



Western Australia

Local Government Amendment Act 2023

As at 18 May 2023

No. 11 of 2023

Published on www.legislation.wa.gov.au

Local Government Amendment Act 2023

Contents

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2

Part 2 — *Local Government Act 1995* amended

3.	Act amended	3
4.	Section 1.3 amended	3
5.	Section 1.4 amended	3
6.	Section 1.4A inserted	4
	1.4A. Caretaker period	4
7.	Section 2.2 amended	5
8.	Section 2.2A inserted	5
	2.2A. Regulations may provide that district cannot be divided into wards	5
9.	Section 2.11 amended	6
10.	Section 2.12B inserted	6
	2.12B. Regulations may require local government to use election by electors method	6
11.	Section 2.13 amended	8
12.	Section 2.14 amended	8
13.	Section 2.17 replaced	8

Subdivision 1 — Preliminary

2.16A.	Terms used	8
2.16B.	Population estimates	9

Subdivision 2 — Membership and size

2.17.	Members of council where mayor or president elected by electors	11
-------	--	----

	2.17A. Members of council where mayor or president elected by council	12	
14.	Part 2 Division 4 Subdivision 3 heading inserted		13
	Subdivision 3 — Orders		
15.	Section 2.18 amended		13
16.	Section 2.18A inserted		13
	2.18A. Change orders	13	
17.	Section 2.19 amended		17
18.	Section 2.25 amended		18
19.	Section 2.28 amended		18
20.	Section 2.32 amended		20
21.	Section 3.1 amended		20
22.	Section 3.59 amended		21
23.	Part 3 Division 5 inserted		21
	Division 5 — Caretaker period		
	3.73. Restrictions on what local government may do during caretaker period	21	
24.	Section 4.4 amended		24
25.	Section 4.8 amended		24
26.	Section 4.13 amended		24
27.	Section 4.16 amended		25
28.	Section 4.17 amended		25
29.	Section 4.31 amended		25
30.	Section 4.32 amended		26
31.	Section 4.33 amended		29
32.	Section 4.35 amended		30
33.	Section 4.39 amended		30
34.	Section 4.40 amended		31
35.	Section 4.41 amended		31
36.	Section 4.42 amended		31
37.	Section 4.43 amended		32
38.	Section 4.46A inserted		32
	4.46A. Restrictions on use of information contained in rolls	32	
39.	Section 4.47 amended		35
40.	Section 4.49 amended		36
41.	Section 4.51 amended		37
42.	Section 4.52 replaced		37
	4.52. Information about candidates to be published	37	
43.	Section 4.53 amended		39

44.	Section 4.64 amended	39
45.	Section 4.69 replaced	39
	4.69. How to vote	39
46.	Section 4.72 amended	40
47.	Section 4.72A inserted	40
	4.72A. Re-counts of votes	40
48.	Section 4.73 amended	41
49.	Section 4.73A inserted	42
	4.73A. Procedure when councillor whose term is not expiring is candidate for mayor or president	42
50.	Section 4.75 amended	43
51.	Section 4.76 amended	44
52.	Section 4.77 amended	44
53.	Section 4.80 amended	44
54.	Section 4.81 amended	45
55.	Section 5.18A inserted	46
	5.18A. Regulations in relation to functions of committees	46
56.	Section 5.19 amended	47
57.	Section 5.21 amended	47
58.	Section 5.23A inserted	48
	5.23A. Electronic broadcasting and video or audio recording of council meetings	48
59.	Section 5.25 deleted	49
60.	Section 5.28 amended	49
61.	Section 5.31 deleted	51
62.	Part 5 Division 2 Subdivision 5 inserted	51
	Subdivision 5 — Regulations about meetings	
	5.33A. Regulations about meetings of councils, committees or electors	51
63.	Section 5.38 replaced	54
	5.38. Annual review of CEO's performance	54
64.	Section 5.39AA inserted	55
	5.39AA. Publication of information relating to CEO's performance	55
65.	Section 5.39A amended	56
66.	Section 5.43 amended	57
67.	Section 5.53 amended	57
68.	Section 5.56 replaced	58
	5.56. Council plan	58

69.	Part 5 Division 5A inserted	59
	Division 5A — Community engagement	
	5.56A. Community engagement charter	59
	5.56B. Community surveys	60
70.	Section 5.63 amended	61
71.	Section 5.68 amended	61
72.	Section 5.88 amended	62
73.	Section 5.92 amended	62
74.	Sections 5.92A to 5.92C inserted	62
	5.92A. Local government to have communications agreement	62
	5.92B. Default communications agreement	64
	5.92C. Local government may adopt communications agreement of its own	65
75.	Section 5.94 amended	66
76.	Section 5.95 amended	66
77.	Section 5.96A amended	67
78.	Section 5.96B inserted	67
	5.96B. Registers	67
79.	Section 5.98 amended	68
80.	Section 5.100 replaced	69
	5.100. Fees paid and expenses reimbursed to committee members	69
81.	Section 5.105 amended	71
82.	Section 5.129 inserted	72
	5.129. Fees and expenses	72
83.	Section 6.2 amended	74
84.	Section 6.4 amended	75
85.	Section 7.13 amended	75
86.	Section 9.61A inserted	75
	9.61A. Further provisions about regulations	75
87.	Section 9.63A inserted	77
	9.63A. Minister may grant exemptions from compliance with Act	77
88.	Section 9.63A amended	79
89.	Schedule 2.2 clause 3 amended	79
90.	Schedule 2.2 clause 6 amended	80
91.	Schedules 4.1A and 4.1B inserted	80
	Schedule 4.1A — Filling extraordinary vacancy without extraordinary election	
	Division 1 — Preliminary	
	1. Terms used	80

Division 2 — Application of Schedule		
2.	Certain extraordinary vacancies to be filled under Schedule instead of by extraordinary election	81
Division 3 — One office elections		
Subdivision 1 — One office election: 2 candidates		
3.	Application of Subdivision	83
4.	Filling of vacancy by unsuccessful candidate	83
Subdivision 2 — One office election: 3 or more candidates where former member elected under Schedule 4.1 clause 4		
5.	Application of Subdivision	84
6.	Filling of vacancy by second placed candidate	85
7.	Filling of vacancy by third placed candidate	86
Subdivision 3 — One office election: 3 or more candidates where former member elected under Schedule 4.1 clause 5		
8.	Application of Subdivision	87
9.	Filling of vacancy by second placed candidate	89
10.	Filling of vacancy by third placed candidate	90
Division 4 — Elections of 2 or more councillors		
11.	Application of Division	91
12.	Filling of vacancy by first unelected candidate	93
13.	Filling of vacancy by second unelected candidate	94
Division 5 — Former member elected under cl. 6, 9 or 12		
14.	Terms used	95
15.	Former member elected under cl. 6	96
16.	Former member elected under cl. 9	96
17.	Former member elected under cl. 12	97
Division 6 — Final provisions		
18.	Regulations about notifications and time periods	98
19.	Declarations and notices under section 4.77 for purposes of Schedule	98

	Schedule 4.1B — Filling office of councillor who is elected elector mayor or president	
	1. Vacancy caused by councillor becoming elector mayor or president not to be filled by extraordinary election in certain circumstances	100
	2. Concurrent election ascertained under Schedule 4.1 clause 2	101
	3. Concurrent election ascertained under Schedule 4.1 clause 4	101
	4. Concurrent election ascertained under Schedule 4.1 clause 5	102
	5. Concurrent election ascertained under Schedule 4.1 Division 3	102
92.	Schedule 4.1 replaced	104
	Schedule 4.1 — How to count votes and ascertain the result of an election	
	Division 1 — Preliminary	
	1. Terms used	104
	Division 2 — One office elections	
	2. One office election: 2 candidates	105
	3. One office election: 3 or more candidates	105
	4. Count of first-preference votes	105
	5. Process if no candidate elected under clause 4	105
	Division 3 — Elections for 2 or more councillors	
	Subdivision 1 — Preliminary	
	6. Application of Division	108
	7. Terms used	108
	Subdivision 2 — Counting and transferring votes	
	8. Count of first-preference votes and determination of quota	109
	9. Transfer of surplus votes (1)	109
	10. Transfer of surplus votes (2)	110
	11. Exclusion of candidates	112
	Subdivision 3 — Supplementary provisions	
	12. No further transfers to elected candidates	114
	13. Filling last office	114
	14. No need for further transfers of votes if number of continuing candidates equals number of vacancies	114
	15. Order of transfers of surpluses	114
	16. Procedure to determine excluded candidates if votes equal	115
	17. Setting aside ballot papers as finally dealt with or exhausted	116

	18.	Transfers to be treated separately	116
93.		Schedule 4.2 clause 6 amended	117
94.		Schedule 4.2 clause 7 amended	117
95.		Schedule 4.2 clauses 7A and 7B inserted	118
96.		Schedule 4.2 clause 8 amended	120
97.		Schedule 4.2 clause 9 amended	120
98.		Schedule 4.2 clause 10 inserted	121
99.		Schedule 9.3 Division 6 inserted	121
		Division 6 — Provisions for <i>Local Government Amendment Act 2023</i>	
	57.	Term used: 2023 amendment Act	121
	58.	Continued application of repealed provisions relating to membership and size of councils	121
	59.	Transitional orders relating to constitution of local government	122
	60.	Enrolment eligibility claims	124
	61.	Electors' special meetings	125
	62.	Transitional regulations	125
		Part 3 — Other written laws amended	
		Division 1 — <i>City of Perth Act 2016</i> amended	
100.		Act amended	127
101.		Section 20 amended	127
		Division 2 — <i>Local Government Amendment (Auditing) Act 2017</i> amended	
102.		Act amended	127
103.		Section 2 amended	127
		Division 3 — <i>Salaries and Allowances Act 1975</i> amended	
104.		Act amended	128
105.		Section 7BAA inserted	128
	7BAA.	Determinations as to fees and allowances of members of local government committees	128
106.		Section 8 amended	129
107.		Section 10 amended	129

	Division 4 — <i>Waste Avoidance and Resource Recovery Act 2007</i> amended	
108.	Act amended	130
109.	Section 40 amended	130
110.	Section 42 amended	130



Western Australia

Local Government Amendment Act 2023

No. 11 of 2023

An Act to amend the *Local Government Act 1995* and to make consequential and related amendments to other written laws.

[Assented to 18 May 2023]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Local Government Amendment Act 2023*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Part 2 (but only sections 3, 60, 86, 87 and 99) — on the day after assent day;
- (c) Part 3 (but only Division 2) — on the day after assent day;
- (d) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — *Local Government Act 1995* amended

3. Act amended

This Part amends the *Local Government Act 1995*.

4. Section 1.3 amended

Delete section 1.3(3).

5. Section 1.4 amended

- (1) In section 1.4 insert in alphabetical order:

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

- (2) In section 1.4 in the definition of *councillor* delete “2.17(2)(a) or (b)” and insert:

2.17(2) or 2.17A(2) or (3)

- (3) In section 1.4 in the definition of *elector mayor or president* delete “district;” and insert:

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

- (4) In section 1.4 in the definition of *member* paragraph (b) delete “2.17(2)(a) or (b)” and insert:

2.17(2) or 2.17A(2) or (3)

6. Section 1.4A inserted

After section 1.4 insert:

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.

7. Section 2.2 amended

After section 2.2(4) insert:

- (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.

8. Section 2.2A inserted

After section 2.2 insert:

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.

9. Section 2.11 amended

After section 2.11(4) insert:

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

10. Section 2.12B inserted

After section 2.12A insert:

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.

s. 11

11. Section 2.13 amended

After section 2.13(3) insert:

- (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.

12. Section 2.14 amended

In section 2.14 delete “a mayor or president elected by the electors” and insert:

an elector mayor or president

13. Section 2.17 replaced

Delete section 2.17 and insert:

Subdivision 1 — Preliminary

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.

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.

s. 13

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.

Subdivision 2 — Membership and size

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).

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).

14. Part 2 Division 4 Subdivision 3 heading inserted

Before section 2.18 insert:

Subdivision 3 — Orders

15. Section 2.18 amended

After section 2.18(4) insert:

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

16. Section 2.18A inserted

After section 2.18 insert:

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.

s. 16

- (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.

17. Section 2.19 amended

After section 2.19(2) insert:

- (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).

s. 18

18. Section 2.25 amended

- (1) In section 2.25(5):
- (a) in paragraph (b)(iii) delete “pending.” and insert:

pending;
 - (b) after paragraph (b) insert:

or
 - (c) if the non-attendance occurs during a period for which the member is entitled to parental leave under subsection (5B).
- (2) After section 2.25(5) insert:
- (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.

19. Section 2.28 amended

- (1) In item 3 in the Table to section 2.28 after “dealt with in item 4,” insert:
- 4A,

- (2) In item 4 in the Table to section 2.28 after “Elected at an ordinary election” insert:

not dealt with in item 4A

- (3) After item 4 in the Table to section 2.28 insert:

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)
-----	------------	---	---	---

- (4) After item 12 in the Table to section 2.28 insert:

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
-----	--	-----------------------------	---	--

s. 20

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
-----	------------	-----------------------------	--	--

20. Section 2.32 amended

Delete section 2.32(f) and insert:

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

21. Section 3.1 amended

After section 3.1(1) insert:

- (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.

22. Section 3.59 amended

Delete section 3.59(3)(d) and insert:

- (d) its expected effect on matters referred to in any current council plan of the local government under section 5.56; and

23. Part 3 Division 5 inserted

At the end of Part 3 insert:

Division 5 — Caretaker period

3.73. Restrictions on what local government may do during caretaker period

- (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);

land transaction has the meaning given in
section 3.59(1);

major land transaction has the meaning given in
section 3.59(1);

major trading undertaking has the meaning given in
section 3.59(1);

senior employee means a senior employee under
section 5.37;

significant act means any of the following —

- (a) making a local law (including making a local
law to amend or repeal a local law);
- (b) entering into, or renewing or terminating, the
contract of employment of the CEO or of a
senior employee;
- (c) entering into a major land transaction;
- (d) entering into a land transaction that is
preparatory to entry into a major land
transaction;
- (e) commencing a major trading undertaking;
- (f) entering into a contract, or other agreement or
arrangement, in prescribed circumstances;
- (g) inviting tenders in prescribed circumstances;
- (h) deciding to do anything referred to in
paragraphs (a) to (g);
- (i) an act done under a written law or otherwise
that is a prescribed act.

- (2) During a caretaker period, a local government must not do a significant act.
- (3) Subsections (4) to (6) apply despite subsection (2).
- (4) A local government may do a significant act during a caretaker period if —
 - (a) the local government’s decision to do the significant act was made before the caretaker period; and
 - (b) any prescribed requirements are met.
- (5) A local government may do a significant act during a caretaker period if it is necessary for the local government to do the significant act during the caretaker period in order to comply with any of the following —
 - (a) a written law;
 - (b) an order of a court or tribunal;
 - (c) a contractual obligation of the local government under a contract entered into by the local government before the caretaker period.
- (6) The Departmental CEO may authorise a local government to do a significant act during a caretaker period if the Departmental CEO is satisfied that it is necessary for the local government to do the significant act during the caretaker period —
 - (a) because of an emergency; or
 - (b) to ensure the proper operation of the local government.

Note:

The description at the beginning of Part 3 is to be altered by deleting paragraph (c) and inserting:

- (c) *Division 4 allows functions to be performed by regional local governments;*
- (d) *Division 5 restricts what a local government may do during a caretaker period.*

24. Section 4.4 amended

In section 4.4(3) delete “section 2.11,” and insert:

Part 2 Division 3,

25. Section 4.8 amended

Delete section 4.8(1) and insert:

- (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.

26. Section 4.13 amended

In section 4.13 delete “2.37 is to be held on the day fixed by order under section 2.37(5).” and insert:

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).

27. Section 4.16 amended

In section 4.16(4)(a) delete “January in” and insert:

October in the year before

28. Section 4.17 amended

(1) In section 4.17(2)(a) delete “January in” and insert:

October in the year before

(2) Delete section 4.17(3) to (4).

29. Section 4.31 amended

After section 4.31(1C) insert:

(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.

30. Section 4.32 amended

- (1) Delete section 4.32(2) to (4) and insert:
 - (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.
- (2) After section 4.32(7) insert:
 - (7A) Regulations may make provision in relation to how the CEO's reasons are to be set out.

(3) After section 4.32(8) insert:

- (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.

31. Section 4.33 amended

(1) After section 4.33(1) insert:

- (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).

s. 32

- (2) In section 4.33(2B)(a) delete “49” and insert:

56

- (3) In section 4.33(3) delete “50” and insert:

57

32. Section 4.35 amended

After section 4.35(4) insert:

- (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.

33. Section 4.39 amended

- (1) In section 4.39(1) delete “50th” and insert:

57th

- (2) In section 4.39(2):

- (a) delete “70th” and insert:

77th

(b) delete “56th” and insert:

63rd

34. Section 4.40 amended

(1) In section 4.40(1) delete “56th” and insert:

63rd

(2) In section 4.40(2) delete “36th” and insert:

43rd

35. Section 4.41 amended

In section 4.41(1) delete “36th” and insert:

43rd

36. Section 4.42 amended

After section 4.42(2) insert:

(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;

s. 37

- (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.

37. Section 4.43 amended

In section 4.43(1) delete “22nd” and insert:

29th

38. Section 4.46A inserted

At the end of Part 4 Division 9 Subdivision 2 insert:

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).

39. Section 4.47 amended

In section 4.47(1):

- (a) delete “56th” and insert:

63rd

- (b) delete “45th” and insert:

52nd

40. Section 4.49 amended

- (1) In section 4.49(a):
- (a) delete “44th” and insert:

51st
 - (b) delete “37th” and insert:

44th
- (2) After section 4.49(b) insert:
- (ba) the nomination paper is accompanied by any prescribed information for publication under section 4.52; and
- (3) Before section 4.49(c) insert:
- (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

41. Section 4.51 amended

- (1) After section 4.51(1)(ba) insert:
- (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
- (2) In section 4.51(2) delete “(b)” and insert:

(b), (ba), (bb)

42. Section 4.52 replaced

Delete section 4.52 and insert:

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.

43. Section 4.53 amended

Delete section 4.53(3) and insert:

- (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.

44. Section 4.64 amended

In section 4.64(1) delete “19th” and insert:

26th

45. Section 4.69 replaced

Delete section 4.69 and insert:

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).

46. Section 4.72 amended

After section 4.72(3) insert:

- (4) The counting of votes may involve re-counts of votes under section 4.72A.

47. Section 4.72A inserted

After section 4.72 insert:

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.

48. Section 4.73 amended

Delete section 4.73(5) and insert:

- (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.

49. Section 4.73A inserted

After section 4.73 insert:

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).

50. Section 4.75 amended

- (1) In section 4.75(1) delete “regulations.” and insert:

section 4.69.
- (2) After section 4.75(2) insert:
- (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

s. 51

- (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).

Note: The heading to amended section 4.75 is to read:

Acceptance and rejection of ballot papers

51. Section 4.76 amended

In section 4.76 delete “votes.” and insert:

votes as referred to in section 4.72A(4).

52. Section 4.77 amended

At the end of section 4.77 insert:

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.

53. Section 4.80 amended

Delete section 4.80(2) and insert:

- (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.

54. Section 4.81 amended

(1) After section 4.81(3)(b) insert:

- (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

(2) After section 4.81(4) insert:

- (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.

55. Section 5.18A inserted

At the end of Part 5 Division 2 Subdivision 2 insert:

5.18A. Regulations in relation to functions of committees

Regulations may make provision in relation to the functions of committees or the functions of types of committee.

56. Section 5.19 amended

- (1) In section 5.19 delete “The quorum” and insert:
 - (1) The quorum

- (2) At the end of section 5.19 insert:
 - (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.

57. Section 5.21 amended

Delete section 5.21(4) and insert:

- (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).

58. Section 5.23A inserted

After section 5.23 insert:

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.

59. Section 5.25 deleted

Delete section 5.25.

60. Section 5.28 amended

- (1) In section 5.28(1)(a) delete “100” and insert:

300

- (2) After section 5.28(4) insert:
- (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.

61. Section 5.31 deleted

Delete section 5.31.

62. Part 5 Division 2 Subdivision 5 inserted

At the end of Part 5 Division 2 insert:

Subdivision 5 — Regulations about meetings

5.33A. Regulations about meetings of councils, committees or electors

- (1) Regulations may make provision in relation to meetings of councils, committees or electors.
- (2) Without limiting subsection (1), regulations made for the purposes of that subsection may make provision in relation to any of the following —
 - (a) the matters to be dealt with at meetings;

- (b) the procedure to be followed at, or in respect of, meetings;
- (c) the holding of meetings by telephone, video conference or other electronic means;
- (d) methods of voting at meetings;
- (e) the circumstances and manner in which a decision made at a meeting may be revoked or changed (which may differ from the manner in which the decision was made);
- (f) the content and confirmation of minutes of meetings;
- (g) the keeping and preserving of documents that relate to meetings;
- (h) the publication or otherwise making available for inspection by the public (including in advance of meetings) of documents that relate to meetings;
- (i) the giving of public notice of the date and agenda for meetings;
- (j) the giving of directions, by the person presiding at a meeting, to a council or committee member or to any other person;
- (k) the exclusion from a meeting of a council or committee member or any other person —
 - (i) who fails to comply with a direction given by the person presiding at the meeting; or
 - (ii) whose conduct at the meeting is offensive or disruptive or otherwise not conducive to the proper conduct of the meeting;

- (l) the steps to be taken if a council or committee member, or any other person, refuses to leave a meeting after having been excluded as referred to in paragraph (k).
- (3) If regulations made for the purposes of subsection (1) provide for meetings to be held by telephone, video conference or other electronic means, regulations 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.
- (4) In subsection (2)(g) and (h), references to documents that relate to meetings include (without limitation) the following —
 - (a) minutes of meetings (confirmed or unconfirmed);
 - (b) notice papers or agendas for meetings;
 - (c) reports or other documents that are tabled, produced or presented at meetings;
 - (d) reports or other documents that are intended to be tabled, produced or presented at meetings.
- (5) Regulations made for the purposes of subsection (1) may, in relation to a member of the public who raises a question at a meeting under section 5.24, make provision about how the member is to be referred to in a document that is made available for inspection under section 5.94(n) or (p) or is published under section 5.96A(1)(f) or (h).
- (6) Regulations made for the purposes of subsection (1) may prescribe model provisions that must or may be adopted by a local government.

63. Section 5.38 replaced

Delete section 5.38 and insert:

5.38. Annual review of CEO's 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) A review under subsection (1) must be conducted at least once in relation to each year of the CEO's employment.
- (3) If a local government reviews the performance of the CEO under subsection (1), the local government must —
 - (a) prepare a report of the review; and
 - (b) provide a copy of the report to the CEO; and
 - (c) give the CEO a reasonable opportunity to respond to the report.
- (4) The report under subsection (3)(a) must include, for publication under section 5.39AA(1)(b), a statement that —
 - (a) sets out each performance criterion against which the CEO's performance was reviewed; and
 - (b) for each performance criterion, summarises the outcome of the review; and
 - (c) includes any prescribed information.

- (5) The CEO's response under subsection (3)(c) may include, for publication under section 5.39AA(1)(c), a statement responding to the statement under subsection (4).
- (6) A report or response under subsection (3)(a) or (c), including any statement under subsection (4) or (5), must comply with any prescribed requirements relating to its form or content.

64. Section 5.39AA inserted

After section 5.39 insert:

5.39AA. Publication of information relating to CEO's performance

- (1) A local government must publish the following in accordance with regulations —
 - (a) the performance criteria specified in the CEO's contract of employment under section 5.39(3)(b);
 - (b) a copy of any statement under section 5.38(4) relating to a review of the CEO's performance;
 - (c) a copy of any statement of the CEO under section 5.38(5) responding to a statement under section 5.38(4).
- (2) The Departmental CEO may, if satisfied that it is in the public interest to do so, direct that specified information be excluded from anything published under subsection (1).

65. Section 5.39A amended

After section 5.39A(2) insert:

- (3) Without limiting subsection (1), the model standards may —
 - (a) provide for a local government to involve, in ways specified in the model standards, a member of a panel of persons established by the Departmental CEO; and
 - (b) confer functions on members of the panel; and
 - (c) provide for the Departmental CEO to authorise a local government not to involve a member of the panel as the local government would otherwise be required to under a provision included in the model standards under paragraph (a).
- (4) For the purposes of any provision included in the model standards under subsection (3), regulations may provide for the establishment of a panel of persons by the Departmental CEO.
- (5) Without limiting subsection (4), regulations made for the purposes of that subsection may do any of the following —
 - (a) provide for a local government to pay fees to a member of the panel;
 - (b) provide for a local government to reimburse expenses of a member of the panel;
 - (c) for the purposes of paragraph (a) or (b) (but without limiting either of those paragraphs), provide for any provision of section 5.100 to apply (with or without modifications) as if the member of the panel were a committee member.

66. Section 5.43 amended

In section 5.43(e) delete “5.99A or 5.100;” and insert:

5.99A, 5.100 or 5.129;

67. Section 5.53 amended

Delete section 5.53(2) and insert:

- (2) Regulations may prescribe information or other contents that must be contained in an annual report.
- (3) Without limiting subsection (2), regulations may prescribe any of the following for the purposes of that subsection —
 - (a) a report from the mayor or president;
 - (b) a report from the CEO;
 - (c) an overview of any current council plan under section 5.56, including major initiatives that are proposed under that plan to commence or to continue in the next financial year;
 - (d) the financial report for the financial year;
 - (e) information relating to payments made to employees;
 - (f) details of entries made under section 5.121 during the financial year in the register of complaints.
- (4) An annual report must contain —
 - (a) the auditor’s report prepared under section 7.12AD(1) for the financial year; and

- (b) any report required under the *Disability Services Act 1993* section 29(2).

68. Section 5.56 replaced

Delete section 5.56 and insert:

5.56. Council plan

- (1) A local government must, in accordance with regulations —
 - (a) prepare a council plan; and
 - (b) publish, review and modify the council plan.
- (2) A *council plan* is a plan for —
 - (a) the future services and facilities for the district that are to be provided by the local government; and
 - (b) any prescribed matters.
- (3) Without limiting subsections (1) and (2)(b), regulations may prescribe any of the following —
 - (a) information and other contents to be contained in a council plan;
 - (b) the period which a council plan is to cover;
 - (c) when a council plan is to be prepared, published, reviewed, modified or replaced;
 - (d) procedures to be followed in preparing, reviewing, modifying or replacing a council plan.

Note for this section:

See the *Waste Avoidance and Resource Recovery Act 2007* Part 4 Division 3 for provisions relating to the inclusion of waste plans in council plans.

69. Part 5 Division 5A inserted

After Part 5 Division 5 insert:

Division 5A — Community engagement

5.56A. Community engagement charter

- (1) In this section —
community member, in relation to a local government —
 - (a) means a person who is a member of the district's community or who otherwise has an interest in the local government's activities; and
 - (b) includes a person of a prescribed class.
- (2) A local government must prepare and adopt* a community engagement charter that sets out principles to be applied, and things to be done, by the local government for, or in relation to, the following —
 - (a) ascertaining opinions of, and otherwise receiving feedback from, a diverse range of community members;
 - (b) facilitating and otherwise promoting the participation of a diverse range of community members in the local government's decision-making processes;
 - (c) otherwise engaging with a diverse range of community members.

** Absolute majority required.*

- (3) The local government may amend* its community engagement charter.

** Absolute majority required.*

- (4) The CEO must publish an up-to-date version of the local government's community engagement charter on the local government's official website.
- (5) Regulations may do any of the following —
 - (a) make provision in relation to the form or content of a community engagement charter;
 - (b) prescribe a deadline for the adoption of a community engagement charter;
 - (c) prescribe things that a local government must do when preparing its community engagement charter or an amendment to it;
 - (d) make other provision in relation to community engagement charters.

5.56B. Community surveys

- (1) Regulations may require a local government to conduct surveys of persons of a prescribed class —
 - (a) to ascertain opinions on prescribed matters; or
 - (b) otherwise to receive feedback on prescribed matters; or
 - (c) for any other prescribed purpose.
- (2) Any survey must be conducted in accordance with any prescribed requirements.
- (3) Without limiting subsection (2), regulations may prescribe the form, content or frequency of surveys.
- (4) Regulations may require the CEO to publish the results of a survey in any prescribed way.

70. Section 5.63 amended

In section 5.63(1)(c):

- (a) in subparagraph (iii) delete “5.101A;” and insert:

5.101A; or

- (b) after subparagraph (iii) insert:

- (iv) a fee or reimbursement of an expense in accordance with a policy adopted by the local government under section 5.129;

71. Section 5.68 amended

Delete section 5.68(1A) and insert:

(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

s. 72

- (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.

72. Section 5.88 amended

After section 5.88(2) insert:

- (2A) The CEO must publish an up-to-date version of the record required under subsection (2)(b) on the local government's official website.

73. Section 5.92 amended

After section 5.92(2) insert:

- (3) The right of a council member or committee member to access information under this section must be exercised in accordance with the local government's communications agreement (see sections 5.92A to 5.92C).

74. Sections 5.92A to 5.92C inserted

After section 5.92 insert:

5.92A. Local government to have communications agreement

- (1) A local government must have a communications agreement.

- (2) A communications agreement is a written agreement between the council and the CEO that regulates the following —
- (a) the access of council members and committee members to information held by the local government under section 5.92 or otherwise, including the following —
 - (i) the steps that a council member or committee member who wants access to information must take;
 - (ii) the steps that the CEO must take if a council member or committee member wants access to information;
 - (b) other requests for information that council members and committee members may make to the local government, including the following —
 - (i) the steps that a council member or committee member who wants to request information must take;
 - (ii) the steps that the CEO must take if a council member or committee member requests information;
 - (c) the way in which, and the circumstances in which, dealings may be had, and communications may be made, between —
 - (i) a council member or committee member; and
 - (ii) an employee;
 - (d) any prescribed matter.
- (3) A person who is a council member, committee member or employee must (when acting in their capacity as such) comply with the communications agreement.

- (4) Regulations may do any of the following —
 - (a) prescribe content that must be included in a communications agreement;
 - (b) prescribe content that must not be included in a communications agreement;
 - (c) make other provision in relation to communications agreements.

5.92B. Default communications agreement

- (1) The Minister must, by order, set out a form of communications agreement (the *default communications agreement*).

Note for this subsection:

The default communications agreement can be amended or replaced from time to time by a variation to the order in which the default communications agreement is set out or by the making of an order that supersedes that order — see section 9.65(2).

- (2) For the purposes of section 5.92A, the default communications agreement is taken to be a local government's communications agreement at any time when the local government does not have a communications agreement of its own under section 5.92C.
- (3) The version of the default communications agreement that is taken to be a local government's communications agreement at any time under subsection (2) is the version that is current at that time.
- (4) An order under subsection (1) may set out different forms of communications agreement for different local governments or different classes of local government.

- (5) For the purposes of subsection (4), an order under subsection (1) 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.

5.92C. Local government may adopt communications agreement of its own

- (1) A local government may prepare and adopt* a communications agreement of its own.

** Absolute majority required.*

- (2) A local government cannot adopt a communications agreement of its own at any time during a caretaker period.

- (3) If a local government adopts a communications agreement of its own, for the purposes of section 5.92A —

- (a) the communications agreement has effect as the local government's communications agreement from when it is adopted until the earlier of the following —

- (i) the next time a caretaker period ends;
- (ii) the end of the employment of the CEO who agreed to the adoption of the communications agreement under subsection (4);

and

- (b) the local government may amend* the communications agreement at any time when it is in effect under paragraph (a), except during a caretaker period.

** Absolute majority required.*

s. 75

- (4) A local government cannot adopt or amend a communications agreement of its own without the agreement of the CEO.
- (5) If a local government has a communications agreement of its own, the CEO must publish an up-to-date version of the communications agreement on the local government's official website.

75. Section 5.94 amended

Delete section 5.94(f) and insert:

- (f) any current council plan under section 5.56;

76. Section 5.95 amended

(1) After section 5.95(4) insert:

- (4A) A person's right to inspect information referred to in section 5.94(n) or (p) is subject to any provision of regulations made for the purposes of section 5.33A(1) as referred to in section 5.33A(5).

(2) After section 5.95(8) insert:

- (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.

Note: The heading to amended section 5.95 is to read:

Further provisions relating to right to inspect local government information

77. Section 5.96A amended

- (1) Delete section 5.96A(1)(e) and insert:
 - (e) any current council plan under section 5.56;

- (2) After section 5.96A(3) insert:
 - (3A) The publication of information referred to in subsection (1)(f) or (h) must comply with any provision of regulations made for the purposes of section 5.33A(1) as referred to in section 5.33A(5).

- (3) Before section 5.96A(4) insert:
 - (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.

78. Section 5.96B inserted

After section 5.96A insert:

5.96B. Registers

- (1) Regulations may require the CEO to keep a register containing prescribed information relating to a prescribed matter.

s. 79

- (2) Without limiting subsection (1), the matters that may be prescribed for the purposes of that subsection include the following —
 - (a) leases of land for which the local government is the lessor or lessee;
 - (b) grants of money made by the local government;
 - (c) contracts for goods or services entered into by the local government;
 - (d) matters relating to a function of the local government under the *Planning and Development Act 2005*.
- (3) A register must be in the form that is prescribed (if any).
- (4) A register must be updated from time to time in accordance with regulations.
- (5) The CEO must publish a register (as updated from time to time) on the local government's official website.

79. Section 5.98 amended

- (1) Delete section 5.98(6) and insert:
 - (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.
- (2) Delete section 5.98(7).

80. Section 5.100 replaced

Delete section 5.100 and insert:

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.

81. Section 5.105 amended

- (1) After section 5.105(1)(a) insert:
 - (aa) contravenes a provision of regulations made for the purposes of section 5.33A(1), contravention of which regulations specify to be a minor breach; or

- (2) After section 5.105(1A) insert:
 - (1AA) Regulations cannot specify that contravention of a provision of regulations made for the purposes of section 5.33A(1) is a minor breach if contravention of the provision would, in addition to being a minor breach under subsection (1), also be a serious breach under subsection (3).

- (3) After section 5.105(3) insert:

- (4) In this section, references to a provision of regulations made for the purposes of section 5.33A(1) include a model provision prescribed as referred to in section 5.33A(6) that has been adopted by the local government.

82. Section 5.129 inserted

At the end of Part 5 Division 10 insert:

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.

83. Section 6.2 amended

- (1) In section 6.2(2) delete “the plan for the future of the district made in accordance with” and insert:

any current council plan under

- (2) Delete section 6.2(4) and (5) and insert:

(4) Regulations may prescribe information or other contents that must be contained in the annual budget or contained in documents accompanying the annual budget.

(5) Without limiting subsection (4), regulations may prescribe any of the following for the purposes of that subsection —

- (a) particulars of the estimated expenditure proposed to be incurred by the local government;
- (b) 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;
- (c) the fees and charges proposed to be imposed by the local government;
- (d) the particulars of borrowings and other financial accommodation proposed to be entered into by the local government;

- (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;
 - (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.
- (6) Regulations may provide for the form of the annual budget.

84. Section 6.4 amended

In section 6.4(2)(b) delete “information.” and insert:

information or other contents.

85. Section 7.13 amended

In section 7.13(2) delete “under section 5.25 in relation to” and insert:

for the purposes of section 5.33A(1) in relation to meetings of

86. Section 9.61A inserted

After section 9.61 insert:

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).

87. Section 9.63A inserted

After section 9.63 insert:

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 4.1 or 4.2 or a provision of either 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 —

s. 87

- (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.

88. Section 9.63A amended

In section 9.63A(1) in the definition of *excluded provision* delete paragraph (e) and insert:

- (e) Schedule 4.1A, 4.1B, 4.1 or 4.2 or a provision of any of those Schedules; or

89. Schedule 2.2 clause 3 amended

After Schedule 2.2 clause 3(2) insert:

- (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.

s. 90

90. Schedule 2.2 clause 6 amended

- (1) In Schedule 2.2 clause 6(1) delete “8” and insert:

10

- (2) After Schedule 2.2 clause 6(1) insert:

- (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.

- (3) Delete Schedule 2.2 clause 6(2).

- (4) In Schedule 2.2 clause 6(3) delete “or (2)”.

91. Schedules 4.1A and 4.1B inserted

After Schedule 3.2 insert:

**Schedule 4.1A — Filling extraordinary vacancy
without extraordinary election**

[s. 4.8]

Division 1 — Preliminary

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.

Division 2 — Application of Schedule

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);

s. 91

- (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.

Division 3 — One office elections

Subdivision 1 — One office election: 2 candidates

3. Application of Subdivision

This Subdivision applies if the former member was elected under Schedule 4.1 clause 2.

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;

s. 91

- (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.

Subdivision 2 — One office election: 3 or more candidates where former member elected under Schedule 4.1 clause 4

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.

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.

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.

Subdivision 3 — One office election: 3 or more candidates where former member elected under Schedule 4.1 clause 5

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

s. 91

- (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.

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.

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.

Division 4 — Elections of 2 or more councillors

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.

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.

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.

Division 5 — Former member elected under cl. 6, 9 or 12

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.

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).

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).

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).

Division 6 — Final provisions

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.

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).

**Schedule 4.1B — Filling office of councillor who is
elected elector mayor or president**

[s. 4.8]

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.

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.

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.

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.

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.

92. Schedule 4.1 replaced

Delete Schedule 4.1 and insert:

Schedule 4.1 — How to count votes and ascertain the result of an election

[s. 4.74]

Division 1 — Preliminary

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.

Division 2 — One office elections

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.

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.

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.

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.

Division 3 — Elections for 2 or more councillors

Subdivision 1 — Preliminary

6. Application of Division

This Division applies to an election that is not a one office election.

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).

Subdivision 2 — Counting and transferring votes

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.

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.

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.

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).

Subdivision 3 — Supplementary provisions

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.

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.

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.

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.

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.

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.

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.

93. Schedule 4.2 clause 6 amended

In Schedule 4.2 clause 6:

- (a) delete “declared elected by the returning officer,” and insert:

elected,

- (b) delete “declared elected unopposed,” and insert:

elected unopposed,

- (c) after “lots” insert:

in accordance with regulations

94. Schedule 4.2 clause 7 amended

In Schedule 4.2 clause 7:

- (a) delete “declared elected by the returning officer,” and insert:

elected,

- (b) delete “declared elected unopposed,” and insert:

elected unopposed,

- (c) after “lots” insert:

in accordance with regulations

95. Schedule 4.2 clauses 7A and 7B inserted

After Schedule 4.2 clause 7 insert:

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.

s. 96

- 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.

96. Schedule 4.2 clause 8 amended

In Schedule 4.2 clause 8:

- (a) delete “votes” (each occurrence) and insert:

first-preference votes

- (b) in paragraph (b) after “lots” insert:

in accordance with regulations

97. Schedule 4.2 clause 9 amended

In Schedule 4.2 clause 9(a) after “lots” insert:

in accordance with regulations

98. Schedule 4.2 clause 10 inserted

At the end of Schedule 4.2 insert:

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.

99. Schedule 9.3 Division 6 inserted

At the end of Schedule 9.3 insert:

Division 6 — Provisions for *Local Government Amendment Act 2023*

57. Term used: 2023 amendment Act

In this Division —

2023 amendment Act means the *Local Government Amendment Act 2023*.

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.

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.

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.

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.

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.

s. 99

- (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.

Part 3 — Other written laws amended

Division 1 — *City of Perth Act 2016* amended

100. Act amended

This Division amends the *City of Perth Act 2016*.

101. Section 20 amended

After section 20(2) insert:

- (3) The *Local Government Act 1995* Schedule 4.1A applies to the office of Lord Mayor.

Note for this subsection:

The *Local Government Act 1995* Schedule 4.1A sets out how a vacancy in the office of an elector mayor or president (as defined in section 1.4 of that Act) is to be filled in certain circumstances.

Division 2 — *Local Government Amendment (Auditing) Act 2017* amended

102. Act amended

This Division amends the *Local Government Amendment (Auditing) Act 2017*.

103. Section 2 amended

- (1) In section 2 delete “This Act” and insert:

- (1) This Act

Local Government Amendment Act 2023

Part 3 Other written laws amended

Division 3 Salaries and Allowances Act 1975 amended

s. 104

(2) At the end of section 2 insert:

- (2) Despite subsection (1)(c), if the *Local Government Amendment Act 2023* section 67 comes into operation on or before the day fixed by proclamation under section 22(2), section 7(2) —
- (a) does not come into operation; and
 - (b) is deleted when the *Local Government Amendment Act 2023* section 67 comes into operation.

Division 3 — Salaries and Allowances Act 1975 amended

104. Act amended

This Division amends the *Salaries and Allowances Act 1975*.

105. Section 7BAA inserted

After section 7B insert:

7BAA. Determinations as to fees and allowances of members of local government committees

- (1) In this section —
- committee member* has the meaning given in the *Local Government Act 1995* section 5.100(1).
- (2) The Tribunal must, from time to time as provided by this Act, inquire into and determine —
- (a) the amount of fees, or the minimum and maximum amounts of fees, to be paid under the *Local Government Act 1995* to committee members for attendance at meetings; and

- (b) the amount of expenses, or the minimum and maximum amounts of expenses, to be reimbursed under the *Local Government Act 1995* to committee members.
- (3) Section 6(2) and (3) apply to a determination under this section.

106. Section 8 amended

After section 8(1)(d) insert:

- (da) not more than a year elapses between one determination under section 7BAA(2) and another; and

107. Section 10 amended

In section 10(4)(c):

- (a) in subparagraph (ii) delete “7B;” and insert:

7B; or
- (b) after subparagraph (ii) insert:
 - (iii) the fees and expenses to be paid to committee members referred to in section 7BAA;

**Division 4 — *Waste Avoidance and Resource Recovery Act 2007*
amended**

108. Act amended

This Division amends the *Waste Avoidance and Resource Recovery Act 2007*.

109. Section 40 amended

(1) Delete section 40(1) and insert:

(1) In this section —

council plan means a council plan under the *Local Government Act 1995* section 5.56.

(2) In section 40(2) and (4) delete “its plan for the future” and insert:

a council plan

(3) In section 40(5) delete “plan for the future.” and insert:

council plan.

110. Section 42 amended

In section 42(2) delete “plan for the future” and insert:

council plan