.

[Clause 58 inserted: No. 11 of 2023 s. 99.]

59. Transitional orders relating to constitution of local government

(1) In this clause —

amendment day means the day on which section 16 of the 2023 amendment Act comes into operation;

election has the meaning given in section 4.1;

election day, in relation to a local government, means —

(a) an ordinary election day for the local government; or

(b) any other day —

(i) that is fixed under this Act for the holding of any poll needed for an election for the local government (whether or not any poll is actually held); and

(ii) that is no later than 4 years after amendment day;

ordinary election day, in relation to a local government, means a day —

(a) that is fixed under this Act for the holding of any polls needed for ordinary elections for the local government (whether or not any polls are actually held); and

(b) that is no later than 4 years after amendment day.

(2) The Governor may, by order (a ***transitional order***), do anything authorised under this clause.

(3) A transitional order may abolish all of the wards in a district on an election day for the local government.

(4) A transitional order may specify —

(a) the number of offices of councillor that a council is to have on and from an election day for the local government; and

(b) if relevant — the number of offices of councillor that each ward in the district is to have on and from the election day.

(5) A transitional order —

(a) may specify —

(i) the number of offices of councillor that a council is to have on and from an election day for the local government until a subsequent election day for the local government; and

(ii) if relevant — the number of offices of councillor that each ward in the district is to have on and from the election day until the subsequent election day;

and

(b) may specify —

(i) the number of offices of councillor that the council is to have on and from the subsequent election day; and

(ii) if relevant —the number of offices of councillor that each ward in the district is to have on and from the subsequent election day.

(6) Any provision made under subclause (5)(a) has effect despite section 2.17 or 2.17A as inserted by section 13 of the 2023 amendment Act.

(7) A transitional order may provide for this Act to apply as if the Table to section 2.28 provided for the terms of all councillors on a council, or of all councillors on a council for a ward, to end on an ordinary election day for the local government.

(8) If provision is made under subclause (7) —

(a) the ordinary elections are to be held accordingly for the purpose of filling all offices of councillor or of councillor for the ward (as the number of those offices may be increased or decreased on the ordinary election day by provision made under subclause (4) or (5)); and

(b) item 4A in the Table to section 2.28, as inserted by section 19(3) of the 2023 amendment Act, applies to a councillor elected at the ordinary elections as if the provision made under subclause (7) were a provision made by a change order under section 2.18A(8) as inserted by section 16 of the 2023 amendment Act.

(9) A transitional order does not prevent an order being subsequently made under Part 2 in relation to a local government or district.

(10) The *Interpretation Act 1984* section 42 applies to a transitional order as if the transitional order were regulations made under this Act.

[Clause 59 inserted: No. 11 of 2023 s. 99.]

60. Enrolment eligibility claims

(1) Despite the amendment made by section 30(1) of the 2023 amendment Act, section 4.32(2) to (4), as in force immediately before the day on which section 30(1) of the 2023 amendment Act comes into operation, continue to apply on and after that day to enrolment eligibility claims made before that day.

(2) Section 4.33(1A)(a), as inserted by section 31(1) of the 2023 amendment Act, does not apply to enrolment eligibility claims

made before the day on which section 31(1) of the 2023 amendment Act comes into operation.

[Clause 60 inserted: No. 11 of 2023 s. 99.]

61. Electors' special meetings

(1) In this clause —

amendment day means the day on which section 60 of the 2023 amendment Act comes into operation.

(2) The amendment made by section 60(1) of the 2023 amendment Act does not affect the requirement to hold a special meeting on a request made before amendment day.

(3) Section 5.28(5), as inserted by section 60(2) of the 2023 amendment Act, does not apply if the request for the special meeting is made before amendment day.

[Clause 61 inserted: No. 11 of 2023 s. 99.]

62. Transitional regulations

(1) In this clause —

specified means specified or described in regulations made for the purposes of subclause (2);

transitional matter —

(a) means a matter or issue of a transitional nature that arises as a result of any of the amendments to this Act, or to any other written law, made by the 2023 amendment Act; and

(b) includes a saving or application matter.

(2) Regulations may prescribe anything required, necessary or convenient to be prescribed in relation to a transitional matter.

(3) Without limiting subclause (2), regulations made for the purposes of that subclause may provide that specified provisions of this Act or any other written law —

(a) do not apply to, or in relation to, a specified matter or thing; or

(b) apply with specified modifications to, or in relation to, a specified matter or thing.

[Clause 62 inserted: No. 11 of 2023 s. 99.]

Notes

This is a compilation of the *Local Government Act 1995* and includes amendments made by other written laws [9, 10]. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
Local Government Act 1995	74 of 1995	9 Jan 1996	1 Jul 1996 (see s. 1.2)
Local Government Act (Schedule 3.1) Amendment Regulations 1996 published: *Gazette* 24 Jun 1996 p. 2861-2			1 Jul 1996 (see r. 2)
Local Government (Consequential Amendments) Act 1996 s. 4 [11]	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
Local Government Act (Schedule 3.1) Amendment Regulations (No. 2) 1996 published: *Gazette* 25 Oct 1996 p. 5647			25 Oct 1996
Transfer of Land Amendment Act 1996 s. 153(1)	81 of 1996	14 Nov 1996	14 Nov 1996 (see s. 2(1))
Local Government Act (Schedule 3.1) Amendment Regulations 1997 published: *Gazette* 29 Apr 1997 p. 2144			29 Apr 1997
Statutes (Repeals and Minor Amendments) Act 1997 s. 81	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
Local Government Amendment Act 1998 [12, 13]	1 of 1998	26 Mar 1998	Act other than s. 21: 26 Mar 1998 (see s. 2(1)); s. 21: 1 Jul 1998 (see s. 2(2))
Local Government Amendment Act (No. 2) 1998 [14, 15]	64 of 1998	12 Jan 1999	12 Jan 1999 (see s. 2)

Short title	Number and year	Assent	Commencement
Perth Parking Management (Consequential Provisions) Act 1999 s. 7(3) [16]	16 of 1999	19 May 1999	7 Aug 1999 (see s. 2 and *Gazette* 6 Aug 1999 p. 3727)
Acts Amendment and Repeal (Financial Sector Reform) Act 1999 s. 92	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2(1) and *Gazette* 30 Jun 1999 p. 2905)
School Education Act 1999 s. 247	36 of 1999	2 Nov 1999	1 Jan 2001 (see s. 2 and *Gazette* 29 Dec 2000 p. 7904)
Disability Services Amendment Act 1999 s. 28(3)	44 of 1999	25 Nov 1999	25 Nov 1999 (see s. 2)
Reprint of the *Local Government Act 1995* as at 18 Feb 2000 (includes amendments listed above except those in the *School Education Act 1999*)			
Statutes (Repeals and Minor Amendments) Act 2000 s. 22	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
Corporations (Consequential Amendments) Act 2001 Pt. 36	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and *Gazette* 29 Jun 2001 p. 3257 and Cwlth *Gazette* 13 Jul 2001 No. S285)
Road Traffic Amendment (Vehicle Licensing) Act 2001 Pt. 3 Div. 3	28 of 2001	21 Dec 2001	4 Dec 2006 (see s. 2 and *Gazette* 28 Nov 2006 p. 4889)
Corporations (Consequential Amendments) Act (No. 2) 2003 Pt. 14	20 of 2003	23 Apr 2003	15 Jul 2001 (see s. 2(1) and Cwlth *Gazette* 13 Jul 2001 No. S285)
Corporations (Consequential Amendments) Act (No. 3) 2003 Pt. 7 [17]	21 of 2003	23 Apr 2003	11 Mar 2002 (see s. 2 and Cwlth *Gazette* 24 Oct 2001 No. GN42)
Acts Amendment (Equality of Status) Act 2003 Pt. 38	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and *Gazette* 30 Jun 2003 p. 2579)
Statutes (Repeals and Minor Amendments) Act 2003 s. 79	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)

Short title	Number and year	Assent	Commencement
Reprint 2: The *Local Government Act 1995* as at 2 Apr 2004 (includes amendments listed above except those in the *Road Traffic Amendment (Vehicle Licensing) Act 2001*) (correction: *Gazette* 1 Oct 2004 p. 4283)			
Workers' Compensation Reform Act 2004 s. 165	42 of 2004	9 Nov 2004	4 Jan 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7131)
Local Government Amendment Act 2004 [18-23]	49 of 2004 (as amended by No. 8 of 2009 s. 88; No. 17 of 2009 s. 48)	12 Nov 2004	s. 1 and 2: 12 Nov 2004; s. 17, 30-37, 38(1) and (2) and 39-41: 22 Jan 2005 (see s. 2 and *Gazette* 21 Jan 2005 p. 257); s. 10-15, 18, 21, 22, 42, 46(3), 47, 48, 53, 55-58, 61-64, 67, 68, 70, 71, 73 and 74: 1 Apr 2005 (see s. 2 and *Gazette* 31 Mar 2005 p. 1029); s. 4-9, 16(4), 19(1), 23-29, 43-45, 46(1), (2) and (4), 49-52, 54, 65, 66, 69 and 72: 7 May 2005 (see s. 2 and *Gazette* 31 Mar 2005 p. 1029 and 29 Apr 2005 p. 1771); Proclamation published 31 Mar 2005 p. 1029 revoked to the extent that the proclamation applies to s. 16(1), (2), (3) and (5) and s. 19(2) (see *Gazette* 29 Apr 2005 p. 1771); s. 59 and 60: 1 Jul 2005 (see s. 2 and *Gazette* 31 Mar 2005 p. 1029)
Courts Legislation Amendment and Repeal Act 2004 s. 141 [24]	59 of 2004 (as amended by No. 2 of 2008 s. 77(13))	23 Nov 2004	1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128)
State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 76 [25, 26]	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7130)

Short title	Number and year	Assent	Commencement
Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 Pt. 11 and s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction: *Gazette* 7 Jan 2005 p. 53))
Reprint 3: The *Local Government Act 1995* as at 5 Aug 2005 (includes amendments listed above except those in the *Road Traffic Amendment (Vehicle Licensing) Act 2001*)			
Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005 Pt. 14	24 of 2005	2 Dec 2005	1 Jan 2006 (see s. 2(1) and *Gazette* 23 Dec 2005 p. 6244)
Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and *Gazette* 21 Mar 2006 p. 1078)
Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 12 Div. 3 [27]	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and *Gazette* 27 Jun 2006 p. 2347)
Land Information Authority Act 2006 s. 144	60 of 2006	16 Nov 2006	1 Jan 2007 (see s. 2(1) and *Gazette* 8 Dec 2006 p. 5369)
Local Government Amendment Act 2006	66 of 2006	8 Dec 2006	Act other than s. 14: 9 Dec 2006 (see s. 2(1)); s. 14: 6 Sep 2007 (see s. 2(2) and *Gazette* 21 Aug 2007 p. 4173)
Financial Legislation Amendment and Repeal Act 2006 s. 4 and Sch. 1 cl. 102	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and *Gazette* 19 Jan 2007 p. 137)
Local Government (Official Conduct) Amendment Act 2007	1 of 2007	28 Mar 2007	s. 1 and 2: 28 Mar 2007; Act other than s. 1 and 2: 21 Oct 2007 (see s. 2 and *Gazette* 21 Aug 2007 p. 4173)
Local Government Amendment Act 2007	9 of 2007	25 Jun 2007	s. 1 and 2: 25 Jun 2007; Act other than s. 1 and 2: 6 Sep 2007 (see s. 2 and *Gazette* 3 Aug 2007 p. 3989)
Local Government (Miscellaneous Provisions) Amendment Act 2007 s. 13	11 of 2007	29 Jun 2007	1 Jul 2008 (see s. 2 and *Gazette* 6 Jun 2008 p. 2179)

Short title	Number and year	Assent	Commencement
Petroleum Amendment Act 2007 s. 99	35 of 2007	21 Dec 2007	31 Oct 2009 (see s. 2(b) and *Gazette* 30 Oct 2009 p. 4305)
Reprint 4: The *Local Government Act 1995* as at 18 Jan 2008 (includes amendments listed above, except those in the *Local Government (Miscellaneous Provisions) Amendment Act 2007* and the *Petroleum Amendment Act 2007*)			
Duties Legislation Amendment Act 2008 Sch. 1 cl. 21	12 of 2008	14 Apr 2008	1 Jul 2008 (see s. 2(d))
Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 87	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
Local Government Amendment (Elections) Act 2009	15 of 2009	17 Aug 2009	s. 1 and 2: 17 Aug 2009 (see s. 2(a)); Act other than s. 1 and 2: 29 Aug 2009 (see s. 2(b) and *Gazette* 28 Aug 2009 p. 3347)
Local Government Amendment Act 2009	17 of 2009	16 Sep 2009	s. 1 and 2: 16 Sep 2009 (see s. 2(a)); Act other than s. 1, 2 and 34: 21 Nov 2009 (see s. 2(b) and *Gazette* 20 Nov 2009 p. 4649); s. 34: 4 May 2011 (see s. 2(b) and *Gazette* 3 May 2011 p. 1577)
Co-operatives Act 2009 s. 506 and 516	24 of 2009	22 Oct 2009	s. 506: 16 May 2011 (see s. 2(d) and *Gazette* 24 Jun 2011 p. 2516); s. 516: 1 Sep 2012 (see s. 2(c) and *Gazette* 13 Aug 2010 p. 3975)
Reprint 5: The *Local Government Act 1995* as at 5 Feb 2010 (includes amendments listed above except those in the *Local Government Amendment Act 2009* s. 34 and the *Co-operatives Act 2009*)			
Standardisation of Formatting Act 2010 s. 44(2) and 51	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and *Gazette* 10 Sep 2010 p. 4341)

Short title	Number and year	Assent	Commencement
Approvals and Related Reforms (No. 4) (Planning) Act 2010 s. 34 and Pt. 5 Div 2	28 of 2010	19 Aug 2010	22 Nov 2010 (see s. 2(b) and *Gazette* 19 Nov 2010 p. 5709)
Public Sector Reform Act 2010 s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and *Gazette* 5 Nov 2010 p. 5563)
Acts Amendment (Fair Trading) Act 2010 s. 182	58 of 2010	8 Dec 2010	1 Jan 2011 (see s. 2(c) and *Gazette* 24 Dec 2010 p. 6805)
Building Act 2011 s. 166	24 of 2011	11 Jul 2011	2 Apr 2012 (see s. 2(b) and *Gazette* 13 Mar 2012 p. 1033)
Statutes (Repeals and Minor Amendments) Act 2011 s. 16	47 of 2011	25 Oct 2011	26 Oct 2011 (see s. 2(b))
Local Government Amendment Act 2012 Pt. 2	2 of 2012	4 Apr 2012	Pt. 2 other than s. 13-18: 21 Apr 2012 (see s. 2(b) and *Gazette* 20 Apr 2012 p. 1695); s. 13: 1 Jul 2012 (see s. 2(b) and *Gazette* 20 Apr 2012 p. 1695); s. 14-18: 1 Jul 2013 (see s. 2(b) and *Gazette* 8 Feb 2013 p. 863)
Road Traffic Legislation Amendment Act 2012 Pt. 4 Div. 29	8 of 2012	21 May 2012	27 Apr 2015 (see s. 2(d) and *Gazette* 17 Apr 2015 p. 1371)
Reprint 6: The *Local Government Act 1995* as at 3 Aug 2012 (includes amendments listed above except those in the *Co-operatives Act 2009* s. 516, *Local Government Amendment Act 2012* s. 14-18 (correction: *Gazette* 7 Sep 2012 p. 4329 and 28 Mar 2013 p. 1317) and the *Road Traffic Legislation Amendment Act 2012* Pt. 4 Div. 29)			
Commercial Arbitration Act 2012 s. 45 it. 12	23 of 2012	29 Aug 2012	7 Aug 2013 (see s. 1B(b) and *Gazette* 6 Aug 2013 p. 3677)
Corruption and Crime Commission Amendment (Misconduct) Act 2014 s. 35	35 of 2014	9 Dec 2014	1 Jul 2015 (see s. 2(b) and *Gazette* 26 Jun 2015 p. 2235)
Associations Incorporation Act 2015 s. 223	30 of 2015	2 Nov 2015	1 Jul 2016 (see s. 2(b) and *Gazette* 24 Jun 2016 p. 2291-2)
City of Perth Act 2016 Pt. 4 Div. 4	2 of 2016	3 Mar 2016	4 Mar 2016 (see s. 2(b))

Short title	Number and year	Assent	Commencement
Reprint 7: The *Local Government Act 1995* as at 13 May 2016 (includes amendments listed above except those in the *Associations Incorporation Act 2015*)			
Graffiti Vandalism Act 2016 Pt. 6 Div. 2	16 of 2016	11 Jul 2016	12 Oct 2016 (see s. 2(b) and *Gazette* 11 Oct 2016 p. 4531)
Public Health (Consequential Provisions) Act 2016 Pt. 3 Div. 18	19 of 2016	25 Jul 2016	24 Jan 2017 (see s. 2(1)(c) and *Gazette* 10 Jan 2017 p. 165)
Local Government Legislation Amendment Act 2016 Pt. 2	26 of 2016	21 Sep 2016	Pt. 2 (other than s. 4, 6-9, 11 and 17): 12 Nov 2016 (see s. 2(b) and *Gazette* 11 Nov 2016 p. 5035); s. 4, 6-9, 11 and 17: 21 Jan 2017 (see s. 2(b) and *Gazette* 20 Jan 2017 p. 648)
Local Government Amendment (Auditing) Act 2017 (other than s. 4(2) and 7(2)) [28]	5 of 2017	1 Sep 2017	s. 1 and 2: 1 Sep 2017 (see s. 2(a)); Act other than s. 1, 2, 4(2) and 7(2): 28 Oct 2017 (see s. 2(b) and *Gazette* 27 Oct 2017 p. 5413)
Strata Titles Amendment Act 2018 Pt. 3 Div. 12	30 of 2018	19 Nov 2018	1 May 2020 (see s. 2(b) and SL 2020/39 cl. 2)
Local Government Amendment (Suspension and Dismissal) Act 2018	31 of 2018	19 Nov 2018	s. 1 and 2: 19 Nov 2018 (see s. 2(b)); Act other than s. 1 and 2: 20 Nov 2018 (see s. 2(b))
Local Government Legislation Amendment Act 2019 Pt. 2 (other than s. 39(2))	16 of 2019	5 Jul 2019	s. 3-4, 6-12, 18, 19, 21, 23, 45-47, 52-56, 58-60, 62, 63, 69-73: 6 Jul 2019 (see s. 2(c)); s. 15: 10 Aug 2019 (see s. 2(b) and *Gazette* 9 Aug 2019 p. 3019); s. 61: 16 Sep 2019 (see s. 2(b) and *Gazette* 9 Aug 2019 p. 3019); s. 26 to 38, 39(1), 40 to 44, 67 and 74(3): 19 Oct 2019 (see s. 2(b) and *Gazette* 18 Oct 2019 p. 3673); s. 5, 13, 14, 16, 17, 20, 24, 57,

Short title	Number and year	Assent	Commencement
			64-66, 68 and 74(1) and (2): 7 Nov 2020 (see s. 2(b) and SL 2020/212 cl. 2); s. 22, 25 and 48-51: 3 Feb 2021 (see s. 2(b) and SL 2021/13 cl. 2)
Local Government Amendment (COVID-19 Response) Act 2020 (other than s. 5)	17 of 2020	20 Apr 2020	s. 1 and 2: 20 Apr 2020 (see s. 2(a)); Act other than s. 1, 2 and 5: 21 Apr 2020 (see s. 2(c))
Work Health and Safety Act 2020 Pt. 15 Div. 4 Subdiv. 6	36 of 2020	10 Nov 2020	31 Mar 2022 (see s. 2(1)(c) and SL 2022/18 cl. 2)
Swan Valley Planning Act 2020 Pt. 10 Div. 7	45 of 2020	9 Dec 2020	1 Aug 2021 (see s. 2(1)(e) and SL 2021/124 cl. 2)
Constitutional and Electoral Legislation Amendment (Electoral Equality) Act 2021 s. 95	20 of 2021	24 Nov 2021	25 Nov 2021 (see s. 2(b))
Transfer of Land Amendment Act 2022 Pt. 3 Div. 6	21 of 2022	24 Jun 2022	7 Aug 2023 (see s. 2(b) and SL 2023/111 cl. 2)
Emergency Management Amendment (Temporary COVID-19 Provisions) Act 2022 Pt. 2 Div. 2 Subdiv. 3	33 of 2022	21 Oct 2022	3 Nov 2022 (see s. 2(b) and SL 2022/175 cl. 2)

Short title	Number and year	Assent	Commencement
Local Government Amendment Act 2023 Pt. 2 (other than s. 22, 23, 55, 59, 61-65, 67-69, 72-75, 76(1), 77(1) and (2), 78, 81 and 83-85)	11 of 2023	18 May 2023	s. 3, 60, 86, 87 and 99: 19 May 2023 (see s. 2(b)); s. 5(2) and (4), 7-11, 13-16, 19(1)-(3), 24 and 89: 21 Jun 2023 (see s. 2(d) and SL 2023/77 cl. 2); s. 4, 5(1) and (3), 6, 12, 18, 19(4), 20, 21, 25 to 28, 31(2) and (3), 33 to 39, 40(1) and (2), 42 to 54, 56, 57, 71, 76(2), 77(3), 88 and 90 to 98: 1 Jul 2023 (see s. 2(d) and SL 2023/92 cl. 2(a)); s. 58, 66, 70, 79(1) and 82: 19 Oct 2023 (see s. 2(d) and SL 2023/157 cl. 2(a)); s. 17, 29, 30, 31(1), 32, 40(3), 41, 79(2) and 80: 1 Jan 2024 (see s. 2(d), SL 2023/92 cl. 2(b) and SL 2023/157 cl. 2(b))

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
Local Government Amendment (Auditing) Act 2017 s. 4(2) and 7(2)	5 of 2017 (as amended by No. 11 of 2023 s. 103)	1 Sep 2017	To be proclaimed (see s. 2(1)(c))
Local Government Legislation Amendment Act 2019 s. 39(2)	16 of 2019	5 Jul 2019	To be proclaimed (see s. 2(b))
Local Government Amendment (COVID-19 Response) Act 2020 s. 5	17 of 2020	20 Apr 2020	To be proclaimed (see s. 2(b))
Local Government Amendment Act 2023 s. 22, 23, 55, 59, 61-65, 67-69,	11 of 2023	18 May 2023	s. 23: 1 Jul 2024 (see s. 2(d) and SL 2023/92 cl. 2(c)); s. 22, 55, 59, 61-65, 67-69,

Short title	Number and year	Assent	Commencement
72-75, 76(1), 77(1) and (2), 78, 81 and 83-85			72-75, 76(1), 77(1) and (2), 78, 81 and 83-85: to be proclaimed (see s. 2(d));
Workers Compensation and Injury Management Act 2023 Pt. 15 Div. 3 Subdiv. 10	21 of 2023	24 Oct 2023	1 Jul 2024 (see s. 2(d) and SL 2024/34 cl. 2)
Electoral Amendment (Finance and Other Matters) Act 2023 Pt. 4	30 of 2023	11 Dec 2023	1 Jul 2024 (see s. 2(c))
Petroleum Legislation Amendment Act 2024 s. 433(2)	17 of 2024	14 May 2024	To be proclaimed (see s. 2(b))

Other notes

[1M] Under the *Local Government Act 1995* s. 10.3, modifications to s. 5.27, 5.28, 5.94, 6.2, 6.13, 6.33, 6.34, 6.35, 6.36, 6.45, 6.51 and 9.51 are prescribed in the *Local Government (COVID-19 Response) Order* 2020 (see SL 2020/57 published in *Gazette* 8 May 2020).

[1] Footnote no longer applicable.

[2] The provisions in this Act amending the *Local Government Act 1960* have been omitted under the *Reprints Act 1984* s. 7(4)(e).

[3] Repealed by the *Mining Act 1978.*

[4] The short title of the *Local Government Act 1960* was amended to the *Local Government (Miscellaneous Provisions) Act 1960* by Sch. 9.2 cl. 2 of this Act. That provision has now been omitted.

[5] Under the *Land Administration Act 1997* s. 281(3) a reference in a written law to the *Land Act 1933* is, unless the contrary intention appears, to be read and construed as if that reference were a reference to the *Land Administration Act 1997*.

[6] Footnote no longer applicable.

[7] Footnote no longer applicable.

[8] The provisions of the *Local Government Act 1960* Pt. VIA as continued by Sch. 9.3 cl. 16 of this Act and amended by the *Local Government (Amendment of Part VIA – Employee Superannuation) Regulations 2006* r. 4 and 5 (published: *Gazette* 26 May 2006 p. 1877-8) read as follows:

Part VIA — Employee Superannuation

170A. Interpretation

(1) In this Part —

City of Perth scheme means the superannuation scheme established under section 170C;

dependant has the same definition as in section 10 of the SIS Act;

employee and ***employer*** have the same definitions as in section 10 of the SIS Act;

industry scheme means the WA Local Government Superannuation Plan (formerly called the W.A. Local Government Occupational Superannuation Fund) established by a trust deed dated 21 March 1990 and continued under a trust deed dated 4 November 2004;

municipality includes a regional council;

SIS Act means the *Superannuation Industry (Supervision) Act 1993* (Cwlth) as amended from time to time.

(2) A reference in this Part to the City of Perth scheme is a reference to the scheme as it is amended from time to time.

(3) A reference in this Part to the industry scheme is a reference to the scheme as it is amended from time to time.

[Section 170A amended: Gazette 26 May 2006 p. 1877.]

170B. Municipalities to use industry scheme

(1) To provide superannuation and other benefits for its employees and their dependants, a municipality shall participate in and comply with the industry scheme.

(2) A municipality shall exercise such powers and discharge such obligations as are necessary to give effect to the industry scheme.

(3) Subsections (1) and (2) do not apply in respect of an employee if under section 170D, or the *City of Perth Act 2016* section 23, a municipality has to participate in and comply with the City of Perth scheme in respect of that employee.

(4) Subsections (1) and (2) apply to the City of Perth only in respect of those of its employees who are not members of the City of Perth scheme.

(5) If, in respect of an employee for any period —

(a) there is a chosen fund for the employee throughout the period; and

(b) the chosen fund is not the industry scheme; and

(c) the municipality makes the minimum SG contributions for the employee for that period to the chosen fund,

the amount that the municipality would, but for this subsection, be required under subsection (1) and the industry scheme trust deed to contribute to the industry scheme for that employee for that period is reduced by the amount of those minimum SG contributions made to the chosen fund.

(6) In subsection (5) —

(a) the following terms have the same meanings as they have in the *Superannuation Guarantee (Administration) Act 1992* (Cwlth) —

(i) chosen fund for the employer;

(ii) individual superannuation guarantee shortfall;

and

(b) a reference to a municipality making the minimum SG contributions for an employee for a period is a reference to the municipality making the contributions necessary for it to avoid incurring an individual superannuation guarantee shortfall in respect of the employee in respect of that period.

[Section 170B amended: Gazette 26 May 2006 p. 1878; No. 2 of 2016 s. 31.]

170C. City of Perth scheme

(1) The City of Perth shall establish a scheme that accords with the SIS Act to provide superannuation and other benefits for its employees and their dependants and for those of its former employees (and their dependants) whose employers, by virtue of section 170D or the *City of Perth Act 2016* section 23, are required to participate in and comply with the scheme.

(2) The City of Perth shall participate in and comply with the City of Perth scheme.

(3) The City of Perth shall exercise such powers and discharge such obligations as are necessary to give effect to the City of Perth scheme.

(4) A person who becomes an employee of the City of Perth shall be a member of and subject to the City of Perth scheme unless he or she elects to be a member of the industry scheme.

[Section 170C amended: No. 2 of 2016 s. 32.]

170D. City of Perth scheme members who become employed by a regional council

(1) If a person —

(a) is a member of the City of Perth scheme; and

(b) becomes an employee of a regional council of which the City of Perth is a constituent municipality,

then, despite section 170B, the regional council shall, in respect of that person, participate in and comply with the City of Perth scheme in the same way and to the same extent as the City of Perth would be required to if the person were its employee; unless the person elects to become a member of the industry scheme.

(2) A person referred to in subsection (1) does not cease to be a member of the City of Perth scheme by reason only of ceasing to be an employee of the City of Perth.

170E. Other superannuation schemes

Nothing in this Part prevents a municipality from participating, in respect of an employee of the municipality, in a superannuation scheme in addition to either the industry scheme or the City of Perth scheme (as the case may be) if the municipality and the employee agree to participate in that other scheme.

[9] The *Local Government Act 1995* is affected by the *Dampier to Bunbury Pipeline Act 1997* Sch. 4 cl. 36, which reads as follows:

36. Payment in place of local government rates

(1) The DBNGP Land Access Minister is not liable to pay rates in respect of land in the DBNGP corridor.

(2) A holder of rights conferred under section 34 of this Act or the holder's nominee approved under section 34(3) of this Act is not, as the holder of those rights or the holder's nominee, liable to pay rates.

(3) The DBNGP Land Access Minister is to pay to each local government in the district of which there is any utilized corridor land an amount equivalent to the rates that would have been assessable in the hands of an owner holding the fee simple in the land whose rates were assessable on the basis of unimproved value.

(4) An amount payable under subclause (3) is to be treated for the purposes of Part 4 of this Act as a part of the cost of administering that Part.

(5) In this clause —

DBNGP corridor and ***DBNGP Land Access Minister*** have the meanings given by section 27 of this Act;

rates means rates under the *Local Government Act 1995*;

utilized corridor land means land in the DBNGP corridor in respect of which rights under section 34 of this Act are held, regardless of whether rights are held by one holder or several holders.

[10] The *Local Government Act 1995* is affected by the *Gas Corporation (Business Disposal) Act 1999* s. 67, which reads as follows:

67. Presence of pipeline does not constitute occupation of land

Despite anything to the contrary in the *Local Government Act 1995*, land is not to be regarded as being occupied for the purposes of that Act merely because —

(a) there is on or under that land any pipe or system of pipes for or incidental to the transport of gas in respect of which a distribution licence has been issued under Part 2A of the *Energy Coordination Act 1994*; or

(b) a person is the holder of a distribution licence under Part 2A of the *Energy Coordination Act 1994* in respect of a distribution system that is on or under that land.

[11] The *Local Government (Consequential Amendments) Act 1996* s. 7 and 8 read as follows:

7. Transitional matters relating to by-laws

(1) If, when this Act comes into operation —

(a) a local government has resolved to make a by-law under the *Bush Fires Act 1954*, the *City of Perth Parking Facilities Act 1956* or the *Health Act 1911*; but

(b) the by-law has not been published in the *Gazette*,

the process of making, confirming or approving, and publishing the by-law may be completed as if this Act and the *Local Government Act 1995* had not come into operation.

(2) If, when this Act comes into operation —

(a) a local government has —

(i) resolved to make a by-law under the *Cemeteries Act 1986*, the *Control of Vehicles (Off-road Areas) Act 1978* or the *Dog Act 1976*; and

(ii) caused a notice of intention to submit the by-law for confirmation or approval by the Governor to be published;

but

(b) the by-law has not been published in the *Gazette*,

the process of making, confirming or approving, and publishing the by-law may be completed as if this Act and the *Local Government Act 1995* had not come into operation.

(3) A by-law that is made, confirmed or approved, or published in accordance with subsection (1) or (2) becomes a local law as soon as it is published in the *Gazette*.

(4) If, when this Act comes into operation —

(a) a local government has resolved to make a by-law under the *Cemeteries Act 1986*, the *Control of Vehicles (Off-road Areas) Act 1978* or the *Dog Act 1976*; but

(b) a notice of intention to submit the by-law for confirmation or approval by the Governor has not been published,

the resolution ceases to have effect as a resolution to make a by-law and instead has effect as if it were a resolution under that Act as amended by this Act proposing to make a local law to the same effect.

(5) This section ceases to operate on the day 6 months after this Act comes into operation.

8. Transitional regulations

(1) If there is no sufficient provision in this Act for dealing with a transitional matter, the Governor may make regulations

prescribing all matters that are required, or are necessary or convenient, for dealing with that transitional matter.

(2) Regulations made under subsection (1) may have effect before the day on which they are published in the *Gazette*.

(3) To the extent that a regulation made under subsection (1) may have effect before the day of its publication in the *Gazette*, it does not —

(a) affect in a manner prejudicial to any person (other than the State or a local government), the rights of that person existing before the day of its publication; or

(b) impose liabilities on any person (other than the State or a local government) in respect of anything done or omitted to be done before the day of its publication.

(4) In subsection (1) —

transitional matter means a matter that needs to be dealt with for the purpose of effecting the transition from the provisions of the Acts amended by this Act as in force before this Act comes into operation to the provisions of those Acts as in force after this Act comes into operation.

[12] The *Local Government Amendment Act 1998* s. 5(2)-(4) and 14(2) are transitional provisions that are of no further effect.

[13] The amendment purported to be made by the *Local Government Amendment Act 1998* s. 28 is not included because prior to its commencement cl. 4(2) of Sch. 9.2 had been previously amended by the *Statutes (Repeals and Minor Amendments) Act 1997* s. 81(1).

[14] The *Local Government Amendment Act (No. 2) 1998* s. 14(3) reads as follows:

(3) The amendments made by this section have no effect in relation to a notice given under section 3.49 before the commencement of this section or anything done in consequence of such a notice.

[15] The *Local Government Amendment Act (No. 2) 1998* s. 56 is a transitional provision that is of no further effect.

[16] The *Perth Parking Management (Consequential Provisions) Act 1999* s. 5(2) is a transitional provision that is of no further effect.

[17] The *Corporations (Consequential Amendments) Act (No. 3) 2003* s. 2-4 read as follows:

2. Commencement

(1) If this Act receives the Royal Assent before the day on which Schedule 1 to the Financial Services Reform Act comes into operation, this Act comes into operation at the same time as that Schedule comes into operation.

(2) If this Act receives the Royal Assent on or after the day on which Schedule 1 to the Financial Services Reform Act comes into operation, this Act is deemed to have come into operation at the same time as that Schedule comes into operation.

3. Interpretation

In this Part —

Financial Services Reform Act means the *Financial Services Reform Act 2001* of the Commonwealth;

FSR commencement time means the time when Schedule 1 to the Financial Services Reform Act comes into operation;

statutory rule means a regulation, rule or by-law.

4. Validation

(1) This section applies if this Act comes into operation under section 2(2).

(2) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent that could have been done if this Act had received the Royal Assent before the FSR commencement time is taken to be as valid and lawful, and to always have been as valid and lawful, as it would have been if this Act had received the Royal Assent before the FSR commencement time.

(3) Anything done or omitted to have been done by a person after the FSR commencement time and before this Act received the Royal Assent that would have been valid and lawful if the Financial Services Reform Act had not commenced, is taken to be valid and lawful.

(4) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent —

(a) that could only have been validly and lawfully done or omitted because this Act received the Royal Assent after the FSR commencement time; and

(b) that could not have been validly and lawfully done or omitted if this Act had received the Royal Assent before the FSR commencement time,

is taken not to be valid, and to never have been valid.

[18] The *Local Government Amendment Act 2004* s. 30(2) reads as follows:

(2) Despite subsection (1), if the day for an election, referendum or other poll was fixed under the *Local Government Act 1995* before the commencement of this section, sections 4.1A and 4.1B of that Act as inserted by subsection (1) do not apply in respect of that election, referendum or other poll.

[19] The *Local Government Amendment Act 2004* s. 67(6) reads as follows:

(6) Schedule 2.1 of the *Local Government Act 1995* as in force immediately before the commencement of this section applies to and in respect of any proposal made under clause 2 of that Schedule before that commencement.

[20] The *Local Government Amendment Act 2004* s. 14, which gives effect to Sch. 2, reads as follows:

14. Transitional and validation provisions — Schedule 2

Schedule 2 has effect.

Schedule 2 reads as follows:

Schedule 2 — Transitional and validation provisions — WALGA

[s. 14]

1. Interpretation

In this Schedule —

anything done means anything done, or omitted, or purported to be done or omitted;

commencement means the commencement of section 10;

body previously constituted under section 9.58 means a body constituted under section 9.58 of the *Local Government Act 1995* before the commencement;

WALGA means the Western Australian Local Government Association constituted under section 9.58 of the *Local Government Act 1995* after the commencement.

2. WALGA successor in law to bodies previously constituted under section 9.58

(1) On the commencement, WALGA becomes the successor in law of each body previously constituted under section 9.58.

(2) In particular —

(a) each body previously constituted under section 9.58 is dissolved;

(b) the property of each body previously constituted under section 9.58 becomes the property of WALGA;

(c) all assets, liabilities, rights and duties of the body previously constituted under section 9.58 becomes the assets, liabilities, rights and duties of WALGA;

(d) any proceedings or remedy that immediately before the commencement might have been brought or continued by or available against or to a body previously constituted under section 9.58, may be brought or continued and are available, by or against or to WALGA;

(e) WALGA is to take delivery of all papers, documents, minutes, books of account and other records (however compiled, recorded or stored) relating to the operations of each body previously constituted under section 9.58.

3. Agreements and instruments

Any agreement or instrument subsisting immediately before the commencement —

(a) to which a body previously constituted under section 9.58 was a party; or

(b) which contains a reference to a body previously constituted under section 9.58,

has effect after the commencement as if —

(c) WALGA were substituted for the body previously constituted under section 9.58 as a party to the agreement or instrument; and

(d) any reference in the agreement or instrument to the body previously constituted under section 9.58 were (unless the context otherwise requires) amended to be or include a reference to WALGA.

4. Validation

Anything done before the commencement under the name of WALGA, or the Western Australian Local Government Association, by, to, or in respect of, a body previously constituted under section 9.58 is as valid and effective, and is to be taken to have always been as valid and effective, as it would have been had the thing been done after the commencement by, to, or in respect of WALGA.

5. *Interpretation Act 1984* not affected

Nothing in this Schedule is to be construed so as to limit the operation of the *Interpretation Act 1984*.

[21] The *Local Government Amendment Act 2004* s. 73(3) reads as follows:

73. Schedule 9.3 amended and validation

(3) The amendment effected by subsection (2) is to be taken to have come into operation on the day on which the *Local Government Act 1995* came into operation and any laws referred to in —

(a) subclause (4a)(a) of that amendment are to be taken to have applied from that day; and

(b) subclause (4a)(b) of that amendment are to be taken to have applied from the day on which the local law commenced.

[22] The *Local Government Amendment Act 2004* s. 16(1)-(3) and (5) had not come into operation when they were deleted by the *Statutes (Repeals and Miscellaneous Amendments) Act 2009* s. 88.

[23] The *Local Government Amendment Act 2004* s. 19(2), 20 and 38(3) had not come into operation when they were deleted by the *Local Government Amendment Act 2009* s. 48.

[24] The *Courts Legislation Amendment and Repeal Act 2004* Sch. 2 cl. 28 was deleted by the *Criminal Law and Evidence Amendment Act 2008* s. 77(13).

[25] The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

[26] The *State Administrative Tribunal Regulations 2004* r. 56 reads as follows:

> **56. *Local Government Act 1995***
>
> (1) In this regulation —
>
> ***commencement day*** means the day on which the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Part 2 Division 76 comes into operation;
>
> ***the LG Act*** means the *Local Government Act 1995*.
>
> (2) If a local government receives, before the commencement day, a notice in accordance with the LG Act section 6.77 (as in force when the notice was received by the local government) but does not before the commencement day refer the decision referred to in the notice to a Land Valuation Tribunal as an appeal, on and after the commencement day the local government must refer the notice to the State Administrative Tribunal and the notice is to be taken to be an application to the Tribunal for a review of the decision under the LG Act section 6.77.
>
> (3) If a local government receives, before the commencement day, a notice in accordance with the LG Act section 6.78 (as in force when the notice was received by the local government) but does not before the commencement day refer the decision referred to in the notice to a Land Valuation Tribunal as an appeal, on and after the commencement day the local government must refer the notice to the State Administrative Tribunal and the notice is to be taken to be an application to the Tribunal for a review of the decision under the LG Act section 6.78.

[27] References to the Executive Director were replaced by references to the Departmental CEO, see the *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 12 Div. 3. Section 454 of that Act is a general transitional provision that applies to references to the Executive Director in written laws.

[28] The *Local Government Amendment (Auditing) Act 2017* s. 22 reads as follows:

> **22. Superseded provisions to be deleted**
>
> (1) In this section —

superseded provisions means the following provisions of the *Local Government Act 1995* —

(a) section 5.43(c);

(b) in section 7.1, the definitions of ***approved auditor***, ***disqualified person***, ***qualified person*** and ***registered company auditor***;

(c) Part 7 Division 2;

(d) Part 7 Division 3;

(e) section 7.12AA;

(f) section 7.12AF;

(g) section 7.13(1)(ab)(i), (ac), (a)-(e), (g) and (h).

(2) The superseded provisions are deleted on a day fixed by proclamation.

(3) A proclamation cannot be made under subsection (2) unless the Minister is satisfied that there is no reason for the superseded provisions to remain in operation.

(4) This section is deleted immediately after the superseded provisions are deleted.

Note for Part 7:

The description at the beginning of Part 7 is to be altered by:

(a) deleting "*the financial accounts of* " ;

(b) deleting paragraph (a) and inserting:

(a) the establishment of audit committees; and

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

Defined term	Provision(s)
2023 amendment Act	Sch. 9.3 cl. 57
abandoned vehicle wreck	3.40A(5)
absent vote	4.67
absolute majority	1.4
Absolute majority required	1.9
acquire	3.59(1)
action report	7.13(1)
additional purpose	6.8(1a)
address	5.74(1)
Advisory Board	1.4
affected electors	Sch. 2.1 cl. 1, Sch. 2.2 cl. 1
affected local government	Sch. 2.1 cl. 1
affected person	9.2
agreement	7.13(1)
alleged offender	3.38
amending Act	Sch. 9.3 cl. 14A(1), 42, 45
amending provision	Sch. 9.3 cl. 44
amendment day	Sch. 9.3 cl. 58(1), 59(1), 61(1)
amount misapplied	8.35(3)
an authorised person	8.3(6)
annual budget	6.1
annual return	5.74(1)
approved auditor	7.1
arrangement	5.49(1)
audit	7.1
audit committee	7.1
audit contract	7.1, Sch. 9.3 cl. 49
auditor	1.4
Auditor General Act	7.1
audit report	7.1
authorisation	9.2
authorised employee	9.31
authorised land officer	9.69(1)
authorised person	8.1, 8.35(3), 9.10(5), 9.13(1), 9.15
Authority	9.69(1)
ballot paper	Sch. 4.1 cl. 7
breach	5.102A
budget deficiency	6.1
candidate	5.102A, Sch. 4.1A cl. 5(2), 11(2)

candidate A ..... 4.81(4), Sch. 2.3 cl. 12(4)
candidate B ..... 4.81(4), Sch. 2.3 cl. 12(4)
caretaker period ..... 1.4, 1.4A(1)
CEO 1.4
certified copy 9.31
change order ..... 2.18A(1)
close of enrolments ..... 4.39(1)
close of nominations 4.49
commencement day ..... 7.1, Sch. 9.3 cl. 1, 49, 56(1)
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committee 5.1
committee meeting ..... 5.98(7)
committee member ..... 5.100(1)
complaints officer 5.102A
concurrent election ..... Sch. 4.1B cl. 1(1)
conditions ..... 5.44(5)
continuing authority ..... Sch. 9.3 cl. 1
continuing candidate ..... Sch. 4.1A cl. 8(2), Sch. 4.1B cl. 4(1), Sch. 4.1 cl. 7
contravention that can lead to impounding 3.38
corporation ..... 5.74(1)
council 1.4
councillor 1.4
councillor mayor or president 1.4
council meeting ..... 5.23A(1)
council proceedings ..... 9.57A(1)
court ..... 3.26(5)
COVID emergency declaration 10.1
Crown lands 1.4
Crown lease 1.4
Crown lessee 1.4
debt ..... 5.85(3)
deceptive material ..... 4.88(4)
decision ..... 5.125(2), 9.2
Department 1.4
Departmental CEO 1.4
designated employee ..... 5.74(1), Sch. 9.3 cl. 1
determined ..... 5.98(1A), 5.100(1)
detriment ..... 4.85(4)
differential general rate 6.1
dispose ..... 3.58(1), 3.59(1)
disposition of real property ..... 5.86(3)
disqualification offence 8.15D
disqualified ..... 2.27(1)
disqualified person ..... 7.1, 7.4(2)

district 1.4
districts ..... Sch. 2.1 cl. 8(1)
disused material ..... Sch. 3.1
early vote 4.67
elected candidate ..... Sch. 4.1 cl. 9(1), 10(1)
election ..... 2.16A, 4.1, 4.36(2), Sch. 2.3 cl. 10, Sch. 4.1A cl. 8(2), 11(2), Sch. 9.3 cl. 59(1)
election day ..... 2.16A, 4.1, Sch. 4.1B cl. 1(2), Sch. 9.3 cl. 59(1)
election notice ..... 4.1, 4.64(2)
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elector 1.4
Electoral Commissioner 1.4
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Electoral Division ..... 4.1A(6)
electoral gift ..... 5.62(2)
electoral material ..... 4.87(3)
electoral officer 4.1
electoral requirements 1.4, 4.1
electoral roll 4.1
electorate ..... 4.29(1), 4.30(1), Sch. 9.3 cl. 12(2)
elector mayor or president 1.4
electors 5.26
electronic broadcasting ..... 5.23A(1)
eligible body ..... 5.49(1)
emergency ..... 9.63A(1)
employee ..... 1.4, 5.48(1), 5.70(1), (2)
enrolment information ..... 4.46A(1)
entitled person ..... 6.67(3)
establishment agreement ..... 3.61(2)
event ..... 5.90A(1)
excluded candidate ..... Sch. 4.1 cl. 5(2)
excluded provision ..... 9.63A(1)
existing roll ..... Sch. 9.3 cl. 12(1)
extension order ..... 8.15F(3)
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first-preference vote ..... 4.73(6), Sch. 4.1A cl. 5(2), Sch. 4.1B cl. 3(4), Sch. 4.1 cl. 1, Sch. 4.2
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former district ..... Sch. 9.3 cl. 1

former member ..... Sch. 4.1A cl. 1, Sch. 4.1B cl. 1(1)
former municipality ..... Sch. 9.3 cl. 1
former provisions ..... 2.22(3), Sch. 9.3 cl. 1, 56(1)
former section ..... Sch. 9.3 cl. 38(1)
former section 300 ..... 3.53(1)
former section 5.89A(7) ..... Sch. 9.3 cl. 56(1)
former valuation ..... Sch. 6.1 cl. 1(2)
FY17/18 audit ..... Sch. 9.3 cl. 51(1)
FY19/20 audit ..... Sch. 9.3 cl. 52(1)
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general rate 6.1
gift 5.57
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Government agreement 6.25
Government Statistician ..... 2.16B(8)
gross rental value 6.25
inaugural election ..... 1.4, 4.2(2)
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indictable penalty ..... 2.22(3)
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Inquiry Panel 1.4
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invalidity complaint ..... 4.80(2), Sch. 2.3 cl. 11(2)
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