

Authorised Version No. 146
Local Government Act 1989

No. 11 of 1989

Authorised Version incorporating amendments as at
20 December 2017

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20 December 2017

The Parliament of Victoria enacts as follows:

Part 1—Preliminary

1 Preamble

- (1) Section 74A(1) of the **Constitution Act 1975** provides that local government is a distinct and essential tier of government consisting of democratically elected Councils having the functions and powers that the Parliament considers are necessary to ensure the peace, order and good government of each municipal district.
- (2) It is the role of Councils in exercising those functions and powers to work in partnership with the Governments of Victoria and Australia.
- (3) It is necessary to ensure that the Councillors who comprise each Council are democratically elected by persons entitled to vote at municipal elections and that the Council is responsible and accountable to the local community.
- (4) It is the role of the Council to provide governance and leadership for the local community through advocacy, decision making and action.
- (5) It is essential that there is a legislative framework that provides for Councils to be accountable to their local communities in the performance of functions and the exercise of powers and the use of resources.

S. 1
substituted by
No. 109/2003
s. 3.

- (6) The purpose of this Act is to establish a legislative scheme that supports the system of local government in accordance with Part IIA of the **Constitution Act 1975**.

S. 1A
inserted by
No. 109/2003
s. 4.

1A Interpretation of Act

- (1) It is the intention of the Parliament that the provisions of this Act be interpreted so as to give effect to the Preamble and the local government charter.
- (2) The Preamble and the local government charter are not to be construed as having the effect of limiting the functions and powers of Councils under this Act or any other Act.
- (3) In the interpretation of the Preamble and the local government charter, a construction that promotes consistency between the provisions of this Act and any other Act is to be adopted.
- (4) In this Act—

local community includes—

- (a) people who live in the municipal district; and
- (b) people and bodies who are ratepayers; and
- (c) people and bodies who conduct activities in the municipal district;

local government charter means the provisions in Part 1A;

Preamble means the Preamble in section 1.

2 Commencement

- (1) This Act comes into operation on a day or days to be proclaimed.
- (2) The proclamation or proclamations made under subsection (1) must be made on or before 1 July 1990.

3 Definitions

- (1) In this Act—

AAS means the accounting standards published by the Australian Accounting Standards Board from time to time;

S. 3(1) def. of AAS inserted by No. 5/2014 s. 4(a).

accounts and records includes—

- (a) the financial statements; and
- (b) any additional notes attached to, or intended to be read with, the financial statements; and
- (c) any working papers and other documents which are necessary to explain the financial statements; and
- (d) invoices, receipts, orders for the payment of money, bills of exchange, promissory notes, vouchers and other documents of prime entry;

S. 3(1) def. of accounting records substituted as accounts and records by No. 109/2003 s. 72(1)(a), amended by No. 5/2014 s. 4(b).

* * * *

S. 3(1) def. of accounts repealed by No. 109/2003 s. 72(1)(a).

advisory committee means any committee established by the Council, other than a special committee, that provides advice to—

S. 3(1) def. of advisory committee inserted by No. 58/2010 s. 3(1).

- (a) the Council; or
- (b) a special committee; or

- (c) a member of Council staff who has been delegated a power, duty or function of the Council under section 98;

S. 3(1) def. of *assembly of Councillors* inserted by No. 63/2012 s. 3(1).

assembly of Councillors (however titled) means a meeting of an advisory committee of the Council, if at least one Councillor is present, or a planned or scheduled meeting of at least half of the Councillors and one member of Council staff which considers matters that are intended or likely to be—

- (a) the subject of a decision of the Council; or
(b) subject to the exercise of a function, duty or power of the Council that has been delegated to a person or committee—

but does not include a meeting of the Council, a special committee of the Council, an audit committee established under section 139, a club, association, peak body, political party or other organisation;

S. 3(1) def. of *auditor* inserted by No. 33/1995 s. 4(2)(a).

auditor means the Auditor-General;

S. 3(1) def. of *authorised deposit-taking institution* inserted by No. 11/2001 s. 3(Sch. item 42.1(a)).

authorised deposit-taking institution has the same meaning as in the Banking Act 1959 of the Commonwealth;

S. 3(1) def. of *average rate cap* inserted by No. 65/2015 s. 3(1).

average rate cap means an amount expressed as a percentage amount, based on the change to CPI over the financial year to which the cap relates, plus or minus any adjustment;

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*	*	*	*	*	S. 3(1) def. of <i>bank</i> repealed by No. 11/2001 s. 3(Sch. item 42.1(b)).
<i>base average rate</i> has the meaning given by section 185B;					S. 3(1) def. of <i>base average rate</i> inserted by No. 65/2015 s. 3(1).
<i>base year</i> means the financial year preceding the capped year;					S. 3(1) def. of <i>base year</i> inserted by No. 65/2015 s. 3(1).
*	*	*	*	*	S. 3(1) def. of <i>Board</i> repealed by No. 27/1997 s. 3(a).
<i>bullying</i> by a Councillor means the Councillor repeatedly behaves unreasonably towards another Councillor or member of Council staff and that behaviour creates a risk to the health and safety of that other Councillor or member of Council staff;					S. 3(1) def. of <i>bullying</i> inserted by No. 53/2015 s. 12(1).
<i>capital improved value</i> means the sum which land, if it were held for an estate in fee simple unencumbered by any lease, mortgage or other charge, might be expected to realize at the time of valuation if offered for sale on any reasonable terms and conditions which a genuine seller might in ordinary circumstances be expected to require;					
<i>capped average rate</i> has the meaning given by section 185C;					S. 3(1) def. of <i>capped average rate</i> inserted by No. 65/2015 s. 3(1).

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S. 3(1) def. of
capped year
inserted by
No. 65/2015
s. 3(1).

capped year means the financial year specified in
a general Order;

S. 3(1) def. of
*Chief
Executive
Officer*
inserted by
No. 125/1993
s. 3(a),
amended by
No. 125/1993
s. 6(1).

Chief Executive Officer means the person
appointed by a Council to be its Chief
Executive Officer or any person acting in
that position;

S. 3(1) def. of
*Chief
Municipal
Inspector*
inserted by
No. 53/2015
s. 39.

Chief Municipal Inspector means the person
appointed under section 223A;

S. 3(1) def. of
*Commis-
sioner for
Privacy and
Data
Protection*
inserted by
No. 60/2014
s. 140(Sch. 3
item 29.1(a)),
repealed by
No. 20/2017
s. 134(Sch. 1
item 11.1(a)).

* * * * *

S. 3(1) def. of
*competitive
tendering
statement*
inserted by
No. 40/1994
s. 4,
repealed by
No. 59/1999
s. 5(a).

* * * * *

corporation includes—

- (a) any body corporate, whether formed or incorporated within or outside the State of Victoria; and

* * * *

- (c) any incorporated association within the meaning of the **Associations Incorporation Reform Act 2012**—

but does not include a Council or any other body incorporated or constituted by or under this Act or any public statutory corporation constituted by or under any law of the State of Victoria, any other State or Territory of the Commonwealth or the Commonwealth;

Council means a municipal council (including the Council of the City of Melbourne and the Council of the City of Geelong) whether constituted before or after the commencement of this section;

Councillor means a person who holds the office of member of a Council;

Councillor Code of Conduct means the code of conduct developed by a Council under section 76C;

Councillor Conduct Panel means a panel of 2 people selected by the Principal Councillor Conduct Registrar under section 81V;

S. 3(1) def. of *corporation* amended by Nos 35/2008 s. 3(1), 20/2012 s. 226(Sch. 5 item 19).

S. 3(1) def. of *Councillor Code of Conduct* inserted by No. 67/2008 s. 10.

S. 3(1) def. of *Councillor Conduct Panel* inserted by No. 53/2015 s. 12(1).

S. 3(1) def. of
*Councillor
conduct
principles*
inserted by
No. 67/2008
s. 10.

Councillor conduct principles means the
principles specified in sections 76B
and 76BA;

S. 3(1) def. of
Council staff
repealed by
No. 125/1993
s. 3(b),
new def. of
Council staff
inserted by
No. 64/2009
s. 36(1).

Council staff means the persons who are members
of Council staff;

S. 3(1) def. of
CPI
inserted by
No. 65/2015
s. 3(1).

CPI means the forecast Melbourne consumer
price index, as published in the budget
update prepared under the **Financial
Management Act 1994**;

S. 3(1) def. of
Department
inserted by
No. 67/2008
s. 10,
amended by
No. 53/2015
s. 12(2).

Department means the Department of
Environment, Land, Water and Planning;

S. 3(1) def. of
*designated
officer*
repealed by
No. 125/1993
s. 3(b).

* * * *

S. 3(1) def. of
*disposition of
property*
inserted by
No. 109/2003
s. 31.

disposition of property means any conveyance,
transfer, assignment, settlement, delivery,
payment, gift or other alienation of property
including—

- (a) the allotment of shares in a company;
- (b) the creation of a trust in property;

- (c) the grant or creation of any lease, mortgage, charge, servitude, licence, power, partnership or interest in property;
- (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of any debt, contract or chose in action, or of any interest in property;
- (e) the exercise by a person of a general power of appointment of property in favour of any other person;
- (f) any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of any other person;

election day means—

- (a) in the case of an election, the day of an election determined under section 31 or 38;
- (b) in the case of a poll of voters', the relevant date specified in the public notice under clause 16 of Schedule 3;

S. 3(1) def. of *election day* inserted by No. 109/2003 s. 12(1)(b).

election period, in relation to an election, means the period that—

- (a) starts on the last day on which nominations for that election can be received; and
- (b) ends at 6 p.m. on election day;

S. 3(1) def. of *election period* inserted by No. 109/2003 s. 25(1), amended by No. 35/2008 s. 3(2).

S. 3(1) def. of
*electoral advertise-
ment, handbill,
pamphlet or notice*
inserted by
No. 109/2003
s. 25(1).

electoral advertisement, handbill, pamphlet or notice means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting;

S. 3(1) def. of
Electoral Commission
inserted by
No. 109/2003
s. 33(1),
repealed by
No. 53/2015
s. 45(c).

* * * * *

S. 3(1) def. of
*Electoral Commis-
sioner*
inserted by
No. 53/2015
s. 45(a).

Electoral Commissioner means the Electoral Commissioner appointed under section 12 of the **Electoral Act 2002**;

S. 3(1) def. of
entitlement date
amended by
Nos 13/1990
s. 5(2),
34/1996
s. 33(a),
substituted by
No. 109/2003
s. 12(1)(a).

entitlement date means—

- (a) the day that is 57 days before the election day; or
- (b) if the date determined under paragraph (a) is a public holiday, means the day which is the last working day before that day;

S. 3(1) def of
environmental upgrade agreement
inserted by
No. 39/2015
s. 3.

environmental upgrade agreement means an agreement entered into in accordance with section 181A;

environmental upgrade charge means a charge
declared under section 181C;

S. 3(1) def. of
*environmental
upgrade
charge*
inserted by
No. 39/2015
s. 3.

Essential Services Commission has the same
meaning as *Commission* has in the **Essential
Services Commission Act 2001**;

S. 3(1) def. of
*Essential
Services
Commission*
inserted by
No. 65/2015
s. 3(1).

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S. 3(1) defs. of
*exhibition roll,
exhibition roll
date*
inserted by
No. 109/2003
s. 12(1)(b),
repealed by
No. 53/2015
s. 45(c).

farm land has the same meaning as it has in the
Valuation of Land Act 1960;

S. 3(1) def. of
farm land
inserted by
No. 91/1994
s. 35(a).

film friendly principles has the same meaning as
in the **Filming Approval Act 2014**;

S. 3(1) def. of
*film friendly
principles*
inserted by
No. 51/2014
s. 9(Sch. 2
item 8.1).

film permit has the same meaning as in the
Filming Approval Act 2014;

S. 3(1) def. of
film permit
inserted by
No. 51/2014
s. 9(Sch. 2
item 8.1).

S. 3(1) def. of
finance lease
inserted by
No. 109/2003
s. 72(1)(b).

finance lease means a finance lease within the meaning of the Australian Accounting Standards as issued by the Australian Accounting Research Foundation;

S. 3(1) def. of
financial statements
inserted by
No. 5/2014
s. 4(a).

financial statements—

- (a) subject to paragraph (b), means the financial statements and the notes attached to, or intended to be read with, the financial statements prepared in accordance with the current AAS as it applies to the general purpose financial reports of local governments;
- (b) in sections 126 and 127, means the financial statements referred to in paragraph (a) but does not include the notes referred to in that paragraph;

S. 3(1) def. of
financial year
substituted by
No. 99/1994
s. 3(1).

financial year means the period of 12 months ending on 30 June each year;

S. 3(1) def. of
general Order
inserted by
No. 65/2015
s. 3(1).

general Order means an Order made by the Minister under section 185D;

S. 3(1) def. of
gift
inserted by
No. 109/2003
s. 31.

gift means any disposition of property otherwise than by will made by a person to another person without consideration in money or money's worth or with inadequate consideration, including—

- (a) the provision of a service (other than volunteer labour); and
- (b) the payment of an amount in respect of a guarantee; and
- (c) the making of a payment or contribution at a fundraising function;

<i>gift disclosure threshold</i> means \$500 or a higher amount or value prescribed by the regulations;	S. 3(1) def. of <i>gift disclosure threshold</i> inserted by No. 64/2009 s. 36(1), amended by No. 58/2010 s. 3(2)(a).
<i>gross misconduct</i> by a Councillor means behaviour that demonstrates that a Councillor is not of good character or is otherwise not a fit and proper person to hold the office of Councillor;	S. 3(1) def. of <i>gross misconduct</i> inserted by No. 53/2015 s. 12(1).
<i>higher cap</i> means an amount expressed as the average rate cap specified in a general Order plus an additional percentage amount in respect of that financial year;	S. 3(1) def. of <i>higher cap</i> inserted by No. 65/2015 s. 3(1).
<i>how-to-vote card</i> means any card, handbill, pamphlet or notice— (a) which is or includes a representation or partial representation or purported representation or purported partial representation of a ballot-paper for use in an election; or (b) which lists the names of any or all of the candidates for an election with a number indicating an order of voting preference against the names of any or all of those candidates;	
<i>IBAC</i> means the Independent Broad-based Anti-corruption Commission established under section 12 of the Independent Broad-based Anti-corruption Commission Act 2011 ;	S. 3(1) def. of <i>IBAC</i> inserted by No. 53/2015 s. 12(1).

S. 3(1) def. of
*Information
Commissioner*
inserted by
No. 20/2017
s. 134(Sch. 1
item 11.1(b)).

Information Commissioner means the
Information Commissioner appointed under
the **Freedom of Information Act 1982** in
the Information Commissioner's capacity
under the **Privacy and Data Protection
Act 2014**;

S. 3(1) def. of
*Integrity
Minister*
inserted by
No. 53/2015
s. 39.

Integrity Minister means the Minister
administering section 223A;

S. 3(1) def. of
*internal
resolution
procedure*
inserted by
No. 53/2015
s. 12(1).

internal resolution procedure means the
procedure—
(a) specified in the Councillor Code of
Conduct; and
(b) developed and maintained by a Council
in accordance with section 81AA to
address the matters specified in that
section;

S. 3(1) def. of
*law
enforcement
agency*
inserted by
No. 53/2015
s. 12(1).

law enforcement agency means—
(a) Victoria Police; or
(b) the police force or police service of
another State or a Territory; or
(c) the Australian Federal Police; or
(d) the Australian Crime Commission
established under section 7 of the
Australian Crime Commission
Act 2002 of the Commonwealth; or
(e) a commission established by a law of
Victoria or the Commonwealth or of
any other State or a Territory with the
function of investigating matters
relating to criminal activity generally or
of a specified class or classes; or

- (f) the Chief Examiner and Examiners appointed under Part 3 of the **Major Crime (Investigative Powers) Act 2004**; or
- (g) the IBAC; or
- (h) the sheriff within the meaning of the **Sheriff Act 2009**; or
- (i) the Victorian Inspectorate established under section 8 of the **Victorian Inspectorate Act 2011**; or
- (j) an agency responsible for the performance of functions or activities directed to—
 - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of a law imposing a penalty or sanction for a breach; or
 - (ii) the management of property seized or restrained under laws relating to the confiscation of the proceeds of crime or the enforcement of such laws, or of orders made under such laws; or
- (k) an agency responsible for the execution or implementation of an order or decision made by a court or tribunal; or
- (l) an agency responsible for the protection of the public revenue under a law administered by it;

lending body means the person who advances funds under the environmental upgrade agreement;

S. 3(1) def of ***lending body*** inserted by No. 39/2015 s. 3.

S. 3(1) def. of
*local
government
panel*
inserted by
No. 27/1997
s. 3(b).

local government panel means a panel established
by the Minister under section 220A;

S. 3(1) def. of
*member of
Council staff*
inserted by
No. 64/2009
s. 36(1).

member of Council staff means a natural person
who is employed by the Chief Executive
Officer (other than an independent contractor
under a contract for services or a volunteer)
to enable—

- (a) the functions of the Council under this
Act or any other Act to be carried out;
- (b) the Chief Executive Officer to carry out
his or her functions;

Note

The Chief Executive Officer is also a member of
Council staff—see section 94(2).

S. 3(1) def. of
misconduct
inserted by
No. 53/2015
s. 12(1).

misconduct by a Councillor means any of the
following—

- (a) failure by a Councillor to comply with
the Council's internal resolution
procedure; or
- (b) failure by a Councillor to comply with
a written direction given by the Council
under section 81AB; or
- (c) repeated contravention of any of the
Councillor conduct principles;

municipal district means the district under the
local government of a Council;

S. 3(1) def. of
*municipal
enterprise*
amended by
No. 109/2003
s. 7(1).

municipal enterprise means any venture under
section 193 or any trading or entrepreneurial
enterprise;

Order in Council means an Order made by the Governor with the advice of the Executive Council and published in the Government Gazette;

owner in relation to any land, means the person who is entitled to receive the rack-rent for the land or who, if the land were let at a rack-rent, would be entitled to receive the rent;

panel list means the panel list established by the Minister under section 81U for the purposes of forming Councillor Conduct Panels;

S. 3(1) def. of *panel list* inserted by No. 53/2015 s. 12(1).

person in relation to Divisions 1 to 7 of Part 3, means a person who has attained the age of 18 years but does not include—

S. 3(1) def. of *person* amended by Nos 109/2003 s. 12(1)(c), 35/2008 s. 3(3).

- (a) a corporation; or
- (b) a Council or any other body incorporated or constituted by or under this Act; or
- (c) any public statutory corporation constituted by or under any law of the State of Victoria, any other State or Territory of the Commonwealth or the Commonwealth;

police officer has the same meaning as it has in the **Victoria Police Act 2013**;

S. 3(1) def. of *police officer* inserted by No. 37/2014 s. 10(Sch. item 99.1).

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S. 3(1) def. of *prescribed* repealed by No. 78/1991 s. 3(a).

Local Government Act 1989
No. 11 of 1989
Part 1—Preliminary

S. 3(1) def. of
*primary
parties*
inserted by
No. 39/2015
s. 3.

primary parties, in relation to an environmental
upgrade agreement, means a Council, the
lending body and the owner of the rateable
land;

S. 3(1) def. of
*Principal
Conduct
Officer*
inserted by
No. 53/2015
s. 12(1).

Principal Conduct Officer means the person
appointed in writing by the Chief Executive
Officer to be the Principal Conduct Officer
for the Council under section 81Y;

S. 3(1) def. of
*Principal
Councillor
Conduct
Registrar*
inserted by
No. 53/2015
s. 12(1).

Principal Councillor Conduct Registrar means
the person appointed by the Secretary to be
the Principal Councillor Conduct Registrar
under section 81S;

S. 3(1) def. of
*principles of
sound
financial
management*
inserted by
No. 109/2003
s. 72(1)(b).

principles of sound financial management means
the principles specified in section 136;

S. 3(1) def. of
*printed
electoral
material*
substituted by
No. 109/2003
s. 28(1).

printed electoral material means an
advertisement, handbill, pamphlet or notice
that contains electoral matter;

S. 3(1) def. of
*Privacy
Commis-
sioner*
inserted by
No. 109/2003
s. 12(1)(d),
repealed by
No. 60/2014
s. 140(Sch. 3
item 29.1(b)).

* * * * *

public body means any government department or municipal council or body established for a public purpose by an Act of the Parliament of Victoria, any other State or Territory of the Commonwealth, or the Commonwealth;

public highway is a road which is open to the public for traffic as a right, irrespective of whether the road is in fact open to traffic, and includes a road—

S. 3(1) def. of *public highway* inserted by No. 125/1993 s. 21(a), amended by No. 12/2004 s. 143(1)(a).

- (a) declared to be a public highway under section 204(1) or under any other Act;
- (b) which becomes a public highway under section 24(2)(c) of the **Subdivision Act 1988**;
- (c) which is a public road under the **Road Management Act 2004**;

public notice means a notice published in a newspaper generally circulating in the municipal district of the Council chosen for the purpose by—

S. 3(1) def. of *public notice* substituted by No. 35/2008 s. 3(4), amended by No. 64/2009 s. 36(2).

- (a) if the notice is required to be given by the Council, the Council;
- (b) if the notice is required to be given by the Registrar, the Registrar;
- (c) if the notice is required to be given by the returning officer, the returning officer;

Note

See also section 82A(2) which requires any public notice to be given by the Council to be published on the Internet website of the Council.

publish means publish by any means including by publication on the Internet;

S. 3(1) def. of *publish* inserted by No. 109/2003 s. 25(1).

S. 3(1) def. of
rateable land
inserted by
No. 78/1991
s. 3(b).

rateable land means any land that is rateable
under section 154;

S. 3(1) def. of
*rateable
property*
inserted by
No. 109/2003
s. 12(1)(d),
amended by
Nos 35/2008
s. 3(5),
65/2010
s. 420(Sch. 3
item 9),
65/2015
s. 3(2).

rateable property in relation to Division 1 of
Part 3 or Part 8A, means an occupancy
which is separately valued under
section 13DC of the **Valuation of Land
Act 1960** and is rateable land but does not
include an occupancy that is used, or is
intended to be used, for the sole purpose
of—

- (a) parking a single *motor vehicle* within
the meaning of section 3(1) of the
Road Safety Act 1986; or
- (b) mooring a single *vessel* within the
meaning of section 3(1) of the **Marine
Safety Act 2010**; or
- (c) storage, being a single lockable unit
with a floor area not exceeding
25 square metres;

S. 3(1) def. of
Registrar
inserted by
No. 109/2003
s. 12(1)(d),
substituted by
No. 53/2015
s. 45(b).

Registrar means—

- (a) the Electoral Commissioner; or
- (b) a person appointed in writing by the
Electoral Commissioner;

S. 3(1) def. of
*residential
use land*
inserted by
No. 91/1994
s. 35(b).

residential use land has the same meaning as it
has in the **Valuation of Land Act 1960**;

returning officer means—

- (a) the Electoral Commissioner; or
- (b) a person appointed in writing by the Electoral Commissioner;

S. 3(1) def. of *returning officer* inserted by No. 53/2015 s. 45(a).

road includes—

- (a) a street; and
- (b) a right of way; and
- (c) any land reserved or proclaimed as a street or road under the **Crown Land (Reserves) Act 1978** or the **Land Act 1958**; and
- (ca) a public road under the **Road Management Act 2004**; and
- (d) a passage; and
- (e) a cul de sac; and
- (f) a by-pass; and
- (g) a bridge or ford; and
- (h) a footpath, bicycle path or nature strip; and
- (i) any culvert or kerbing or other land or works forming part of the road;

S. 3(1) def. of *road* substituted by No. 125/1993 s. 21(b), amended by No. 12/2004 s. 143(1)(b).

Secretary means Secretary to the Department;

S. 3(1) def. of *Secretary* inserted by No. 67/2008 s. 10.

S. 3(1) def. of
senior officer
inserted by
No. 125/1993
s. 3(c),
substituted by
No. 109/2003
s. 68(1),
amended by
Nos 64/2009
s. 36(3),
58/2010
s. 3(2)(b).

senior officer means—

- (a) the Chief Executive Officer;
- (b) a member of Council Staff who has management responsibilities and reports directly to the Chief Executive Officer;
- (c) any other member of Council staff whose total remuneration exceeds \$124 000 or a higher threshold amount specified by the Minister in accordance with section 97B;

S. 3(1) def. of
serious misconduct
inserted by
No. 53/2015
s. 12(1).

serious misconduct by a Councillor means—

- (a) the failure of a Councillor to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that Councillor; or
- (b) the failure of a Councillor to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested the Councillor to give; or
- (c) the failure of a Councillor to comply with a direction of a Councillor Conduct Panel; or
- (d) continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by a Councillor Conduct Panel; or
- (e) bullying of another Councillor or member of Council staff by a Councillor; or
- (f) conduct by a Councillor in respect of a member of Council staff in contravention of section 76E; or

- (g) the release of confidential information by a Councillor in contravention of section 77;

special committee means—

- (a) a committee established by a Council under section 86;
- (b) a committee that exercises a power, or performs a duty or function, of the Council that has been delegated to that committee under any Act;

S. 3(1) def. of *special committee* inserted by No. 63/2012 s. 3(1).

special Order means an Order made by the Essential Services Commission under section 185E;

S. 3(1) def. of *special Order* inserted by No. 65/2015 s. 3(1).

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S. 3(1) def. of *standard statements* inserted by No. 109/2003 s. 72(1)(b), repealed by No. 5/2014 s. 4(c).

total annual remuneration, in relation to a member of Council staff, means the total remuneration package to which the member is entitled for a financial year, including—

- (a) the gross annual salary; and
- (b) the annual cost in dollars to the Council of any other allowance, benefit or remuneration that the member of Council staff receives from the Council or that is paid or given by the Council to another person for the ultimate benefit of the member of Council staff (other than any allowances in relation

S. 3(1) def. of *total remuneration* inserted by No. 125/1993 s. 3(c), substituted as *total annual remuneration* by No. 109/2003 s. 68(1).

to expenses incurred in the course of employment) including—

- (i) any contribution made by the Council to a superannuation fund on behalf of the member of Council staff; and
- (ii) the annual value of any motor vehicle provided by the Council to the member of Council staff;

tribunal is a reference to a municipal electoral tribunal established under section 44;

S. 3(1) def. of *unenrolled voter* inserted by No. 15/1992 s. 25(2).

unenrolled voter means a person who is entitled to be enrolled on a voter's roll but is not so enrolled;

S. 3(1) def. of *urban farm land* inserted by No. 91/1994 s. 35(c).

urban farm land has the same meaning as it has in the **Valuation of Land Act 1960**;

S. 3(1) def. of *Victorian Electoral Commission* inserted by No. 23/2002 s. 198(1).

Victorian Electoral Commission means the Victorian Electoral Commission established under section 6 of the **Electoral Act 2002**;

voter means a person who is enrolled on a voters' roll;

S. 3(1) def. of *voting centre* inserted by No. 109/2003 s. 29(a).

voting centre means a place appointed by the returning officer for voting at an election as—

- (a) an early voting centre;
- (b) a mobile voting centre;
- (c) an election day voting centre;

<i>ward</i> means a subdivision of a municipal district and includes a riding;	S. 3(1) def. of <i>ward</i> amended by No. 49/2017 s. 79(1).
<i>Yarra protection principles</i> has the same meaning as in the Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017 ;	S. 3(1) def. of <i>Yarra protection principles</i> inserted by No. 49/2017 s. 79(2).
<i>Yarra River land</i> has the same meaning as in the Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017 ;	S. 3(1) def. of <i>Yarra River land</i> inserted by No. 49/2017 s. 79(2).
<i>Yarra Strategic Plan</i> has the same meaning as in the Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017 ;	S. 3(1) def. of <i>Yarra Strategic Plan</i> inserted by No. 49/2017 s. 79(2).
<i>Yarra Strategic Plan area</i> has the same meaning as in the Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017 .	S. 3(1) def. of <i>Yarra Strategic Plan area</i> inserted by No. 49/2017 s. 79(2).
(1A) In this Act, <i>electoral matter</i> means matter which is intended or likely to affect voting in an election but does not include any electoral material produced by or on behalf of the returning officer for the purposes of conducting an election.	S. 3(1A) inserted by No. 109/2003 s. 25(2).
(1B) Without limiting the generality of the definition of <i>electoral matter</i> , matter is to be taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on—	S. 3(1B) inserted by No. 109/2003 s. 25(2).

- (a) the election; or
- (b) a candidate in the election; or
- (c) an issue submitted to, or otherwise before, the voters in connection with the election.

(2) For the purposes of—

- (a) the performance of the functions or the exercise of the powers of a Council; and
- (b) any proceedings for offences under the **Transport (Compliance and Miscellaneous) Act 1983**, the **Road Management Act 2004** or the **Road Safety Act 1986**—

road includes a shopping mall.

S. 3(2)(b)
amended by
Nos 12/2004
s. 143(2),
6/2010
s. 203(1)(Sch. 6
item 29.1) (as
amended by
No. 45/2010
s. 22).

- (3) If the boundary of a municipal district is described by reference to a road, proposed road, railway line, former railway line or waterway (other than a waterway that forms part of the sea coast), that boundary is to be taken to be constituted by a line along the centre for the time being of the road, proposed road, railway line, former railway line or waterway.

S. 3(3)
amended by
No. 81/1989
s. 3(Sch.
item 30.1),
substituted by
No. 33/1995
s. 8.

- (3A) If the boundary of a municipal district is described by reference to the sea coast (regardless of whether it is referred to as the sea shore or the waters of the sea or a bay or in any other way), that boundary is to be taken to be the line for the time being of the low water mark on that sea coast.

S. 3(3A)
inserted by
No. 33/1995
s. 8,
amended by
No. 76/1997
s. 3.

- (3B) Subsection (3) or (3A) does not apply if an intention contrary to the effect of that subsection appears in the description.

S. 3(3B)
inserted by
No. 33/1995
s. 8.

- (4) If a municipal district is not subdivided a reference to **ward** is to be taken to be a reference to the municipal district.
- (5) Where a Council is empowered to do any act, matter or thing, the decision to do the act, matter or thing is to be made by a resolution of the Council.
- (6) For the purposes of subsection (5), **resolution of the Council** means—
- (a) a resolution made at an ordinary meeting or special meeting;
 - (b) a resolution made at a meeting of a special committee;
 - (c) the exercise of a power, duty or function delegated to a member of Council staff under section 98—

S. 3(6)
inserted by
No. 63/2012
s. 3(2).

but does not include any business transacted at an assembly of Councillors.

3AA Transport Integration Act 2010

This Act is interface legislation within the meaning of the **Transport Integration Act 2010**.

S. 3AA
inserted by
No. 6/2010
s. 25(5)(Sch. 2
item 6.1) (as
amended by
No. 45/2010
s. 6).

3AB Filming Approval Act 2014

This Act is filming approval legislation within the meaning of the **Filming Approval Act 2014**.

S. 3AB
inserted by
No. 51/2014
s. 9(Sch. 2
item 8.2).

Pt 1A
(Heading and
ss 3A–3F)
inserted by
No. 109/2003
s. 5.

Part 1A—Local government charter

S. 3A
inserted by
No. 109/2003
s. 5.

3A What is the purpose of local government?

The purpose of local government is to provide a system under which Councils perform the functions and exercise the powers conferred by or under this Act and any other Act for the peace, order and good government of their municipal districts.

S. 3B
inserted by
No. 109/2003
s. 5.

3B How is a Council constituted?

A Council consists of its Councillors who are democratically elected in accordance with this Act.

S. 3C
inserted by
No. 109/2003
s. 5.

3C Objectives of a Council

- (1) The primary objective of a Council is to endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions.
- (2) In seeking to achieve its primary objective, a Council must have regard to the following facilitating objectives—
 - (a) to promote the social, economic and environmental viability and sustainability of the municipal district;
 - (b) to ensure that resources are used efficiently and effectively and services are provided in accordance with the Best Value Principles to best meet the needs of the local community;
 - (c) to improve the overall quality of life of people in the local community;

- (d) to promote appropriate business and employment opportunities;
- (e) to ensure that services and facilities provided by the Council are accessible and equitable;
- (f) to ensure the equitable imposition of rates and charges;
- (g) to ensure transparency and accountability in Council decision making.

3D What is the role of a Council?

**S. 3D
inserted by
No. 109/2003
s. 5.**

- (1) A Council is elected to provide leadership for the good governance of the municipal district and the local community.
- (2) The role of a Council includes—
 - (a) acting as a representative government by taking into account the diverse needs of the local community in decision making;
 - (b) providing leadership by establishing strategic objectives and monitoring their achievement;
 - (c) maintaining the viability of the Council by ensuring that resources are managed in a responsible and accountable manner;
 - (d) advocating the interests of the local community to other communities and governments;
 - (e) acting as a responsible partner in government by taking into account the needs of other communities;
 - (f) fostering community cohesion and encouraging active participation in civic life.

S. 3E
inserted by
No. 109/2003
s. 5.

3E What are the functions of a Council?

- (1) The functions of a Council include—
 - (a) advocating and promoting proposals which are in the best interests of the local community;
 - (b) planning for and providing services and facilities for the local community;
 - (c) providing and maintaining community infrastructure in the municipal district;
 - (d) undertaking strategic and land use planning for the municipal district;
 - (e) raising revenue to enable the Council to perform its functions;
 - (f) making and enforcing local laws;
 - (g) exercising, performing and discharging the duties, functions and powers of Councils under this Act and other Acts;
 - (h) any other function relating to the peace, order and good government of the municipal district.
- (2) For the purpose of achieving its objectives, a Council may perform its functions inside and outside its municipal district.

S. 3F
inserted by
No. 109/2003
s. 5.

3F What are the powers of Councils?

- (1) Subject to any limitations or restrictions imposed by or under this Act or any other Act, a Council has the power to do all things necessary or convenient to be done in connection with the achievement of its objectives and the performance of its functions.

- (2) The generality of this section is not limited by the conferring of specific powers by or under this or any other Act.

3G Obligations of Council in relation to Yarra River land

S. 3G
inserted by
No. 49/2017
s. 80.

- (1) A Council that is a responsible public entity within the meaning of the **Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017**—
- (a) must not act inconsistently with any part of a Yarra Strategic Plan that is expressed to be binding on the Council when performing a function or duty or exercising a power under this Act in relation to Yarra River land; and
 - (b) must have regard to the Yarra protection principles, and those parts of a Yarra Strategic Plan not expressed to be binding on the Council, when performing a function or duty or exercising a power under this Act in relation to the Yarra Strategic Plan area that may affect Yarra River land.
- (2) Subsection (1) does not apply to the performance of a function or the exercise of a power by a Council in relation to a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**.

Part 2—The Council

4 Types of Councils

- (1) A Council may be constituted as a—
 - (a) City Council; or
 - (b) Rural City Council; or
 - (c) Shire Council.
- (2) The municipal district of a City Council must be predominantly urban in character.
- (3) The municipal district of a Rural City Council must be partly urban and partly rural in character.
- (4) The municipal district of a Shire Council must be predominantly rural in character.

5 The Council

S. 5(1)
repealed by
No. 109/2003
s. 7(2).

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- (2) A Council—
 - (a) is a body corporate with perpetual succession; and
 - (b) must have a common seal; and
 - (c) may sue or be sued in its corporate name; and
 - (d) is capable of acquiring, holding, dealing with or disposing of property for the purpose of performing its functions and exercising its powers; and
 - (e) is capable of doing and suffering all acts and things which bodies corporate may by law do and suffer and which are necessary or expedient for performing its functions and exercising its powers.

(3) The common seal of a Council must—

- (a) bear the name of the Council (which name may refer to the inhabitants of the municipal district) and any other word, letter, sign or device the Council determines should be included; and
- (b) be kept at the Council office; and
- (c) be used in accordance with the local laws of the Council.

S. 5(3)(a)
amended by
No. 78/1991
s. 13(a).

- (4) All courts, judges and persons acting judicially must take judicial notice of the imprint of the seal of a Council on any document and must presume that the document was properly sealed until the contrary is proved.

5A Council may be referred to by standardised name

Despite anything to the contrary in this or any other Act, in all proceedings and in all Acts, regulations and documents it is sufficient for all purposes to refer to—

S. 5A
inserted by
No. 78/1991
s. 4.

- (a) a City Council as—
"[name of municipal district] City Council";
- (b) a Rural City Council as—
"[name of municipal district] Rural City Council";
- (c) a Shire Council as—
"[name of municipal district] Shire Council";
- (d) a Council that has "Borough" as part of its name as—
"[name of municipal district] Borough Council";

Local Government Act 1989
No. 11 of 1989
Part 2—The Council

S. 5A(e)
repealed by
No. 109/2003
s. 47.

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S. 5B
inserted by
No. 109/2003
s. 6.

5B Constitution of Council

- (1) A Council must consist of not fewer than 5 Councillors and not more than 12 Councillors.
- (2) A Council may be constituted so that it consists of—
 - (a) only Councillors elected to represent the municipal district as a whole; or
 - (b) only Councillors elected to represent individual wards into which the municipal district is divided.

S. 6
repealed by
No. 109/2003
s. 7(2).

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S. 7
amended by
No. 59/1999
s. 3,
repealed by
No. 109/2003
s. 7(2).

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S. 8
repealed by
No. 109/2003
s. 7(2).

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9 Resolution of disputes

- (1) Any difference or dispute arising between a Council and another public body may be referred to the Governor in Council.

(2) The Governor in Council is to appoint a board of inquiry to inquire into and determine any difference or dispute referred to the Governor in Council.

(3) For the purposes of any inquiry a board of inquiry has all the powers conferred by sections 14 to 16 of the **Evidence (Miscellaneous Provisions) Act 1958**, as in force immediately before their repeal.

S. 9(3)
amended by
Nos 69/2009
s. 54(Sch. Pt 2
item 31),
67/2014
s. 147(Sch. 2
item 24.1).

(4) A determination of a board of inquiry is binding on the parties.

(5) If an Act contains a mechanism for resolving a dispute or difference in respect of the performing of a function conferred on a Council by that Act, that mechanism must be used instead of this section.

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S. 10
amended by
Nos 76/1995
s. 3(1)(2),
34/1996
s. 32(2),
76/1997
s. 4(1),
repealed by
No. 109/2003
s. 7(2).

Part 3—Elections

Division 1—Voters

Pt. 3 Div. 1
(Heading and
ss 11–20)
amended by
Nos 13/1990
s. 3, 15/1992
s. 3, 43/1993
s. 7, 98/1993
s. 15, 125/1993
s. 14(a)–(c),
33/1995
ss 12–16,
76/1995 s. 4,
76/1997 s. 5–7,
54/1998
s. 3(1)(a)–(c),
5/2001
s. 30(1),
substituted by
No. 109/2003
s. 10.

S. 11
substituted by
No. 109/2003
s. 10.

11 Entitlements relating to enrolment

- (1) A person can only be enrolled on the voters' roll of a Council if the person is a resident in the municipal district of the Council or a ratepayer to the Council exercising an entitlement under and in accordance with this Division.
- (2) Despite anything to the contrary in this Division, a person can only be enrolled on the voters' roll for one ward in a municipal district.
- (3) Despite anything to the contrary in this Part, a person is only entitled to vote once at any election in respect of a Council, regardless of how many different entitlements the person may have to vote in respect of any ward.
- (4) A person is not entitled to elect which right of entitlement conferred by section 12(1), 13(1), 14(1) or 15(1) to exercise.

(5) A person can only be enrolled on the voters' roll if—

- (a) the person has an entitlement as a resident or ratepayer to be enrolled without application as at the entitlement date; or
- (b) the person is entitled as a ratepayer to apply to be enrolled and the application—
 - (i) complies with subsection (6); and
 - (ii) is accepted in accordance with this Division; or
- (c) the person is appointed to vote on behalf of a corporation under section 16 and the application for appointment—
 - (i) complies with subsection (6); and
 - (ii) is accepted in accordance with this Division.

S. 11(5)(c)
substituted by
No. 35/2008
s. 4.

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S. 11(5)(d)
repealed by
No. 35/2008
s. 4.

(6) An application must—

- (a) be in writing;
- (b) contain the details required by the regulations;
- (c) be delivered to the Council office by 4 p.m. on the entitlement date.

(7) Enrolment under an application referred to in subsection (5)(b) or (5)(c) has effect from the next entitlement date after it is accepted and continues in force until the day before the subsequent entitlement date for a general election.

S. 11(7)
amended by
No. 58/2010
s. 4.

S. 12
substituted by
No. 109/2003
s. 10.

12 Residents entitled to be enrolled without application

- (1) A person who on the entitlement date would be an elector in respect of an address in a ward if a roll of electors for the Legislative Assembly was compiled from the register of electors, is entitled as a resident without application to be enrolled on the voters' roll in respect of that address.
- (2) Despite subsection (1), a person who—
 - (a) will attain 18 years of age on or before election day; and
 - (b) had the person been not less than 18 years of age on the entitlement date would be an elector in respect of an address in a ward if a roll of electors for the Legislative Assembly was compiled from the register of electors—

is entitled as a resident without application to be enrolled on the voters' roll in respect of that address.

S. 13
substituted by
No. 109/2003
s. 10.

13 Owner ratepayers entitled to be enrolled without application

- (1) Subject to subsections (2) and (3), a person who on the entitlement date—
 - (a) is not a person referred to in section 12; and
 - (b) is not less than 18 years of age or is less than 18 years of age but will attain the age of 18 years on or before election day; and
 - (c) is the owner of any rateable property in the municipal district whether solely or jointly with any other person or persons; and

S. 13(1)(c)
amended by
No. 35/2008
s. 5(1).

(d) is not a resident of the municipal district—

S. 13(1)(d)
amended by
No. 35/2008
s. 5(2).

is entitled as a ratepayer without application to be enrolled on the voters' roll in respect of that rateable property.

- (2) For the purposes of subsection (1), only 2 joint owners are entitled to be enrolled in respect of each rateable property.
- (3) A person is not entitled to be enrolled under subsection (1) if an occupier is enrolled as a ratepayer under section 15 in respect of that rateable property.
- (4) For the purposes of subsection (1), if it appears from the rate records of the Council that there are more than 2 owners of any rateable property, the Chief Executive Officer must enrol without application the 2 owners—
 - (a) whose names appear first on the rate records in relation to that rateable property when those names are read in the order in which they appear in those records; and
 - (b) who satisfy the requirements of paragraphs (b), (c) and (d) of subsection (1) in respect of that rateable property.
- (5) Despite subsection (4), if a written request containing the details required by the regulations is delivered to the Council office by 4 p.m. on the entitlement date requesting that the owner or 2 owners of the rateable property specified in the request be enrolled on the voters' roll instead of the owner or 2 owners that would otherwise be enrolled by virtue of subsection (4), the Chief Executive Officer must give effect to the request.

S. 13(7)
amended by
No. 35/2008
s. 5(3).

- (6) If a person is the owner of more than one rateable property in a municipal district, the person may by a written request containing the details required by the regulations delivered to the Council office by 4 p.m. on the entitlement date specify the location of the rateable property in respect of which the entitlement under this section is to be exercised.
- (7) If a person is the owner of more than one rateable property in a municipal district and the Council does not receive a written request under subsection (6), the Chief Executive Officer—
 - (a) must choose one rateable property in respect of which the entitlement under this section is to be exercised; and
 - (b) may for the purposes of paragraph (a) choose the rateable property which has the highest capital improved value in the council valuation records at the entitlement date.

S. 14
substituted by
No. 109/2003
s. 10.

14 Owner ratepayers may apply for enrolment

- (1) Subject to subsections (2) and (3), a person who on the entitlement date—
 - (a) is not a person referred to in section 12 or 13; and
 - (b) is not less than 18 years of age or is less than 18 years of age but will attain the age of 18 years on or before election day; and
 - (c) is an owner of any rateable property in the municipal district—

S. 14(1)(c)
amended by
No. 35/2008
s. 6.

is entitled as a ratepayer to apply to be enrolled on the voters' roll in respect of that rateable property.

- (2) For the purposes of section 13(1) and subsection (1), only 2 joint owners can be enrolled in respect of each rateable property.

- (3) A person is not entitled to apply to be enrolled under subsection (1) if an occupier is enrolled as a ratepayer under section 15 in respect of that rateable property.
- (4) A person who is enrolled on the voters' roll as an owner under this section may renew the enrolment by an application containing the details required by the regulations delivered to the Council office by 4 p.m. on the entitlement date before the next general election.

15 Occupier ratepayers may apply to be enrolled

S. 15
substituted by
No. 109/2003
s. 10.

- (1) A person who on the entitlement date—
 - (a) is not a person referred to in section 12, 13 or 14; and
 - (b) is not less than 18 years of age or is less than 18 years of age but will attain the age of 18 years on or before the election day; and
 - (c) is the occupier of any rateable property in the municipal district, whether solely or jointly with any other person or persons and is liable to pay the rates in respect of that rateable property—

S. 15(1)(c)
amended by
No. 35/2008
s. 7(1).

is entitled as a ratepayer to apply to be enrolled on the voters' roll in respect of that rateable property.

- (2) For the purposes of subsection (1), only 2 joint occupiers can be enrolled in respect of each rateable property.
- (3) For the purposes of subsection (1), an occupier is liable to pay the rates in respect of that rateable property only if—
 - (a) the occupier is paying the rates to the Council; or

S. 15(3)
amended by
No. 63/2012
s. 4.

S. 15(6)
amended by
No. 35/2008
s. 7(2).

- (b) the lease under which the occupier occupies the rateable property specifies that the occupier is liable to pay the rates.
- (4) Subject to subsection (5), an application under subsection (1) must be accompanied by the written consent of the owner, or if there are joint owners, of at least 2 of the joint owners, of the rateable property.
- (5) Subsection (4) does not apply if it appears from the Council records that the occupier is, or the joint occupiers are, receiving the rate notice.
- (6) If the Council receives an application under subsection (1), the Chief Executive Officer must notify the owner or joint owners that the Council has received the application.
- (7) If an application is in force under subsection (1), an enrolment cannot be made in respect of the same rateable property under section 13 or 14.
- (8) A person who is enrolled on the voters' roll as an occupier under subsection (1) may renew the enrolment by an application containing the details required by the regulations delivered to the Council office by 4 p.m. on the entitlement date before the next general election.
- (9) Subsection (4) does not apply to an application under subsection (8).
- (10) A person who is enrolled on the voters' roll as an occupier under subsection (1) may resign the enrolment by an application containing the details required by the regulations delivered to the Council.
- (11) The owner or any 2 of the joint owners may withdraw a written consent under subsection (4) by an application containing the details required by the regulations delivered to the Council before 4 p.m. on the entitlement date.

16 Provisions relating to corporations

S. 16
substituted by
No. 109/2003
s. 10.

- (1) Subject to subsection (3), if on the entitlement date a corporation is the sole owner of any rateable property in the municipal district, the corporation may apply to appoint a person to represent it at Council elections to vote on its behalf.
- (2) Subject to subsection (3), if on the entitlement date a corporation is a joint owner of any rateable property in the municipal district, the corporation may apply to appoint a person to represent it at Council elections to vote on its behalf.
- (3) If an application is in force under section 15, an enrolment cannot be made in respect of the same rateable property under subsection (1) or (2).
- (4) Section 14(2) applies in respect of an application under subsection (2).
- (5) If on the entitlement date a corporation is the occupier of any rateable property in the municipal district whether solely or jointly and is liable to pay the rates in respect of that rateable property, the corporation may apply to appoint a person to represent it at Council elections to vote on its behalf.
- (6) Sections 15(2), 15(3), 15(4), 15(5), 15(6), 15(7) and 15(11) apply in respect of an application under subsection (5).
- (7) A corporation may only exercise the right of entitlement conferred by subsections (1), (2) and (5) once, regardless of how many rateable properties it owns or occupies or jointly owns or occupies in the municipal district.

S. 16(1)
amended by
No. 35/2008
s. 8(1)(2).

S. 16(2)
amended by
No. 35/2008
s. 8(3).

S. 16(4)
amended by
No. 35/2008
s. 8(4).

S. 16(5)
amended by
No. 35/2008
s. 8(5)(6).

S. 16(8)
amended by
No. 35/2008
s. 8(5).

- (8) A corporation may only be represented by one person under this section at a Council election in respect of the municipal district, regardless of anything to the contrary in subsections (1), (2) and (5).

S. 16(9)
amended by
No. 35/2008
s. 8(7)(a).

- (9) An application for a person to be appointed under this section is void if at the time the appointment is made the person appointed—

S. 16(9)(a)
amended by
No. 35/2008
s. 8(7)(b).

- (a) is not a director or company secretary (however styled) of the corporation; or
- (b) has not reached 18 years of age and will not attain the age of 18 years on or before election day; or
- (c) has not consented in writing to be appointed; or
- (d) is for any other reason entitled to be enrolled on the voters' roll in respect of the municipal district for which the appointment is made; or
- (e) is as a result of another appointment for the purposes of subsection (1), (2) or (5) which is still in force, already enrolled on the voters' roll in respect of the municipal district for which the appointment is made.

- (10) An appointment for the purposes of subsection (1), (2) or (5) is revoked if—

S. 16(10)(a)(i)
amended by
No. 35/2008
s. 8(8).

- (a) the person appointed—
- (i) ceases to be a director or company secretary (however styled) of the corporation; or
- (ii) dies; or

- (iii) delivers a notice of resignation containing the details required by the regulations to the Council office; or
- (iv) for any other reason becomes entitled in his or her own right to be enrolled on the voters' roll in respect of the municipal district for which the appointment was made; or
- (b) notice of revocation containing the details required by the regulations is delivered to the Council office; or
- (c) the entitlement under subsection (1), (2) or (5) ceases to exist.

17 Provisions relating to appointments and enrolments

S. 17
substituted by
Nos 109/2003
s. 10, 35/2008
s. 9.

- (1) On receiving notice of an appointment under section 13(5), 13(6) or 16 or an application for enrolment under section 14 or 15, the Chief Executive Officer must enrol the person unless the Chief Executive Officer believes that the person is not entitled to be enrolled.
- (2) If the Chief Executive Officer believes the person is not entitled to be enrolled, the Chief Executive Officer must—
 - (a) refuse to enrol the person; and
 - (b) advise the person who submitted the notice of appointment or application for enrolment of the refusal in writing and give the person the reason for the refusal.
- (3) The Chief Executive Officer may either orally or in writing, request any person or corporation to provide information to enable the Chief Executive Officer to determine the eligibility of a person to be enrolled.

- (4) If a request under subsection (3) is made in writing, the Chief Executive Officer may require the information to be given in writing and signed by the person giving the information.

S. 17(5)
repealed by
No. 64/2009
s. 4.

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S. 18
substituted by
No. 109/2003
s. 10,
repealed by
No. 35/2008
s. 9.

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S. 19
substituted by
No. 109/2003
s. 10,
repealed by
No. 35/2008
s. 10.

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S. 20
substituted by
No. 109/2003
s. 10.

20 Request that address not be shown

S. 20(1)
amended by
No. 35/2008
s. 11.

- (1) A person who is entitled as a ratepayer to be enrolled on the voters' roll under section 13, 14, 15 or 16 may lodge a request with the Chief Executive Officer in the prescribed form that the address of the person not be shown on any voters' roll if the person considers that having the address on the voters' roll places or would place the personal safety of the person or of members of the person's family at risk.
- (2) A request must—
- (a) give particulars of the relevant risk; and
 - (b) be verified by statutory declaration by the person making the request.

- (3) If the Chief Executive Officer is satisfied that having the address of the person making the request shown on any voters' roll places or would place the personal safety of the person or of members of the person's family at risk, the Chief Executive Officer must ensure that the address of the person is not entered on any voters' roll.
- (4) The Chief Executive Officer must notify the person in writing of a decision to grant or refuse a request made by a person under subsection (1).

Division 2—Voters' rolls

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S. 21
amended by
Nos 13/1990
s. 31(a),
125/1993
s. 14(d),
99/1994
s. 6(1)(3),
76/1997
s. 9(1)(a),
54/1998
s. 4(1),
23/2002
s. 198(2)–(4),
substituted by
No. 109/2003
s. 11,
repealed by
No. 53/2015
s. 46.

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S. 21A
inserted by
No. 76/1997
s. 8,
amended by
No. 54/1998
s. 4(2),
repealed by
No. 109/2003
s. 11.

22 Chief Executive Officer to prepare voters' list of ratepayers

S. 22
amended by
Nos 13/1990
s. 4, 15/1992
s. 4, 125/1993
s. 14(d),
99/1994
s. 6(4)(5),
33/1995 s. 17,
76/1997
s. 9(1)(b),
54/1998
s. 4(3),
23/2002
s. 198(5),
substituted by
No. 109/2003
s. 11.

S. 22(2)
substituted by
No. 53/2015
s. 47.

S. 22(3)
inserted by
No. 53/2015
s. 47.

S. 22A
inserted by
No. 33/1995
s. 18,
repealed by
No. 5/2001
s. 30(1).

- (1) The Chief Executive Officer is responsible for the preparation of the voters' list of ratepayers prepared under this section and the maintenance of any records which may be required to facilitate the preparation of an accurate and complete voters' list.
- (2) On or before a date (that is a date before the entitlement date for a general election) determined by the Registrar, the Chief Executive Officer must supply the Registrar with a voters' list of the persons who appear to the Chief Executive Officer to be entitled to be enrolled (as at a date specified by the Registrar) under sections 13, 14, 15 and 16 identifying those persons whose request that their address not be shown has been accepted.
- (3) Within the period specified by the Registrar, the Chief Executive Officer must supply the Registrar with any information required by the Registrar to prepare the voters' roll under section 24.

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Local Government Act 1989
No. 11 of 1989
Part 3—Elections

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S. 23
amended by
Nos 125/1993
s. 14(d),
23/2002
s. 198(6),
substituted by
No. 109/2003
s. 11,
repealed by
No. 53/2015
s. 48.

23A Public notification

S. 23A
(Heading)
amended by
No. 53/2015
s. 49(1).

S. 23A
inserted by
No. 109/2003
s. 11.

(1) In the case of a general election, the Chief Executive Officer must not later than 42 days before the entitlement date—

S. 23A(1)
amended by
No. 53/2015
s. 49(2).

(a) if the entitlement under section 14 or 15 has been exercised by a person, give a letter to the person specifying that the enrolment of the person on the voters' roll will cease to have effect on the entitlement date and that if still entitled, an application to renew the enrolment can be made under section 14(4) or 15(8); or

S. 23A(1)(a)
amended by
No. 35/2008
s. 12(1).

(b) if a corporation has exercised an entitlement under section 16, give a letter to the corporation specifying that the enrolment of the person on the voters' roll to represent the corporation will cease to have effect on the entitlement date and that if still entitled, an application to renew the enrolment can be made under section 16.

S. 23A(1)(b)
substituted by
No. 35/2008
s. 12(2).

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S. 23A(1)(c) repealed by No. 35/2008 s. 12(2).	*	*	*	*	*
S. 23A(2) substituted by No. 35/2008 s. 12(3), repealed by No. 53/2015 s. 49(3).	*	*	*	*	*
S. 23A(3) amended by No. 53/2015 s. 49(4).	(3) A letter under subsection (1) must be accompanied by the relevant application form under section 14, 15 or 16.				
S. 23A(4) amended by No. 35/2008 s. 12(4), repealed by No. 53/2015 s. 49(5).	*	*	*	*	*
S. 23A (4A)(4B) inserted by No. 35/2008 s. 12(5), repealed by No. 53/2015 s. 49(5).	*	*	*	*	*
	(5) The Registrar must at least 10 days before the entitlement date publish a public notice stating— (a) the entitlement date;				
S. 23A(5)(b)(c) repealed by No. 53/2015 s. 49(6).	*	*	*	*	*
	(d) when the voters' roll will close; (e) who can apply to enrol; (f) how they can apply to enrol.				

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Part 3—Elections

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S. 23A(6)
substituted by
No. 35/2008
s. 12(6),
repealed by
No. 53/2015
s. 49(7).

S. 23A(7)(8)
repealed by
No. 53/2015
s. 49(7).

24 Preparation of voters' rolls

- (1) The close of the roll is 4 p.m. on the entitlement date.

S. 24
amended by
Nos 13/1990
s. 5(1),
125/1993
s. 14(d),
76/1995 s. 5,
76/1997
s. 9(1)(c)(2),
54/1998
s. 4(4),
23/2002
s. 198(6),
substituted by
No. 109/2003
s. 11.

- (2) The Registrar must compile a voters' roll containing the prescribed particulars of persons entitled to be enrolled as at the close of the roll from—

S. 24(2)
substituted by
No. 53/2015
s. 50(1).

- (a) a roll of electors for the Legislative Assembly compiled from the register of electors in accordance with section 12; and
- (b) in the case of a general election, information received under subsection (5) and section 22(2); and
- (c) in the case of a by-election, the voters' roll used at the last election and information received under subsection (5).

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S. 24(2A)
inserted by
No. 35/2008
s. 13.

- (2A) In the case of a by-election, a voters' roll for a ward must not include a person enrolled on the voters' roll prepared for the last general election for another ward unless—
- (a) the person's primary place of residence is in the ward in respect of which the voters' roll is being prepared; or
 - (b) the person has ceased to have a right of entitlement to be enrolled in respect of that other ward.
- (3) A voters' roll may be prepared for each ward or for the whole of the municipal district but identifying the ward in respect of which each person is enrolled.

S. 24(4)
repealed by
No. 53/2015
s. 50(2).

* * * * *

S. 24(5)
substituted by
No. 53/2015
s. 50(3).

- (5) The Chief Executive Officer must provide to the Registrar—
- (a) in the case of a general election, sufficient information in a form and at the times specified by the Registrar, so as to enable information supplied under section 22(2) to be updated during the period from the supply of the information until the close of the roll; or
 - (b) in the case of a by-election, the voters' roll used at the last election to be updated in respect of persons whose entitlement arises as a ratepayer under section 13, 14, 15 or 16 during the period from certification of the voters' roll until the close of the roll.

- (6) The Registrar must—
- (a) in the case of a general election or a by-election, not later than 3 days before nomination day; or
 - (b) in the case of a poll of voters, not later than 14 days after the entitlement date—
- certify in writing that the voters' roll has been prepared in accordance with this Act.
- (7) The voters' roll signed and certified by the Registrar—
- (a) continues in force until the next voters' roll is prepared; and
 - (b) must not be amended except in accordance with section 24A.

S. 24(6)
amended by
No. 53/2015
s. 50(4).

S. 24(7)
amended by
No. 53/2015
s. 50(5).

24A Amendment of voters' roll

S. 24A
inserted by
No. 109/2003
s. 11.

- (1) A voters' roll may be amended by the Registrar if—
- (a) there is any error in the preparation, printing or copying of the voters' roll; or
 - (b) there is any misnomer or any inaccurate description of any person, place or thing on the voters' roll.
- * * * *
- (2) If an amendment relates to a person enrolled under section 13, 14, 15 or 16, the Registrar must obtain the approval of the Chief Executive Officer.

S. 24A(1)
amended by
No. 53/2015
s. 51(1)(a).

S. 24A(1)(b)
amended by
No. 53/2015
s. 51(1)(b).

S. 24A(1)(c)
repealed by
No. 53/2015
s. 51(1)(c).

S. 24A(2)
substituted by
No. 53/2015
s. 51(2).

S. 24A(3)
substituted by
No. 53/2015
s. 51(3).

(3) The amendment of the voters' roll under subsection (1) must be certified by the Registrar.

- (4) The certification under subsection (3) must—
- (a) be in writing;
 - (b) detail the amendments made;
 - (c) specify the reasons why the amendments were made.

S. 24B
inserted by
No. 109/2003
s. 11,
amended by
No. 53/2015
s. 52.

24B Inspection of voters' roll

The Registrar must ensure that the voters' roll certified under section 24 is available for inspection by members of the public for the period—

- (a) beginning on the day that the voters' roll is certified; and
- (b) ending 30 days after election day.

S. 24C
inserted by
No. 109/2003
s. 11.

24C Provision of voters' rolls

S. 24C(1)
amended by
No. 53/2015
s. 53(1).

(1) The returning officer must only provide a copy of a voters' roll to a person in accordance with this section.

S. 24C(2)
amended by
No. 53/2015
s. 53(2).

(2) On the request of any candidate for an election, the returning officer must provide to the candidate, free of charge, a copy of the voters' roll for the ward or municipal district for which the candidate has nominated, in a form determined by the returning officer.

S. 24C(3)
amended by
No. 64/2009
s. 5(1).

(3) A candidate must—

- (a) only use a copy of a voters' roll provided under subsection (2) for the purpose of conducting the election campaign; and

- (b) within the period of 30 days after the day of the election, either destroy the copy of the voters' roll and any copies made from it or return the copy of the voters' roll and any copies made from it to the returning officer.

S. 24C(3)(b)
amended by
No. 53/2015
s. 53(3).

Penalty: 120 penalty units.

- (4) On the request of any person or organisation, the Chief Executive Officer may only provide a copy of the voters' roll to the person or organisation for a permitted purpose—

- (a) in a form determined by the Chief Executive Officer; and
- (b) subject to any conditions determined by the Chief Executive Officer; and
- (c) upon payment of the fee determined by the Chief Executive Officer.

- (5) A permitted purpose for the purposes of subsection (4) is—

- (a) any purpose connected with an election;
- (b) any purpose connected with communicating with or surveying constituents in relation to council functions;
- (c) the conduct of a poll of voters;
- (d) subject to the approval of the Information Commissioner, any other public interest purpose in accordance with the **Privacy and Data Protection Act 2014**.

S. 24C(5)(d)
amended by
No. 60/2014
s. 140(Sch. 3
item 29.2),
substituted by
No. 20/2017
s. 134(Sch. 1
item 11.2(a)).

- (6) A permitted purpose under paragraph (a), (b) or (c) of subsection (5) is restricted to use by the Council or on behalf of the Council.

S. 24C(6)
amended by
No. 53/2015
s. 53(4).

S. 24C(7)
amended by
Nos 60/2014
s. 140(Sch. 3
item 29.2),
20/2017
s. 134(Sch. 1
item 11.2(b)).

- (7) If a request is for a permitted purpose to which subsection (5)(d) applies, the Chief Executive Officer must forward the request to the Information Commissioner.

S. 24C(8)
amended by
Nos 60/2014
s. 140(Sch. 3
item 29.2),
20/2017
s. 134(Sch. 1
item 11.2(b)).

- (8) The Information Commissioner may approve a proposed use as a public interest purpose if the Information Commissioner is satisfied that the public interest involved in the proposed use outweighs the public interest in protecting the privacy of personal information in the particular circumstances.

S. 24C(9)
amended by
Nos 60/2014
s. 140(Sch. 3
item 29.2),
20/2017
s. 134(Sch. 1
item 11.2(b)).

- (9) In considering the request, the Information Commissioner may have regard to—
- (a) the public interest involved in the proposed use of the voters' roll; and
 - (b) the public interest in protecting the privacy of personal information; and
 - (c) any alternative sources of information that would be available.

S. 24C(10)
amended by
Nos 60/2014
s. 140(Sch. 3
item 29.2),
20/2017
s. 134(Sch. 1
item 11.2(b)).

- (10) If the Information Commissioner does not approve a proposed use as a public interest purpose, the Chief Executive Officer must reject the request for a copy of the voters' roll to be used for that purpose.

S. 24C(11)
amended by
No. 64/2009
s. 5(2).

- (11) A person or organisation that is provided with a copy of the voters' roll under subsection (4) must—
- (a) only use the copy of the voters' roll for the permitted purpose for which the voters' roll was provided; and

- (b) within the period specified in the conditions subject to which the voters' roll was provided, either destroy the copy of the voters' roll and any copies made from it or return the copy of the voters' roll and any copies made from it to the Chief Executive Officer.

Penalty: In the case of a natural person,
120 penalty units;

In the case of a body corporate,
600 penalty units.

- (12) The Chief Executive Officer must not provide particulars of any person whose request that their address not be shown has been accepted.

25 Validity of voters' rolls

- (1) The validity of a voters' roll is not affected if—
- (a) from any cause, any act or thing required to be done in connection with the preparation, printing or copying of the voters' roll has been omitted or has not been completed; or
 - (b) from any cause, there has been an error in the preparation, printing or copying of the voters' roll; or
 - (c) there has been any misnomer or any inaccurate description of any person, place or thing on the voters' roll which is capable of being given meaning.
- (2) A voters' roll which is amended under section 24A is as valid as if it had been prepared as required by this Act.

S. 25(2)
amended by
No. 109/2003
s. 12(2)(a).

S. 26
(Heading)
inserted by
No. 23/2002
s. 198(7).

26 Victorian Electoral Commission's expenses

S. 26
amended by
Nos 23/2002
s. 198(8),
53/2015 s. 54.

The Victorian Electoral Commission may send to each Council an account of the reasonable expenses incurred by the Victorian Electoral Commission for preparing each Council's voters' rolls.

27 Offences relating to voters' rolls

S. 27(1)
amended by
Nos 64/2009
ss 6(1)(2), 37,
53/2015
s. 55(1).

- (1) A member of the Council staff, a person employed in accordance with section 17 of the **Electoral Act 2002** or any person employed or contracted to perform a function under this Division who intentionally contravenes any provision of this Division is guilty of an offence and liable to a fine not exceeding 120 penalty units.

S. 27(2)
amended by
Nos 125/1993
s. 14(d),
64/2009
s. 6(3)(4),
53/2015
s. 55(2).

- (2) A person who alters any voters' roll after it has been signed and certified by the Registrar without authority to do so is guilty of an offence and liable to a fine not exceeding 120 penalty units.

S. 27(3)
amended by
No. 125/1993
s. 14(d),
substituted by
No. 64/2009
s. 6(5),
amended by
No. 53/2015
s. 55(3).

- (3) A person who intentionally gives to the Registrar, the Chief Executive Officer, or a person authorised by the Chief Executive Officer, false or misleading information in relation to—

- (a) the entitlement of a person to be enrolled on a voters' roll; or
- (b) a person's enrolment details on or for use on a voters' roll—

is guilty of an offence and liable to a fine not exceeding 120 penalty units.

Division 3—Qualification of Councillors

28 Qualification to be a Councillor

- | | |
|---|--|
| (1) A person is qualified to be a candidate for the office of Councillor if he or she has an entitlement referred to in section 11. | S. 28(1)
amended by
No. 15/1992
s. 5(1),
substituted by
No. 109/2003
s. 14. |
| (1A) A person is qualified to become and continue to be a Councillor at a particular time if, were that particular time the entitlement date and a voters' roll prepared, subsection (1) would apply to that person. | S. 28(1A)
inserted by
No. 109/2003
s. 14. |
| (1AA) For the purposes of subsection (1A), if the only entitlement that a person has is an entitlement to be enrolled as a resident of the municipal district, the person ceases to be qualified to continue to be a Councillor at a particular time if at that particular time the person's principal place of residence is not located within the municipal district. | S. 28(1AA)
inserted by
No. 67/2008
s. 26(1). |
| (1B) A Councillor must notify the Chief Executive Officer in writing if there has been any change to any entitlement relating to enrolment of the Councillor under section 11. | S. 28(1B)
inserted by
No. 109/2003
s. 14,
substituted by
No. 67/2008
s. 26(2). |
| (1C) A notification under subsection (1B) must specify the nature of the change and the date on which the change occurred. | S. 28(1C)
inserted by
No. 67/2008
s. 26(2). |
| (2) If a Councillor ceases to have a qualification entitling the Councillor to continue in office, the Councillor continues to hold the office of Councillor for 50 days after ceasing to be qualified. | S. 28(2)
amended by
No. 67/2008
s. 26(3). |

(3) A Councillor to whom subsection (2) applies, goes out of office at the expiry of the period specified in subsection (2) unless the Councillor has within that period—

(a) obtained a qualification entitling him or her to continue to be a Councillor; and

(b) lodged a written statement with the Chief Executive Officer specifying that qualification.

S. 28(3)(b)
amended by
No. 125/1993
s. 14(e).

(4) Despite subsection (3), a Councillor does not go out of office if the Councillor has only failed to comply with subsection (3)(b) within the period specified in subsection (2).

S. 28(4)
inserted by
No. 67/2008
s. 26(4).

28A Disqualification to be a Councillor due to conflicting duties

S. 28A
inserted by
No. 53/2009
s. 3.

(1) Subject to section 28B, unless subsection (2) applies, a person is not capable of becoming or continuing to be a Councillor or nominating as a candidate at an election under this Act if the person is—

(a) a member of the Parliament of Victoria or of the Parliament of the Commonwealth of Australia or of another State or a Territory of the Commonwealth; or

(b) employed as a Ministerial officer, a Parliamentary adviser or an electorate officer by a member of the Parliament of Victoria or in a corresponding position (however designated) by or for a member of the Parliament of the Commonwealth of Australia or of another State or a Territory of the Commonwealth; or

(c) a Councillor of another Council constituted under this Act or a member of a corresponding body (however designated)

under an Act of another State or a Territory of the Commonwealth.

- (2) A person to whom subsection (1)(b) applies is not prevented from nominating as a candidate at an election or from being declared elected at an election if for the duration of the election period for that election—
- (a) the person has taken leave from any office or position referred to in subsection (1)(b) held by that person; and
 - (b) the person does not perform any of the duties of that office or position.
- (3) Despite subsection (2), a person to whom subsection (1)(b) applies cannot take the oath of office after being declared elected if the person continues to hold any office or position referred to in subsection (1)(b).
- (4) In this section—

electorate officer means a person employed under Part 4 of the **Parliamentary Administration Act 2005**;

Ministerial officer means a person employed as a Ministerial officer under Part 6 of the **Public Administration Act 2004**;

Parliamentary adviser means a person employed as a Parliamentary adviser under Part 6 of the **Public Administration Act 2004**.

28B Transitional provision

A Councillor who immediately before the commencement of the **Local Government Amendment (Conflicting Duties) Act 2009** holds any office or position referred to in section 28A(1)(a), (b) or (c) who continues to hold that office or position at the expiry of the period

S. 28B
inserted by
No. 53/2009
s. 3.

of 7 days after that commencement goes out of office as a Councillor on the expiry of that period.

29 Disqualifications

- (1) A person is not capable of becoming or continuing to be a Councillor or nominating as a candidate at an election if—
- (a) he or she is an undischarged bankrupt; or
 - (b) his or her property is subject to control under the law relating to bankruptcy; or
 - (c) he or she is of unsound mind; or
 - (d) except as provided in subsection (3), he or she is a member of Council staff of the Council for which he or she intends to be a Councillor; or
 - (e) he or she has not taken the oath of office of Councillor within 3 months after the day on which he or she was declared elected; or
 - (ea) he or she has failed to make a declaration stating that he or she will abide by the Councillor Code of Conduct in accordance with section 76C; or
 - (f) he or she is not a person referred to in section 48(1)(a) of the **Constitution Act 1975**; or
 - (fa) he or she has been disqualified under section 81K after a finding of gross misconduct and the period of disqualification specified in the order made by VCAT under that section has not expired; or
 - (fb) he or she is disqualified from managing corporations under Part 2D.6 of the Corporations Act; or

S. 29(1)(e)
substituted by
No. 109/2003
s. 49(1).

S. 29(1)(ea)
inserted by
No. 53/2015
s. 13(1).

S. 29(1)(fa)
inserted by
No. 67/2008
s. 11(1).

S. 29(1)(fb)
inserted by
No. 53/2015
s. 56.

(g) he or she is otherwise incapable of becoming or continuing to be a Councillor under this Act.

(2) A person who—

S. 29(2)
substituted by
No. 15/1992
s. 5(2)(a),
amended by
No. 53/2015
s. 13(2)(b).

(a) is convicted of an offence against section 66, 76D, 79, 80A or 80B; or

S. 29(2)(a)
amended by
Nos 109/2003
s. 58, 67/2008
s. 11(2),
64/2009
s. 38(a).

(ab) is convicted of an offence against section 52(1), 52(2), 54(1), 55A(1), 55A(2), 56, 58(2), 58(3), 58A, 59 or 60; or

S. 29(2)(ab)
inserted by
No. 43/1993
s. 8,
substituted by
No. 109/2003
ss 25(3), 28(2),
amended by
Nos 64/2009
s. 38(b)–(e),
63/2012 s. 5.

(b) has been convicted of an offence committed when he or she was of or over 18 years of age which is punishable upon first conviction for a term of imprisonment of 2 years or more under the law of Victoria or the law of any other State or Territory of the Commonwealth of Australia or the law of the Commonwealth of Australia—

S. 29(2)(b)
amended by
No. 53/2015
s. 13(2)(a).

is not capable of becoming or continuing to be a Councillor for a period of 8 years after the conviction.

(3) Subsection (1)(d) does not apply to a member of the Council staff who takes leave to stand for election to the office of Councillor and who if

elected resigns from the Council staff immediately upon being declared elected.

S. 29(4)
inserted by
No. 67/2008
s. 11(3),
amended by
No. 53/2015
s. 13(3).

- (4) If a Councillor is charged with an offence referred to in subsection (2), the Chief Municipal Inspector may apply to VCAT for an order requiring the Councillor to take leave of absence from the office of Councillor until the proceedings in respect of the charge are finally determined.

S. 29(5)
inserted by
No. 67/2008
s. 11(3).

- (5) Before VCAT makes an order under subsection (4), VCAT must have regard to the nature and circumstances of the charge.

S. 29(6)
inserted by
No. 67/2008
s. 11(3).

- (6) An order made under subsection (4) ceases to have effect if—
- (a) the relevant charge is withdrawn; or
 - (b) the Councillor is not convicted of the offence.

S. 29(7)
inserted by
No. 67/2008
s. 11(3).

- (7) If—
- (a) a person is not capable of becoming a Councillor or cannot continue to be a Councillor because he or she has been convicted of an offence referred to in subsection (2); and
 - (b) that person lodges an appeal in respect of the conviction—

he or she is taken to be on leave of absence from the office of Councillor and their allowance must be withheld until the appeal is determined or withdrawn.

S. 29(8)
inserted by
No. 67/2008
s. 11(3),
amended by
No. 68/2009
s. 97(Sch.
item 80.1).

- (8) If the conviction referred to in subsection (7) is quashed or set aside following the appeal—
- (a) the leave of absence the Councillor was required to take ceases; and

- (b) the Councillor is entitled to receive any allowances that were withheld during the leave period.

30 Relief from disqualification

S. 30
amended by
No. 15/1992
s. 5(2)(b)–(e),
substituted by
No. 67/2008
s. 12.

- (1) Any person convicted of an offence referred to in section 29(2), and disqualified, may apply to VCAT for relief from that disqualification after a period of 4 years from the date of the conviction.
- (2) VCAT may grant a person who has made an application under subsection (1) relief from disqualification if VCAT is satisfied that the person is a fit and proper person to seek office as a Councillor having regard to—
- (a) the nature of the offence that gave rise to the disqualification; and
 - (b) the conduct of the person since the disqualification; and
 - (c) any other relevant considerations.

Division 4—Holding of general elections

Pt 3 Div. 4
(Heading and
ss 31, 32)
amended by
Nos 99/1994
s. 5(a),
54/1998
s. 5(1),
substituted as
Pt 3 Div. 4
(Heading and
s. 31) by
No. 109/2003
s. 15.

31 General elections

S. 31
substituted by
Nos 109/2003
s. 15, 44/2011
s. 3.

- (1) Subject to this Division, a general election of Councillors for all Councils must be held on the fourth Saturday in October 2012 and thereafter on the fourth Saturday in October in the fourth year after the last general election of Councillors for all Councils was held.

- (2) Despite subsection (1), if the Minister has made a recommendation to the Governor in Council in accordance with subsection (3), the Governor in Council may by Order in Council change the election day under subsection (1) in respect of all Councils or in respect of one or more Councils specified in the Order in Council to another Saturday as nearest as possible to that election day having regard to the need to ensure that the election is conducted in a participatory and secure manner.
- (3) Subject to subsection (5), the Minister may make a recommendation if the Minister is satisfied that an event or circumstance could adversely affect the conduct of the general election for all Councils or for one or more Councils if the general election were to be held on that day.
- (4) Without limiting the generality of subsection (3), an event or circumstance that could adversely affect the conduct of the general election includes—
 - (a) a general election is to be held under the **Constitution Act 1975**;
 - (b) a general election for the House of Representatives or an election for the Senate, of the Commonwealth Parliament, is to be held;
 - (c) school holidays;
 - (d) a natural disaster;
 - (e) the declaration of a state of disaster under section 23 of the **Emergency Management Act 1986**.
- (5) The Minister cannot make a recommendation for an Order in Council to be made under subsection (2) after the day on which nominations

for the general election close under clause 3(2) of Schedule 2.

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Pt 3 Div. 5
(Heading and
ss 33–36)
amended by
Nos 13/1990
s. 6(1),
99/1994
s. 5(a),
76/1997
s. 13(a),
54/1998
ss 5(2), 6,
5/2001
s. 30(1)(2)(a),
repealed by
No. 109/2003
s. 15.

Division 6—Extraordinary vacancies

37 Extraordinary vacancy within 6 months before a general election

- (1) If an extraordinary vacancy occurs within 6 months before a general election, the extraordinary vacancy is not to be filled unless the Council decides to fill the vacancy.
- (2) If the Council decides to fill an extraordinary vacancy which occurs within 6 months before a general election, the Chief Executive Officer must notify the Minister of that decision within 3 working days of the Council making the decision.

S. 37
substituted by
No. 109/2003
s. 17,
amended by
No. 35/2008
s. 14 (ILA
s. 39B(1)).

S. 37(2)
inserted by
No. 35/2008
s. 14.

37A Extraordinary vacancies—Councillors elected under Schedule 3 (Part 4A) or 3A

- (1) This section applies if—
 - (a) an extraordinary vacancy occurs as a result of the departure from office of a person who was elected to a Council in accordance with Part 4A of Schedule 3 or with Schedule 3A; and

S. 37A
inserted by
No. 54/1998
s. 7.

(b) either—

S. 37A(1)(b)(i)
amended by
No. 109/2003
s. 18(1).

(i) the vacancy occurs more than 6 months
before a general election is due; or

S. 37A(1)(b)(ii)
amended by
No. 109/2003
s. 18(1).

(ii) the Council decides to fill the vacancy
within 6 months before a general
election is due.

(2) The extraordinary vacancy is to be filled in
accordance with Schedule 3A.

(3) This section overrides any provision to the
contrary in section 38.

S. 37A(4)
repealed by
No. 53/2015
s. 57.

* * * * *

38 By-elections

S. 38(1)
amended by
Nos 125/1993
s. 14(e),
54/1998 s. 8,
substituted by
No. 109/2003
s. 18(2),
amended by
No. 35/2008
s. 15(1).

(1) Unless subsection (1AA) applies, an election to
fill an extraordinary vacancy must be held on a
Saturday which is not later than the 100th day
after the extraordinary vacancy.

S. 38(1A)
inserted by
No. 109/2003
s. 18(2).

(1A) The date of an election under subsection (1) must
be—

(a) fixed by the Minister; and

(b) published in the Government Gazette.

S. 38(1AA)
inserted by
No. 35/2008
s. 15(2).

(1AA) For the purposes of determining when the period
under subsection (1) commences, the
extraordinary vacancy is to be taken to have
occurred—

- (a) if the extraordinary vacancy occurs within 6 months before a general election, on the date that the Council decides to fill the vacancy under section 37; or
 - (b) if the returning officer determines that the extraordinary vacancy cannot be filled by a countback under Schedule 3A, on the date on which the returning officer makes that determination.
- (1AB) Despite subsection (1), if the Minister considers that the process for holding an election to fill an extraordinary vacancy would be adversely affected by the Christmas and New Year holiday period if the date of the election was fixed in accordance with that subsection, the Minister may fix a date for the holding of the election on a day which is a Saturday not later than the 150th day after the extraordinary vacancy and is as soon as is reasonably practicable.
- (1AC) For the purposes of subsection (1AB), the Minister—
- (a) may specify as the entitlement date a date which is more than 57 days before the date of the election;
 - (b) must publish the date of the election and the entitlement date in the Government Gazette.
- (1B) The Chief Executive Officer must notify the Minister and the Victorian Electoral Commission that an extraordinary vacancy has occurred within 3 working days of becoming aware of the extraordinary vacancy.
- (2) If an extraordinary vacancy is caused by the ouster of a Councillor from office by the Supreme Court, the extraordinary vacancy occurs on the following days—

S. 38(1AB)
inserted by
No. 35/2008
s. 15(2).

S. 38(1AC)
inserted by
No. 35/2008
s. 15(2).

S. 38(1B)
inserted by
No. 109/2003
s. 18(2),
amended by
No. 53/2015
s. 58.

S. 38(2)(a)
amended by
No. 109/1994
s. 34(10).

(a) if notice of appeal to the Court of Appeal is not served within the period allowed, on the day after that period;

S. 38(2)(b)
amended by
No. 109/1994
s. 34(10).

(b) if an appeal to the Court of Appeal is dismissed, on the day the decision is given.

S. 38(2A)
inserted by
No. 15/1992
s. 6.

(2A) If an extraordinary vacancy is caused by the declaration of a municipal electoral tribunal, the extraordinary vacancy occurs on the following days—

S. 38(2A)(a)
amended by
No. 52/1998
s. 311(Sch. 1
item 55.1).

(a) if an application for review to the Victorian Civil and Administrative Tribunal is not served within 7 days of the decision of the municipal electoral tribunal, on the day after that period;

S. 38(2A)(b)
amended by
No. 52/1998
s. 311(Sch. 1
item 55.1).

(b) if an application for review to the Victorian Civil and Administrative Tribunal is dismissed, on the day the decision is given.

S. 38(2AA)
inserted by
No. 109/2003
s. 18(3).

(2AA) If an extraordinary vacancy is caused by the decision of the Victorian Civil and Administrative Tribunal on an application for review, the extraordinary vacancy occurs on the day the decision is given.

S. 38(2B)
inserted by
No. 15/1992
s. 6,
amended by
No. 109/2003
ss 16(1)(a),
18(4).

(2B) Subsection (2A) or (2AA) applies in respect of a general election and for that purpose all the extraordinary vacancies are deemed to have occurred on the same day as determined in accordance with that subsection.

S. 38(2C)
inserted by
No. 15/1992
s. 6,
amended by
No. 109/2003
s. 18(5).

(2C) Despite subsection (3), if more than one extraordinary vacancy in a ward is caused by the declaration of a municipal electoral tribunal or the decision of the Victorian Civil and Administrative

Tribunal, an election must be held to fill all the extraordinary vacancies at the same time.

- (3) If more than 1 extraordinary vacancy occurs in respect of the same ward and an election is required to be held to fill the vacancies on the same day, one election must be held to fill all the extraordinary vacancies at the same time.

S. 38(3)
substituted by
No. 13/1990
s. 7,
amended by
No. 109/2003
s. 18(6).

- (4) Despite anything to the contrary in this section, in exceptional circumstances, on the recommendation of the Minister, the Governor in Council may by Order in Council postpone the election day under this section to another Saturday as nearest as possible to the election day.

S. 38(4)
inserted by
No. 109/2003
s. 18(7).

Division 7—Conduct of elections and polls of voters

39 One vote per person

A person who is entitled to vote at an election is only entitled to 1 vote in respect of each municipal district for which he or she is enrolled.

S. 39
amended by
Nos 33/1995
s. 19(1),
76/1997
s. 9(3)(4),
5/2001
s. 30(2)(b)(c),
substituted by
No. 109/2003
s. 19.

40 Voting is compulsory

- (1) Except as is provided in the regulations, it is compulsory for a person who is enrolled on the voters' roll as a resident under section 12 to vote at any election in respect of the ward in which his or her principal place of residence is located.

S. 40
amended by
No. 15/1992
s. 8(a).

S. 40(1)
amended by
No. 35/2008
s. 16.

Local Government Act 1989
No. 11 of 1989
Part 3—Elections

S. 40(1A)
inserted by
No. 43/1993
s. 9(a),
amended by
No. 33/1995
s. 20.

(1A) It is an offence against this Act to fail to vote as required by subsection (1).

Penalty: 1 penalty unit.

S. 40(2)
inserted by
No. 15/1992
s. 8(b).

(2) In this section—

infringement means an offence against this section;

prescribed penalty means the penalty prescribed for the purposes of this section;

prosecution officer means the Electoral Commissioner or a person appointed by the Electoral Commissioner for the purposes of this section.

S. 40(2) def. of
prosecution officer
amended by
Nos 43/1993
s. 9(b),
76/1995
s. 6(a)(b),
substituted by
Nos 109/2003
s. 21(1),
53/2015
s. 59(1).

S. 40(3)
inserted by
No. 15/1992
s. 8(b).

(3) A prosecution officer may serve or cause to be served an infringement notice on any person if the prosecution officer has reason to believe that the person has committed an infringement.

S. 40(3A)
inserted by
No. 32/2006
s. 94(Sch.
item 30(1)).

(3A) An offence referred to in subsection (3) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006** and the penalty for that offence is the prescribed penalty in respect of that offence.

Local Government Act 1989
No. 11 of 1989
Part 3—Elections

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|--|--|
| (4) In addition to the details required under section 13 of the Infringements Act 2006 , the details of the election to which the alleged infringement relates must be included in an infringement notice served under subsection (3), including—

(a) the name of the Council; and

(b) the date of the election; and

(c) the name of the ward. | S. 40(4)
inserted by
No. 15/1992
s. 8(b),
amended by
No. 109/2003
s. 21(2),
substituted by
No. 32/2006
s. 94(Sch.
item 30(2)). |
| (5) Payments received by the prosecution officer under this section, in relation to the enforcement and prosecution of an offence against this section, must be paid to the Council in respect of which the offence relates. | |
| * * * * * | S. 40(5)–(10)
inserted by
No. 15/1992
s. 8(b),
repealed by
No. 32/2006
s. 94(Sch.
item 30(3)). |
| * * * * * | S. 40(11)
inserted by
No. 15/1992
s. 8(b),
repealed by
No. 109/2003
s. 21(3). |
| * * * * * | S. 40(12)(13)
inserted by
No. 15/1992
s. 8(b),
repealed by
No. 32/2006
s. 94(Sch.
item 30(3)). |

S. 40A
inserted by
No. 33/1995
s. 21,
amended by
No. 76/1997
s. 10,
repealed by
No. 5/2001
s. 30(1),
new s. 40A
inserted by
No. 53/2015
s. 60.

40A Victorian Electoral Commission's election and enforcement expenses

- (1) The Victorian Electoral Commission may send to each Council an account of the reasonable expenses incurred by the Victorian Electoral Commission—
 - (a) for conducting an election for the Council;
and
 - (b) for the administration, enforcement and prosecution of any offence related to compulsory voting under this Act, the **City of Melbourne Act 2001** or the regulations.
- (2) A Council is responsible for the reasonable expenses of the Victorian Electoral Commission as specified in an account sent to the Council under subsection (1).
- (3) For the purposes of this section, reasonable expenses that may be recovered from a Council do not include any costs recovered under the **Infringements Act 2006** and passed on to the Victorian Electoral Commission under that Act (being an enforcement agency under that Act).

* * * * *

S. 40B
inserted by
No. 76/1997
s. 11,
repealed by
No. 109/2003
s. 7(4).

41 Holding of an election

Schedule 2 has effect in respect of the holding of an election.

41A Election or poll by postal voting

S. 41A
inserted by
No. 99/1994
s. 7.

- (1) Subject to subsections (2A) and (2B), a Council may decide that all voting at an election or at a poll of voters is to be by means of postal voting.

S. 41A(1)
amended by
Nos 76/1997
s. 12(1)(a),
35/2008
s. 17(1).

- (2) If the Council makes such a decision, the returning officer must—

- (a) state in the public notice of the election or poll that all voting at the election or poll is to be by postal voting; and

S. 41A(2)(a)
amended by
No. 76/1997
s. 12(1)(b).

- (b) send or deliver to each voter on the voters' roll who is entitled to vote at the election or poll—

S. 41A(2)(b)
amended by
No. 76/1997
s. 12(1)(b).

- (i) a postal vote certificate or declaration;
- (ii) a ballot paper for postal voting;
- (iii) a prepaid envelope for the return of the certificate and ballot paper;
- (iv) instructions on how to vote;
- (v) notice of how and when the ballot paper must be returned by;
- (vi) any document prescribed for the purposes of this paragraph;
- (vii) any other material that the returning officer thinks is appropriate.

- (2A) Voting at a general election must be conducted by the same means, whether attendance or postal voting, as the previous general election was conducted unless the Council has decided at least 8 months before the election day to change the means of conducting the voting.

S. 41A(2A)
inserted by
No. 35/2008
s. 17(2).

Local Government Act 1989
No. 11 of 1989
Part 3—Elections

S. 41A(2B)
inserted by
No. 35/2008
s. 17(2).

- (2B) Voting at a by-election must be conducted by the same means, whether attendance or postal voting, as the previous general election was conducted unless the Council has decided not later than 7 days after the extraordinary vacancy occurred to change the means of conducting the voting.

S. 41A(3)
amended by
No. 76/1997
s. 12(1)(c)(i)(ii),
substituted by
No. 109/2003
s. 12(3).

- (3) If an election or a poll of voters is conducted under this section, voting closes at 6 p.m. on the last working day before election day in the election or poll of voters.

S. 41A(3A)
inserted by
No. 109/2003
s. 12(3),
repealed by
No. 35/2008
s. 17(3).

* * * * *

S. 41A(4)
amended by
No. 76/1997
s. 12(1)(b).

- (4) Subject to this section, the election or poll is to be conducted in accordance with the regulations and the provisions of Schedules 2 and 3 that are not inconsistent with the regulations.

42 Voting and counting of votes and polls of voters

Schedule 3 has effect in respect of voting at elections and the counting of votes and polls of voters.

43 Governor in Council may give directions

- (1) The Governor in Council may by Order in Council—

- (a) direct that an act or thing required to be done in connection with the preparation, printing or copying of a voters' roll which has been omitted or has not been completed, is to be done; and

S. 43(1)(b)(c)
repealed by
No. 109/2003
s. 12(2)(b).

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|---|--|
| (ca) direct that an election or poll is to be held on or by a specified date; and | S. 43(1)(ca) inserted by No. 15/1992 s. 7(a), amended by No. 76/1997 s. 12(2). |
| (d) give any directions or provide for any matters or things as may appear to the Governor in Council to be necessary or expedient with respect to the conduct of any election or poll; and | S. 43(1)(d) amended by Nos 15/1992 s. 7(b), 53/2015 s. 61. |
| (e) give directions in connection with any election or poll to— | S. 43(1)(e) amended by No. 15/1992 s. 7(b), substituted by No. 64/2009 s. 39(a). |
| (i) any Council or any member of Council staff; or | |
| (ii) any other public body or any officer of a public body; and | |
| (f) appoint any person, member of Council staff or an officer of any other public body to carry out any directions referred to in paragraph (d) or (e). | S. 43(1)(f) amended by No. 64/2009 s. 39(b). |
| (2) An Order in Council under subsection (1) cannot change the method of counting votes under this Act. | |

Division 8—General provisions

44 Municipal electoral tribunals

- | | |
|---|--|
| (1) There may be established one or more municipal electoral tribunals to consider disputes which may arise from the holding of elections. | S. 44(1) substituted by No. 15/1992 s. 9(1). |
| (1A) The Minister may determine that one municipal electoral tribunal be established for a period of up to 12 months as the Minister considers appropriate. | S. 44(1A) inserted by No. 15/1992 s. 9(1). |

- (2) Schedule 4 has effect with respect to municipal electoral tribunals.

45 Application for an inquiry

S. 45(1)
amended by
Nos 15/1992
s. 9(2)(a)(b),
34/1996
s. 28(2),
54/1998
s. 3(1)(d),
substituted by
No. 109/2003
s. 22(1).

- (1) Within 14 days of the declaration of the result of an election—
- (a) a candidate in that election who disputes the validity of the election; or
 - (b) 10 persons who were entitled to vote at the election who dispute the validity of the election; or
 - (c) a returning officer who disputes the validity of the election—

S. 45(1)(b)
substituted by
No. 53/2015
s. 62.

S. 45(1)(c)
inserted by
No. 53/2015
s. 62.

may apply for an inquiry into the election by a municipal electoral tribunal.

S. 45(1A)
inserted by
No. 54/1998
s. 3(2).

- (1A) The application must be made in writing and must contain the details required by the regulations.

S. 45(2)
substituted by
No. 34/1996
s. 28(3).

- (2) The application for an inquiry must be lodged with the principal registrar of the Magistrates' Court.
- (3) The prescribed fee must be forwarded with the application.

46 Powers of a municipal electoral tribunal

S. 46(1)
substituted by
No. 15/1992
s. 9(3).

- (1) A municipal electoral tribunal has the following powers—
- (a) to declare that any person declared elected was not duly elected;
 - (b) to declare any candidate duly elected who was not declared elected;

- (c) to declare an election void;
 - (d) to dismiss or uphold an application in whole or in part;
 - (e) to amend or permit the amendment of an application;
 - (f) to order the inspection of, and permit copying of, documents used in connection with an election, subject to such terms and conditions as it considers appropriate;
 - (g) to undertake a preliminary review of an application;
 - (h) to require any further information relating to an application.
- (1A) A municipal electoral tribunal may impose a financial penalty not exceeding the amount prescribed for the purposes of this section. S. 46(1A)
inserted by
No. 15/1992
s. 9(3).
- (2) A municipal electoral tribunal cannot order a recount of the whole or any part of the ballot-papers unless it is satisfied that a recount is justified and has advised the returning officer of its intention.
- (3) If a municipal electoral tribunal has declared that a person declared elected was not duly elected and has not declared another candidate duly elected instead, an extraordinary vacancy is caused by the declaration of the municipal electoral tribunal on the day which applies under section 38(2A). S. 46(3)
inserted by
No. 67/2008
s. 27.
- (4) If a municipal electoral tribunal has declared an election for a ward to be void, an extraordinary vacancy in each office of Councillor for the ward is caused by the declaration of the municipal electoral tribunal on the day which applies under section 38(2A). S. 46(4)
inserted by
No. 67/2008
s. 27.

S. 47
amended by
No. 15/1992
s. 9(4).

47 Report to the Minister

A municipal electoral tribunal must submit a report to the Minister on any possible offences against this Act at an election.

48 Decision of municipal electoral tribunal

S. 48(1)
amended by
No. 34/1996
s. 28(4),
repealed by
No. 109/2003
s. 22(2).

* * * * *

S. 48(2)
amended by
Nos 15/1992
s. 9(5),
76/1995
s. 7(1),
substituted by
No. 52/1998
s. 311(Sch. 1
item 55.2).

- (2) A person whose interests are affected by a decision of a municipal electoral tribunal may apply to the Victorian Civil and Administrative Tribunal for review of the decision.

S. 48(3)
inserted by
No. 76/1995
s. 7(2),
substituted by
Nos 52/1998
s. 311(Sch. 1
item 55.2),
109/2003
s. 22(3).

- (3) An application for review must be made within 7 days of a copy of the decision being given to the parties to the application.

S. 48(4)
inserted by
No. 109/2003
s. 22(3).

- (4) The Tribunal's power under this section is exercisable only by a presidential member of the Tribunal.

49 Reasons for decision

S. 49(1)
amended by
No. 109/2003
s. 22(4).

- (1) A municipal electoral tribunal must give reasons in writing for its decision.

- (2) A municipal electoral tribunal must provide a copy of its decision to—
- (a) each party to the application; and
 - (b) the Minister.

S. 49(2)
substituted by
No. 109/2003
s. 22(5).

50 Scrutiny of voters' roll

The returning officer must as soon as practicable after an election undertake a scrutiny of the voters' roll used at the election and prepare a list of the names of persons who were required to vote and did not vote at the election.

51 Validity of election or poll

- (1) The validity of an election or poll is not affected by any defect in the appointment of any person for the purpose of holding the election or poll.
- (2) The validity of an election or poll is not affected by—
- (a) any irregularity in any of the proceedings preliminary to voting; or
 - (b) any failure to hold the election or poll at any place appointed; or
 - (c) any failure to comply with any directions as to the holding of the election or poll or the counting of the votes; or
 - (d) any mistake in the use of any forms—
- if the election or poll was conducted in accordance with the principles in this Act and the irregularity, failure or mistake did not affect the result of the election or poll.

S. 51(1)
amended by
No. 76/1997
s. 13(b).

S. 51(2)
amended by
No. 76/1997
s. 13(b).

S. 51(2)(b)
amended by
No. 76/1997
s. 13(b).

S. 51(2)(c)
amended by
No. 76/1997
s. 13(b).

52 Unlawful nomination

S. 52
amended by
No. 109/2003
s. 52(1) (ILA
s. 39B(1)).

S. 52(1)
amended by
Nos 109/2003
s. 23(a),
64/2009
s. 7(1)(2).

- (1) If a person who is not qualified to be a candidate or is not capable of becoming a Councillor submits a nomination the person is guilty of an offence and liable to a term of imprisonment not exceeding 2 years or to a fine not exceeding 240 penalty units.

S. 52(2)
inserted by
No. 109/2003
s. 52(1),
amended by
Nos 67/2008
s. 28, 64/2009
s. 7(3)(4).

- (2) A person who submits a nomination in breach of section 70(2), 70(2A), 70(3), 70(4) or 70(5) is guilty of an offence and liable to a term of imprisonment not exceeding 2 years or to a fine not exceeding 240 penalty units.

53 Prohibition of canvassing near voting centre

S. 53(1)
amended by
Nos 15/1992
s. 10, 109/2003
s. 29(b).

- (1) A person must not—
- (a) canvass for votes; or
 - (b) solicit the vote of a person; or
 - (c) attempt to induce a person not to vote for a particular candidate; or

S. 53(1)(c)
amended by
No. 13/1990
s. 31(b).

- (d) attempt to induce a person not to vote at the election; or

S. 53(1)(d)
amended by
No. 13/1990
s. 31(c).

- (e) exhibit any notice or sign (other than an official notice) relating to the election—

within 6 metres (or a lesser distance fixed by the returning officer) of any entrance to or within the premises used as a voting centre at any time during polling hours or any adjournment.

Penalty: 10 penalty units.

- (2) The authorised person in charge of a voting centre may cause any area in the vicinity of the premises used as a voting centre to be delineated by notices, signs or other means, and that area is to be treated as the voting centre for the purposes of subsection (1).

S. 53(2)
amended by
No. 109/2003
s. 29(b)(c).

54 Interfering with rights

- (1) A person must not hinder or interfere with the free exercise or performance by any other person of any political right or duty that is relevant to an election.

S. 54(1)
amended by
No. 64/2009
s. 8(1).

Penalty: 120 penalty units or imprisonment for 1 year.

- (2) During the hours of polling at an election, a person must not—

- (a) make any public demonstration having any reference to the election; or
- (b) use any loud speaker or amplifier or any other apparatus or device for broadcasting or disseminating any matter intended or likely to affect the result of the election.

Penalty: 1 penalty unit.

- (3) Subsections (1) and (2) do not apply to any official statement or announcement made or exhibited under the authority of this Act.

* * * * *

S. 54(4)
repealed by
No. 109/2003
s. 93(a).

- (5) A person must not interfere with or attempt to interfere with a voter when the voter is marking his or her ballot-paper.

S. 54(5)
amended by
No. 109/2003
s. 29(d),
substituted by
No. 64/2009
s. 8(2).

Penalty: 120 penalty units or imprisonment for 1 year.

S. 55
amended by
No. 15/1992
s. 11(a)(b),
substituted by
No. 109/2003
s. 24.

55 Printing and publication of electoral advertisements, handbills, pamphlets or notices

S. 55(1)
amended by
No. 64/2009
s. 9.

- (1) A person must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, an electoral advertisement, handbill, pamphlet or notice unless the name and address of the person who authorised the electoral advertisement, handbill, pamphlet or notice appears at its end.

Penalty: In the case of a natural person,
10 penalty units;

In the case of a body corporate,
50 penalty units.

- (2) Subsection (1) does not apply in relation to—

(a) a car sticker, an item of clothing, lapel button, lapel badge, fridge magnet, pen, pencil or balloon; or

(b) an article included in a prescribed class of articles.

- (3) Nothing in subsection (2)(a) is to be taken, by implication, to limit the generality of regulations that may be made by virtue of subsection (2)(b).

S. 55(4)
inserted by
No. 35/2008
s. 18.

- (4) For the purposes of subsection (1), **address** does not include a post office box.

55A Misleading or deceptive matter

S. 55A
inserted by
No. 109/2003
s. 24.

(1) A person must not—

S. 55A(1)
amended by
Nos 35/2008
s. 19(a),
64/2009
s. 10(1).

- (a) print, publish or distribute; or
- (b) cause, permit or authorise to be printed,
published or distributed—

any matter or thing that is likely to mislead or
deceive a voter in relation to the casting of the
vote of the voter.

Penalty: In the case of a natural person,
60 penalty units or imprisonment for
6 months;

In the case of a body corporate,
300 penalty units.

(2) A person must not—

S. 55A(2)
amended by
Nos 35/2008
s. 19(b),
64/2009
s. 10(2).

- (a) print, publish or distribute; or
- (b) cause, permit or authorise to be printed,
published or distributed—

an electoral advertisement, handbill, pamphlet or
notice that contains a representation or purported
representation of a ballot-paper for use in an
election that is likely to induce a voter to mark the
voter's vote otherwise than in accordance with the
directions on the ballot-paper.

Penalty: In the case of a natural person,
60 penalty units or imprisonment for
6 months;

In the case of a body corporate,
300 penalty units.

(3) In a prosecution of a person for an alleged offence against subsection (1) or (2), it is a defence if the person proves that the person—

- (a) did not know; and
- (b) could not reasonably be expected to have known—

that the matter or thing was likely to mislead a voter when casting the voter's vote.

S. 55B
inserted by
No. 109/2003
s. 24,
amended by
No. 64/2009
s. 11.

55B Heading to electoral advertisements

The proprietor of a newspaper must cause the word "advertisement" to be printed as a headline in letters not smaller than 10 point to each article or paragraph in the proprietor's newspaper containing electoral matter, the insertion—

- (a) of which is, or is to be, paid for; or
- (b) for which any reward or compensation or promise of reward or compensation is, or is to be, made.

Penalty: In the case of a natural person,
10 penalty units;

In the case of a body corporate,
50 penalty units.

S. 55C
inserted by
No. 109/2003
s. 24.

55C Authors to be identified

(1) A person must not during the election period—

- (a) print, publish or distribute; or
- (b) cause, permit or authorise to be printed, published or distributed—

a newspaper, circular or pamphlet containing an article, report, letter or other matter containing electoral matter unless the author's name and

S. 55C(1)
amended by
No. 64/2009
s. 12.

address are set out at the end of the article, report, letter or other matter, or if only part of the article, report, letter or matter appears in any issue of a newspaper, circular or pamphlet at the end of that part.

Penalty: In the case of a natural person,
10 penalty units;

In the case of a body corporate,
50 penalty units.

(2) This section does not apply to the publication in a newspaper of—

(a) a leading article; or

(b) an article that consists solely of a report of a meeting and does not contain electoral matter, other than comment made by a speaker at the meeting.

(3) It is sufficient compliance with subsection (1) if a newspaper containing a letter containing electoral matter sets out the author's name and the suburb or locality in which the author's address is located.

55D Prohibition on Council

(1) A Council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any advertisement, handbill, pamphlet or notice during the election period unless the advertisement, handbill, pamphlet or notice has been certified, in writing, by the Chief Executive Officer.

S. 55D
inserted by
No. 109/2003
s. 24,
substituted by
No. 58/2010
s. 5.

(1A) For the purposes of subsection (1), the publication of a document of a kind specified in that subsection does not include—

S. 55D(1A)
inserted by
No. 53/2015
s. 63.

(a) publication of any document published before the commencement of the election period; and

- (b) publication of any document required to be published in accordance with, or under, any Act or regulation.

Note

See definitions of *publish* in section 3(1) and *document* in section 38 of the **Interpretation of Legislation Act 1984**.

- (2) The Chief Executive Officer must not intentionally or recklessly certify an electoral advertisement, handbill, pamphlet or notice during the election period unless it only contains information about the election process.

Penalty: 60 penalty units.

- (3) Despite section 98(2), the Chief Executive Officer must not delegate the power to certify any advertisement, handbill, pamphlet or notice under this section to a member of Council staff.

- (4) A Councillor or member of Council staff must not intentionally or recklessly print, publish or distribute or cause, permit or authorise to be printed, published or distributed an electoral advertisement, handbill, pamphlet or notice during the election period on behalf of, or in the name of, the Council or on behalf of, or in the name of, a Councillor using Council resources if the electoral advertisement, handbill, pamphlet or notice has not been certified by the Chief Executive Officer under this section.

Penalty: 60 penalty units.

S. 56
substituted by
No. 109/2003
s. 27.

56 Distribution of printed electoral material

S. 56(1)
amended by
No. 64/2009
s. 13(1).

- (1) A person must not during the hours of voting within 400 metres of the entrance of, or within the building used as, a voting centre—

- (a) hand out, distribute or otherwise make available; or
- (b) authorise the handing out, distribution or otherwise making available—

to any person of any printed electoral material other than a registered how-to-vote card.

Penalty: 60 penalty units.

- (2) A person must not—

- (a) print, publish or distribute; or

S. 56(2)
amended by
No. 64/2009
s. 13(2).

- (b) cause, permit or authorise to be printed, published or distributed—

a how-to-vote card which is not a registered how-to-vote card and which contains a representation or purported representation of an endorsement in the prescribed manner.

Penalty: 60 penalty units.

- (3) In a prosecution of a person for an alleged offence against subsection (1) or (2), it is a defence if the person proves that the person did not know, and could not reasonably be expected to have known, that the card was not a registered how-to-vote card.

- (4) Subsection (1) does not apply to—

- (a) the handing out, distribution, sale or otherwise making available of a newspaper by or on behalf of a newsagent, newspaper seller or distributor if the handing out, distribution, sale or making available is in the course of the newsagent's, newspaper seller's or distributor's employment or business; or

- (b) the handing out, distribution or otherwise making available of any printed electoral material in any room or building used as a campaign room or an office by a candidate in the election to which the material relates; or
- (c) printed electoral material in the form of any poster or notice which is affixed or attached to any vehicle, building, hoarding or structure (whether moveable or fixed).

S. 56(5)
inserted by
No. 63/2012
s. 6.

- (5) Subsection (1) does not apply to the distribution or otherwise making available of any printed electoral material during the hours of voting to any property within 400 metres of the entrance of a voting centre that is an early voting centre.

S. 56A
inserted by
No. 109/2003
s. 27.

56A Power to request handing over of how-to-vote cards

- (1) The person in charge of a voting centre or a person authorised by the person in charge to act on that person's behalf under this section may on election day request a person reasonably suspected by the person in charge of contravening section 56—
 - (a) to produce for inspection any how-to-vote cards in the person's possession; and
 - (b) to hand over all how-to-vote cards other than registered how-to-vote cards.
- (2) A person who fails to comply with a request under subsection (1) is guilty of an offence.

Penalty: 10 penalty units.

S. 56A(3)
amended by
No. 37/2014
s. 10(Sch.
item 99.2).

- (3) If a person refuses to comply with a request, a police officer or a returning officer may seize any card in the person's possession which is not endorsed in the prescribed manner.

* * * * *

S. 57
amended by
No. 68/2009
s. 97(Sch.
item 80.2)
repealed by
No. 63/2012
s. 7.

57A Injunction

S. 57A
inserted by
No. 15/1992
s. 12.

- (1) If a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute an offence under section 55 or 55A, the Supreme Court may on the application of a candidate in an election grant an injunction restraining that person from engaging in the conduct and, if in the opinion of the Supreme Court it is desirable to do so, requiring that person to do any act or thing.
- (2) If an application is made to the Supreme Court for an injunction under subsection (1), the Supreme Court may, if in the opinion of the Supreme Court it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in that subsection pending the determination of the application.
- (3) The Supreme Court may discharge or vary an injunction granted under subsection (1) or (2).
- (4) If an application is made to the Supreme Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Supreme Court to grant the injunction may be exercised—

S. 57A(1)
amended by
Nos 109/2003
s. 25(4),
63/2012 s. 8.

- (a) if the Supreme Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Supreme Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the Supreme Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.
- (5) The powers conferred on the Supreme Court under this section are in addition to, and not in derogation of, any other powers of the Supreme Court.

58 Offences relating to ballot-papers

S. 58(1)
repealed by
No. 64/2009
s. 14(1).

* * * * *

S. 58(2)
amended by
No. 64/2009
s. 14(2)(3).

- (2) A person who—
- (a) forges or fraudulently marks, defaces or destroys a ballot-paper; or
 - (b) without authority supplies a ballot-paper to any person; or
 - (c) fraudulently puts any unauthorised ballot-paper into a ballot-box; or
 - (d) is in possession of an unauthorised ballot-paper; or

(e) without authority destroys, takes, opens or otherwise interferes with any ballot-box or parcel of ballot-papers—

is guilty of an offence and liable to a term of imprisonment not exceeding 2 years or to a fine not exceeding 240 penalty units.

(3) A person who—

S. 58(3)
amended by
No. 64/2009
s. 14(4)(5).

(a) votes or attempts to vote more than once at an election; or

S. 58(3)(a)
amended by
Nos. 33/1995
s. 19(2),
109/2003 s. 20.

(b) fraudulently removes a ballot-paper from a ballot-box; or

(c) impersonates any voter—

S. 58(3)(c)
amended by
No. 76/1995
s. 8(1).

is guilty of an offence and liable to a term of imprisonment not exceeding 2 years or to a fine not exceeding 240 penalty units.

(4) A person who leaves a voting centre with a ballot-paper is guilty of an offence and liable to a fine not exceeding 10 penalty units.

S. 58(4)
amended by
Nos 109/2003
s. 29(e),
64/2009
s. 14(6)(7).

(5) A person who agrees to post a postal ballot-paper on behalf of a voter and who fails to post the ballot-paper in accordance with the agreement is guilty of an offence and liable to a fine not exceeding 10 penalty units.

S. 58(5)
inserted by
No. 76/1995
s. 8(2),
amended by
No. 64/2009
s. 14(8)(9).

S. 58(6)
inserted by
No. 76/1995
s. 8(2).

- (6) It is a defence to a charge under subsection (5) if the ballot-paper was received by the returning officer in time for the ballot-paper to be counted in the election.

S. 58A
inserted by
No. 76/1995
s. 9.

58A Offence to interfere with postal ballot materials

S. 58A(1)
amended by
No. 64/2009
s. 15.

- (1) A person must not interfere with any material being, or to be, sent or delivered to a voter under section 41A(2)(b).

Penalty: 240 penalty units or imprisonment for 2 years.

- (2) This does not apply to a person who is acting with the authority of the returning officer.

59 Bribery, treating and undue influence

S. 59(1)
amended by
No. 64/2009
s. 16(1).

- (1) A person must not ask for, receive or obtain, or offer or agree to ask for, or receive or obtain, any property or benefit of any kind for himself or herself or any other person, on an understanding that—
- (a) any vote of the first-mentioned person; or
 - (b) any candidature of the first-mentioned person; or
 - (c) any support of, or opposition to, a candidate, by the first-mentioned person; or
 - (d) the doing of any act or thing by the first-mentioned person the purpose of which is, or the effect of which is likely to be, to influence the preferences set out in the vote of a voter—

will in any manner be influenced or affected.

Penalty: 600 penalty units or imprisonment for 5 years.

- (2) A person must not, in order to influence or affect—
- (a) any vote of another person; or
 - (b) any candidature of another person; or
 - (c) any support of, or opposition to, a candidate, by another person; or
 - (d) the doing of any act or thing by another person the purpose of which is, or the effect of which is likely to be, to influence the preferences set out or the effect of which is likely to be, to influence the preferences set out in the vote of a voter—
- give or confer, or promise or offer to give or confer, any property or benefit of any kind to that other person or to a third person.
- Penalty: 600 penalty units or imprisonment for 5 years.
- (3) This section does not apply in relation to a declaration of public policy or a promise of public action.

S. 59(2)
amended by
No. 64/2009
s. 16(2).

Note

Section 239A applies to an offence against subsection (1) or (2).

Note to s. 59
inserted by
No. 13/2013
s. 35.

60 Infringement of secrecy

- (1) It is the responsibility of the returning officer and any authorised person, interpreter, scrutineer and police officer at a voting centre to maintain and aid in maintaining the secrecy of voting.

S. 60(1)
amended by
Nos 109/2003
s. 29(e),
37/2014
s. 10(Sch.
item 99.2).

S. 60(2)
amended by
Nos 64/2009
s. 17(1),
37/2014
s. 10(Sch.
item 99.2).

- (2) Except as authorised by law, the returning officer and any authorised person, interpreter, scrutineer and police officer must not communicate to any person any information likely to defeat the secrecy of voting.

Penalty: 120 penalty units or imprisonment for 1 year.

S. 60(3)
amended by
No. 64/2009
s. 17(3).

- (3) Except as provided in this Act, a person must not—

S. 60(3)(a)
repealed by
No. 64/2009
s. 17(2).

* * * *

S. 60(3)(b)
amended by
No. 109/2003
s. 29(f).

- (b) attempt to obtain in the voting centre any information as to the candidate for whom any voter has or is to vote; or

S. 60(3)(c)
amended by
No. 109/2003
s. 29(e).

- (c) communicate to any person any information obtained in a voting centre as to the candidate for whom any voter has or is to vote.

Penalty: 120 penalty units or imprisonment for 1 year.

S. 60(4)
repealed by
No. 64/2009
s. 17(4).

* * * *

S. 61
amended by
No. 64/2009
s. 18.

61 Penalty on officers

Any returning officer, authorised person or interpreter who does any wilful or negligent act of omission or commission contrary to this Part is guilty of an offence and liable to a term of imprisonment not exceeding 6 months or to a fine not exceeding 60 penalty units.

Division 9—Election campaign donations

Pt 3 Div. 9
(Heading and
ss 62–62B)
inserted by
No. 109/2003
s. 30.

62 Return by candidate

S. 62
repealed by
No. 13/1990
s. 8, new s. 62
inserted by
No. 109/2003
s. 30.

- (1) Within 40 days after election day, a person who was a candidate in the election must give an election campaign donation return to the Chief Executive Officer.
- (2) An election campaign donation return must—
 - (a) be in the prescribed form; and
 - (b) contain the prescribed details in respect of any gifts received during the donation period, by the candidate or on behalf of the candidate, to be used for or in connection with the election campaign—
 - (i) the amount or value of which is equal to or exceeds the gift disclosure threshold; or
 - (ii) being goods or services the amount or value of which is equal to or exceeds the gift disclosure threshold.
- (3) Despite subsection (2), a candidate is not required to specify the relevant details of an amount in a return if the amount was a gift made in a private capacity to the candidate for the candidate's personal use and the candidate has not used, and will not use, the gift solely or substantially for a purpose related to the election.

S. 62(1)
amended by
No. 44/2011
s. 4.

S. 62(2)(b)(i)
amended by
No. 64/2009
s. 40(1).

S. 62(2)(b)(ii)
amended by
No. 64/2009
s. 40(1).

S. 62(6)
substituted by
No. 35/2008
s. 20.

- (4) The reference in subsection (2) to a gift made by a person includes a reference to a gift made on behalf of the members of an unincorporated association.
- (5) For the purposes of this section, 2 or more gifts made by the same person to or for the benefit of a candidate are to be taken to be one donation.
- (6) In this section, *donation period* means the period commencing on whichever is the later of—
 - (a) 30 days after the last general election for the Council; or
 - (b) 30 days after the last election for the Council at which the person required to give the election campaign donation return was a candidate—

and ending 30 days after election day in the current election for the Council.

S. 62(7)
amended by
No. 64/2009
s. 19.

- (7) A person who—
 - (a) fails to give a return that the person is required to give under this section; or
 - (b) gives a return that contains particulars that to the knowledge of the person are false or misleading in a material particular; or
 - (c) provides information that to the knowledge of the person is false or misleading in a material particular to a person required to give a return under this section—

is guilty of an offence and liable to a fine not exceeding 60 penalty units.

S. 62(7A)
inserted by
No. 64/2009
s. 40(2).

- (7A) If a person is found guilty or convicted of an offence under subsection (7), a court may make an order that the offender give a return under subsection (1) that is not false or misleading in a material particular.

(8) If no details are required to be included in a return under this section in respect of a candidate, the return—

- (a) must be given; and
- (b) must include a statement to the effect that no gifts of a kind required to be disclosed were received.

62A Responsibilities of Chief Executive Officer

S. 62A
inserted by
No. 109/2003
s. 30.

(1) The Chief Executive Officer must within 14 days after the period specified in section 62(1) submit a written report to the Minister specifying—

S. 62A(1)
amended by
No. 44/2011
s. 5.

- (a) the names of the persons who were candidates in the election; and
- (b) the names of the persons who submitted a return under section 62.

(2) The Chief Executive Officer must ensure that, within 14 days after the period specified in section 62(1), a summary of each election campaign donation return given to the Chief Executive Officer under section 62 is made available on the Internet website of the Council.

S. 62A(2)
repealed by
No. 58/2010
s. 6(1), new
s. 62A(2)
inserted by
No. 63/2012
s. 9.

(2A) If an election campaign donation return is given after the period specified in section 62(1), the Chief Executive Officer must ensure that a summary of the return is made available on the Internet website of the Council.

S. 62A(2A)
inserted by
No. 63/2012
s. 9.

(2B) A summary of an election campaign donation return must include the following information in respect of the candidate who gave the election campaign donation return—

S. 62A(2B)
inserted by
No. 63/2012
s. 9.

- (a) the name of the candidate;

(b) if a gift is included in the return, the name of the person who made the gift and the total value of the gift received from that person.

S. 62A(2C)
inserted by
No. 63/2012
s. 9.

(2C) The Chief Executive Officer must ensure that a summary of an election campaign donation return is made available on the Internet website of the Council until the entitlement date for the next general election.

S. 62A(3)
amended by
No. 58/2010
s. 6(2).

(3) The Chief Executive Officer must ensure that a copy of an election campaign donation return is available for inspection at the office of the Council during normal office hours for a period of 4 years from the date that it is given under section 62.

S. 62B
inserted by
No. 109/2003
s. 30.

62B Certain gifts not to be accepted

S. 62B(1)
amended by
No. 64/2009
s. 41.

(1) It is unlawful for a Councillor or a person acting on behalf of a Councillor to receive during the donation period a gift made to or for the benefit of the Councillor, being a gift the amount or value of which is equal to or exceeds the gift disclosure threshold unless—

(a) the name and address of the person making the gift are known to the person receiving the gift; or

(b) at the time when the gift is made—

(i) the person making the gift gives to the person receiving the gift the person's name and address; and

(ii) the person receiving the gift has no grounds to believe that the name and address so given are not the true name and address of the person making the gift.

- (2) It is unlawful for a candidate or a person acting on behalf of a candidate to receive during the donation period a gift made to or for the benefit of the candidate, being a gift the amount or value of which is equal to or exceeds the gift disclosure threshold unless—
- (a) the name and address of the person making the gift are known to the person receiving the gift; or
 - (b) at the time when the gift is made—
 - (i) the person making the gift gives to the person receiving the gift the person's name and address; and
 - (ii) the person receiving the gift has no grounds to believe that the name and address so given are not the true name and address of the person making the gift.
- (3) The references in subsections (1) and (2) to a gift made by a person includes a reference to a gift made on behalf of the members of an unincorporated association.
- (4) A reference in subsection (1) or (2) to the name and address of a person making a gift is—
- (a) in the case of a gift made on behalf of the members of an unincorporated association, a reference to—
 - (i) the name of the association; and
 - (ii) the names and addresses of the members of the executive committee (however described) of the association; and

S. 62B(2)
amended by
No. 64/2009
s. 41.

- (b) in the case of a gift purportedly made out of a trust fund or out of the funds of a foundation, a reference to—
 - (i) the names and addresses of the trustees of the fund or of the funds of the foundation; and
 - (ii) the title or other description of the trust fund or the name of the foundation.
- (5) For the purposes of subsection (2), a person who is a candidate in an election is to be taken to remain a candidate for 30 days after the election day in the election.
- (6) For the purposes of this section, 2 or more gifts made by the same person to or for the benefit of a Councillor or a candidate are to be taken to be one gift.
- (7) In this section, *donation period* means the period commencing on whichever is the later of—
 - (a) 30 days after the last general election for the Council; or
 - (b) 30 days after the last election for the Council at which the person required to give the election campaign donation return was a candidate—and ending 30 days after election day in the current election for the Council.
- (8) If a person receives a gift that, by virtue of this section, it is unlawful for the person to receive, an amount equal to twice the amount or value of the gift is forfeited to the State.
- (9) An amount forfeited under subsection (8) may be recovered against the Councillor or candidate.

S. 62B(7)
substituted by
No. 35/2008
s. 21.

Part 4—Council administration

Division 1—The Mayor and other Councillors

63 Oath of office and Councillor Code of Conduct

S. 63
(Heading)
amended by
53/2015
s. 4(1).

S. 63
amended by
No. 125/1993
s. 14(g),
substituted by
No. 109/2003
s. 48.

- (1) A person elected to be a Councillor is not capable of acting as a Councillor until the person has—
- (a) taken the oath of office specified in subsection (1A); and
 - (b) read the Councillor Code of Conduct and, in accordance with subsection (3), made a declaration stating that they will abide by the Councillor Code of Conduct.

S. 63(1)
amended by
Nos 67/2008
s. 29, 69/2009
s. 54(Sch. Pt 2
item 31),
substituted by
No. 53/2015
s. 4(2).

- (1A) The following oath of office is to be taken by a Councillor in accordance with Division 2 of Part IV of the **Evidence (Miscellaneous Provisions) Act 1958**—

S. 63(1A)
inserted by
No. 53/2015
s. 4(2).

"I will undertake the duties of the office of Councillor in the best interests of the people in the municipal district of _____ and faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the **Local Government Act 1989** or any other Act to the best of my skill and judgment."

- (2) The oath of office must be—
- (a) made before the Chief Executive Officer;
and

- (b) dated and signed before the Chief Executive Officer; and
- (c) recorded in the minutes of the Council.

Note to
s. 63(2)
amended by
No. 69/2009
s. 54(Sch. Pt 2
item 31).

Note

See section 102 of the **Evidence (Miscellaneous Provisions) Act 1958** as to the making of a solemn affirmation instead of an oath.

S. 63(3)
inserted by
No. 53/2015
s. 4(3).

- (3) A declaration by a person elected to be a Councillor under subsection (1)(b) must be—
 - (a) in writing; and
 - (b) witnessed by the Chief Executive Officer.

S. 64
amended by
No. 125/1993
s. 14(g),
substituted by
Nos 109/2003
s. 48, 53/2015
s. 5.

64 Failure to take oath of office or make Code of Conduct declaration

The office of a Councillor becomes vacant if a person elected to be a Councillor does not, within 3 months after the day on which the person was declared elected—

- (a) take the oath of office; or
- (b) make the declaration specified in section 63(1)(b).

S. 65
repealed by
No. 109/2003
s. 48,
new s. 65
inserted by
No. 53/2015
s. 6.

65 What is the role of a Councillor?

- (1) The role of a Councillor is—
 - (a) to participate in the decision-making of the Council; and
 - (b) to represent the local community in that decision-making; and
 - (c) to contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.

- (2) In performing the role of a Councillor, a Councillor must—
- (a) consider the diversity of interests and needs of the local community; and
 - (b) observe principles of good governance and act with integrity; and
 - (c) provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under this Act and other Acts; and
 - (d) participate in the responsible allocation of the resources of Council through the annual budget; and
 - (e) facilitate effective communication between the Council and the community.
- (3) The role of a Councillor does not include the performance of any functions that are specified as functions of the Chief Executive Officer under section 94A.

Note

See Part 1A which sets out the local government charter and in particular section 3D which specifies the role of a Council.

66 Penalty for acting as Councillor if incapable

Any person who acts as a Councillor while incapable of being or continuing to be a Councillor other than because of unsound mind is guilty of an offence and liable to a term of imprisonment not exceeding 1 year or to a fine not exceeding 120 penalty units.

S. 66
amended by
No. 64/2009
s. 20.

66AA Order for return of allowances or entitlements

If a person is found guilty or convicted of an offence under section 66, the court may order that the person return to the Council any allowances,

S. 66AA
inserted by
No. 64/2009
s. 42.

reimbursements, equipment or materials the person received as a result of acting as Councillor for the period that the person acted as Councillor while incapable of being or continuing to be a Councillor.

S. 66AB
inserted by
No. 64/2009
s. 42.

66AB Offences committed by person acting as Councillor

A person who acts as a Councillor while incapable of being or continuing to be a Councillor, other than because of unsound mind, and who engages in conduct that would constitute an offence under this Act if that person were a Councillor, is guilty of that offence as if he or she were a Councillor.

S. 66A
inserted by
No. 67/2008
s. 30.

66A Suspension of Councillor

If a Councillor is suspended under this Act, the Councillor—

- (a) ceases to be a Councillor for the term of the suspension;
- (b) is not entitled to receive a Councillor allowance for the term of the suspension unless this Act otherwise provides;
- (c) must return all Council equipment and materials to the Council at the beginning of the term of suspension.

S. 66B
inserted by
No. 67/2008
s. 30.

66B Leave of absence of Councillor

- (1) If a Councillor is required to take leave of absence under this Act, the Councillor—
 - (a) may continue to be a Councillor but must not perform the duties or functions of a Councillor during the period of leave;
 - (b) remains entitled to receive a Councillor allowance unless this Act otherwise provides;

- (c) is not entitled to be reimbursed for out-of-pocket expenses during the period of leave;
 - (d) must return all Council equipment and materials to the Council for the period of leave if the Council requires.
- (2) If a Mayor is required to take a leave of absence under this Act, the Mayor is, for the duration of the leave, to be considered as incapable of acting under section 73(3) and subsection (1) applies to the Mayor as if the Mayor were a Councillor only.

67 Ouster from office

- (1) The Minister, a Council of which a particular Councillor is a member or any person who is on the voters' roll of that Council may apply to the Supreme Court for the ouster from the office of Councillor of any person whom he, she or it believes is declared elected or holds the office contrary to this Act.
- (2) If an application relates to the election of a Councillor the application must be made during the term for which that person was elected.
- (3) The Supreme Court may make rules with respect to—
- (a) the procedure for making applications; and
 - (b) proceedings for hearing the application; and
 - (c) the payment of a deposit as security for costs; and
 - (d) ordering an inquiry into any matter raised by the proceedings; and
 - (e) orders as to costs.

68 Retirement of Councillors

S. 68(1)
amended by
No. 43/1993
s. 10,
repealed by
No. 109/2003
s. 16(1)(b).

* * * *

S. 68(2)
amended by
No. 109/2003
s. 16(1)(c).

- (2) At a general election, the following provisions apply—
- (a) all Councillors are to go out of office at 6 a.m. on the day appointed for each general election;
 - (b) the term of office of a Councillor elected at a general election commences at 6 p.m. on the day of the general election and expires at 6 a.m. on the day appointed for the next general election.

S. 68A
inserted by
No. 43/1993
s. 11(1).

68A Resignation of Councillor

S. 68A(1)
amended by
No. 125/1993
s. 14(g).

- (1) For the purpose of holding an election to fill the extraordinary vacancy caused by the resignation of a Councillor, a Councillor is to be taken to have resigned on the date that the resignation is delivered to the Chief Executive Officer.
- (2) Despite subsection (1), the Councillor continues to hold office until the date specified in his or her resignation.

S. 68A(2A)
inserted by
No. 35/2008
s. 22(1).

- (2A) A Councillor may specify in his or her resignation that they will continue in office until the result of the by-election or countback is declared.

S. 68A(2B)
inserted by
No. 35/2008
s. 22(1).

- (2B) A Councillor who has resigned cannot continue in office after the result of the by-election or countback is declared.

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| (3) A person cannot revoke his or her resignation as a Councillor after the resignation has been delivered to the Chief Executive Officer. | S. 68A(3)
amended by
No. 125/1993
s. 14(g). |
| (4) Upon the resignation being delivered to the Chief Executive Officer, the Chief Executive Officer may commence the holding of an election to fill the extraordinary vacancy. | S. 68A(4)
amended by
No. 125/1993
s. 14(g). |
| * * * * | S. 68A(5)
repealed by
No. 35/2008
s. 22(2). |

69 Extraordinary vacancies

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|--|--|
| (1) An extraordinary vacancy is created if the office of a Councillor becomes vacant because the Councillor— | |
| (a) fails to take the oath of office of Councillor;
or | S. 69(1)(a)
substituted by
No. 109/2003
s. 49(2). |
| (b) dies; or | |
| (c) resigns in writing delivered to the Chief Executive Officer; or | S. 69(1)(c)
amended by
No. 125/1993
s. 14(h). |
| (d) becomes incapable of continuing to be a Councillor; or | |
| (e) ceases to be qualified to be a Councillor; or | |
| (f) is ousted from office; or | |
| (g) is absent from 4 consecutive ordinary meetings of the Council without leave obtained from the Council. | |
| (2) The Council must not unreasonably refuse to grant leave. | |

(3) A Councillor is not to be taken to be absent from an ordinary meeting of the Council—

(a) unless a meeting of the Council at which a quorum is present is actually held; or

(b) while any proceeding for ouster from office of the Councillor is pending.

S. 69A
inserted by
No. 109/2003
s. 50.

69A Multiple extraordinary vacancies

(1) This section applies if the number of extraordinary vacancies created in the offices of Councillors of a Council results in 50 per cent or more of the offices of Councillors of the Council being vacant.

(2) If this section applies, the remaining Councillors are by virtue of this section suspended for the period commencing immediately upon 50 per cent or more of the offices of Councillors of the Council being vacant and ending upon the number of extraordinary vacancies that are filled and the number of existing Councillors constituting more than 50 per cent of the offices of Councillors of the Council.

(3) If this section applies the Minister must recommend to the Governor in Council that an Order in Council be made under this section appointing an administrator for the Council for the period referred to in subsection (2).

S. 69A(3A)
inserted by
No. 67/2008
s. 31.

(3A) The Governor in Council may make an Order in Council recommended by the Minister under subsection (3).

(4) Sections 219(3) and 219(3A) apply in respect of the appointment of an administrator under subsection (3).

(5) The appointment of an administrator under subsection (3) has effect for the period referred to in subsection (2).

- (6) The suspended Councillors are not Councillors of the Council during the period of suspension.
- (7) Despite subsection (6), the suspended Councillors—
 - (a) are entitled to receive their allowances under section 74; and
 - (b) may provide advice to the administrator if the administrator so requests during the period of administration.

70 Candidate for election

- (1) Subject to this section, a Councillor may nominate as a candidate for an election if he or she is capable of being or continuing to be a Councillor.

S. 70
amended by
No. 54/1998
s. 9,
substituted by
No. 109/2003
s. 51.

- (2) A person who has been a Councillor of a Council can not nominate as a candidate for an election to fill an extraordinary vacancy in the office of a Councillor of that Council if the person ceased to be a Councillor of that Council under section 69(1) since the last general election.

- (2A) In addition to subsection (2), if a person who has been a Councillor of a Council ceased to be a Councillor of that Council because—

S. 70(2A)
inserted by
No. 35/2008
s. 23(1).

- (a) the person failed to take the oath of office as required by section 63; or
 - (b) the person was absent from 4 consecutive ordinary meetings of the Council without leave obtained from the Council; or
 - (c) the Minister has made an order under section 85(6) in respect of that person—

the person cannot nominate as a candidate for an election for that Council to be held during the period ending 4 years after the person ceased to be a Councillor of that Council.

S. 70(2B)
inserted by
No. 35/2008
s. 23(1).

(2B) Subsection (2A) applies in respect of any person who ceases to be a Councillor because of a ground specified in that subsection on or after the commencement of section 23 of the **Local Government Amendment (Elections) Act 2008**.

(3) A person who is a Councillor of a Council can not nominate as a candidate for an election as a Councillor of any Council unless at the time of the nomination the person will cease to hold office as a Councillor on or before the election day for that election.

(4) A person must not nominate as a candidate for more than one election of Councillors to be held on the same day.

(5) A person who has nominated as a candidate for an election as a Councillor of a Council can not nominate as a candidate for any other election as a Councillor unless at the time of the nomination the person has withdrawn the previous nomination.

S. 70(6)
amended by
No. 35/2008
s. 23(2).

(6) If a person makes a nomination in contravention of subsection (2), (2A), (3) or (5), the nomination is void.

(7) If a person makes nominations in contravention of subsection (4), all the nominations are void.

71 Election of Mayor

S. 71(1)
amended by
No. 67/2008
s. 32(1).

(1) At a meeting of the Council that is open to the public, the Councillors must elect a Councillor to be the Mayor of the Council.

S. 71(2)
repealed by
No. 76/1995
s. 10(1)(a),
new s. 71(2)
inserted by
No. 67/2008
s. 32(2).

(2) Before a Mayor is elected under this section, the Council may resolve to elect a Mayor for a term of 2 years.

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| (3) The Mayor is to be elected— | S. 71(3)
amended by
No. 76/1995
s. 10(1)(b). |
| (a) after the fourth Saturday in October but not
later than 30 November in each year; or | S. 71(3)(a)
amended by
No. 99/1994
s. 5(b),
substituted by
No. 109/2003
s. 53,
amended by
No. 44/2011
s. 6. |
| (ab) if under subsection (2), the Mayor is elected
for a term of 2 years, the next election of
Mayor is 2 years after the fourth Saturday in
October but not later than 30 November in
the second year after the election; or | S. 71(3)(ab)
inserted by
No. 67/2008
s. 32(3),
amended by
No. 44/2011
s. 6. |
| (b) as soon as possible after any vacancy in the
office of Mayor occurs. | S. 71(3)(b)
amended by
No. 76/1995
s. 10(1)(c). |
| (4) The election of a Mayor after the period specified
in this section does not invalidate the election. | S. 71(4)
amended by
No. 76/1995
s. 10(1)(d). |
| * * * * * | S. 71(5)
substituted by
No. 76/1995
s. 10(2),
repealed by
No. 5/2001
s. 30(1). |
| (6) The Mayor of a Shire Council may be titled the
President. | S. 71(6)
substituted by
No. 76/1995
s. 10(2). |
| (7) Any reference to "Mayor" includes a reference to
"Lord Mayor" or "President" as the case may be. | S. 71(7)
substituted by
No. 76/1995
s. 10(2). |

72 Term of office

S. 72(1)
amended by
No. 76/1995
s. 10(3)(a).

(1) The office of Mayor becomes vacant—

S. 72(1)(a)
amended by
No. 76/1995
s. 10(3)(a).

(a) at 6 a.m. on the day of the election of the Mayor; or

(b) if he or she dies or ceases to be a Councillor;
or

S. 72(1)(ba)
inserted by
No. 109/2003
s. 54.

(ba) if his or her office as a Councillor is suspended for any period under this Act; or

S. 72(1)(c)
amended by
No. 125/1993
s. 14(h).

(c) if he or she resigns in writing which is given at a Council meeting or to the Chief Executive Officer; or

S. 72(1)(ca)
inserted by
No. 67/2008
s. 13,
amended by
No. 53/2015
s. 14.

(ca) if he or she becomes ineligible to hold office under section 81J(2), 81J(2A) or 81K; or

(d) if he or she is ousted from office.

S. 72(2)
repealed by
No. 76/1995
s. 10(3)(b),
new s. 72(2)
inserted by
No. 67/2008
s. 33.

(2) For the avoidance of doubt, the office of Mayor becomes vacant under subsection (1)(b) at 6 a.m. on the day of a general election whether or not the Mayor has completed his or her term of office as resolved by the Council under section 71(1).

S. 72(3)
amended by
No. 76/1995
s. 10(3)(c).

(3) Any Councillor is eligible for election or re-election to the office of Mayor.

* * * *

S. 72A
inserted by
No. 98/1993
s. 17,
amended by
Nos 99/1994
s. 5(b),
33/1995 s. 9,
repealed by
No. 5/2001
s. 30(1).

73 Precedence of Mayor

- (1) The Mayor of a Council takes precedence at all municipal proceedings within the municipal district.
- (2) The Mayor must take the chair at all meetings of the Council at which he or she is present.
- (3) If there is a vacancy in the office of Mayor or the Mayor is absent, incapable of acting or refusing to act, the Council must appoint one of the Councillors to be the acting Mayor.
- (4) An acting Mayor may perform any function or exercise any power conferred on the Mayor.

S. 73(3)
substituted by
No. 76/1995
s. 10(4).

73AA Functions of Mayor

The functions of the Mayor of a Council include—

S. 73AA
inserted by
No. 53/2015
s. 7.

- (a) providing guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65, and the observation of the Councillor conduct principles and the Councillor Code of Conduct by Councillors under sections 76B, 76BA and 76C; and

- (b) acting as the principal spokesperson for the Council; and
- (c) supporting good working relations between Councillors; and
- (d) carrying out the civic and ceremonial duties of the office of Mayor.

S. 73A
inserted by
No. 67/2008
s. 4.

73A Review of allowance categories

- (1) The Minister must, at least once every year, review the allowance category for each Council.
- (2) In conducting a review under subsection (1), the Minister must have regard to—
 - (a) changes in the number of residents in each municipal area; and
 - (b) variations in the total recurrent revenue of each Council after adjusting for inflation.
- (3) If a review conducted by the Minister under this section results in a finding that one or more Councils in the categories of Councils require alteration, the Minister must specify by notice published in the Government Gazette, the Councils that are in each category of Councils following the review.
- (4) A notice published under subsection (3), to the extent that it varies the amounts, limits, ranges or categories specified in an Order in Council made under section 74B, varies the Order from the date specified in the notice as the date on which the variation has effect.
- (5) In subsection (2), ***total recurrent revenue*** means the total revenue of the Council reported in the financial statements of the Council for the previous financial year after adjusting for any items that are extraordinary, abnormal or non-recurring.

73B Review of allowance limits and ranges

- (1) In this section, *adjustment factor* means the percentage increase to be applied to Councillor and Mayoral allowance limits and ranges.
- (2) The Minister must, at least once every year, review the limits and ranges of Councillor and Mayoral allowances.
- (3) The Minister must have regard to movements in the levels of remuneration of executives within the meaning of the **Public Administration Act 2004** when reviewing the limits and ranges of Councillor and Mayoral allowances under subsection (2).
- (4) If a review conducted by the Minister under this section results in a finding that Councillor and Mayoral allowances should be adjusted, the Minister must specify by notice published in the Government Gazette—
 - (a) an adjustment factor; and
 - (b) the new limits and ranges of allowances for each category of Councils, adjusted in accordance with the adjustment factor.
- (5) If a notice is published in the Government Gazette under subsection (4), a Council must increase the level of Councillor and Mayoral allowances in accordance with the adjustment factor specified in the notice.

S. 73B
inserted by
No. 67/2008
s. 4.

S. 73B(5)
amended by
No. 58/2010
s. 7.

74 Councillor and Mayoral Allowances

S. 74
amended by
No. 99/1994
s. 5(b),
substituted by
No. 76/1995,
amended by
Nos 76/1997
s. 14(1),
5/2001
s. 30(1),
substituted by
No. 109/2003
s. 55.

S. 74(1)
amended by
No. 44/2011
s. 7.

- (1) A Council must review and determine the level of the Councillor allowance and the Mayoral allowance within the period of 6 months after a general election or by the next 30 June, whichever is later.

S. 74(1A)
inserted by
No. 67/2008
s. 5(1).

- (1A) A Council may review and determine the level of the Councillor allowance and the Mayoral allowance after an Order in Council is made by the Governor in Council under section 74B that varies the limits or ranges of allowances payable by the Council.

S. 74(1B)
inserted by
No. 67/2008
s. 5(1).

- (1B) A Council may review and determine the level of the Councillor allowance and the Mayoral allowance after—
- (a) the Minister, by notice published in the Government Gazette under section 73A or 74C, has changed the category of the Council; or
 - (b) an Order in Council under section 74B has been made changing the category of the Council.

S. 74(2)
amended by
No. 67/2008
s. 5(2).

- (2) Subject to subsection (3), the allowances determined under subsections (1), (1A) or (1B) are payable from the date of the resolution of the Council determining the levels of allowances.

- (3) A Council can only vary the allowances determined under subsection (1) if—
- (a) the Council has conducted a review under subsection (1), (1A) or (1B); or
 - (b) the Council is required to increase allowances in accordance with a notice published under section 73B specifying an adjustment factor; or
 - (c) the Council is required to increase allowances by an Order in Council under section 74B.
- (4) A person has a right to make a submission under section 223 in respect of a review of allowances.

S. 74(3)
substituted by
No. 67/2008
s. 5(3).

74A General provisions relating to allowances

- (1) A Mayor is not entitled to receive a Councillor allowance if the Mayor is entitled to receive a Mayoral allowance.
- (1A) If a Councillor is appointed to act as Mayor under section 73(3) for a continuous period exceeding 50 days, the acting Mayor may be paid a Mayoral allowance instead of a Councillor allowance for the period that he or she is acting as Mayor.
- (2) Subject to subsection (3), a Council must pay a Councillor allowance or Mayoral allowance as specified in the most recent of—
- (a) the relevant Order in Council made under section 74B; or
 - (b) a Minister's notice published under section 73A, 73B or 74C.

S. 74A
inserted by
No. 76/1995
s. 11,
amended by
No. 76/1997
s. 14(2),
repealed by
No. 5/2001
s. 30(1),
new s. 74A
inserted by
No. 109/2003
s. 55.

S. 74A(1A)
inserted by
No. 67/2008
s. 6(1).

S. 74A(2)
substituted by
No. 67/2008
s. 6(2).

S. 74A(2A)
inserted by
No. 67/2008
s. 6(2).

(2A) In addition to complying with the relevant Order in Council or Minister's notice referred to in subsection (2), a Council must pay a Councillor allowance or Mayoral allowance in accordance with any review and determination made by a Council under section 74.

S. 74A(3)
amended by
No. 67/2008
s. 6(3).

(3) A Council does not have to pay an allowance to a Councillor or Mayor who does not want to receive an allowance.

S. 74A(4)
amended by
No. 67/2008
s. 6(3).

(4) A person is only entitled to receive an allowance while he or she holds the office in respect of which the allowance is payable.

S. 74A(5)
inserted by
No. 67/2008
s. 6(4).

(5) A person elected to be a Councillor is entitled to receive a Councillor allowance from the date the person takes the oath of office under section 63.

S. 74A(6)
inserted by
No. 67/2008
s. 6(4).

(6) A Councillor elected to be Mayor is entitled to receive a Mayoral allowance from the date he or she is elected under section 71.

S. 74B
inserted by
No. 76/1995
s. 11,
substituted by
No. 109/2003
s. 55.

74B Allowance Orders

- (1) The Governor in Council may by Order in Council—
- (a) specify the amounts of allowances payable by a Council as a Councillor allowance or a Mayoral allowance;
 - (b) specify limits on the amounts of allowances payable by a Council as a Councillor allowance or a Mayoral allowance;
 - (c) vary the amount, limit or range of allowances payable by a Council as a Councillor allowance or a Mayoral allowance;

(d) specify the manner in which Councillor allowances and Mayoral allowances are payable.

- (2) An Order in Council may make the same provision for all Councils or may make different provision for particular Councils or for different categories of Councils as specified in the Order in Council.

* * * * * S. 74B(3)(4)
repealed by
No. 67/2008
s. 7.

74C Advisory panel

- (1) The Minister may appoint a local government panel under Part 10A to advise the Minister on matters relating to Councillor allowances and Mayoral allowances.

S. 74C
inserted by
No. 109/2003
s. 55.

- (2) A Council may make a submission to the local government panel requesting the panel to consider a change of category for the Council.

S. 74C(2)
substituted by
No. 67/2008
s. 8(1).

- (2A) The Minister may request a local government panel to review the category of Council for a particular Council with respect to allowances.

S. 74C(2A)
inserted by
No. 67/2008
s. 8(1).

- (3) If after considering a submission under subsection (2) or a request made by the Minister under subsection (2A), the local government panel finds that the category of Council for the Council should be changed or set at a particular level with respect to allowances, the local government panel may recommend to the Minister that the change be made pursuant to the findings of the local government panel.

S. 74C(3)
substituted by
No. 67/2008
s. 8(2).

- (4) The Minister must give effect to a recommendation under subsection (3) by notice in the Government Gazette.

S. 74C(4)
amended by
No. 67/2008
s. 8(3).

S. 75
substituted by
No. 67/2008
s. 9.

75 Reimbursement of expenses of Councillors

- (1) A Council must reimburse a Councillor for expenses if the Councillor—
 - (a) applies in writing to the Council for reimbursement of expenses; and
 - (b) establishes in the application to Council that the expenses were reasonable bona fide Councillor out-of-pocket expenses incurred while performing duties as a Councillor.
- (2) In this section, *duties as a Councillor* means duties performed by a Councillor that are necessary or appropriate for the purposes of achieving the objectives of a Council having regard to any relevant Act, regulations, Ministerial guidelines or Council policies.

S. 75A
inserted by
No. 67/2008
s. 9.

75A Reimbursement of expenses of members of council committees

A Council may reimburse members of council committees for necessary out-of-pocket expenses incurred while performing duties as a committee member.

S. 75B
inserted by
No. 67/2008
s. 9.

75B Councillor reimbursement policy

- (1) A Council must adopt and maintain a policy in relation to the reimbursement of expenses for Councillors and members of Council committees.
- (2) A policy adopted by Council under this section must be consistent with—
 - (a) the prescribed types of Councillor out-of-pocket expenses that must be reimbursed if the expenses are reasonable and bona fide; and
 - (b) the prescribed procedures to be followed by Councils in relation to the reimbursement of out-of-pocket expenses.

- (3) A Council must keep a copy of the policy adopted and maintained under this section available for inspection at the office of the Council.

75C Resources and facilities for Councillors

A Council must make available for the Mayor and the Councillors the minimum resources and facilities prescribed for the purposes of this section.

S. 75C
inserted by
No. 67/2008
s. 9.

76 Indemnity provision

A Council must indemnify and keep indemnified each Councillor, member of a Council committee, member of Council staff and any person exercising any function or power on behalf of a Council against all actions or claims (whether arising during or after the term of office or employment of that Councillor or member) in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of any function or power conferred on the Council or Council committee or any Councillor, member of the Council committee or member of Council staff by or under this or any other Act.

S. 76
substituted by
No. 13/1990
s. 9.

76A Council must take out insurance cover

- (1) A Council must take out and maintain insurance against—
- (a) public liability for an amount of at least \$30 million or such higher amount as may be fixed by Order in Council; and
 - (b) professional liability for an amount of at least \$5 million or such higher amount as may be fixed by Order in Council.
- (2) A Council may comply with subsection (1) by becoming a member of or participating in a scheme approved by the Minister for the purposes of this subsection.

S. 76A
inserted by
No. 22/1992
s. 3,
amended by
No. 43/1993
s. 12(a).

S. 76A(2)
inserted by
No. 43/1993
s. 12(b).

S. 76A(3)
inserted by
No. 43/1993
s. 12(b).

- (3) A Council may become a member of or participate in a scheme approved by the Minister for the purposes of this subsection without complying with any restriction or requirement otherwise imposed on a Council by this Act.

Pt 4 Div. 1A
(Heading and
ss 76B, 76C)
inserted by
No. 109/2003
s. 57.

Division 1A—Conduct and interests

S. 76AA
inserted by
No. 67/2008
s. 20.

76AA Definitions

In this Division—

S. 76AA
def. of
*assembly of
Councillors*
amended by
No. 58/2010
s. 8(1),
repealed by
No. 63/2012
s. 10.

* * * * *

S. 76AA
def. of
family
inserted by
No. 58/2010
s. 8(2).

family has the same meaning as *family member* has in section 78;

matter means a matter with which a Council, special committee or a member of council staff is concerned and that will require—

- (a) a power to be exercised, or a duty or function to be performed, or a decision to be made, by the Council or a special committee in respect of the matter;
- (b) a power to be exercised, or a duty or function to be performed, or a decision to be made by a member of council staff in respect of the matter;

not-for-profit organisation means a body or organisation that—

S. 76AA
def. of
*not-for-profit
organisation*
inserted by
No. 64/2009
s. 43.

- (a) operates exclusively for charitable, civil or other social purposes; and
- (b) does not share or allocate the funds or profits of the body or organisation with the owners, shareholders or executives of the body or organisation;

relevant person means a person who is a—

- (a) Councillor; or
- (b) member of a special committee; or
- (c) member of Council staff.

76B Primary principle of Councillor conduct

It is a primary principle of Councillor conduct that, in performing the role of a Councillor, a Councillor must—

S. 76B
inserted by
No. 109/2003
s. 57,
substituted by
No. 67/2008
s. 14.

- (a) act with integrity; and
- (b) impartially exercise his or her responsibilities in the interests of the local community; and
- (c) not improperly seek to confer an advantage or disadvantage on any person.

76BA General Councillor conduct principles

In addition to acting in accordance with the primary principle of Councillor conduct specified in section 76B, in performing the role of a Councillor, a Councillor must—

S. 76BA
inserted by
No. 67/2008
s. 14.

- (a) avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations;

S. 76BA(c)
amended by
No. 64/2009
s. 44.

- (b) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
- (c) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council staff and other persons;
- (d) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
- (e) endeavour to ensure that public resources are used prudently and solely in the public interest;
- (f) act lawfully and in accordance with the trust placed in him or her as an elected representative;
- (g) support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

S. 76C
(Heading)
amended by
No. 67/2008
s. 15(1).

76C Councillor Code of Conduct

S. 76C
inserted by
No. 109/2003
s. 57.

S. 76C(1)
substituted by
Nos 67/2008
s. 15(2),
53/2015
s. 15(1),
repealed by
No. 46/2016
s. 3(1).

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|--|---|
| (2) A Council must, within the period of 4 months after a general election— | S. 76C(2)
amended by
No. 67/2008
s. 15(3),
substituted by
No. 53/2015
s. 15(1). |
| (a) call a special meeting solely for the purpose of reviewing the Councillor Code of Conduct; and | |
| (b) at that special meeting, approve any amendments to be made to the Councillor Code of Conduct determined by the Council to be necessary following the review of the Councillor Code of Conduct. | |
| (3) A Councillor Code of Conduct— | S. 76C(3)
amended by
No. 67/2008
s. 15(4)(a). |
| (a) must include the internal resolution procedure for dealing with an alleged contravention of the Councillor Code of Conduct by a Councillor; | S. 76C(3)(a)
substituted by
Nos 67/2008
s. 15(4)(b),
53/2015
s. 15(2)(a). |
| Note
Section 81AA provides for matters to be addressed by the internal resolution procedure of a Council. | |
| (b) may set out processes for the purpose of resolving an internal dispute between Councillors; | S. 76C(3)(b)
amended by
No. 67/2008
s. 15(4)(c). |
| (c) must include any provisions prescribed for the purpose of this section; | S. 76C(3)(c)
repealed by
No. 67/2008
s. 15(4)(d),
new
s. 76C(3)(c)
inserted by
No. 53/2015
s. 15(2)(b). |
| (d) must include provisions addressing any matters prescribed for the purpose of this section; | S. 76C(3)(d)
amended by
No. 53/2015
s. 15(2)(c). |

(e) may include any other matters relating to the conduct of Councillors which the Council considers appropriate.

S. 76C(4)
repealed by
No. 67/2008
s. 15(5).

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S. 76C(5)
amended by
No. 67/2008
s. 15(6).

(5) A Councillor Code of Conduct must not be inconsistent with any Act or regulation.

S. 76C(5A)
inserted by
No. 67/2008
s. 15(7).

(5A) A Councillor Code of Conduct is inoperative to the extent that it is inconsistent with any Act or regulation.

S. 76C(6)
amended by
No. 67/2008
s. 15(8).

(6) A copy of the current Councillor Code of Conduct must be—

- (a) given to each Councillor;
- (b) available for inspection by the public at the Council office and any district offices;

S. 76C(6)(c)
inserted by
No. 53/2015
s. 15(3)(b).

(c) published on the Council's Internet website maintained under section 82A.

S. 76C(6A)
inserted by
No. 53/2015
s. 8,
amended by
No. 46/2016
s. 3(2).

(6A) Within one month of amendments to a Councillor Code of Conduct being approved in accordance with subsection (2), a Councillor must make a declaration stating that they will abide by the Councillor Code of Conduct.

S. 76C(6B)
inserted by
No. 53/2015
s. 8.

(6B) A declaration by a Councillor under subsection (6A) must be—

- (a) in writing; and
- (b) witnessed by the Chief Executive Officer.

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S. 76C(7)
inserted by
No. 67/2008
s. 15(9),
repealed by
No. 53/2015
s. 15(4).

76D Misuse of position

S. 76D
inserted by
No. 67/2008
s. 16.

- (1) A person who is, or has been, a Councillor or member of a special committee must not misuse his or her position—
- (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
 - (b) to cause, or attempt to cause, detriment to the Council or another person.
- Penalty: 600 penalty units or imprisonment for 5 years or both.
- (2) For the purposes of this section, circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a special committee include—
- (a) making improper use of information acquired as a result of the position he or she held or holds; or
 - (b) disclosing information that is confidential information within the meaning of section 77(2); or
 - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or

S. 76D(1)
amended by
No. 64/2009
s. 21.

S. 76D(2)(e)
amended by
No. 64/2009
s. 45(a).

- (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
- (e) using public funds or resources in a manner that is improper or unauthorised; or
- (f) failing to disclose a conflict of interest as required under this Division.

S. 76D(2)(f)
inserted by
No. 64/2009
s. 45(b).

(3) This section—

- (a) has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of Councillors or members of special committees; and
- (b) does not prevent the institution of any criminal or civil proceedings in respect of that liability.

S. 76E
inserted by
No. 67/2008
s. 16.

76E Improper direction and improper influence

S. 76E(1)
repealed by
No. 53/2015
s. 16(1).

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S. 76E(2)
amended by
No. 53/2015
s. 16(2).

- (2) A Councillor must not direct, or seek to direct, a member of Council staff—
 - (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the Council; or

- (b) in the exercise of a power or the performance of a duty or function exercised or performed by the member as an authorised officer under this Act or any other Act; or
- (c) in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under another Act; or
- (d) in relation to advice provided to the Council or a special committee, including advice in a report to the Council or special committee.

Penalty: 120 penalty units.

- (2A) If an application for a Councillor Conduct Panel to make a finding of serious misconduct by a Councillor has been made in respect of conduct in contravention of subsection (2), the Councillor must not be charged with an offence against that subsection in respect of the same conduct unless—

**S. 76E(2A)
inserted by
No. 53/2015
s. 16(3).**

- (a) the Councillor Conduct Panel application is withdrawn; or
- (b) the Chief Municipal Inspector requires the Councillor Conduct Panel to suspend or stop consideration of the matter under section 81P; or
- (c) before the Councillor Conduct Panel makes a determination, the Councillor ceases to be a Councillor; or
- (d) the matter or behaviour that is the subject of an application for a finding of serious misconduct has been referred to another law enforcement agency.

- (2B) If a Councillor is charged with an offence against subsection (2), an application for a Councillor Conduct Panel to make a finding of serious

**S. 76E(2B)
inserted by
No. 53/2015
s. 16(3).**

misconduct by the Councillor must not be made for the same conduct in respect of which the Councillor has been charged.

- (3) This section does not apply to a decision of the Council or a special committee that is made within the powers, duties or functions conferred under this or any other Act.

S. 77
substituted by
Nos 34/1996
s. 3, 109/2003
s. 59.

77 Confidential information

S. 77(1)
amended by
Nos 67/2008
s. 17, 53/2015
s. 17(1)(2).

- (1) A person who is, or has been, a Councillor or a member of a special committee, must not disclose information that the person knows, or should reasonably know, is confidential information.

Penalty: 120 penalty units.

S. 77(1A)
inserted by
No. 53/2015
s. 17(3).

- (1A) A person who is, or has been, a Councillor or a member of a special committee, may disclose information that the person knows is confidential information in the following circumstances—
- (a) for the purposes of any legal proceedings arising out of this Act;
 - (b) to a court or tribunal in the course of legal proceedings;
 - (c) pursuant to an order of a court or tribunal;
 - (d) to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
 - (e) to a Councillor Conduct Panel in the course of a hearing and for the purposes of the hearing;
 - (f) to a municipal monitor to the extent reasonably required by the municipal monitor;

- (g) to the extent reasonably required for any other law enforcement purposes.
- (1B) If an application for a Councillor Conduct Panel to make a finding of serious misconduct by a Councillor has been made in respect of conduct in contravention of subsection (1), the Councillor must not be charged with an offence against that subsection in respect of the same conduct unless—
- S. 77(1B)
inserted by
No. 53/2015
s. 17(3).
- (a) the Councillor Conduct Panel application is withdrawn; or
 - (b) the Chief Municipal Inspector requires the Councillor Conduct Panel to suspend or stop consideration of the matter under section 81P; or
 - (c) before the Councillor Conduct Panel makes a determination, the Councillor ceases to be a Councillor; or
 - (d) the matter or behaviour that is the subject of an application for a finding of serious misconduct has been referred to another law enforcement agency.
- (1C) If a Councillor is charged with an offence against subsection (1), an application for a Councillor Conduct Panel to make a finding of serious misconduct by the Councillor must not be made for the same conduct in respect of which the Councillor has been charged.
- S. 77(1C)
inserted by
No. 53/2015
s. 17(3).
- (2) For the purposes of this section, information is ***confidential information*** if—
- (a) the information was provided to the Council or a special committee in relation to a matter considered by the Council or special committee at a meeting closed to members of the public and the Council or special

committee has not passed a resolution that the information is not confidential; or

- (b) the information has been designated as confidential information by a resolution of the Council or a special committee which specifies the relevant ground or grounds applying under section 89(2) and the Council or special committee has not passed a resolution that the information is not confidential; or
- (c) the information has been designated in writing as confidential information by the Chief Executive Officer specifying the relevant ground or grounds applying under section 89(2) and the Council has not passed a resolution that the information is not confidential.

S. 77(2)(c)
amended by
No. 53/2015
s. 17(4).

S. 77(3)
repealed by
No. 53/2015
s. 17(5).

* * * * *

S. 77A
inserted by
No. 109/2003
s. 60,
substituted by
No. 67/2008
s. 21.

77A Direct and indirect interests

- (1) A relevant person has a conflict of interest in respect of a matter if the relevant person has a direct interest or indirect interest in the matter.
- (2) A relevant person has a direct interest in a matter if the relevant person has an interest of a kind described in section 77B.
- (3) A relevant person has an indirect interest in a matter if the relevant person has—
 - (a) a close association as specified in section 78; or
 - (b) an indirect financial interest as specified in section 78A; or
 - (c) a conflicting duty as specified in section 78B; or

- (d) received an applicable gift as specified in section 78C; or
 - (e) become an interested party as specified in section 78D; or S. 77A(3)(e) amended by No. 58/2010 s. 9(1)(a).
 - (f) a residential amenity that may be altered as specified in section 78E. S. 77A(3)(f) inserted by No. 58/2010 s. 9(1)(b).
- (4) A relevant person does not have a conflict of interest in a matter if the direct interest or indirect interest of the relevant person is so remote or insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter.
- (5) A relevant person does not have a conflict of interest in a matter if the direct interest or indirect interest the relevant person holds— S. 77A(5) substituted by No. 58/2010 s. 9(2).
- (a) is held as a resident, ratepayer or voter and does not exceed the interests generally held by other residents, ratepayers or voters; or
 - (b) is held in common with a large class of persons and does not exceed the interests generally held by the class of persons.
- (6) A relevant person does not have a conflict of interest in a matter if the relevant person— S. 77A(6) inserted by No. 58/2010 s. 9(2).
- (a) does not know the circumstances that give rise to the conflict of interest; and
 - (b) would not reasonably be expected to know the circumstances that give rise to the conflict of interest.

77B Direct interest

S. 77B
inserted by
No. 109/2003
s. 60,
substituted by
No. 67/2008
s. 21.

- (1) A person has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way.
- (2) Without limiting subsection (1), a person has a direct interest in a matter if—
 - (a) there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way;
 - (b) the person has, or the person together with a member or members of the person's family have, a controlling interest in a company or other body that has a direct interest in the matter.

S. 77B(2)(b)
substituted by
No. 58/2010
s. 10(1).

- (3) A person who has a membership in a club or organisation that has a direct interest in a matter—
 - (a) does not, by reason of that membership, have a direct interest in the matter under subsection (1); and
 - (b) does not have an indirect interest in the matter, by reason of that membership, unless the person has an indirect interest in the matter under section 78A, 78B or 78C.

S. 77B(3)
inserted by
No. 58/2010
s. 10(2).

- (4) In subsection (2), ***controlling interest*** has the same meaning as it has in section 72(2) of the **Payroll Tax Act 2007**.

S. 77B(4)
inserted by
No. 58/2010
s. 10(2).

78 Indirect interest by close association

(1) In this section—

daughter means a biological daughter, step-daughter, adopted daughter, or female child for whom the person has custodial responsibilities;

direct relative means the spouse, domestic partner, son, daughter, mother, father, brother or sister of the person;

domestic partner of a person means—

- (a) a person who is in a registered relationship with the person; or
- (b) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—
 - (i) for fee or reward; or
 - (ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

family member means—

- (a) a spouse or domestic partner of the person; or

S. 78
amended by
Nos 99/2004
s. 8(a),
76/1995
s. 10(5),
109/2003 s. 61,
12/2008
s. 73(Sch. 1
item 38),
substituted by
No. 67/2008
s. 21.

- (b) a son, daughter, mother, father, brother or sister that regularly resides with the person;

relative means—

- (a) a direct relative of the person;
- (b) a direct relative of a person who is the direct relative of the person;

son means a biological son, step son, adopted son or male child for which the person has custodial responsibilities.

- (2) A person has an indirect interest by close association in a matter if—
 - (a) a family member of the person has a direct interest or an indirect interest in a matter; or
 - (b) a relative of the person has a direct interest in a matter; or
 - (c) a member of the person's household has a direct interest in a matter.
- (3) For the purposes of the definition of *domestic partner* in subsection (1)—
 - (a) *registered relationship* has the same meaning as in the **Relationships Act 2008**; and
 - (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and
 - (c) a person is not a domestic partner of another person only because they are co-tenants.

78A Indirect interest that is an indirect financial interest

**S. 78A
inserted by
No. 67/2008
s. 21.**

- (1) A person has an indirect financial interest in a matter if the person is likely to receive a benefit or incur a loss, measurable in monetary terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.
- (2) Without limiting subsection (1), a person has an indirect financial interest that is a conflict of interest if—
 - (a) the person has a beneficial interest in shares of a company or other body that has a direct interest in the matter, except in the circumstances specified in subsection (3);
 - (b) the person is owed money from another person and that other person has a direct interest in the matter.
- (3) If a person, and family members of the person, hold shares in a company or body that has a direct or indirect interest in a matter with a combined total value that does not exceed \$10 000 and the total value of issued shares of the company or body exceeds \$10 million, the person's indirect financial interest is not a conflict of interest.
- (4) Subsection (2)(b) does not apply if the other person is an authorised deposit-taking institution.
- (5) For the purposes of determining the value of shares under this section, the share value is to be taken from—
 - (a) the close of business on the most recent of 30 June or 31 December; or
 - (b) if the person has lodged an ordinary return since the most recent of 30 June or 31 December, the close of business on the date the return was submitted.

78B Indirect interest because of conflicting duties

S. 78B
inserted by
No. 67/2008
s. 21.

- (1) A person has an indirect interest in a matter because of a conflicting duty if the person—
 - (a) is a manager or a member of a governing body of a company or body that has a direct interest in a matter;
 - (b) is a partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter;
 - (c) is a trustee for a person who has a direct interest in a matter.
- (2) A person has an indirect interest in a matter because of a conflicting duty if the person held a position or role specified in subsection (1) and, in that position or role, dealt with the matter.
- (3) A person does not have an indirect interest because of a conflicting duty if—

S. 78B(3)(a)
amended by
No. 58/2010
s. 11(a).

- (a) the person is, or has been, only an employee in the service of the Crown or of a body established by or under any Act for a public purpose and the person has no current or expected responsibilities as that employee in relation to a matter;

S. 78B(3)(b)
substituted by
No. 58/2010
s. 11(b).

- (b) the person only holds a position in a not-for-profit organisation for which the person receives no remuneration and the person was appointed to the relevant special committee of the Council to be a representative of the non-for-profit organisation;

S. 78B(3)(ba)
inserted by
No. 58/2010
s. 11(b).

- (ba) the person only holds a position, with the Council's approval as a representative of the Council, in an organisation for which the person receives no remuneration;

(c) the person is only a Councillor who holds a position in the Municipal Association of Victoria or in another body that has the purpose of representing the interests of Councils;

(ca) the person is only a member of the Planning Application Committee established under Part 4AA of the **Planning and Environment Act 1987** or a member or co-opted member of a subcommittee of that Committee;

S. 78B(3)(ca) inserted by No. 66/2009 s. 8, repealed by No. 3/2013 s. 7, new s. 78B(3)(ca) inserted by No. 3/2013 s. 13.

(d) the person only holds a position that has been prescribed for the purposes of this section.

78C Indirect interest because of receipt of an applicable gift

S. 78C inserted by No. 67/2008 s. 21.

(1) In this section, *applicable gift* means one or more gifts with a total value of, or more than, the gift disclosure threshold, received from a person or persons specified in subsection (2) in the 5 years preceding the decision or the exercise of the power, duty or function but does not include—

S. 78C(1) substituted by Nos 64/2009 s. 46, 58/2010 s. 12(1).

(a) reasonable hospitality received by the person at an event or function the person attended in an official capacity as the Mayor, a Councillor, a member of Council staff or a member of a special committee; or

(b) a gift, other than an election campaign donation, that was received by the person more than 12 months before the person became a Councillor, a member of Council staff or a member of a special committee.

- (2) A person has an indirect interest in a matter if the person has received an applicable gift, directly or indirectly, from—
- (a) a person who has a direct interest in the matter; or
 - (b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or
 - (c) a person who gives the applicable gift to the person on behalf of a person, company or body that has a direct interest in the matter.
- (3) For the purposes of determining when a person became a Councillor or member of a special committee under subsection (1)(b), if the person is re-elected or reappointed as a Councillor or a member of a special committee, on completion of his or her term of office, the previous term of office served by that person as a Councillor or member of a special committee must be counted as continuous service with any service completed by the person after the person's re-election or reappointment.

S. 78C(3)
inserted by
No. 58/2010
s. 12(2).

S. 78D
inserted by
No. 67/2008
s. 21.

78D Indirect interest as a consequence of becoming an interested party

A person has an indirect interest in a matter if the person has become an interested party in the matter by initiating civil proceedings in relation to the matter or becoming a party to civil proceedings in relation to the matter.

S. 78E
inserted by
No. 58/2010
s. 13.

78E Indirect interest because of impact on residential amenity

A person has an indirect interest in a matter if there is a reasonable likelihood that the residential amenity of the person will be altered if the matter is decided in a particular way.

79 Disclosure of conflict of interest

S. 79
amended by
Nos 125/1993
s. 14(h),
99/1994
s. 8(b),
substituted by
Nos 109/2003
s. 62, 67/2008
s. 22.

- (1) If a Councillor or member of a special committee has a conflict of interest in a matter which is to be considered or discussed at a meeting of the Council or the special committee, the Councillor or member must, if he or she is attending the meeting, disclose the conflict of interest in accordance with subsection (2).
- (2) A Councillor or member of a special committee who has a conflict of interest and is attending the meeting of the Council or special committee must make a full disclosure of that interest—
 - (a) by either—
 - (i) advising the Council or special committee at the meeting of the details required under paragraphs (b) and (c) immediately before the matter is considered at the meeting; or
 - (ii) advising the Chief Executive Officer in writing of the details required under paragraphs (b) and (c) before the meeting; and
 - (b) classifying the type of interest that has given rise to the conflict as either—
 - (i) a direct interest; or

S. 79(1)
substituted by
No. 58/2010
s. 14(1).

S. 79(2)(b)(ii)
amended by
No. 58/2010
s. 14(2).

- (ii) an indirect interest and specifying the particular kind of indirect interest under section 78, 78A, 78B, 78C, 78D or 78E; and
- (c) describing the nature of the interest; and
- (d) if the Councillor or member advised the Chief Executive Officer of the details under paragraph (a)(ii), the Councillor or member must make a disclosure of the class of interest only to the meeting immediately before the matter is considered at the meeting.

S. 79(3)
repealed by
No. 58/2010
s. 14(3), new
s. 79(3)
inserted by
No. 63/2012
s. 11.

- (3) For the purposes of section 79(2)(a)(i), if a Councillor or member of a special committee has a conflict of interest in two or more matters which are to be considered or discussed consecutively at a meeting of the Council or the special committee, the Councillor or member may make a full disclosure of each of those interests immediately before the first matter is considered at the meeting.

S. 79(4)
repealed by
No. 58/2010
s. 14(3).

* * * * *

- (5) The Chief Executive Officer must—
 - (a) keep written disclosures given to him or her under this section in a secure place for 3 years after the date the Councillor or member of a special committee who made the disclosure ceases to be Councillor or member of a committee; and
 - (b) destroy the written disclosure when the 3 year period referred to in paragraph (a) has expired.

- (6) While the matter is being considered or any vote is taken in relation to the matter, the Councillor or member of a special committee must—
- (a) leave the room and notify the Mayor or the Chairperson of the special committee that he or she is doing so; and
 - (b) remain outside the room and any gallery or other area in view or hearing of the room.
- (7) The Mayor or the Chairperson of the special committee must cause the Councillor or member of a special committee to be notified that he or she may return to the room after—
- (a) consideration of the matter; and
 - (b) all votes on the matter.
- (8) If a Councillor or member of a special committee discloses a conflict of interest, the Chief Executive Officer or the Chairperson must record in the minutes of the meeting—
- (a) the declaration of the conflict of interest; and
 - (b) the classification of the interest that has given rise to the conflict, and if the Councillor or member has disclosed the nature of the interest to the meeting, the nature of the interest.
- (9) Unless section 80 applies, a Councillor or member of a special committee who fails to comply with this section is guilty of an offence and liable to a fine not exceeding 120 penalty units.

* * * * *

S. 79(9)
amended by
No. 64/2009
s. 22.

S. 79A
inserted by
No. 67/2008
s. 22,
repealed by
No. 58/2010
s. 15.

S. 79B
inserted by
No. 67/2008
s. 22.

79B Conflicting personal interest

- (1) This section does not apply to a Councillor or member of a special committee who has a conflict of interest in the matter.
- (2) If a Councillor or a member of a special committee considers that he or she has a personal interest in relation to a matter that is in conflict with his or her public duty in relation to the matter, the Councillor or member may, immediately before the matter is considered at the relevant meeting, apply to the Council or special committee to be exempted from voting on the matter.
- (3) If a Councillor or member of a special committee makes an application under subsection (2), he or she must give reasons in support of the application.
- (4) A Council or special committee may consent to an application made under subsection (2) and must not unreasonably withhold consent.
- (5) If a Council or special committee consents to an application under subsection (4), sections 79(6), 79(7), 79(8) and 79(9) apply as if the personal interest that is the subject of an application under subsection (2) were a conflict of interest specified under this Act.

S. 79C
inserted by
No. 67/2008
s. 22.

79C Certain situations where Councillor taken to not have a conflict of interest

S. 79C(1)
amended by
No. 64/2009
s. 47(a).

- (1) A Councillor is taken to not have a conflict of interest for the purposes of this Division if the matter only relates to—
 - (a) the nomination or appointment by the Council of the Councillor to a position for which the Councillor will not be remunerated;

- (b) the election of the Mayor under section 71 or the appointment of an acting Mayor under section 73(3);
- (c) a decision in relation to the payment of allowances to the Mayor or Councillors under section 74 or 74C(2);
- (d) the adoption of a policy under section 75B in relation to the reimbursement of expenses; S. 79C(1)(d) substituted by No. 63/2012 s. 12(1).
- (e) the adoption of a Councillor Code of Conduct under section 76C;
- (f) an application to a Councillor Conduct Panel or VCAT under Division 1B;
- (g) an application for an exemption under section 80;
- (h) the appointment of members and Chairpersons of special committees;
- (i) a resolution that has the effect of making the Councillors eligible or ineligible for the superannuation guarantee under taxation legislation; S. 79C(1)(i) amended by No. 64/2009 s. 47(b).
- (j) the conduct of a Councillor with respect to—
 - (i) an internal dispute that involves the Councillor; S. 79C(1)(j) inserted by No. 64/2009 s. 47(c).
 - (ii) an allegation of misconduct or serious misconduct (as defined in section 81A) by the Councillor; S. 79C(1)(j)(ii) amended by No. 58/2010 s. 16(a).
- (k) a submission provided to an electoral representation review under section 219F; S. 79C(1)(k) inserted by No. 58/2010 s. 16(b).
- (l) a submission provided for the purposes of a subdivision review conducted under section 219N. S. 79C(1)(l) inserted by No. 58/2010 s. 16(b).

- (2) If a budget or revised budget to be approved by a Council includes funding for a matter in respect of which a Councillor has a conflict of interest the Councillor is taken to not have a conflict of interest for the purposes of approving the budget or revised budget if—
- S. 79C(2)(a) substituted by No. 63/2012 s. 12(2).**
- (a) the Council previously approved the matter and the proposed funding for the matter for inclusion in the budget or revised budget; and
- S. 79C(2)(b) substituted by No. 63/2012 s. 12(3).**
- (b) the Councillor disclosed the nature of the conflict of interest under section 79 when the decision in respect of the matter and the proposed funding for the matter was previously considered and made.
- S. 79C(3) inserted by No. 63/2012 s. 12(4).**
- (3) If a Council Plan to be approved by a Council includes a matter in respect of which a Councillor has a conflict of interest, the Councillor is taken to not have a conflict of interest for the purposes of approving the Council Plan if—
- (a) the Council previously approved the matter for inclusion in the Council Plan; and
- (b) the Councillor disclosed the nature of the conflict of interest under section 79 when the decision in respect of the matter was previously considered and made.
- S. 79C(4) inserted by No. 63/2012 s. 12(4).**
- (4) If a Councillor with a conflict of interest referred to in subsection (2) or (3) notifies the Mayor or Chairperson prior to the consideration of the budget, revised budget or Council Plan of the conflict of interest, the Mayor or Chairperson must allow a prior motion to be put that the matter or funding be considered for inclusion in the budget, revised budget or Council Plan.

79D Person may make submission despite conflict of interest

S. 79D
inserted by
No. 67/2008
s. 22.

- (1) Subject to subsection (2), a relevant person who has a conflict of interest in a matter and who has made a written submission under section 223 in respect of the matter, may present his or her submission under section 223(1)(b) to the Council or committee of the Council.
- (2) The relevant person who has a conflict of interest in a matter must not be at the meeting of the Council or committee of the Council any longer than is required for the person to be heard in support of the person's written submission.

80 Exemption by Minister

- (1AA) Despite section 79, the Minister may, of his or her own motion, exempt in writing a person, other than a Councillor, from any or all of the provisions of section 79 for an unlimited or specified period, subject to any conditions the Minister thinks fit if the Minister is satisfied that—

S. 80(1AA)
inserted by
No. 64/2009
s. 48.

- (a) extraordinary circumstances exist that justify the exemption of the person; and
- (b) it is in the public interest to exempt the person.

- (1AB) In exempting a person under subsection (1AA), the Minister must have regard to the extent of the conflict of interest of the person.

S. 80(1AB)
inserted by
No. 64/2009
s. 48.

- (1) Despite section 79—

- (a) a Council may apply, in writing, to the Minister for an exemption of any Councillor from any or all of the provisions of section 79 if the Council is of the opinion that the transaction of any Council or special committee business would be impeded

S. 80(1)
substituted by
No. 67/2008
s. 23(1).

because of the number of Councillors affected by section 79;

- (b) a Chief Executive Officer of a Council may apply, in writing, to the Minister, after receiving written declarations of conflicts of interest from a majority of Councillors, for an exemption of those Councillors from any or all of the provisions of section 79.

S. 80(1A)
inserted by
No. 67/2008
s. 23(1).

- (1A) After reviewing an application received from a Council or a Chief Executive Officer, the Minister may require the Council or Chief Executive Officer to provide additional information in respect of the application, including copies of the written declarations of conflicts of interests made by Councillors under section 79.

S. 80(1B)
inserted by
No. 67/2008
s. 23(1).

- (1B) In considering an application made by a Council or Chief Executive Officer, the Minister must have regard to—
 - (a) the extent of the conflicts of interest of the Councillors; and
 - (b) the public interest.

S. 80(2)
substituted by
No. 67/2008
s. 23(2).

- (2) The Minister may, after considering an application under subsection (1B), exempt in writing a Councillor from any or all of the provisions of section 79 for an unlimited or specified period, subject to any conditions the Minister thinks fit.
- (3) The Minister may revoke an exemption.

S. 80A
inserted by
No. 67/2008
s. 24.

80A Requirements to be observed by an assembly of Councillors

- (1) At an assembly of Councillors, the Chief Executive Officer must ensure that a written record is kept of—
 - (a) the names of all Councillors and members of Council staff attending;

- (b) the matters considered;
 - (c) any conflict of interest disclosures made by a Councillor attending under subsection (3); S. 80A(1)(c)
amended by
No. 58/2010
s. 17(1)(a).
 - (d) whether a Councillor who has disclosed a conflict of interest as required by subsection (3) leaves the assembly. S. 80A(1)(d)
inserted by
No. 58/2010
s. 17(1)(b).
 - (2) The Chief Executive Officer must ensure that the written record of an assembly of Councillors is, as soon as practicable—S. 80A(2)
substituted by
No. 58/2010
s. 17(2).
 - (a) reported at an ordinary meeting of the Council; and
 - (b) incorporated in the minutes of that Council meeting.
 - (3) If a Councillor attending an assembly of Councillors knows, or would reasonably be expected to know, that a matter being considered by the assembly is a matter that, were the matter to be considered and decided by Council, the Councillor would have to disclose a conflict of interest under section 79, the Councillor must, at the time set out in subsection (4), disclose to the assembly that he or she has a conflict of interest and leave the assembly whilst the matter is being considered by the assembly. S. 80A(3)
amended by
Nos 64/2009
s. 23, 58/2010
s. 17(3).
- Penalty: 120 penalty units.
- (4) A Councillor must disclose the conflict of interest either—
 - (a) immediately before the matter in relation to which the Councillor has a conflict of interest is considered; or
 - (b) if the Councillor realises that he or she has a conflict of interest after consideration of the matter has begun, as soon as the Councillor

becomes aware that he or she has a conflict of interest.

S. 80B
inserted by
No. 67/2008
s. 24.

80B Members of Council staff to disclose conflicts of interest in respect of delegated functions

S. 80B(1)
substituted by
No. 58/2010
s. 18(1).

(1) This section applies to—

- (a) a member of Council staff who has been delegated a power, duty or function of the Council under section 98(1) or 98(3) or under another Act;
- (b) the Chief Executive Officer who has been given a power, duty or function under this Act or another Act;
- (c) any other member of Council staff who has been delegated a power, duty or function of the Chief Executive Officer under section 98(2).

S. 80B(2)
amended by
No. 64/2009
s. 24.

(2) A member of Council staff who has a conflict of interest in a matter in which they also have delegated power, duty or function must—

- (a) not exercise the power or discharge the duty or function; and
- (b) in the case of the Chief Executive Officer, disclose the type of interest and the nature of the interest to—
 - (i) the Mayor, in writing, as soon as he or she becomes aware of the conflict of interest in the matter; and
 - (ii) the Council by no later than the next ordinary meeting of the Council.
- (c) in the case of any other member of staff, disclose the type of interest and the nature of the interest to the Chief Executive Officer, in

writing, as soon as he or she becomes aware of the conflict of interest in the matter.

Penalty: 120 penalty units.

- (3) The Chief Executive Officer does not have a conflict of interest in a matter if the matter only relates to—
- (a) the adoption or amendment of a policy relating to Council staff generally;
 - (b) the adoption of a code of conduct for Council staff under section 95AA;
 - (c) a decision to delegate a power, duty or function to a member of Council staff;
 - (d) a decision to request the appointment of a probity auditor under Division 4.

S. 80B(3)
inserted by
No. 58/2010
s. 18(2).

S. 80B(3)(c)
amended by
No. 63/2012
s. 13(a).

S. 80B(3)(d)
inserted by
No. 63/2012
s. 13(b).

80C Persons to disclose interests to Council when providing advice

S. 80C
inserted by
No. 67/2008
s. 24.

- (1) This section applies to Council staff and persons engaged under a contract to provide advice or services to the Council or a special committee.
- (2) A person who is providing advice or a report to a meeting of the Council or a special committee, and who has a conflict of interest in a matter to which the advice or report relates, must disclose the type of interest constituting the conflict of interest when providing the advice or report and before the advice or report is considered by the Council or the committee.

S. 80C(2)
amended by
Nos 64/2009
s. 25, 58/2010
s. 19(1).

Penalty: 60 penalty units.

- (3) A disclosure made by a person under subsection (2) must be recorded in the minutes of the meeting.

(4) A person who has made a disclosure under subsection (2) must disclose the nature of the interest if required to make that disclosure by the Council or committee.

S. 80C(5)
amended by
No. 58/2010
s. 19(2).

(5) Sections 77A to 78E apply to a person to whom this section applies as if the person were a relevant person under this Division.

81 Register of interests

(1) In this section—

S. 81(1) def. of
*nominated
officer*
substituted by
No. 99/1994
s. 9(a),
amended by
No. 67/2008
s. 25(1)(a).

nominated officer means the senior officers of the Council and any other member of the Council staff nominated by the Chief Executive Officer;

S. 81(1) def. of
relative
inserted by
No. 58/2010
s. 20(1).

relative has the same meaning as *relative* has in section 78;

S. 81(1) def. of
return period
amended by
Nos 34/1996
s. 4(1)(a),
67/2008
s. 25(1)(b)(c).

return period in relation to the ordinary return of a Councillor, member of a special committee or nominated officer means—

- (a) if the last return of the Councillor, member of a special committee or nominated officer was a primary return, the period between the date of the primary return and the date the ordinary return is submitted; or
- (b) if the last return of the Councillor, member of a special committee or nominated officer was an ordinary return, the period between the date of that return and the date the current ordinary return is submitted.

- (2) A person who becomes a Councillor or a member of a special committee must submit a primary return in the prescribed form to the Chief Executive Officer within—
- (a) in the case of a Councillor—
- (i) 30 days of election day; or
- (ii) 7 days of making the oath of office of a Councillor; or
- (b) 30 days of becoming a member of a special committee.
- Penalty: 60 penalty units.
- (2A) A Council may exempt a member of a special committee who is not a Councillor from being required to submit a primary return or an ordinary return.
- (2B) The Council must review any exemptions in force under subsection (2A) within the period of 12 months after a general election.
- (3) If a person is re-elected or reappointed upon completion of his or her term of office as a Councillor or member of a special committee, the Councillor or member of a special committee does not have to submit a new primary return.
- (4) Any person who becomes a nominated officer must within 30 days of becoming a nominated officer submit a primary return in the prescribed form to the Chief Executive Officer.
- Penalty: 60 penalty units.
- (4A) Any person who becomes a nominated officer solely because of the amendment made to this Act by section 8 of the **Local Government**
- S. 81(2) amended by Nos 99/1994 s. 9(b), 109/2003 ss 49(3), 63(a), substituted by No. 67/2008 s. 25(2), amended by No. 64/2009 s. 26(1).
- S. 81(2A) inserted by No. 13/1990 s. 10.
- S. 81(2B) inserted by No. 67/2008 s. 25(3).
- S. 81(3) amended by No. 58/2010 s. 20(2).
- S. 81(4) substituted by No. 99/1994 s. 9(c), amended by Nos 109/2003 s. 63(b), 67/2008 s. 25(4), 64/2009 s. 26(2).
- S. 81(4A) inserted by No. 99/1994 s. 9(c).

(Amendment) Act 1994 is deemed for the purposes of subsection (4) to have become a nominated officer on the date section 8 of that Act came into operation.

S. 81(5)
amended by
Nos 99/1994
s. 9(b),
109/2003
s. 63(c),
substituted by
No. 67/2008
s. 25(5),
amended by
No. 64/2009
s. 26(3).

- (5) A Councillor, a member of a special committee or a nominated officer must submit an ordinary return in the prescribed form to the Chief Executive Officer on—

S. 81(5)(a)
amended by
No. 58/2010
s. 20(3)(a).

- (a) 30 June or within 40 days after 30 June; and

S. 81(5)(b)
amended by
No. 58/2010
s. 20(3)(b).

- (b) 31 December or within 40 days after 31 December.

Penalty: 60 penalty units.

S. 81(6)
amended by
Nos 109/2003
s. 63(d),
64/2009
s. 26(4).

- (6) A Councillor, a member of a special committee or a nominated officer must disclose the following information in the primary return as at the date of the primary return—

S. 81(6)(a)
amended by
No. 34/1996
s. 4(1)(b).

- (a) the name of any company or other body in which he or she holds any office whether as a director or otherwise;

S. 81(6)(b)
substituted by
Nos 34/1996
s. 4(1)(c),
67/2008
s. 25(6).

- (b) the name or description of any company or body in which he or she holds a beneficial interest unless the total value of the interest does not exceed \$10 000 and the total value of issued shares of the company or body exceeds \$10 million;

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- | | |
|---|---|
| (c) the address or description of any land in the municipal district of the Council or in a municipal district which adjoins that municipal district in which he or she has any beneficial interest other than by way of security for any debt; | S. 81(6)(c)
inserted by
No. 34/1996
s. 4(1)(c). |
| (d) a concise description of any trust in which he or she holds a beneficial interest or of which he or she is a trustee and a member of his or her family holds a beneficial interest; | S. 81(6)(d)
inserted by
No. 34/1996
s. 4(1)(c). |
| (e) any other substantial interest whether of a pecuniary nature or not of him or her or of a member of his or her family of which he or she is aware and which he or she considers might appear to raise a material conflict between his or her private interest and his or her public duty as a Councillor, a member of a special committee or nominated officer. | S. 81(6)(e)
inserted by
No. 34/1996
s. 4(1)(c). |
| Penalty: 60 penalty units. | |
| * * * * * | S. 81(6A)
inserted by
No. 43/1993
s. 13,
repealed by
No. 109/2003
s. 63(e). |
| (7) A Councillor, a member of a special committee or a nominated officer must disclose in an ordinary return the following information in relation to the return period— | S. 81(7)
amended by
No. 64/2009
s. 26(5). |
| (a) if he or she has held an office whether as director or otherwise in any company or body, corporate or unincorporate—the name of the company or body; | |

S. 81(7)(b)
amended by
No. 34/1996
s. 4(1)(d),
substituted by
No. 67/2008
s. 25(7)(a).

(b) the name or description of any company or body in which he or she holds or has held a beneficial interest unless the total value of the interest does or did not exceed \$10 000 and the total value of issued shares of the company or body exceeds \$10 million;

S. 81(7)(c)
amended by
No. 34/1996
s. 4(1)(e).

(c) the address or description of any land in the municipal district of the Council or in a municipal district which adjoins that municipal district in which he or she had any beneficial interest other than by way of security for any debt;

S. 81(7)(d)
amended by
No. 34/1996
s. 4(1)(f).

(d) a concise description of any trust in which he or she held a beneficial interest or of which he or she is a trustee and a member of his or her family held a beneficial interest;

S. 81(7)(e)
amended by
No. 109/2003
s. 63(f),
substituted by
No. 67/2008
s. 25(7)(b),
amended by
No. 64/2009
s. 49(1),
substituted by
No. 58/2010
s. 20(4).

(e) particulars of any gift of or above the amount or value of the gift disclosure threshold received by him or her, either directly or indirectly, other than a gift received—

(i) from a person who is a relative of him or her; or

(ii) as hospitality at an event or function he or she attended in an official capacity as the Mayor, a Councillor, a member of Council staff or a member of a special committee;

S. 81(7)(f)
amended by
No. 13/1990
s. 31(d).

(f) any other substantial interest whether of a pecuniary nature or not of him or her or of a member of his or her family of which he or she is aware and which he or she considers might appear to raise a material conflict between his or her private interest and his or her public duty as a Councillor, member of a special committee or nominated officer.

Penalty: 60 penalty units.

Local Government Act 1989
No. 11 of 1989
Part 4—Council administration

*	*	*	*	*	S. 81(8) repealed by No. 99/1994 s. 9(d).
(9)	The Chief Executive Officer must maintain a register of the interests of Councillors, members of special committees and nominated officers consisting of the last 3 returns that those Councillors, members and officers were required to submit under this section.				S. 81(9) substituted by No. 99/1994 s. 9(e).
(10)	The Chief Executive Officer must allow a person to inspect the register if that person has previously made written application to the Chief Executive Officer to do so and the application meets the requirements of the regulations.				S. 81(10) amended by No. 99/1994 s. 9(f).
(11)	The register may be inspected at the office of the Council during normal office hours.				
(12)	The Chief Executive Officer must take all reasonable steps to ensure that no person other than a person who has made application has access to or is permitted to inspect the register or any return.				S. 81(12) amended by No. 99/1994 s. 9(f).
(13)	A person must not publish any information derived from the register unless that information is a fair and accurate summary or copy of the information derived from the register.				
(13A)	The Chief Executive Officer must maintain a record of the names of persons who have inspected the register of interests under subsection (10).				S. 81(13A) inserted by No. 67/2008 s. 25(8).
(13B)	A Councillor, a member of a special committee or a nominated officer, whose interests are recorded in the register may inspect the recorded names of people kept under subsection (13A) who have inspected his or her personal records.				S. 81(13B) inserted by No. 67/2008 s. 25(8), amended by No. 64/2009 s. 49(2).

S. 81(14)
amended by
No. 64/2009
ss 26(6), 49(3).

- (14) A member of Council staff must not, whether before or after he or she ceases to be so employed, make a record of, divulge or communicate to any person any information in relation to a matter dealt with by this section that is gained by or conveyed to him or her during his or her employment with the Council or make use of that information for any purpose other than the discharge of his or her official duties under this section.

Penalty: 60 penalty units.

S. 81(15)
amended by
No. 99/1994
s. 9(f),
repealed by
No. 58/2010
s. 20(5).

* * * *

S. 81(16)
amended by
No. 99/1994
s. 9(f)(g).

- (16) As soon as practicable after a person ceases to be a Councillor or a member of a special committee or a nominated officer, the Chief Executive Officer must remove all the returns submitted by that person from the register.

Pt 4 Div. 1AB
(Heading and
ss 81AA,
81AB)
inserted by
No. 53/2015
s. 18.

Division 1AB—Internal resolution procedure of Council

S. 81AA
inserted by
No. 53/2015
s. 18.

81AA Internal resolution procedure of Council

- (1) A Council must develop and maintain an internal resolution procedure for the purposes of addressing an alleged contravention of the Councillor Code of Conduct by a Councillor.

- (2) The internal resolution procedure of a Council must—
- (a) be specified in the Councillor Code of Conduct; and
 - (b) incorporate any prescribed processes including any application process; and
 - (c) provide for the selection of an arbiter who is suitably independent and able to carry out the role of arbiter fairly; and
 - (d) specify the role an arbiter is expected to undertake in the conduct of any internal resolution procedure including that the arbiter must—
 - (i) consider applications alleging a contravention of the Councillor Code of Conduct by a Councillor; and
 - (ii) make findings in relation to any application alleging a contravention of the Councillor Code of Conduct which the arbiter must give to the Council; and
 - (e) provide processes to ensure that parties affected by an application alleging a contravention of the Councillor Code of Conduct are given an opportunity to be heard by the arbiter; and
 - (f) specify that the Council and the Councillor the subject of any application made alleging a contravention of the Councillor Code of Conduct are to be given written reasons for any findings made by an arbiter; and

- (g) address any matters prescribed for the purposes of this section; and
- (h) include any provisions prescribed for the purposes of this section.

S. 81AB
inserted by
No. 53/2015
s. 18.

81AB Sanctions for contravention of Councillor Code of Conduct

- (1) If, after an internal resolution procedure has been conducted, it is found that a Councillor has contravened the Councillor Code of Conduct, the Council may give any or all of the following written directions to the Councillor—
 - (a) direct the Councillor to make an apology in a form or manner specified by the Council;
 - (b) direct the Councillor to not attend up to, but not exceeding, 2 meetings of the Council;
 - (c) direct that, for a period of up to, but not exceeding, 2 months commencing on a date specified by the Council, the Councillor—
 - (i) be removed from any position where the Councillor represents the Council; and
 - (ii) to not chair or attend any advisory committee or special committee meeting or an assembly of Councillors or any other meeting specified in the direction.
- (2) A direction given under subsection (1)(b) must be in respect of the next scheduled meetings of the Council after the direction is made.

Division 1B—Councillor Conduct Panels

Pt 4 Div. 1B
(Heading and
ss 81A–81S)
inserted by
No. 67/2008
s. 18.

* * * * *

S. 81A
inserted by
No. 67/2008
s. 18,
amended by
No. 64/2009
s. 27,
repealed by
No. 53/2015
s. 19.

81B Application to Councillor Conduct Panel

S. 81B
inserted by
No. 67/2008
s. 18.

(1) A Councillor Conduct Panel may hear an application that alleges misconduct or serious misconduct by a Councillor.

S. 81B(1)
substituted by
No. 53/2015
s. 20(1).

(1A) An application for a Councillor Conduct Panel to make a finding of misconduct against a Councillor may be made by—

S. 81B(1A)
inserted by
No. 53/2015
s. 20(1).

(a) the Council following a resolution of the Council to make an application to a Councillor Conduct Panel under this subsection in respect of a Councillor's conduct; or

(b) a Councillor or a group of Councillors.

(1B) An application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor may be made by—

S. 81B(1B)
inserted by
No. 53/2015
s. 20(1).

(a) the Council following a resolution of the Council to make an application to a Councillor Conduct Panel under this subsection in respect of a Councillor's conduct; or

- (b) a Councillor or a group of Councillors; or
- (c) the Chief Municipal Inspector.

S. 81B(2)
repealed by
No. 53/2015
s. 20(2).

* * * *

- (3) An application made under this section must—

- (a) specify the ground or grounds for the application;

S. 81B(3)(b)
substituted by
No. 53/2015
s. 20(3).

- (b) set out—

- (i) the circumstances, actions or inactions of the Councillor who is the subject of the application that are alleged as constituting misconduct or serious misconduct; and

- (ii) the particulars of any evidence of those circumstances, actions or inactions of the Councillor that are alleged as constituting the misconduct or serious misconduct;

S. 81B(3)(c)
substituted by
No. 53/2015
s. 20(3).

- (c) specify—

- (i) any steps taken by Council to resolve the matter that is the subject of the application and the reason why the matter was not resolved by the taking of those steps; or

- (ii) if the Council did not take any steps to resolve the matter that is the subject of the application, the reason why the Council did not take any steps to resolve the matter;

- (d) if the application is made by the Council or a group of Councillors, state the name and address of the Councillor whom the Council

has, or group have, appointed as
representative of the Council or group.

**81C Principal Councillor Conduct Registrar must reject
application for formation of a Councillor Conduct
Panel in specified circumstances**

S. 81C
inserted by
No. 67/2008
s. 18,
substituted by
No. 53/2015
s. 21.

- (1) The Principal Councillor Conduct Registrar, after examining an application made under section 81B, must form a Councillor Conduct Panel to hear the matter if the Principal Councillor Conduct Registrar is satisfied that—
 - (a) the application is not frivolous, vexatious, misconceived or lacking in substance; and
 - (b) there is sufficient evidence to support an allegation of misconduct or serious misconduct as specified in the application; and
 - (c) the Council—
 - (i) has taken sufficient or appropriate steps to resolve the matter; or
 - (ii) has not taken any steps to resolve the matter but the Principal Councillor Conduct Registrar is satisfied of the Council's reasons for not taking any steps.
- (2) Subject to subsection (3), the Principal Councillor Conduct Registrar must reject an application, or refer a matter the subject of a an application back to the Council, if the Principal Councillor Conduct Registrar is not satisfied under subsection (1)(a), (b) or (c).
- (3) The Principal Councillor Conduct Registrar must form a Councillor Conduct Panel to hear the matter if the application is made under section 81B(1B)(c) by the Chief Municipal Inspector for a finding of serious misconduct.

- (4) The rejection of an application, or the referral of a matter the subject of an application back to the Council, by the Principal Councillor Conduct Registrar under this section does not prevent a further application being made under section 81B in respect of the same conduct by a Councillor that was the subject of the rejected or referred application.

S. 81D
inserted by
No. 67/2008
s. 18,
repealed by
No. 53/2015
s. 22.

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S. 81E
inserted by
No. 67/2008
s. 18.

81E Application on grounds of gross misconduct

S. 81E(1)
amended by
No. 53/2015
s. 23.

- (1) VCAT may hear an application made by the Chief Municipal Inspector that alleges gross misconduct by a Councillor.

S. 81E(2)
amended by
No. 53/2015
s. 23.

- (2) An application made under subsection (1) may only be made by the Chief Municipal Inspector.

S. 81F
inserted by
No. 67/2008
s. 18.

81F Parties to a VCAT proceeding

S. 81F(1)
amended by
No. 53/2015
s. 24(1).

- (1) The applicant and respondent are parties to a proceeding commenced in VCAT under section 81E.

S. 81F(2)
repealed by
No. 53/2015
s. 24(2).

* * * *

81G Notice of a Councillor Conduct Panel

S. 81G
inserted by
No. 67/2008
s. 18.

- (1) A Councillor Conduct Panel must—
 - (a) fix a time and, subject to subsection (2), a place that is within the municipal district of the relevant Council, for the hearing to be conducted; and
 - (b) serve by post a notice of the time and place of the hearing on the applicant, respondent and Council.
- (2) For the purposes of subsection (1)(a), a Councillor Conduct Panel may fix a place for the hearing that is not within the municipal district of the relevant Council if the Panel considers it necessary or appropriate in the circumstances.

81H Procedures

S. 81H
inserted by
No. 67/2008
s. 18.

- (1) A Councillor Conduct Panel may—
 - (a) request a person to attend a hearing and answer questions;
 - (b) request information from the applicant, the respondent or the Council, including confidential information held by the Council.
- (2) Members of a Councillor Conduct Panel that are provided with confidential information must ensure that the information is not released to the public.

81I Conduct of a Councillor Conduct Panel

S. 81I
inserted by
No. 67/2008
s. 18.

- (1) A Councillor Conduct Panel must not make a determination under section 81J until it has conducted a hearing.

(2) The following applies to a hearing of a Councillor Conduct Panel—

- (a) the proceedings must be conducted with as little formality and technicality as the requirements of this Act and the proper consideration of the matter permit;
- (b) there is no right to representation at the hearing except if the Panel considers that a party requires representation to ensure that the hearing is conducted fairly;
- (c) the proceedings must not be open to the public;
- (d) if the hearing is based on an application made by Council or group of Councillors, the appointed representative must represent the Council or group of Councillors at the hearing;
- (e) the Panel is not bound by rules of evidence but may inform itself in any way it thinks fit;
- (f) the Panel is bound by the rules of natural justice;
- (g) the procedure of a Panel is otherwise in its discretion.

(3) At the hearing of an application, the Councillor Conduct Panel must provide the respondent with an opportunity to be heard.

S. 81J
inserted by
No. 67/2008
s. 18.

81J Determinations by a Councillor Conduct Panel

- (1) After a Councillor Conduct Panel has conducted a hearing, the Panel may—
- (a) make a finding of misconduct against a Councillor; or
 - (b) make a finding of serious misconduct against a Councillor; or

S. 81J(1)(b)
substituted by
No. 53/2015
s. 25(1).

- (c) whether or not a finding of misconduct or serious misconduct against a Councillor has been made, make a finding that remedial action is required; or S. 81J(1)(c) amended by No. 53/2015 s. 25(2).
 - (d) in addition to any findings made under paragraphs (a) to (c), direct that the Council amend its Councillor Code of Conduct in a particular way or to address a particular issue; or
 - (e) dismiss the application.
- (2) If a Councillor Conduct Panel makes a finding of misconduct against a Councillor, the Panel may—
 - (a) reprimand that Councillor; or
 - (b) direct that Councillor to make an apology in a form or manner determined by the Panel; or
 - (c) direct that Councillor to take leave of absence for a period specified by the Panel not exceeding 2 months, commencing on a date specified by the Panel; or S. 81J(2)(c) amended by No. 53/2015 s. 25(3)(a).
 - (d) direct that the Councillor is ineligible to hold the office of Mayor for a period specified by the Panel not exceeding the remainder of the Council's term. S. 81J(2)(d) inserted by No. 53/2015 s. 25(3)(b).
- (2A) If a Councillor Conduct Panel makes a finding of serious misconduct against a Councillor— S. 81J(2A) inserted by No. 53/2015 s. 25(4).
 - (a) that Councillor becomes ineligible to hold the office of Mayor for the remainder of the Council's term unless the Panel directs otherwise; and
 - (b) the Panel may—
 - (i) reprimand that Councillor; or

- (ii) direct that Councillor to make an apology in a form or manner determined by the Panel; or
 - (iii) direct that Councillor to take a leave of absence for a period specified by the Panel not exceeding 2 months, commencing on a date specified by the Panel; or
 - (iv) suspend that Councillor from office for a period specified by the Panel not exceeding 6 months; or
 - (v) direct that the Councillor is ineligible to chair a special committee of the Council for a period specified by the Panel not exceeding the remainder of the Council's term.
- (3) If a Councillor Conduct Panel makes a finding that remedial action is required under subsection (1)(c), the Panel may—
- (a) direct the Councillor who is the subject of the application to attend mediation; or
 - (b) direct the Councillor who is the subject of the application to attend training; or
 - (c) direct the Councillor who is the subject of the application to attend counselling.
- (4) For the purposes of subsection (3), a Councillor Conduct Panel may set reasonable conditions in respect of how or when remedial action is to be undertaken.
- (5) Any necessary expenses incurred by Councillors in attending mediation, training or counselling must be paid by the Council.

- (6) If a Councillor Conduct Panel directs the Council to amend its Councillor Code of Conduct, the Council must comply with that direction within 3 months of the direction being made.

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S. 81J(7)
repealed by
No. 53/2015
s. 25(5).

81K Findings and orders of VCAT

If VCAT makes a finding that a Councillor has engaged in conduct that constitutes gross misconduct, VCAT may order that the Councillor is disqualified from continuing to be a Councillor for a period specified by VCAT not exceeding 8 years and the office of the Councillor is vacated.

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S. 81K
inserted by
No. 67/2008
s. 18,
substituted by
No. 53/2015
s. 26.

S. 81L
inserted by
No. 67/2008
s. 18,
repealed by
No. 53/2015
s. 27.

81M Notice of determinations and tabling of decisions

- (1) After a Councillor Conduct Panel has made a determination under section 81J, the Panel must give a copy of the decision to—

- (a) the Council; and
- (b) the parties to the matter; and
- (c) the Minister; and

S. 81M
inserted by
No. 67/2008
s. 18.

S. 81M(1)(c)
amended by
No. 53/2015
s. 28(a).

- (d) the Principal Councillor Conduct Registrar.

S. 81M(1)(d)
inserted by
No. 53/2015
s. 28(b).

- (2) A copy of the decision given to the Council under subsection (1)(a) must be tabled at the next ordinary meeting of the Council and recorded in the minutes for that meeting.
- (3) A Councillor Conduct Panel must give a written statement of reasons for the decision, within 28 days of making a determination, to—
 - (a) the Council; and
 - (b) the parties to the matter; and
 - (c) the Minister; and

S. 81M(3)(c)
amended by
No. 53/2015
s. 28(a).

- (d) the Principal Councillor Conduct Registrar.

S. 81M(3)(d)
inserted by
No. 53/2015
s. 28(b).

- (4) A statement of reasons provided in accordance with subsection (3) is taken to be a statement of reasons provided in accordance with section 46(1) of the **Victorian Civil and Administrative Tribunal Act 1998**.
- (5) A record of the decision of VCAT, made in respect of an application or review under this Division in relation to a Councillor of a Council, must be tabled at the next ordinary meeting of the Council and recorded in the minutes of that meeting.

S. 81N
inserted by
No. 67/2008
s. 18.

81N Suspension of matters during election period

- (1) Applications and proceedings made and conducted under this Division must be suspended during the election period for a general election.

- (2) If an application is made to a Councillor Conduct Panel for a finding of misconduct or serious misconduct against a person who is a Councillor before a general election, and that person is not returned to the office of Councillor as a result of the general election, the application made against that person who was a Councillor before the election lapses. **S. 81N(2) amended by No. 53/2015 s. 29.**
- (3) If an application is made to a Councillor Conduct Panel for a finding of misconduct or serious misconduct against a person who is a Councillor before a general election, and that person is returned to the office of Councillor as a result of the general election, the application made against the Councillor may resume, whether or not the applicants were returned as a result of the general election. **S. 81N(3) amended by No. 53/2015 s. 29.**
- (4) An application under section 81E against a person who is a Councillor before a general election must resume after the general election is held whether or not the person is returned to the office of Councillor.

81O Breach of Act by Councillor

- (1) This section applies if it appears to a Councillor Conduct Panel that a Councillor has committed an offence under this Act. **S. 81O inserted by No. 67/2008 s. 18.**
- (2) A Councillor Conduct Panel must by notice in writing notify the Chief Municipal Inspector that a Councillor appears to have committed an offence under this Act as soon as the Panel becomes aware of the apparent offence. **S. 81O(2) amended by No. 53/2015 s. 30.**

S. 81P
(Heading)
amended by
No. 53/2015
s. 31(1).

S. 81P
inserted by
No. 67/2008
s. 18.

81P Investigation by Chief Municipal Inspector

S. 81P(1)
amended by
No. 53/2015
s. 31(2).

- (1) The Chief Municipal Inspector may at any time (whether or not the Chief Municipal Inspector has received a notice under section 81O), by notice, require a Councillor Conduct Panel to suspend or stop the Panel's consideration of a matter.

S. 81P(2)
substituted by
No. 53/2015
s. 31(3).

- (2) Within 28 days of the Chief Municipal Inspector requiring a Councillor Conduct Panel to suspend or stop consideration of a matter, the Chief Municipal Inspector must commence an investigation into the matter.

S. 81P(3)
repealed by
No. 53/2015
s. 31(3).

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S. 81Q
inserted by
No. 67/2008
s. 18.

81Q Review by VCAT

S. 81Q(3)
substituted by
No. 53/2015
s. 32.

- (1) In this section, *party* means the applicant or respondent to an application made to, and matter heard by, a Councillor Conduct Panel, under this Division.
- (2) Subject to subsection (3), a party who is affected by the decision made by a Councillor Conduct Panel under this Division may apply to VCAT for review of the decision.
- (3) A person is not entitled to apply for review of a decision made by a Councillor Conduct Panel to dismiss the application because it is frivolous, vexatious, misconceived or lacking in substance.

81R Time period for making application to VCAT

An application for review under section 81Q must be made within 28 days of the Councillor Conduct Panel giving a statement of reasons under section 81M.

S. 81R
inserted by
No. 67/2008
s. 18.

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S. 81S
inserted by
No. 67/2008
s. 18,
repealed by
No. 53/2015
s. 33.

**Division 1C—Appointment and functions of
Principal Councillor Conduct Registrar**

Pt 4 Div. 1C
(Heading and
ss 81S, 81T)
inserted by
No. 53/2015
s. 34.

**81S Appointment of Principal Councillor Conduct
Registrar**

The Secretary must appoint a Principal Councillor Conduct Registrar who is employed under Part 3 of the **Public Administration Act 2004**.

New s. 81S
inserted by
No. 53/2015
s. 34.

**81T Functions and powers of the Principal Councillor
Conduct Registrar**

S. 81T
inserted by
No. 53/2015
s. 34.

- (1) The functions of the Principal Councillor Conduct Registrar are to—
- (a) receive applications for the establishment of Councillor Conduct Panels; and
 - (b) form Councillor Conduct Panels by appointing members of the panel list to sit on Councillor Conduct Panels; and
 - (c) provide general advice and assistance to members of the Councillor Conduct Panel in relation to their functions; and

- (d) publish any determination made by a Councillor Conduct Panel and any reasons given for that determination; and
 - (e) keep copies of all documents requested by, and given to, a Councillor Conduct Panel; and
 - (f) comply with any request made by the Chief Municipal Inspector or VCAT for copies of any documents given to or made by a Councillor Conduct Panel; and
 - (g) set and publish a schedule of fees specifying the fees to be paid to members of a Councillor Conduct Panel; and
 - (h) send notice to a Council specifying the fees payable by the Council following any Councillor Conduct Panel hearing conducted for, or on behalf of, the Council; and
 - (i) publish any guidelines in relation to Councillor Conduct Panel procedures and processes that the Principal Councillor Conduct Registrar has determined to be necessary.
- (2) The Principal Councillor Conduct Registrar has power to do all things necessary or convenient to be done for or in connection with the performance of the Principal Councillor Conduct Registrar's functions under this Act.

**Division 1D—Formation, operation and dissolution
of Councillor Conduct Panels and related matters**

Pt 4 Div. 1D
(Heading and
ss 81U–81ZA)
inserted by
No. 53/2015
s. 34.

81U The panel list

S. 81U
inserted by
No. 53/2015
s. 34.

- (1) The Minister must establish a panel list of eligible persons from which members of a Councillor Conduct Panel must be selected.
- (2) The Minister may appoint as many eligible persons to the Panel list as the Minister considers appropriate.
- (3) A person is eligible for appointment to the panel list if the person—
 - (a) is an Australian lawyer who has been admitted to the legal profession for at least 5 years; or
 - (b) has any other experience the Minister considers relevant to the position.

Note

See also section 81V(3) which requires at least one person selected to form a Councillor Conduct Panel to be an eligible person in accordance with subsection (3)(a).

- (4) A member of the panel list may resign by notice in writing to the Minister.
- (5) The Minister may remove a member of the panel list if the Minister considers that the person is no longer a suitable person to sit on a Councillor Conduct Panel.
- (6) The **Public Administration Act 2004** does not apply to a member of the panel list.

S. 81V
inserted by
No. 53/2015
s. 34.

81V Principal Councillor Conduct Registrar to form Councillor Conduct Panel

- (1) Subject to sections 81C and 81W, the Principal Councillor Conduct Registrar must form a Councillor Conduct Panel, after examining an application made under section 81B, without undue delay.
- (2) For the purposes of subsection (1), the Principal Councillor Conduct Registrar must select 2 people from the panel list established by the Minister under section 81U who the Principal Councillor Conduct Registrar considers suitable to form a Councillor Conduct Panel in accordance with this section and any guidelines made under section 81T(1)(i).
- (3) The Principal Councillor Conduct Registrar must ensure that at least one of the 2 people selected to form a Councillor Conduct Panel is an eligible person in accordance with section 81U(3)(a).
- (4) The person selected under subsection (3) is the chairperson for the Councillor Conduct Panel.

S. 81W
inserted by
No. 53/2015
s. 34.

81W Related applications

- (1) If the Principal Councillor Conduct Registrar receives an application (a *subsequent application*) that appears to be related to another application for which a Councillor Conduct Panel has already been formed, the Principal Councillor Conduct Registrar must forward the subsequent application directly to the existing Councillor Conduct Panel.
- (2) On receipt of the subsequent application, the Councillor Conduct Panel must decide, based on the subject matter of the subsequent application, either—
 - (a) to join the subsequent application to the application the Panel was formed to hear; or

- (b) to return the subsequent application to the Principal Councillor Conduct Registrar without hearing the matter.
- (3) If the Councillor Conduct Panel returns the subsequent application to the Principal Councillor Conduct Registrar under subsection (2)(b), the Principal Councillor Conduct Registrar must form a Councillor Conduct Panel to hear the application unless section 81C(2) applies.

81X Functions of a Principal Conduct Officer

S. 81X
inserted by
No. 53/2015
s. 34.

A Principal Conduct Officer must—

- (a) assist the Council in the implementation of, and conduct of, the internal resolution procedure of a Council; and
- (b) assist the Principal Councillor Conduct Registrar to perform the functions specified in section 81T.

81Y Duties of the Chief Executive Officer in relation to Councillor Conduct Panels

S. 81Y
inserted by
No. 53/2015
s. 34.

- (1) The Chief Executive Officer must appoint, in writing, an eligible person to be the Principal Conduct Officer.
- (2) For the purposes of subsection (1), a person is an eligible person if—
 - (a) the person is a senior officer (other than the Chief Executive Officer); or
 - (b) the Council resolves that the person is suitably qualified to perform the functions of the Principal Conduct Officer.

S. 81Z
inserted by
No. 53/2015
s. 34.

81Z Dissolution of Councillor Conduct Panels

A Councillor Conduct Panel is dissolved when any of the following occurs—

- (a) the application for the Panel to make a finding is withdrawn;
- (b) where the Panel gives notice of the Panel's decision—
 - (i) 28 days after the Panel has given a statement of reasons under section 81M to the persons specified in section 81M(3); or
 - (ii) if an application for review of the decision is made under section 81Q, the conclusion of that review by VCAT;
- (c) the consideration of the matter by the Panel has been stopped by the Chief Municipal Inspector under section 81P.

S. 81ZA
inserted by
No. 53/2015
s. 34.

81ZA Immunity

- (1) A member of a Councillor Conduct Panel under this Act is not personally liable for anything done or omitted to be done in good faith—
 - (a) in the exercise of a power or the discharge of a duty under this Act; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act.
- (2) Any liability resulting from an act or omission that would but for subsection (1) attach to a member of a Councillor Conduct Panel attaches to the Council.

Division 2—Procedure and proceedings

82 Council premises and office

- (1) The Council must maintain premises that are adequate for the Council to perform its functions.
- (2) A Council must establish and maintain a Council office.
- (3) The Council office must be open on the days and during the times determined by the Council.

82A Council must maintain an Internet website

- (1) A Council must maintain an Internet website.
- (2) The Council must ensure that—
 - (a) any public notice required to be given by the Council is published on the Internet website;

S. 82A
inserted by
No. 67/2008
s. 34.

- (ab) the following documents are published on the Internet website—

S. 82A(2)(ab)
inserted by
No. 5/2014
s. 5(1).

- (iaa) the election period policy prepared under section 93B;

S. 82A(2)(ab)
(iaa)
inserted by
No. 53/2015
s. 64.

- (i) the current Council Plan approved under section 125—as soon as practicable after being approved;
 - (ii) the current Strategic Resource Plan adopted under section 126—as soon as practicable after being adopted;
 - (iii) the current budget or revised budget adopted under section 130—as soon as practicable after being adopted;
 - (iv) the current annual report prepared under sections 131, 132 and 133—as soon as practicable after being

S. 82A
(2)(ab)(v)
inserted by
No. 53/2015
s. 35.

submitted to the Minister under
section 133(1);

- (v) the current Councillor Code of
Conduct—as soon as practicable after
being approved under section 76C;

- (b) a copy of each local law made by the
Council and in force is available on the
Internet website—

- (i) from the date the local law comes into
operation; and

- (ii) in a consolidated and up-to-date form;

S. 82A(2)(c)
amended by
No. 5/2014
s. 5(2).

- (c) a list of documents (including the documents
referred to in paragraph (ab)) of the Council
that the Council is required to make available
for public inspection under this Act, and how
a member of the public can examine each
document on the list, is published on the
Internet website.

- (3) A failure to comply with subsection (2) does
not—

- (a) constitute a failure—

- (i) to publish the public notice; or

- (ii) to make the local law available; or

- (iii) to make the documents on the list
publicly available;

- (b) affect the validity of the public notice or the
local law or the documents on the list.

83 Types of meetings

The Council may hold—

- (a) ordinary meetings at which general business
of the Council may be transacted; and

- (b) special meetings at which the business specified in the notice calling the meeting may be transacted.

84 Special meetings

- (1) The Mayor or at least 3 Councillors may by a written notice call a special meeting of the Council.
- (2) The notice must specify the date and time of the special meeting and the business to be transacted.
- (2A) A Council may by a resolution call a special meeting of the Council. **S. 84(2A) inserted by No. 67/2008 s. 35(1).**
- (2B) The resolution must specify the date and time of the special meeting and the business to be transacted. **S. 84(2B) inserted by No. 67/2008 s. 35(1).**
- (3) The Chief Executive Officer must call the special meeting as specified in the notice or resolution. **S. 84(3) amended by Nos 125/1993 s. 14(h), 67/2008 s. 35(2).**
- (4) Unless all Councillors are present and unanimously agree to deal with another matter, only the business specified in the notice or resolution is to be transacted. **S. 84(4) amended by No. 67/2008 s. 35(2).**

84A First meeting after a general election

The Chief Executive Officer may summon a special meeting of the Council within 14 days after the day the returning officer for a general election publicly declares the result of the election.

S. 84A inserted by No. 109/2003 s. 64.

85 Call of the Council

S. 85(1)
amended by
No. 125/1993
s. 14(i).

- (1) If a quorum of a Council cannot be formed or maintained due to the absence of Councillors, the Minister or the Chief Executive Officer may require all Councillors to attend a call of the Council meeting.
- (2) A call of the Council meeting is to be treated as a special meeting.
- (3) The Minister or a person appointed by the Minister is entitled to attend and speak at a call of the Council meeting which the Minister required Councillors to attend.

S. 85(4)
amended by
No. 125/1993
s. 14(j).

- (4) If a Councillor does not attend within 30 minutes after the time fixed for a call of the Council meeting or remain at the meeting the Chief Executive Officer must immediately advise the Minister in writing.
- (5) The Minister must advise the Councillor and the Council that—
 - (a) he or she has received advice that the Councillor did not attend or remain at the call of the Council meeting; and
 - (b) any submissions may be made to the Minister within the period specified by the Minister.

S. 85(6)
amended by
Nos 67/2008
s. 36, 63/2012
s. 14.

- (6) If after considering any submissions from the Councillor and the Council the Minister is not satisfied that the Councillor had a reasonable excuse for not attending or remaining at the call of the Council meeting, the Minister may order that as from the date specified in the order the Councillor is incapable of continuing to be a Councillor.
- (7) The Minister must send a copy of the order to the Council and the Councillor.

86 Special committees of the Council

- (1) In addition to any advisory committees that a Council may establish, a Council may establish one or more special committees of the following—
 - (a) Councillors;
 - (b) Council staff;
 - (c) other persons;
 - (d) any combination of persons referred to in paragraphs (a), (b) and (c).
- (2) A Council may appoint members to a special committee and may at any time remove a member from a special committee.
- (3) Except as provided in subsection (4), a Council may by instrument of delegation delegate any of its functions, duties or powers under this or any other Act to a special committee.
- (4) A Council cannot delegate to a committee the following powers—
 - (a) this power of delegation;
 - (b) to declare a rate or charge;
 - (c) to borrow money;
 - (d) to enter into contracts for an amount exceeding an amount previously determined by the Council;
 - (e) to incur any expenditure exceeding an amount previously determined by the Council;
 - (f) any prescribed power.
- (5) A Council may require a special Committee to report to the Council at intervals determined by the Council.

S. 86(6)
inserted by
No. 67/2008
s. 37.

- (6) The Council must review any delegations to a special committee in force under this section within the period of 12 months after a general election.

S. 86(7)
inserted by
No. 67/2008
s. 37,
repealed by
No. 63/2012
s. 15.

* * * *

S. 87
substituted by
No. 67/2008
s. 38.

87 Special committee meetings

- (1) The Council must keep a register of delegations to special committees.
- (2) The Council may appoint a Chairperson for a special committee.
- (3) If the Council has not appointed a Chairperson under subsection (2), the members of a special committee must appoint a Chairperson.
- (4) If the Chairperson is not present at a meeting of a special committee the members must appoint a Chairperson for that meeting.
- (5) A meeting of a special committee must be held at a time and place determined by the special committee.
- (6) If the special committee has not appointed a time and place for a meeting under subsection (5), the Chairperson, or if the Chairperson is incapable of doing so, the Council, must fix the time and place of the next meeting.
- (7) Until approved by the Council a decision of a special committee which does not relate to a matter delegated to the special committee cannot be given effect to.

- (8) A Council may specify in the instrument of delegation that a member of a special committee who is a member of the public or of Council staff does not have voting rights on the special committee.

* * * * *

**S. 88
repealed by
No. 67/2008
s. 38.**

89 Meetings to be open to the public

- (1) Unless subsection (2) applies, any meeting of a Council or a special committee must be open to members of the public.
- (2) A Council or special committee may resolve that the meeting be closed to members of the public if the meeting is discussing any of the following—
- (a) personnel matters;
 - (b) the personal hardship of any resident or ratepayer;
 - (c) industrial matters;
 - (d) contractual matters;
 - (e) proposed developments;
 - (f) legal advice;
 - (g) matters affecting the security of Council property;
 - (h) any other matter which the Council or special committee considers would prejudice the Council or any person;
 - (i) a resolution to close the meeting to members of the public.
- (3) If a Council or special committee resolves to close a meeting to members of the public the reason must be recorded in the minutes of the meeting.

S. 89(4)
substituted by
No. 67/2008
s. 39(1).

- (4) Unless subsection (4A) applies, a Council must at least 7 days before the holding of—
- (a) an ordinary council meeting; or
 - (b) a special council meeting; or
 - (c) a meeting of a special committee comprised solely of Councillors—
- give public notice of the meeting.

S. 89(4A)
inserted by
No. 67/2008
s. 39(1).

- (4A) If urgent or extraordinary circumstances prevent a Council from complying with subsection (4), the Council must—
- (a) give such public notice as is practicable; and
 - (b) specify the urgent or extraordinary circumstances which prevented the Council from complying with subsection (4) in the minutes.

S. 89(5)
amended by
No. 67/2008
s. 39(2).

- (5) The Chairperson of a special committee that is not comprised solely of Councillors must provide reasonable notice to the public of meetings of the special committee.

90 Voting

- (1) A question before a meeting of a Council or special committee is to be determined as follows—

S. 90(1)(a)
substituted by
No. 13/1990
s. 11(a).

- (a) each Councillor present at a meeting of the Council and each member of a special committee present at a meeting of the special committee who is entitled to vote is entitled to one vote;

S. 90(1)(b)
repealed by
No. 63/2012
s. 16(1).

* * * * *

- (c) unless the procedures of a Council or special Committee otherwise provide, voting must be by a show of hands;
- (ca) voting at a meeting that is open to members of the public must not be in secret; S. 90(1)(ca)
inserted by
No. 67/2008
s. 40.
- (d) the question is determined in the affirmative by a majority of the Councillors or members of the special committee present at a meeting at the time the vote is taken voting in favour of the question; S. 90(1)(d)
substituted by
No. 63/2012
s. 16(2).
- (e) except where subsection (2) applies, if the number of votes in favour of the question is half the number of Councillors or members of the special committee present at the meeting at the time the vote is taken, the Chairperson has a second vote. S. 90(1)(e)
amended by
No. 13/1990
s. 11(b),
substituted by
No. 63/2012
s. 16(3).
- (2) If there is an equality of votes on a question arising under section 71(1), 87(2), 87(3) or 87(4), the matter is to be determined by lot. S. 90(2)
inserted by
No. 13/1990
s. 11(c),
amended by
Nos 34/1996
s. 33(b),
64/2009 s. 50.

91 Conduct of meetings

- (1) A Council must make local laws governing the conduct of meetings of the Council and special committees.
- (2) Except as provided in this Act and subject to any local laws, the conduct of meetings of a Council is in the Council's discretion.
- (3) Except as provided in this Act and subject to any local laws and any resolutions of a Council, the conduct of meetings of a special committee is in the special committee's discretion.

S. 91
substituted by
No. 13/1990
s. 12.

S. 91(3A)
inserted by
No. 67/2008
s. 41.

- (3A) A quorum at a meeting of the Council or a special committee must be at least a majority of the members of the Council or the special committee.

S. 91(4)
inserted by
No. 109/2003
s. 65(1).

- (4) Resolutions made at a meeting of a Council or special committee must clearly state the intention and effect of the resolution.

92 Validity of proceedings

Proceedings of a Council or committee are not invalidated because of—

- (a) any vacancy in the number of Councillors or members; or
- (b) any defect in the election or appointment of a Councillor or member; or
- (c) any incapacity to be a Councillor or member; or
- (d) any failure to comply with section 89.

93 Minutes of meetings

- (1) The Council must keep minutes of each meeting of the Council.
- (2) The minutes of a Council meeting must be submitted to the next appropriate meeting of the Council for confirmation.
- (3) The Chairperson of a special committee must arrange for minutes of each meeting of the committee to be kept.
- (4) If subsection (3) applies, the Chairperson must submit the minutes of a committee meeting to the next meeting of the committee for confirmation.
- (5) If the minutes are confirmed the Chairperson at the meeting must sign the minutes and certify that they have been confirmed.

- (6) The minutes of a meeting of the Council or a special committee must—
- (a) contain details of the proceedings and resolutions made;
 - (b) be clearly expressed;
 - (c) be self-explanatory;
 - (d) in relation to resolutions recorded in the minutes, incorporate relevant reports or a summary of the relevant reports considered in the decision making process.

S. 93(6)
inserted by
No. 109/2003
s. 65(2).

93A Conduct of Council during election period

S. 93A
inserted by
No. 109/2003
s. 66.

- (1) Subject to this section, a Council, a special Committee or a person acting under a delegation given by the Council must not make a major policy decision during the election period for a general election.
- (2) If a Council considers that there are extraordinary circumstances which require the making of a major policy decision during the election period, the Council may apply in writing to the Minister for an exemption from the application of this section to the major policy decision specified in the application.
- (3) If the Minister is satisfied that there are extraordinary circumstances, the Minister may grant an exemption from the application of this section to the major policy decision specified in the application subject to any conditions or limitations that the Minister considers appropriate.
- (4) A major policy decision made in contravention of this section is invalid.
- (5) Any person who suffers any loss or damage as a result of acting in good faith on a major policy decision made in contravention of this section is

entitled to compensation from the Council for that loss or damage.

(6) In this section, a *major policy decision* means any decision—

- (a) relating to the employment or remuneration of a Chief Executive Officer under section 94, other than a decision to appoint an acting Chief Executive Officer;
- (b) to terminate the appointment of a Chief Executive Officer under section 94;
- (c) to enter into a contract the total value of which exceeds whichever is the greater of—
 - (i) \$100 000 or such higher amount as may be fixed by Order in Council under section 186(1); or
 - (ii) 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year;
- (d) to exercise any power under section 193 if the sum assessed under section 193(5A) in respect of the proposal exceeds whichever is the greater of \$100 000 or 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year.

S. 93A(6)(c)
substituted by
No. 67/2008
s. 42(1).

S. 93A(6)(d)
amended by
No. 67/2008
s. 42(2).

S. 93B
inserted by
No. 53/2015
s. 65.

93B Council to adopt an election period policy

- (1) A Council must prepare, adopt and maintain an election period policy in relation to procedures to be applied by Council during the election period for a general election.
- (2) A Council must prepare and adopt an election period policy as required by subsection (1)—
 - (a) by 31 March 2016; and

- (b) following the general election on 22 October 2016, continue to maintain the election period policy by reviewing and, if required, amending the policy not later than 12 months before the commencement of each subsequent general election period.
- (3) An election period policy must include the following—
 - (a) procedures intended to prevent the Council from making inappropriate decisions or using resources inappropriately during the election period before a general election;
 - (b) limits on public consultation and the scheduling of Council events;
 - (c) procedures to ensure that access to information held by Council is made equally available and accessible to candidates during the election.
- (4) A copy of the election period policy must—
 - (a) be given to each Councillor as soon as practicable after it is adopted; and
 - (b) be available for inspection by the public at the Council office and any district offices; and
 - (c) be published on the Council's Internet website maintained under section 82A.
- (5) In this section—
 - inappropriate decisions* made by a Council during an election period includes any of the following—
 - (a) decisions that would affect voting in an election;
 - (b) decisions that could reasonably be made after the election.

Division 3—Council staff

94 The Chief Executive Officer

S. 94
amended by
Nos 13/1990
s. 31(e),
125/1993
s. 4(1)–(3),
99/1994
s. 10(1)(2),
substituted by
No. 27/1997
s. 4.

S. 94(1A)
inserted by
No. 67/2008
s. 43.

S. 94(4)
substituted by
No. 23/2000
s. 3(1).

(1) A Council must appoint a natural person to be its Chief Executive Officer.

(1A) The Council must make a permanent appointment to the position of Chief Executive Officer as soon as is reasonably practicable after a vacancy in the position occurs.

(2) The Chief Executive Officer is a member of Council staff.

(3) A Council may only appoint a person to be its Chief Executive Officer after it has invited applications for the position in a notice in a newspaper circulating generally throughout Victoria and has considered all applications received by it that comply with the conditions specified in the notice.

(4) Subsection (3) does not apply if—

(a) in the 6 months immediately before the person's contract as Chief Executive Officer is due to expire, the Council passes a resolution to reappoint that person as its Chief Executive Officer; and

(b) at least 14 days before the resolution is passed, public notice was given of the intention to put the resolution; and

(c) the public notice contained—

(i) a statement that the passing of the resolution would result in the reappointment of the Chief Executive

Officer without the position being advertised; and

(ii) any other details required by the regulations.

(4A) Subsection (3) also does not apply if a Council appoints a person to act as its Chief Executive Officer for a period of not more than 12 months.

S. 94(4A)
inserted by
No. 23/2000
s. 3(1).

(5) A Council must not remunerate in any way a person who has filled the Chief Executive Officer's position on an acting basis for 12 months for anything the person does in respect of that position after that 12 month period (unless the person is appointed after the Council has complied with subsection (3)).

(6) If a Council passes a resolution to reappoint a person as its Chief Executive Officer without advertising the position, the Council must make details of the person's proposed total remuneration as Chief Executive Officer under the new contract available for public inspection within 14 days after the passing of the resolution.

S. 94(6)
substituted by
No. 23/2000
s. 3(2).

(7) A contract of employment as Chief Executive Officer between a Council and a person is void if it is made—

S. 94(7)
inserted by
No. 23/2000
s. 3(2).

(a) in circumstances that are contrary to this section; or

(b) while a current contract of employment as Chief Executive Officer with the person exists and that current contract is not due to expire for at least another 6 months (regardless of whether or not the Chief Executive Officer's position has been readvertised); or

S. 94(7)(b)
amended by
No. 41/2005
s. 3(1).

S. 94(7)(c)
inserted by
No. 41/2005
s. 3(2).

- (c) before a general election for a term that continues after the general election and the contract of employment was entered into following a variation made to the Chief Executive Officer's then current contract of employment that reduced its term.

S. 94A
inserted by
No. 27/1997
s. 4.

94A Functions of the Chief Executive Officer

- (1) A Chief Executive Officer is responsible for—

S. 94A(1)(a)
amended by
No. 53/2015
s. 9(1)(a).

- (a) establishing and maintaining an appropriate organisational structure for the Council; and

S. 94A(1)(c)
amended by
No. 67/2008
s. 44(1).

- (b) ensuring that the decisions of the Council are implemented without undue delay; and

- (c) the day to day management of the Council's operations in accordance with the Council Plan; and

S. 94A(1)(ca)
inserted by
No. 67/2008
s. 44(2).

- (ca) developing, adopting and disseminating a code of conduct for Council staff; and

S. 94A(1)(d)
amended by
No. 58/2010
s. 21(a).

- (d) providing timely advice to the Council; and

S. 94A(1)(da)
inserted by
No. 53/2015
s. 9(1)(b).

- (da) ensuring that the Council receives timely and reliable advice about its legal obligations under this Act and any other Act; and

S. 94A(1)(db)
inserted by
No. 53/2015
s. 9(1)(b).

- (db) supporting the Mayor in the performance of the Mayor's role as Mayor; and

- (e) carrying out the Council's responsibilities as a deemed employer with respect to Councillors, as deemed workers, which arise under or with respect to the **Accident Compensation Act 1985** or the **Workplace Injury Rehabilitation and Compensation Act 2013**; and

S. 94A(1)(e) inserted by No. 58/2010 s. 21(b), amended by Nos 67/2013 s. 649(Sch. 9 item 22(a)), 53/2015 s. 9(1)(c).

Note

See section 14AA of the **Accident Compensation Act 1985** and clause 15 of Schedule 1 to the **Workplace Injury Rehabilitation and Compensation Act 2013**.

Note to s. 94A(1)(e) amended by No. 67/2013 s. 649(Sch. 9 item 22(b)).

- (f) performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act.

S. 94A(1)(f) inserted by No. 53/2015 s. 9(1)(d).

- (2) The Chief Executive Officer may appoint as many members of Council staff as are required to enable the functions of the Council under this Act or any other Act to be carried out and to enable the Chief Executive Officer to carry out her or his functions.

- (3) The Chief Executive Officer is responsible for appointing, directing, managing and dismissing Council staff and for all other issues that relate to Council staff.

- (3A) The Chief Executive Officer is responsible for managing interactions between Council staff and Councillors including by ensuring that appropriate policies, practices and protocols are in place defining appropriate arrangements for interaction between Council staff and Councillors.

S. 94A(3A) inserted by No. 53/2015 s. 9(2).

- (4) A reference to Council staff in this section does not include a reference to the Chief Executive Officer.

S. 94AB
inserted by
No. 109/2003
s. 69.

94AB Transitional provision relating to senior officers

- (1) This section applies to a member of Council staff who only becomes a senior officer because of—
 - (a) the change to the definition of *senior officer* made by section 68(1) of the **Local Government (Democratic Reform) Act 2003**; or
 - (b) an increase in the total annual remuneration of the member arising out of an entitlement or from a process which applies generally to a class or category of Council staff.
- (2) If this section applies to a member of Council staff—
 - (a) the provisions of this Act, other than sections 94B and 95A, relating to senior officers apply to the member of Council staff from the time that the member becomes a senior officer; and
 - (b) sections 94B and 95A do not apply to the member of Council staff unless—
 - (i) a substantial change is proposed to the duties of the member's current position; or
 - (ii) an increase to the total annual remuneration of the member is proposed which does not arise out of an entitlement or from a process which applies generally to a class or category of Council staff.

S. 94B
inserted by
No. 27/1997
s. 4.

94B Restrictions concerning the appointment of senior officers

- (1) A Chief Executive Officer may only appoint a person to be a senior officer after she or he has invited applications for the position in a notice in a newspaper circulating generally throughout

Victoria and has considered all applications received by her or him that comply with the conditions specified in the notice.

- (2) Subsection (1) does not apply if a Chief Executive Officer appoints a person to fill a senior officer's position on an acting basis for a period of not more than 12 months.
- (3) A Chief Executive Officer must ensure that a person who has filled a senior officer's position on an acting basis for 12 months is not remunerated in any way for anything the person does in respect of that position after that 12 month period (unless the person is appointed after the Chief Executive Officer has complied with subsection (1)).

94C Employment principles

A Council must establish employment processes that will ensure that—

- (a) employment decisions are based on merit;
- (b) employees are treated fairly and reasonably;
- (c) equal employment opportunity is provided;
- (d) employees have a reasonable avenue of redress against unfair or unreasonable treatment.

S. 94C
inserted by
No. 109/2003
s. 67.

94D Duty of Chief Executive Officer

The Chief Executive Officer must give Council staff an opportunity to apply for any vacant permanent full-time Council staff position that the Chief Executive Officer intends to fill.

S. 94D
inserted by
No. 109/2003
s. 67.

95 Conduct principles

- (1) Council staff must in the course of their employment—
 - (a) act impartially;

S. 95
amended by
No. 27/1997
s. 5(1),
substituted by
No. 109/2003
s. 67.

S. 95(1)(b)
amended by
No. 67/2008
s. 45.

- (b) act with integrity including avoiding conflicts of interest;
- (c) accept accountability for results;
- (d) provide responsive service.
- (2) Nothing in subsection (1)(c) affects the granting of an indemnity to a member of Council staff in respect of any liability or limits the effect of—
 - (a) any such indemnity, whether granted before or after the commencement of section 67 of the **Local Government (Democratic Reform) Act 2003**; or
 - (b) any immunity conferred on a member of Council staff by or under any Act, whether before or after that commencement.

S. 95AA
inserted by
No. 67/2008
s. 46.

95AA Code of conduct for Council staff

- (1) A Chief Executive Officer must develop and implement a code of conduct for Council staff.
- (2) A code of conduct for Council staff must include any matters which are prescribed for the purposes of this section.
- (3) The Chief Executive Officer must ensure that members of Council staff have access to the code of conduct for Council staff.

S. 95A
inserted by
No. 125/1993
s. 7(1).

95A Employment of senior officers to be regulated by contract

S. 95A(1)
amended by
No. 27/1997
s. 5(2)(a).

- (1) A senior officer may only be employed under a contract.

(2) The contract must—

(a) specify performance criteria for the purpose of reviews of the senior officer's performance; and

(b) specify the date on which it expires, which must be a date that is not more than 5 years after the date on which it commences; and

S. 95A(2)(b) amended by Nos 99/1994 s. 11(1), 67/2008 s. 47.

(c) include any other matter that is required by the regulations.

(3) On the expiry of a senior officer's contract, the senior officer may be invited to enter into a new contract.

S. 95A(3) substituted by No. 27/1997 s. 5(3).

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S. 95A(3A) inserted by No. 99/1994 s. 11(2), amended by No. 27/1997 s. 5(2)(b), repealed by No. 23/2000 s. 3(3).

(4) Any contract of employment between—

(a) a Council and a Chief Executive Officer; or

(b) a Chief Executive Officer and a senior officer—

S. 95A(4) substituted by No. 27/1997 s. 5(4).

that does not comply with subsection (2) is void.

(5) This section does not apply to work performed by a person filling a position on an acting basis for a period of not more than 12 months.

S. 95A(5) amended by No. 99/1994 s. 11(3).

(6) For the purposes of this section, if a contract contains an option for renewal, the expiry date of the contract is the date on which the last option period ends.

S. 95B
inserted by
No. 125/1993
s. 7(1),
substituted by
No. 27/1997
s. 6.

95B Powers of the Minister concerning the employment of senior officers

- (1) The Minister may, by notice published in the Government Gazette, exempt a Council or a Chief Executive Officer from complying with section 95A.
- (2) If the Minister does this, section 95A does not apply to the Council or Chief Executive Officer until the Minister revokes the notice by a further notice published in the Government Gazette.
- (3) The Minister may also, by notice published in the Government Gazette, for a period specified in the notice, forbid—
 - (a) a Council from employing a new Chief Executive Officer, or entering into a new contract with an existing Chief Executive Officer, or entering into a contract with a Chief Executive Officer that expires after a specified period or date;
 - (b) a Chief Executive Officer from employing new senior officers, or entering into new contracts with existing senior officers, or entering into any contracts with senior officers that expire after a specified period or date.
- (4) A Council must comply with a notice under subsection (3)(a).
- (5) A Chief Executive Officer must comply with a notice under subsection (3)(b).
- (6) If a Council or Chief Executive Officer is forbidden to fill a vacancy by a notice, it or she or he may only employ a person on an acting basis to perform the functions assigned to the vacant position.

- (7) Any contract entered into by a Council or Chief Executive Officer in contravention of a notice under subsection (3) is void.

95C Validity of decisions

Anything done by a person purporting to act as a Chief Executive Officer, or as a senior officer, is not invalid merely because that person's contract of employment as a Chief Executive Officer, or senior officer, was void at the time the thing was done.

S. 95C
inserted by
No. 23/2000
s. 4.

96 Equal Employment Opportunity

Schedule 6 has effect with respect to equal employment opportunity in Councils.

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S. 97
repealed by
No. 125/1993
s. 8, new s. 97
inserted by
No. 125/1993
s. 9,
repealed by
No. 27/1997
s. 7.

97A Performance of senior officers to be assessed annually

- (1) At least once each year a Council must review the performance of its Chief Executive Officer.
- (2) At least once each year the Chief Executive Officer must review the performance of every other senior officer.

S. 97A
inserted by
No. 125/1993
s. 9.

97B Definition of *senior officer* remuneration threshold

- (1) If a review conducted by the Minister under section 73B results in a finding that Councillor and Mayoral allowances should be increased by the adjustment factor within the meaning of that section, for the purposes of paragraph (c) of the

S. 97B
inserted by
No. 125/1993
s. 9,
repealed by
No. 64/2009
s. 51, new
s. 97B
inserted by
No. 58/2010
s. 22.

definition of *senior officer*, the Minister must determine a higher threshold amount by—

- (a) applying the adjustment factor specified by the Minister under section 73B to—
 - (i) if the review conducted under section 73B is the first review to be conducted after the commencement of section 22 of the **Local Government and Planning Legislation Amendment Act 2010**—\$124 000 and then rounding that amount to the nearest \$1000; or
 - (ii) if the review is a subsequent review—the higher threshold amount determined by the Minister under this section after the last review and rounding that amount to the nearest \$1000.
- (2) After a review by the Minister is conducted under section 73B and the Minister has applied the adjustment factor determined under that section as required under this section, the Minister must, by notice published in the Government Gazette specify the higher threshold amount for the purposes of paragraph (c) of the definition of *senior officer* as determined under subsection (1).

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S. 97C
inserted by
No. 27/1997
s. 8,
amended by
No. 76/1997
s. 24(a),
repealed by
No. 109/2003
s. 68(2).

98 Delegations

- (1) A Council may by instrument of delegation delegate to a member of its staff any power, duty or function of a Council under this Act or any other Act other than—
- (a) this power of delegation; and
 - (b) the power to declare a rate or charge; and
 - (c) the power to borrow money; and
 - (d) the power to approve any expenditure not contained in a budget approved by the Council; and
 - (e) any power, duty or function of the Council under section 223; and
 - (f) any prescribed power.
- (2) The Chief Executive Officer may by instrument of delegation delegate to a member of the Council staff any power, duty or function of his or her office other than this power of delegation unless subsection (3) applies.
- (3) The instrument of delegation to the Chief Executive Officer may empower the Chief Executive Officer to delegate a power, duty or function of the Council other than the power of delegation to a member of the Council staff.
- (4) The Council must keep a register of delegations to members of Council staff.
- (5) A delegation under this section to a member of Council staff may be made to—
- (a) a person named in the delegation; or

S. 98(1)(c)
amended by
No. 109/2003
s. 70(1).

S. 98(2)
amended by
No. 125/1993
s. 14(k).

S. 98(3)
amended by
No. 67/2008
s. 48.

S. 98(5)
inserted by
No. 109/2003
s. 70(2).

(b) the holder of an office or position specified in the delegation.

S. 98(6)
inserted by
No. 109/2003
s. 70(2).

(6) A Council must review within the period of 12 months after a general election all delegations which are in force and have been made by the Council under subsection (1).

S. 99
repealed by
No. 109/2003
s. 68(2).

* * * *

S. 100
repealed by
No. 125/1993
s. 10(1).

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101 Long service leave

(1) A Council must implement appropriate long service leave arrangements for Council staff in accordance with the regulations.

S. 101(2)
repealed by
No. 63/2012
s. 17.

* * * *

S. 102
amended by
Nos 13/1990
s. 13(a),
22/1992
ss 4(1), 7(2)(a),
repealed by
No. 125/1993
s. 11(1),
new s. 102
inserted by
No. 125/1993
s. 12.

102 Restriction concerning the employment of ex-councillors

- (1) A Council must not appoint to its staff any person who has been a Councillor of the Council within 2 years after he or she ceases to hold that office.
- (2) Any appointment that contravenes this section is void.

Division 4—Complaints

Pt 4 Div. 4
(Heading)
inserted by
No. 63/2012
s. 18.

103 Purpose of this Division

The purpose of this Division is to ensure proper oversight of processes used by a Council in dealing with a complaint about the conduct of the Chief Executive Officer.

S. 103
amended by
Nos 13/1990
s. 13(b),
78/1991
s. 13(b),
22/1992
ss 4(1), 7(2)(a),
repealed by
No. 125/1993
s. 11(1),
new s. 103
inserted by
No. 63/2012
s. 18.

104 Definitions

In this Division—

complaint means—

- (a) a written complaint by the complainant to the Council about the conduct of the Chief Executive Officer; or
- (b) a written complaint by the complainant about the conduct of the Chief Executive Officer to a person or body authorised under any Act to consider conduct of that kind; or
- (c) an application to a court or tribunal by the complainant to initiate any proceedings in respect of the conduct of the Chief Executive Officer—

but does not include a written complaint that is frivolous or vexatious;

complainant means a person referred to in paragraph (a), (b) or (c) of the definition of *conduct*;

S. 104
repealed by
No. 125/1993
s. 11(1),
new s. 104
inserted by
No. 63/2012
s. 18.

conduct means any action or behaviour of the Chief Executive Officer of a Council involving bullying, victimisation or harassment, including sexual harassment, of—

- (a) a Councillor of that Council; or
- (b) a member of Council staff of that Council; or
- (c) any other person in the course of the Chief Executive Officer performing his or her role as the Chief Executive Officer of that Council;

probity means the integrity of processes used by the Council in dealing with a complaint, including processes to ensure that so far as it is reasonably practicable and within the responsibility of the Council—

- (a) any relevant statutory procedures have been complied with;
- (b) any order made by a court or tribunal in any proceedings relating to the complaint has been given effect to;
- (c) natural justice has been afforded;
- (d) the privacy of personal information has been protected;
- (e) confidentiality under section 77 has been maintained;

probity auditor means a person appointed by the Secretary under section 107.

105 Chief Executive Officer must advise of complaint

If the Chief Executive Officer becomes aware of a complaint, the Chief Executive Officer must—

- (a) immediately advise the Mayor about the complaint; and
- (b) at the next meeting of the Council, advise the Council about the complaint when the meeting is closed to members of the public.

S. 105
repealed by
No. 125/1993
s. 11(1),
new s. 105
inserted by
No. 63/2012
s. 18.

106 Request to appoint a probity auditor

- (1) The Chief Executive Officer may, at any time after complying with section 105(a), request the Secretary to appoint a probity auditor in relation to the complaint.
- (2) If the Chief Executive Officer makes a request under subsection (1), the Chief Executive Officer must immediately advise the Mayor that he or she has done so.
- (3) If the Mayor has not received any advice under subsection (2), the Mayor may request the Secretary to appoint a probity auditor in relation to the complaint.

S. 106
repealed by
No. 125/1993
s. 11(1),
new s. 106
inserted by
No. 63/2012
s. 18.

107 Secretary may appoint a probity auditor

- (1) If after receiving a request under section 106 in relation to a complaint, the Secretary considers that the appointment of a probity auditor could assist in ensuring probity in dealing with the complaint, the Secretary may appoint a person whom the Secretary considers has suitable qualifications to be a probity auditor in relation to that complaint.
- (2) If the Secretary appoints a probity auditor, the Secretary must immediately advise the Mayor and the Chief Executive Officer about the appointment.

S. 107
repealed by
No. 125/1993
s. 11(1),
new s. 107
inserted by
No. 63/2012
s. 18.

- (3) If the Chief Executive Officer is advised that a probity auditor has been appointed, the Chief Executive Officer must, at the next meeting of the Council, advise the Council about the appointment when the meeting is closed to members of the public.

S. 108
repealed by
No. 125/1993
s. 11(1),
new s. 108
inserted by
No. 63/2012
s. 18.

108 Duties and powers of probity auditor

- (1) The primary duty of a probity auditor is to assist the Council to ensure probity in dealing with the complaint and to provide a written report in accordance with section 109 when the probity audit is concluded.
- (2) The probity auditor may provide the Council with advice on probity matters in dealing with the complaint if the probity auditor considers that the advice could assist the Council.
- (3) The probity auditor may require a Councillor or a member of Council staff to produce a document, provide information or give reasonable assistance if the probity auditor considers that it will assist the probity auditor to perform his or her duties.
- (4) If a Councillor or a member of Council staff unreasonably refuses to comply with a requirement under subsection (3), the probity auditor must report the failure to the Council, the Mayor, the Chief Executive Officer and the Secretary.

S. 109
repealed by
No. 125/1993
s. 11(1),
new s. 109
inserted by
No. 63/2012
s. 18.

109 Report by probity auditor

- (1) After the conclusion of the probity audit, the probity auditor must prepare a written report—
- (a) describing the processes used by the Council in dealing with the complaint;
- (b) containing a summary of the activities undertaken by the probity auditor in the course of conducting the probity audit;

- (c) including a statement of opinion by the probity auditor as to whether or not the Council has observed due probity in dealing with the complaint.
- (2) The probity auditor may specify that all or part of the probity report is, and must continue to be, confidential information for the purposes of section 77 as if—
 - (a) it had been designated as confidential information in accordance with section 77(2)(c); and
 - (b) section 77(2) and (3) did not otherwise apply.
- (3) The probity auditor must provide a copy of the report to the Council, the Mayor, the Chief Executive Officer and the Secretary.

110 Provisions applying to probity auditor

- (1) A probity auditor is not, in respect of his or her office as a probity auditor, subject to the **Public Administration Act 2004**.
- (2) A probity auditor is entitled to be paid by the Council the amounts, and on the terms, fixed by the Secretary.
- (3) A probity auditor is not personally liable for anything done or omitted to be done in good faith—
 - (a) in the performance of a duty or the exercise of a power under this Division; or
 - (b) in the reasonable belief that the act or omission was in the performance of a duty or the exercise of a power under this Division.
- (4) Any liability resulting from an act or omission that would, but for subsection (3), attach to a probity auditor attaches instead to the Council.

S. 110
repealed by
No. 125/1993
s. 11(1),
new s. 110
inserted by
No. 63/2012
s. 18.

Part 5—Local laws

111 Power to make local laws

- (1) A Council may make local laws for or with respect to any act, matter or thing in respect of which the Council has a function or power under this or any other Act.
- (2) A local law must not be inconsistent with any Act or regulation.
- (3) A local law is inoperative to the extent that it is inconsistent with any Act or regulation.
- (4) If a planning scheme is in force in the municipal district of a Council, the Council must not make a local law which duplicates or is inconsistent with the planning scheme.

S. 111(4A)
inserted by
No. 58/2010
s. 23.

- (4A) A local law is inoperative to the extent that it is inconsistent with a planning scheme that is in force in the municipal district of a Council.

S. 111(4B)
inserted by
No. 51/2014
s. 9(Sch. 2
item 8.3).

- (4B) A local law for or with respect to the issuing of film permits must not be inconsistent with the film friendly principles.

S. 111(4C)
inserted by
No. 51/2014
s. 9(Sch. 2
item 8.3).

- (4C) A local law for or with respect to the issuing of film permits is inoperative to the extent that it is inconsistent with the film friendly principles.

S. 111(5)
inserted by
No. 64/2009
s. 52.

- (5) A Council must have regard to any guidelines made by the Minister under section 111A when making local laws.

S. 111(6)
inserted by
No. 64/2009
s. 52.

- (6) A Council must comply with any prescribed details relating to the preparation and content of local laws when making local laws.

111A Guidelines

- (1) The Minister may make guidelines for or with respect to—
 - (a) the preparation, content and format of local laws; and
 - (b) the details to be set out in any explanatory documents prepared in relation to proposed local laws.
- (2) The Minister must cause the guidelines to be published in the Government Gazette.
- (3) The guidelines take effect on the date of publication in the Government Gazette or such later date as is specified in the guidelines.
- (4) A Council may disregard any guidelines that are inconsistent with the Regulations.

S. 111A
inserted by
No. 38/1996
s. 13,
repealed by
No. 2/2008
s. 57,
new s. 111A
inserted by
No. 64/2009
s. 53.

112 Incorporation by reference

- (1) A local law may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—
 - (a) wholly or partially or as amended by the local law; or
 - (b) as formulated, issued, prescribed or published at the time the local law is made or at any time before then; or
 - (c) as formulated, issued, prescribed or published from time to time.
- (2) If a local law has applied, adopted or incorporated any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published from time to time and that document, code, standard, rule, specification or method is at any time

amended, until the Council causes notice to be published in the Government Gazette of that amendment, the document, code, standard, rule, specification or method is to be taken to have not been so amended.

113 Permits, licences, fees and charges

- (1) A local law may—
 - (a) provide that a Council may by resolution determine a fee, charge, fare or rent in relation to any property, undertaking, goods, service or other act, matter or thing; and
 - (b) prescribe, regulate or determine the purposes for which and the conditions on which a Council may—
 - (i) grant a permit, licence, authority or registration; or
 - (ii) perform or supply a service; or
 - (iii) supply any goods or information; and
 - (c) prescribe the manner in which an application may be made for a permit, licence, authority or registration; and
 - (d) prescribe the fee which is payable for the granting, renewal or transfer of a permit, licence, authority or registration.
- (2) The power to make a local law imposing fees may be exercised by providing for all or any of the following matters—
 - (a) specific fees;
 - (b) maximum or minimum fees;
 - (c) maximum and minimum fees;
 - (d) scales of fees according to the value of goods or services provided for the fees or the project being assessed;

- (e) the payment of fees either generally or under specified conditions or in specified circumstances;
 - (f) the reduction, waiver or refund, in whole or in part, of the fees.
- (3) If a local law provides for a reduction, waiver or refund, in whole or in part, of a fee, the reduction, waiver or refund may be expressed to apply—
- (a) subject to specified conditions or in the discretion of any specified person or body; and
 - (b) either generally or specifically—
 - (i) in respect of certain matters or transactions or classes of matters or transactions; or
 - (ii) in respect of certain documents or classes of documents; or
 - (iii) when an event happens; or
 - (iv) in respect of certain persons or classes of persons; or
 - (v) in respect of any combination of matters, transactions, documents, events or persons.

114 Delegations

A local law may—

- (a) confer a discretionary authority or impose a duty on a specified person or body or a specified class of persons and bodies; and
- (b) leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by the Council; and

S. 114(c)
amended by
No. 58/2010
s. 24.

(c) delegate to a member of the Council staff the power to—

(i) sign, seal, issue, revoke or cancel any notice, order or agreement on behalf of the Council; and

(ii) sign any document on behalf of the Council; and

S. 114(c)(iii)
amended by
No. 125/1993
s. 26(1)(a).

(iii) do any act, matter or thing necessary or incidental to the performance or exercise of any function or power by the Council.

S. 114(d)
repealed by
No. 125/1993
s. 26(1)(b).

* * * * *

115 Penalties

(1) A local law may—

(a) prescribe a penalty not exceeding 20 penalty units for a contravention of a local law; and

S. 115(1)(b)
amended by
No. 64/2009
s. 54.

(b) prescribe a penalty not exceeding 2 penalty units for each day after a finding of guilt or conviction for an offence during which the contravention continues; and

(c) prescribe higher penalties (not exceeding 20 penalty units) for a subsequent offence.

(2) If a local law does not expressly prescribe a penalty for a contravention of the local law the court before which proceedings are brought may impose a penalty not exceeding 10 penalty units.

116 Application of local law

A local law may be expressed so as to do any or all or a combination of the following—

(a) apply at all times or at a specified time;

- (b) apply throughout the whole of the municipal district or in a specified part of the municipal district;
- (c) apply to all cases or to all cases subject to specified exceptions or to any specified case or class of case;
- (d) make provision for all cases or different provision for different cases or classes of case or different provisions for the same case or class of case for different purposes;
- (e) require a matter to be in accordance with a specified standard or specified requirement or approved by or to the satisfaction of a specified person or body or a specified class of persons or bodies;
- (f) provide in a specified case or class of case for the exception of persons or things or a class of persons or things from the local law, whether unconditionally or on specified conditions and either wholly or to the extent specified.

117 Infringement notices

- (1) A local law may provide for a person to be served with an infringement notice specifying a fixed penalty for an offence against the local law as an alternative to a prosecution for the offence.
- (1A) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.
- (2) The local law must specify—
 - (a) the amount of the fixed penalty; and

S. 117(1A)
inserted by
No. 32/2006
s. 94(Sch.
item 30(4)).

S. 117(2)(b)
amended by
No. 29/2011
s. 3(Sch. 1
item 55.1).

(b) the person or class of persons who may issue
a notice of infringement.

S. 117(2)
(c)(d)(3)
repealed by
No. 32/2006
s. 94(Sch.
item 30(5)).

* * * *

118 Local law is a subordinate instrument

A local law is a subordinate instrument for the
purposes of the **Interpretation of Legislation
Act 1984**.

119 Procedure for making a local law

- (1) Before a Council makes a local law it must
comply with the following procedure.
- (2) The Council must give a notice in the Government
Gazette and a public notice stating—
 - (a) the purpose and general purport of the
proposed local law; and
 - (b) that a copy of the proposed local law and any
explanatory document can be obtained from
the Council office; and
 - (c) that any person affected by the proposed
local law may make a submission relating to
the proposed local law under section 223.

S. 119(2)(b)
amended by
No. 64/2009
s. 55(1).

S. 119(2A)
inserted by
No. 64/2009
s. 55(2).

- (2A) The Council must ensure that—
 - (a) a copy of the proposed local law; and
 - (b) an explanatory document setting out
prescribed details in relation to the local
law—

is available for inspection at, and obtainable from,
the Council office during ordinary business hours.

- (3) After a local law has been made the Council must give a notice in the Government Gazette and a public notice specifying—
 - (a) the title of the local law; and
 - (b) the purpose and general purport of the local law; and
 - (c) that a copy of the local law may be inspected at the Council office.
- (4) After a local law has been made the Council must send a copy to the Minister.

120 Availability of local laws

- (1) A Council must print copies of every local law which is in force in its municipal district.
- (2) A Council must ensure that a copy of every local law—
 - (a) is available for inspection at the Council office during the Council office's office hours; and
 - (b) can be purchased on demand at the Council office during the Council office's office hours.

Note

See also the publication requirements under section 82A(2)(b).

**Note to
s. 120(2)
inserted by
No. 64/2009
s. 56.**

- (3) A Council must ensure that a copy of every document incorporated by a local law under section 112 is available for inspection at the Council office during the Council office's office hours.

- (4) Even though a local law has come into operation—
- (a) a person cannot be convicted of an offence against the local law if it is proved that at the time of the alleged offence a copy of the local law could not be purchased or inspected at the Council office during the Council office's office hours; and
 - (b) a person cannot be prejudicially affected or made subject to any liability by the local law if it is proved that at the relevant time a copy of the local law could not be purchased or inspected at the Council office during the Council office's office hours.

121 Commencement of local laws

- (1) A local law or a provision of a local law comes into operation at the beginning of the day on which the local law is made or at the beginning of such later day as is expressed in the local law as the day on which the local law or provision comes into operation.
- (2) Even though a local law has come into operation—
- (a) a person cannot be convicted of an offence against the local law if it is proved that at the time of the alleged offence the Council had not complied with section 119(3) or 120(1) unless it is proved that at that time reasonable steps had been taken for the purpose of bringing the general purport of the local law to the notice of the public or of persons likely to be affected by it or of the person charged; and

- (b) a person cannot be prejudicially affected or made subject to any liability by the local law if it is proved that at the relevant time the Council had not complied with section 119(3) or 120(1) unless it is proved that at that time reasonable steps had been taken for the purpose of bringing the purport of the local law to the notice of the public or of persons likely to be affected by it or of the person concerned.

122 Sunset provision

- (1) Unless sooner revoked, a local law is by this section revoked on the day which is 10 years after the day which is the earliest day on which any provision of the local law came into operation.
- (2) If a local law has been amended, subsection (1) applies to the local law as amended from time to time and not to any of the amending local laws.
- (3) If a local law is revoked by this section any local law amending that local law is also revoked.

123 Revocation by Governor in Council

- (1) A local law may be revoked in whole or part by the Governor in Council by an Order in Council on the recommendation of the Minister.
- (2) In deciding whether to recommend that a local law be revoked, the Minister must consider—
 - (a) whether there is a substantial breach of any of the matters specified in Schedule 8; and
 - (b) whether the contents of the local law would be more appropriately contained in a planning scheme; and
 - (c) any other matter the Minister considers to be appropriate.

S. 123(3)
inserted by
No. 54/1998
s. 20(2).

- (3) If the Minister is of the opinion that a local law substantially breaches clause 2(j) of Schedule 8, she or he must not recommend that the local law be revoked unless she or he has consulted the Council that made the local law about the possible breach.

S. 123(4)
inserted by
No. 54/1998
s. 20(2).

- (4) The Minister must not, before 1 July 1999, recommend that a local law made before 1 July 1997 be revoked on the grounds that it substantially breaches clause 2(j) of Schedule 8.

124 Validity of local law

A person may dispute the validity of a local law under section 103 of the **Supreme Court Act 1986** as if a local law were a by-law.

Part 6—Planning and accountability reports

Pt 6
(Heading and
ss 125–134)
amended by
Nos 13/1990
ss 14, 15,
22/1992
ss 4(2), 5(1)(2),
6, 7(1)(2)(b),
125/1993
s. 14(l),
40/1994 s. 5,
99/1994 s. 15,
33/1995
ss 4(2)(b)–
(d)(3), 5,
34/1996
ss 5–8, 29,
27/1997 s. 25,
76/1997 s. 15,
93/1997
s. 28(Sch.
item 18),
46/1998
s. 7(Sch. 1),
52/1998
s. 311(Sch. 1
item 55.3),
53/1999
s. 26(Sch.
item 15),
59/1999
s. 5(b),
substituted as
Pt 6
(Heading and
ss 125–135)
by No.
109/2003 s. 71.

125 Council Plan

S. 125
substituted by
No. 109/2003
s. 71.

- (1) A Council must prepare and approve a Council Plan within the period of 6 months after each general election or by the next 30 June, whichever is later.
- (2) A Council Plan must include—
 - (a) the strategic objectives of the Council;

S. 125(1)
substituted by
No. 67/2008
s. 49(1).

S. 125(3A)
inserted by
No. 5/2014
s. 6(1).

- (b) strategies for achieving the objectives for at least the next 4 years;
 - (c) strategic indicators for monitoring the achievement of the objectives;
 - (d) a Strategic Resource Plan containing the matters specified in section 126;
 - (e) any other matters which are prescribed by the regulations.
- (3) A person has a right to make a submission under section 223 on the proposed Council Plan.
- (3A) For the purposes of subsection (3), the Council must ensure that, for at least 28 days after the public notice is published under section 223(1)(a)—
- (a) a copy of the proposed Council Plan is available for inspection by the public at—
 - (i) the Council office and any district offices; and
 - (ii) any other place required by the regulations; and
 - (b) the proposed Council Plan is published on the Council's Internet website.
- (4) The Minister may extend the period within which a Council must comply with subsection (1).
- (5) A Council must submit a copy of the Council Plan to the Minister by the date specified in subsection (1) or applying under subsection (4).
- (6) If a Council fails to submit a Council Plan to the Minister within the time allowed, the Secretary must ensure that details of the failure are published in the annual report of the Department.

S. 125(6)
amended by
No. 67/2008
s. 49(2).

- (7) At least once in each financial year, a Council must consider whether the current Council Plan requires any adjustment in respect of the remaining period of the Council Plan.
- (8) Subject to subsections (9) and (10), a Council may make any adjustment it considers necessary to the Council Plan.
- (9) A person has a right to make a submission under section 223 on a proposed adjustment to a Council Plan which relates to a matter specified under subsection (2)(a), (2)(b) or (2)(c).
- (10) If a Council makes an adjustment to the Council Plan, the Council must within 30 days of making the adjustment advise the Minister of the details of the adjustment to the Council Plan.
- (11) A copy of the current Council Plan must be available for inspection by the public at—
 - (a) the Council office and any district offices; and
 - (b) any other place required by the regulations.

Note

In addition, a Council must ensure that the current Council Plan is published on the Council's Internet website (see section 82A(2)(ab)(i)).

S. 125(9)
substituted by
No. 67/2008
s. 49(3).

Note to
s. 125(11)
inserted by
No. 5/2014
s. 6(2).

126 Strategic Resource Plan

- (1) The Strategic Resource Plan is a resource plan of the resources required to achieve the strategic objectives.
- (2) The Strategic Resource Plan must include in respect of at least the next 4 financial years—
 - (a) financial statements describing the required financial resources in the form and containing the information required by the regulations;

S. 126
substituted by
No. 109/2003
s. 71.

S. 126(2)(a)
amended by
No. 5/2014
s. 7(1).

S. 126(2)(b)
amended by
No. 5/2014
s. 7(2).

(b) statements describing the required non-financial resources, including human resources, in the form and containing the information required by the regulations.

S. 126(2A)
inserted by
No. 5/2014
s. 7(3).

(2A) Without limiting subsection (1), the Strategic Resource Plan must take into account services and initiatives contained in any plan adopted by the Council (so far as the plan relates to the period covered by the Strategic Resource Plan).

S. 126(2B)
inserted by
No. 5/2014
s. 7(3).

(2B) A Council that proposes to adopt a plan to provide services or take initiatives must ensure that the resources required for the plan are consistent with the Strategic Resource Plan (so far as the plan relates to the period covered by the Strategic Resource Plan).

(3) A Council must—

(a) review the Strategic Resource Plan during the preparation of the Council Plan; and

(b) adopt the Strategic Resource Plan not later than 30 June each year, or such other date fixed by the Minister by notice published in the Government Gazette.

S. 126(3)(b)
amended by
No. 65/2015
s. 4.

(4) A copy of the current Strategic Resource Plan must be available for inspection by the public at—

(a) the Council office and any district offices;
and

(b) any other place required by the regulations.

Note to
s. 126(4)
inserted by
No. 5/2014
s. 7(4).

Note

In addition, a Council must ensure that the current Strategic Resource Plan is published on the Council's Internet website (see section 82A(2)(ab)(ii)).

S. 127
substituted by
No. 109/2003
s. 71.

127 Council must prepare a budget

(1) A Council must prepare a budget for each financial year.

(2) The Council must ensure that the budget contains—

- | | |
|---|---|
| (a) financial statements in the form and containing the information required by the regulations; | S. 127(2)(a) substituted by No. 5/2014 s. 8(1). |
| (b) a description of the services and initiatives to be funded in the budget; | S. 127(2)(b) amended by No. 5/2014 s. 8(2). |
| (c) a statement as to how the services and initiatives described under paragraph (b) will contribute to achieving the strategic objectives specified in the Council Plan; | S. 127(2)(c) amended by No. 5/2014 s. 8(2). |
| (d) Major Initiatives, being initiatives identified by the Council as priorities, to be undertaken during the financial year; | S. 127(2)(d) substituted by No. 5/2014 s. 8(3). |
| (da) for services to be funded in the budget, the prescribed indicators of service performance that are required to be reported against in the performance statement under section 131; | S. 127(2)(da) inserted by No. 5/2014 s. 8(3). |
| (db) the prescribed measures relating to those indicators; | S. 127(2)(db) inserted by No. 5/2014 s. 8(3). |
| (e) any other information required by the regulations. | S. 127(2)(e) amended by No. 5/2014 s. 8(4). |

(3) The Council must ensure that the budget also contains—

- | | |
|--|---|
| (a) the information the Council is required to declare under section 158(1); | |
| (b) if the Council intends to declare a differential rate under section 161, the information listed in section 161(2); | S. 127(3)(b) amended by No. 5/2014 s. 8(4). |

S. 127(3)(c)
amended by
No. 5/2014
s. 8(4).

- (c) if the Council intends to declare a differential rate under section 161A, the information listed in section 161(2).

S. 127(4)
inserted by
No. 65/2015
s. 5.

- (4) The Council must ensure that, if applicable, the budget also contains a statement—
 - (a) that the Council intends to apply for a special Order to increase the Council's average rate cap for the financial year under section 185E; or
 - (b) that the Council has made an application to the Essential Services Commission for a special Order under section 185E and is waiting for the outcome of the application; or
 - (c) that a special Order has been made in respect of the Council and a higher cap applies for the financial year.

S. 128
substituted by
No. 109/2003
s. 71.

128 Revised budget

- (1) A Council must prepare a revised budget if circumstances arise which cause a material change in the budget and which affects the financial operations and position of the Council.
- (2) The Council must ensure that a revised budget is prepared as soon as is practicable after the Council becomes aware of the change in the budget.
- (3) The Council must ensure that a revised budget contains all the information required by the regulations.

S. 128(3)
amended by
No. 5/2014
s. 9.

129 Public notice

S. 129
substituted by
No. 109/2003
s. 71,
amended by
No. 63/2012
s. 19,
substituted by
No. 5/2014
s. 10.

- (1) As soon as practicable after a Council has prepared a proposed budget or revised budget, the Council must give public notice.
- (2) A person has a right to make a submission under section 223 on any proposal contained in the proposed budget or revised budget.
- (3) In addition to any other requirements specified by this Act, the notice referred to in subsection (1) must—
 - (a) contain any information required by the regulations; and
 - (b) advise that copies of the proposed budget or revised budget are available for inspection for at least 28 days after the publication of the notice at—
 - (i) the Council office and any district offices; and
 - (ii) any other place required by the regulations; and
 - (c) advise that the proposed budget or revised budget is published on the Council's Internet website for at least 28 days after the publication of the notice.
- (4) A copy of the proposed budget or revised budget must be available and published as set out in subsection (3)(b) and (c).

S. 129(5)
inserted by
No. 65/2015
s. 6.

- (5) In this section, *proposed budget* includes—
- (a) a budget that is prepared on the basis of the application of an average rate cap fixed by general Order or a proposed higher cap subject to an application under section 185E; and
 - (b) a budget that is prepared on the basis of both the application of an average rate cap fixed by general Order and a proposed higher cap subject to an application under section 185E.

S. 130
substituted by
No. 109/2003
s. 71.

130 Adoption of budget or revised budget

- (1) A Council may adopt a budget or revised budget if it has complied with all of the relevant requirements of this Act relating to budgets and revised budgets.
- (2) The Council must give public notice of its decision under subsection (1).
- (3) The Council must adopt the budget by 30 June each year, or such other date fixed by the Minister by notice published in the Government Gazette.

S. 130(3)
amended by
Nos 5/2014
s. 11(1),
65/2015 s. 7.

S. 130(4)
substituted by
No. 5/2014
s. 11(2).

- (4) The Council must submit a copy of the budget or revised budget to the Minister within 28 days after adopting the budget under subsection (3) or adopting the revised budget under subsection (1).
- (5) The Minister may extend the period within which a Council must comply with subsection (4).

S. 130(6)
amended by
Nos 67/2008
s. 50, 5/2014
s. 11(3).

- (6) If a Council fails to submit a copy of the budget or revised budget to the Minister within the time allowed, the Secretary must ensure that details of the failure are published in the annual report of the Department.

- (7) A Council must give the Minister any information concerning its budget or revised budget that the Minister requests. **S. 130(7) amended by No. 5/2014 s. 11(4).**
- (8) A Council must comply with subsection (7)—
- (a) within 14 days of receiving a request in writing for the information from the Minister; or **S. 130(8)(a) amended by No. 5/2014 s. 11(4).**
 - (b) within any longer period specified by the Minister in the request.
- (9) A copy of the budget or revised budget must be available for inspection by the public at—
- (a) the Council office and any district offices; and
 - (b) any other place required by the regulations.

Note

In addition, a Council must ensure that the current budget or revised budget is published on the Council's Internet website (see section 82A(2)(ab)(iii)).

Note to s. 130(9) inserted by No. 5/2014 s. 11(5).

131 Annual report—contents

- (1) A Council must prepare an annual report in respect of each financial year.
- (2) An annual report must contain the following, in respect of the financial year reported on—
- (a) a report of operations of the Council;
 - (b) an audited performance statement;
 - (c) audited financial statements;
 - (d) a copy of the auditor's report on the performance statement, prepared under section 132;

S. 131 substituted by No. 109/2003 s. 71, amended by No. 67/2008 s. 51, substituted by No. 5/2014 s. 12.

- (e) a copy of the auditor's report on the financial statements under Part 3 of the **Audit Act 1994**;
 - (f) any other matter required by the regulations.
- (3) The report of operations of the Council must—
- (a) contain the following—
 - (i) a statement of progress in relation to the Major Initiatives identified in the budget or revised budget for the financial year reported on;
 - (ii) the results, in the prescribed form, of the Council's assessment against the prescribed governance and management checklist;
 - (iii) all prescribed indicators of service performance for the services provided by the Council during that financial year and the prescribed measures relating to those indicators;
 - (iv) results achieved for that financial year in relation to the performance indicators and measures referred to in subparagraph (iii);
 - (v) any other information required by the regulations;
 - (vi) any other information determined by the Council to be appropriate; and
 - (b) be in the form determined by the Council.

- (4) The performance statement in the annual report must—
- (a) contain the following—
 - (i) for the services funded in the budget for the financial year reported on, the prescribed indicators of service performance required by the regulations to be reported against in the performance statement and the prescribed measures relating to those indicators;
 - (ii) the prescribed indicators of financial performance and the prescribed measures relating to those indicators;
 - (iii) the prescribed indicators of sustainable capacity performance and the prescribed measures relating to those indicators;
 - (iv) results achieved for that financial year in relation to those performance indicators and measures referred to in subparagraphs (i), (ii) and (iii);
 - (v) any other information required by the regulations; and
 - (b) be prepared in accordance with the regulations.
- (5) The financial statements in the annual report must—
- (a) include any other information required by the regulations; and
 - (b) be prepared in accordance with the regulations.

S. 132
substituted by
No. 109/2003
s. 71,
amended by
No. 67/2008
s. 52,
substituted by
No. 5/2014
s. 12.

132 Annual report—preparation

- (1) A Council must submit the performance statement and financial statements in their finalised form to the auditor for auditing as soon as possible after the end of the financial year.
- (2) The Council, after passing a resolution giving its approval in principle to the performance statement and financial statements, must submit the statements to the auditor for reporting on the audit.
- (3) The auditor must prepare a report on the performance statement.

Note

The auditor is required under Part 3 of the **Audit Act 1994** to prepare a report on the financial statements.

- (4) The auditor must not sign a report under subsection (3) or under Part 3 of the **Audit Act 1994** unless the performance statement or the financial statements (as applicable) have been certified under subsection (5).
- (5) The Council must ensure that the performance statement and financial statements, in their final form after any changes recommended or agreed by the auditor have been made, are certified in accordance with the regulations by—
 - (a) 2 Councillors authorised by the Council for the purposes of this subsection; and
 - (b) any other prescribed persons.

- (6) The auditor must provide the Minister and the Council with a copy of the report on the performance statement as soon as is reasonably practicable.

Note

The auditor is required under Part 3 of the **Audit Act 1994** to report on the financial statements to the Council within 4 weeks and to give a copy of the report to the Minister.

133 Annual report—submission to Minister and public availability

S. 133
substituted by
Nos 109/2003
s. 71, 5/2014
s. 12.

- (1) A Council must submit the annual report to the Minister—
- (a) within 3 months after the end of the financial year reported on; or
 - (b) within any longer period permitted by the Minister in a particular case.
- (2) After the annual report has been submitted to the Minister, the Council must give public notice that the annual report has been prepared and can be inspected at the Council office and on the Council's Internet website.
- (3) The Council must ensure that a copy of the annual report is available for inspection by the public at—
- (a) the Council office and any district offices; and
 - (b) any other place required by the regulations.

Note

In addition, a Council must ensure that the current annual report is published on the Council's Internet website (see section 82A(2)(ab)(iv)).

- (4) If a Council fails to submit its annual report in accordance with subsection (1), the Secretary must ensure that details of the failure are published in the annual report of the Department.

S. 134
substituted by
No. 109/2003
s. 71.

134 Meeting to consider annual report

- (1) A Council must consider the annual report at a meeting of the Council.
- (2) The meeting—
 - (a) must be held as soon as practicable but within the time required by the regulations, after the Council has sent the annual report to the Minister;
 - (b) must be advertised at least 14 days before the meeting is held in a public notice that states—
 - (i) that the annual report will be discussed at the meeting; and
 - (ii) the place from which copies of the annual report can be obtained before the meeting;
 - (c) must be kept open to the public while the annual report is discussed.

S. 135
substituted by
No. 109/2003
s. 71.

135 Minister may direct Council to submit financial statements

- (1) If the Minister considers that it is necessary or appropriate in the public interest to do so, the Minister may in writing direct a Council to prepare and submit within 4 weeks after the date of the direction—
 - (a) financial statements in respect of any part of a financial year; and
 - (b) any other related information specified in the direction.

- (2) In this section, a reference to a Council includes a reference to—
- (a) a corporation, all the shares in which are owned by or on behalf of one or more Councils, whether directly or indirectly;
 - (b) a trustee of a trust of which a Council is the principal beneficiary or of which several Councils are the principal beneficiaries;
 - (c) a regional library under section 196.

Part 7—Financial management

Pt 7
(Heading and
ss 135–153)
amended by
Nos 13/1990
s. 16, 22/1992
ss 8–14,
98/1993 s. 18,
125/1993
ss 27, 28,
18/1994
s. 66(Sch. 2
item 15) (as
amended by
No. 75/1994
s. 7(6)),
99/1994
s. 3(2)(a)(b),
34/1996 ss 9–
13, 14 (as
amended by
No. 76/1997
s. 22), 29,
54/1998 s. 10,
5/2001
s. 30(1),
11/2001
s. 3(Sch.
items 42.2,
42.3), 44/2001
s. 3(Sch.
item 74.1),
substituted as
Pt 7
(Heading and
ss 136–150)
by No.
109/2003 s. 71.

S. 136
substituted by
No. 109/2003
s. 71.

136 Principles of sound financial management

- (1) A Council must implement the principles of sound financial management.
- (2) The principles of sound financial management are that a Council must—
 - (a) manage financial risks faced by the Council prudently, having regard to economic circumstances;
 - (b) pursue spending and rating policies that are consistent with a reasonable degree of stability in the level of the rates burden;

- (c) ensure that decisions are made and actions are taken having regard to their financial effects on future generations;
 - (d) ensure full, accurate and timely disclosure of financial information relating to the Council.
- (3) The risks referred to in subsection (2)(a) include risks relating to—
- (a) the level of Council debt;
 - (b) the commercial or entrepreneurial activities of the Council;
 - (c) the management and maintenance of assets;
 - (d) the management of current and future liabilities;
 - (e) changes in the structure of the rates and charges base.

137 Budgeting and reporting framework

A Council must establish and maintain a budgeting and reporting framework that is consistent with the principles of sound financial management.

S. 137
substituted by
No. 109/2003
s. 71.

138 Quarterly statements

- (1) At least every 3 months, the Chief Executive Officer must ensure that a statement comparing the budgeted revenue and expenditure for the financial year with the actual revenue and expenditure to date is presented to the Council at a Council meeting which is open to the public.
- (2) The regulations may prescribe matters to be included in the statement.

S. 138
substituted by
No. 109/2003
s. 71.

S. 138(1)
amended by
No. 67/2008
s. 53.

139 Audit committee

S. 139
substituted by
No. 109/2003
s. 71.

- (1) A Council must establish an audit committee.
- (2) An audit committee is an advisory committee.

S. 139(2A)
inserted by
No. 53/2015
s. 10(1).

- (2A) The chairperson of an audit committee—
 - (a) must not be a Councillor; and
 - (b) must not be a member of Council staff; and
 - (c) must be suitably qualified.
- (3) An audit committee must be constituted in the prescribed manner.
- (4) An audit committee has the functions and responsibilities prescribed for the purposes of this section.

S. 139(4A)
inserted by
No. 67/2008
s. 54,
amended by
No. 63/2012
s. 20.

- (4A) Sections 76D, 79 and 81 apply to members of an audit committee as if they were members of a special committee of the Council.

- (5) The Minister may make guidelines for the purposes of this section.
- (6) Guidelines made under subsection (5) must be published in the Government Gazette.

S. 139(6A)
inserted by
No. 53/2015
s. 10(2).

- (6A) The chairperson may require any report prepared by the audit committee to be listed on the agenda for the next ordinary meeting of the Council.
- (7) A Council may pay a fee to a member of an audit committee who is not a Councillor or member of Council staff.

140 Accounts and records

S. 140
substituted by
No. 109/2003
s. 71.

- (1) A Council has a duty to ensure that there are kept in accordance with the regulations—
 - (a) proper accounts and records of the transactions and affairs of the Council; and
 - (b) such other records as will sufficiently explain the financial operations and financial position of the Council.
- (2) A Council has a duty to do all things necessary to—
 - (a) ensure that all money payable to the Council is properly collected;
 - (b) ensure that appropriate arrangements are implemented for the security of all money received by the Council;
 - (c) ensure that all money expended by the Council is correctly expended and properly authorised;
 - (d) ensure that adequate control is maintained over assets owned by or in the custody of the Council;
 - (e) ensure that all liabilities incurred by the Council are properly authorised;
 - (f) ensure efficiency and economy of operations and the avoidance of waste and extravagance;
 - (g) develop and maintain adequate internal control systems.
- (3) A Council has a duty to ensure that its accounts and records are kept up to date and ready for inspection at any time by any person authorised to inspect the accounts and records.

S. 141
substituted by
No. 109/2003
s. 71.

141 Payments

A Council may apply any money to—

- (a) enable the Council to perform the functions and exercise the powers conferred on the Council by or under this Act or any other Act;
- (b) repay to a person any money overpaid or wrongly paid by the person to the Council;
- (c) refund to a person the whole or part of any money paid by the person to the Council for a particular purpose or as a condition of any agreement or arrangement which has not been performed or which has been only partly performed whether by that person or the Council.

S. 142
substituted by
No. 109/2003
s. 71.

142 Power to defer or waive payments

- (1) A Council may waive the payment by a person of the whole or part of any money payable by the person to the Council for a particular purpose or as a condition of any agreement or arrangement which has not been performed or which has been only partly performed whether by that person or the Council.
- (2) Subsection (3) applies—
 - (a) to a person who owes any money (other than rates and charges) to a Council for any act, matter or thing done by the Council or for a particular purpose or as a condition of any agreement or arrangement; and
 - (b) if the Council considers that the payment of the money would cause hardship to the person.

(3) The Council may—

- (a) defer the payment of the whole or any part of the money and the interest or any part of the interest payable on that money for the period and subject to any conditions determined by the Council; or
- (b) waive the payment of the whole or any part of the money and the interest or any part of the interest payable on that money; or
- (c) waive the payment of the whole or any part of the interest payable on the money.

143 Investments

A Council may invest any money—

- (a) in Government securities of the Commonwealth;
- (b) in securities guaranteed by the Government of Victoria;
- (c) with an authorised deposit-taking institution;
- (d) with any financial institution guaranteed by the Government of Victoria;
- (e) on deposit with an eligible money market dealer within the meaning of the Corporations Act;
- (f) in any other manner approved by the Minister after consultation with the Treasurer either generally or specifically, to be an authorised manner of investment for the purposes of this section.

S. 143
substituted by
No. 109/2003
s. 71.

144 Power to borrow

- (1) Subject to the principles of sound financial management, a Council may borrow money to enable the Council to perform the functions and

S. 144
substituted by
No. 109/2003
s. 71.

exercise the powers conferred on the Council under this Act or any other Act.

- (2) This section also applies to borrowing in the form of finance leases.
- (3) The amount borrowed on the security of any special rates or special charges must not at any time exceed the estimated income from the special rates or special charges.

S. 145
substituted by
No. 109/2003
s. 71.

145 Circumstances in which power to borrow may be exercised

- (1) Without limiting the generality of section 144, the power to borrow conferred by section 144 may be exercised—
 - (a) to repay the principal money owing under any previous borrowing; or
 - (b) to meet the consideration still outstanding under a contract which has been partly or wholly performed and in respect of which the power to borrow conferred by section 144 could have been exercised at the time the contract was made.
- (2) The power to borrow conferred by section 144 cannot be exercised to repay an advance by overdraft under section 150(1) or 150(3) unless—
 - (a) the approval of the Minister has been obtained; and
 - (b) any conditions imposed by the Minister are complied with.

S. 146
substituted by
No. 109/2003
s. 71.

146 Budget or revised budget must include proposed borrowings

- (1) A Council cannot borrow money for ordinary purposes or the purposes of municipal enterprises unless the proposed borrowings were included in a budget or revised budget.

- (2) If the proposed borrowings are to re-finance existing loans, the Council is not required to include the proposed borrowings in a budget or revised budget.

147 Use of loan for different purpose

A Council may only apply unexpended money previously borrowed for a particular purpose for capital works included in the current budget or a revised budget.

S. 147
substituted by
No. 109/2003
s. 71.

148 Borrowings to be secured

- (1) Except in the case of a finance lease, money borrowed under section 144 is to be secured by entering into a security—
- (a) in the case of borrowings for ordinary purposes, over the general rates; or
 - (b) in the case of borrowings for the purposes of municipal enterprises, over the total value of the assets of the municipal enterprise and the income from the municipal enterprise; or
 - (c) in the case of borrowings under section 144(3), over the special rates and special charges.
- (2) Unless expressly forbidden by the Act or instrument under which a body corporate or company acts, a security under this section is a lawful investment for any money which a body corporate incorporated under an Act or any company is authorised to invest.

S. 148
substituted by
No. 109/2003
s. 71.

149 Provisions with respect to securities

Schedule 9 has effect with respect to securities given by a Council under section 148.

S. 149
substituted by
No. 109/2003
s. 71.

S. 150
substituted by
No. 109/2003
s. 71.

150 Overdrafts

- (1) Subject to the principles of sound financial management, a Council may obtain an advance from an authorised deposit-taking institution by overdraft secured by entering into a security over the general rates of the Council.
- (2) The advance under subsection (1) must not exceed the amount of all general rates, municipal charges, service rates and service charges received by the Council during the previous financial year.
- (3) Subject to the principles of sound financial management and section 193, a Council may also obtain an advance from an authorised deposit-taking institution by overdraft secured on the assets and income of a municipal enterprise.
- (4) Subject to the principles of sound financial management, a Council may also obtain an advance from an authorised deposit-taking institution by overdraft secured on a special rate or special charge which must not exceed the estimated total income from the special rate or special charge less the amount of any other borrowings secured on the special rate or special charge.

Part 8—Rates and charges on rateable land

Division 1—Declaration of rates and charges

154 What land is rateable?

- (1) Except as provided in this section, all land is rateable.
- (2) The following land is not rateable land—
 - (a) land which is unoccupied and is the property of the Crown or is vested in a Minister, a Council, a public statutory body or trustees appointed under an Act to hold that land in trust for public or municipal purposes;
 - (b) any part of land, if that part—
 - (i) is vested in or owned by the Crown, a Minister, a Council, a public statutory body or trustees appointed under an Act to hold that land in trust for public or municipal purposes; and
 - (ii) is used exclusively for public or municipal purposes;
 - (c) any part of land, if that part is used exclusively for charitable purposes;
 - (d) land which is vested in or held in trust for any religious body and used exclusively—
 - (i) as a residence of a practising Minister of religion; or
 - (ii) for the education and training of persons to be Ministers of religion; or
 - (iii) for both the purposes in subparagraphs (i) and (ii);
 - (e) land which is used exclusively for mining purposes;

S. 154(2)(f)(i)
substituted by
No. 67/2008
s. 55.

- (f) land held in trust and used exclusively—
- (i) as a club for or a memorial to persons who performed *service or duty* within the meaning of section 3(1) of the **Veterans Act 2005**; or
 - (ii) as a sub-branch of the Returned Services League of Australia; or
 - (iii) by the Air Force Association (Victoria Division); or
 - (iv) by the Australian Legion of Ex-Servicemen and Women (Victorian Branch).
- (3) For the purposes of subsections (2)(a) and (2)(b) any part of the land is not used exclusively for public or municipal purposes if—
- (a) it is used for banking or insurance; or
 - (b) a house or flat on the land—
 - (i) is used as a residence; and
 - (ii) is exclusively occupied by persons including a person who must live there to carry out certain duties of employment; or
 - (c) it is used by the Metropolitan Fire Brigades Board.

S. 154(3A)
inserted by
No. 98/1998
s. 47.

S. 154(3A)(a)
amended by
Nos 6/2010
s. 203(1)(Sch. 6
item 29.2) (as
amended by
No. 45/2010
s. 22), 29/2011
s. 3(Sch. 1
item 55.2).

- (3A) For the purposes of subsection (2)(b), any part of land does not cease to be used exclusively for public purposes only because it is leased—
- (a) to a rail freight operator within the meaning of the **Transport (Compliance and Miscellaneous) Act 1983**; or

- (b) to a passenger transport company within the meaning of that Act.
- (4) For the purposes of subsections (2)(c) and (2)(d), any part of the land is not used exclusively for charitable purposes if it is in any of the following categories—
 - (a) it is separately occupied and used for a purpose which is not exclusively charitable;
 - (b) a house or flat on the land—
 - (i) is used as a residence; and
 - (ii) is exclusively occupied by persons including a person who must live there to carry out certain duties of employment;
 - (c) it is used for the retail sale of goods;
 - (d) it is used to carry on a business for profit (unless that use is necessary for or incidental to a charitable purpose).

S. 154(4)
amended by
No. 13/1990
s. 31(f).

155 What rates and charges may a Council declare?

A Council may declare the following rates and charges on rateable land—

- (a) general rates under section 158;
- (b) municipal charges under section 159;
- (c) service rates under section 162;
- (d) service charges under section 162;
- (e) special rates under section 163;
- (f) special charges under section 163.

S. 155
substituted by
No. 34/1996
s. 15.

156 Liability to pay rates and charges

S. 156(2)
amended by
Nos 13/1990
s. 17, 34/1996
s. 16.

- (1) The owner of land is liable to pay the rates and charges on that land.
- (2) If the owner cannot be found or identified, the occupier of, or the mortgagee in possession of, the land is liable to pay the rates and charges.

S. 156(3A)
inserted by
No. 23/1993
s. 21.

- (3) If there is a person who is the private occupier or lessee of the land and the land is land on which rates and charges could not be declared if there were no such occupier or lessee, that person is liable to pay the rates and charges.
- (3A) For the purposes of this Part and Part II of the **Valuation of Land Act 1960** a caravan park is a single rateable property of which the caravan park owner is taken to be the occupier.

S. 156(4)
amended by
No. 81/1989
s. 3(Sch.
item 30.2).

- (4) A person who has a licence to pasture any animals on Crown land under the **Forests Act 1958**, the **Land Act 1958** or the **Water Act 1989**, is liable to pay the rates and charges on that land as if it is rateable land.

S. 156(5)
amended by
No. 96/1994
s. 57.

- (5) A person who has or should have a licence under the **Land Act 1958** in respect of any unused roads or water frontages is liable to pay the rates and charges on that land as if it is rateable land.

S. 156(5A)
inserted by
No. 35/1998
s. 17.

- (5A) A person who is a licensee of vested land under Part 3A of the **Victorian Plantations Corporation Act 1993** is liable to pay the rates and charges on that land as if it is rateable land.

S. 156(6)
amended by
No. 78/1991
s. 13(c)(i)(ii).

- (6) A rate or charge which is declared in relation to land and is unpaid and any unpaid interest on such a rate or charge and any costs awarded to a Council by a court or in any proceedings in relation to such a rate or charge or interest are a first charge on the land.

157 Which systems of valuing land may a Council use?

- (1) A Council may use the site value, net annual value or capital improved value system of valuation.
- (2) A Council must publish public notice of its decision to change its system of valuation. S. 157(2)
amended by
No. 78/1991
s. 13(d).
- (3) For the purposes of calculating the site value, net annual value or capital improved value of rateable land, a Council must use the current valuations made in respect of the land under the **Valuation of Land Act 1960** by a valuation authority. S. 157(3)
repealed by
No. 76/1997
s. 13(a), new
s. 157(3)
inserted by
No. 67/2017
s. 78.
- * * * * *
- S. 157(4)
repealed by
No. 34/1996
s. 19(2).
- (5) A person has a right to make a submission under section 223 on a Council's decision to change its system of valuation. S. 157(5)
substituted by
No. 34/1996
s. 17.

158 Declaring rates and charges

- (1) A Council must at least once in respect of each financial year declare by 30 June the following for that year—S. 158(1)
amended by
Nos 99/1994
s. 3(2)(c),
5/2014
s. 13.
 - (a) the amount which the Council intends to raise by general rates, municipal charges, service rates and service charges;
 - (b) whether the general rates will be raised by the application of—
 - (i) a uniform rate; or
 - (ii) differential rates (if the Council is permitted to raise such rates under section 161(1)); or
- S. 158(1)(b)(ii)
substituted by
No. 34/1996
s. 18(1).

S. 158(1)(b)(iii)
inserted by
No. 34/1996
s. 18(1).

(iii) urban farm rates, farm rates or residential use rates (if the Council is permitted to raise such rates under section 161A).

- (2) The Council must declare the general rate in respect of a period of time between 3 months and a year.
- (3) A Council may levy general rates, municipal charges, service rates and service charges by sending a notice to the person who is liable to pay them.

S. 158(3A)
inserted by
No. 13/1990
s. 18.

- (3A) At the written request of the person liable to pay rates or charges, the Council may send the notice to a person specified in the written request.

S. 158(4)
amended by
No. 13/1990
s. 31(g),
substituted by
No. 22/1992
s. 15(a).

- (4) The notice must—
- (a) contain the prescribed information; and

S. 158(4)(b)
substituted by
No. 27/1997
s. 9(1).

- (b) state—

S. 158(4)(b)(i)
amended by
No. 109/2003
s. 78(1).

- (i) in the case of general rates, municipal charges, service rates and service charges, the dates when the instalments of the rates or charges are due, and, if those rates and charges may be paid in a lump sum, the date when that lump sum is due; or

- (ii) in any other case, when the rates or charges are due; and

S. 158(4)(c)
substituted by
No. 27/1997
s. 9(1).

- (c) specify any other options for payment determined by the Council; and

(d) be issued at least 14 days before the date on which the first payment of the rates or charges is due.

(4A) If general rates, municipal charges, service rates or service charges—

(a) are not payable in a lump sum; or

(b) are payable in a lump sum but the first instalment is paid—

the Council must send a notice that contains the information set out in subsections (4)(b) and (4)(c) at least 14 days before each of the second, third and fourth instalments are due.

S. 158(4A)
inserted by
No. 22/1992
s. 15(a),
substituted by
No. 27/1997
s. 9(2),
amended by
No. 109/2003
s. 78(2).

(4B) Despite anything to the contrary in section 167, a failure to comply with subsection (4)(d) or (4A) alters the date on which the relevant payment is due to a day specified by the Council in the notice which is not less than 14 days after the date on which the notice relating to that payment is sent.

S. 158(4B)
inserted by
No. 27/1997
s. 9(2),
amended by
No. 109/2003
s. 78(3).

(5) If a Council has declared more than one general rate, municipal charge, service rate or service charge for the year, it may levy any of those rates or charges as a combined rate or charge.

(6) A Council must, as far as is practicable, levy all general rates, municipal charges, service rates and service charges which are declared in a financial year in the same financial year.

158A Rates and charges to be levied on each occupancy

S. 158A
inserted by
No. 78/1991
s. 5.

(1) If the Council levies a rate or charge on any land, the Council must separately levy that rate or charge in respect of each portion of that land for which the Council has a separate valuation.

(2) If a valuation treats as a single rateable entity land that is owned separately by 2 or more people, a Council may apportion any rates or charges that apply to that land in accordance with the value

that each separately owned parcel of that land bears in relation to the value of that land as a whole.

159 Municipal charge

- (1) A Council may declare a municipal charge to cover some of the administrative costs of the Council.
- (2) A Council's total revenue from a municipal charge in a financial year must not exceed 20 per cent of the sum total of the Council's—
 - (a) total revenue from a municipal charge; and
 - (b) total revenue from general rates—in that financial year.
- (3) A person may apply to a Council for an exemption from the payment of a municipal charge on rateable land if—
 - (a) the rateable land in respect of which the exemption is claimed is farm land within the meaning of section 2(1) of the **Valuation of Land Act 1960** or would be farm land if it were 2 hectares or more in area; and
 - (b) the rateable land forms part of a single farm enterprise; and
 - (c) an exemption is not claimed in respect of at least one other rateable property which forms part of the single farm enterprise; and
 - (d) in the case of a single farm enterprise which is occupied by more than one person, an exemption is not claimed in respect of more than one principal place of residence.

S. 159(3)
inserted by
No. 78/1991
s. 6,
substituted by
No. 43/1993
s. 14.

(4) In subsection (3)—

single farm enterprise means 2 or more rateable properties—

S. 159(4)
inserted by
No. 43/1993
s. 14.

(a) which—

- (i) are farm land; and
- (ii) are farmed as a single enterprise;
and
- (iii) are occupied by the same person
or persons—

whether or not the properties are
contiguous; or

(b) which—

- (i) as to all the properties except one,
are farm land farmed as a single
enterprise occupied by the same
person or persons; and
- (ii) as to one property contiguous with
at least one of the other properties,
is the principal place of residence
of that person or one of those
persons.

(5) An application must be in the form and made
within the period determined by the Council.

S. 159(5)
inserted by
No. 43/1993
s. 14.

(6) The Council may require the applicant—

- (a) to give further particulars; or
- (b) to verify particulars—

in relation to the application.

S. 159(6)
inserted by
No. 43/1993
s. 14.

160 Uniform rate

If a Council declares that general rates will be raised by the application of a uniform rate—

S. 160(b)
substituted by
No. 34/1996
s. 18(2).

- (a) the Council must specify a percentage as the uniform rate; and
- (b) the general rate for any rateable land is to be determined by multiplying the value of the land (as determined under the valuation system used by the Council) by that percentage.

161 Differential rates

S. 161(1)
substituted by
Nos 34/1996
s. 19(1),
63/2012
s. 21(1).

- (1) A Council may raise any general rates by the application of a differential rate if it uses the capital improved value system of valuing land.

- (2) If a Council declares a differential rate for any land, the Council must—

S. 161(2)(a)
amended by
No. 63/2012
s. 21(2).

- (a) specify the objectives of the differential rate which must include the following—
 - (i) a definition of the types or classes of land which are subject to the rate and a statement of the reasons for the use and level of that rate in relation to those types or classes of land;
 - (ii) an identification of the types or classes of land which are subject to the rate in respect of the uses, geographic location (other than location on the basis of whether or not the land is within a specific ward in the Council's municipal district) and planning scheme zoning of the land and the types of buildings situated on it and any other criteria relevant to the rate;

- (iii) if there has been a change in the valuation system, any provision for relief from a rate for certain land to ease the transition for that land; and
 - (b) specify the characteristics of the land which are the criteria for declaring the differential rate.
- (2A) A Council must have regard to any Ministerial guidelines made under subsection (2B) before declaring a differential rate for any land. S. 161(2A)
inserted by
No. 63/2012
s. 21(3).
- (2B) The Minister may, by notice published in the Government Gazette, make guidelines for or with respect to—S. 161(2B)
inserted by
No. 63/2012
s. 21(3).
 - (a) the objectives of differential rating;
 - (b) suitable uses of differential rating powers;
 - (c) the types or classes of land that are appropriate for differential rating.
- (3) A Council which declares a differential rate must ensure that copies of the following information are available on its Internet website and for public inspection at the Council office—S. 161(3)
amended by
Nos 34/1996
s. 19(3)(a),
63/2012
s. 21(4).
 - (a) the definition of the types or classes of land which are subject to the rate;S. 161(3)(a)
repealed by
No. 34/1996
s. 19(3)(b),
new
s. 161(3)(a)
inserted by
No. 63/2012
s. 21(5).
 - (b) the objectives of the differential rate;S. 161(3)(b)
amended by
No. 63/2012
s. 21(6).

S. 161(3)(c)
amended by
Nos 34/1996
s. 19(3)(c),
63/2012
s. 21(7).

(c) the rate and amount of rates payable in relation to each type or class of land and what proportion of the total rates and charges this represents;

(d) any other information which the Council considers it necessary to make available.

S. 161(4)
repealed by
No. 34/1996
s. 19(4), new
s. 161(4)
inserted by
No. 63/2012
s. 21(8).

(4) On the recommendation of the Minister, the Governor in Council may by Order in Council prohibit any Council from making a declaration of a differential rate in respect of a type or class of land, if the Minister considers that the declaration would be inconsistent with any guidelines made under subsection (2B).

(5) The highest differential rate in a municipal district must be no more than 4 times the lowest differential rate in the municipal district.

S. 161(6)(7)
inserted by
No. 23/1999
s. 3,
repealed by
No. 5/2001
s. 30(1).

* * * * *

S. 161A
inserted by
No. 34/1996
s. 20.

161A Limited differential rates

(1) This section only applies to a Council that does not use the capital improved value system of valuing land.

(2) The Council may raise general rates by applying a differential rate in relation to farm land, urban farm land or residential use land across the whole of the municipal district or between particular wards but in the case of particular wards only if—

S. 161A(2)
amended by
No. 109/2003
s. 79.

(a) the farm rate, urban farm rate or residential use rate is applied on the basis of whether or not any land is within a specific ward in the Council's municipal district; and

- (b) a majority of the Councillors for any such ward which is to be subject to the higher differential rate agree to that differential rate.
- (3) If a Council declares a differential rate under this section, sections 161(2), (3) and (5) apply in respect of the declaration.

162 Service rate and service charge

- (1) A Council may declare a service rate or an annual service charge or any combination of such a rate and charge for any of the following services—
 - (a) the provision of a water supply;
 - (b) the collection and disposal of refuse;
 - (c) the provision of sewage services;
 - (d) any other prescribed service.
- (2) A service rate or service charge may be declared on the basis of any criteria specified by the Council in the rate or charge.

163 Special rate and special charge

- (1) A Council may declare a special rate, a special charge or a combination of both only for the purposes of—
 - (a) defraying any expenses; or
 - (b) repaying (with interest) any advance made to or debt incurred or loan raised by the Council—

in relation to the performance of a function or the exercise of a power of the Council, if the Council considers that the performance of the function or the exercise of the power is or will be of special benefit to the persons required to pay the special rate or special charge.

Local Government Act 1989
No. 11 of 1989
Part 8—Rates and charges on rateable land

S. 163(1A)
inserted by
No. 27/1997
s. 10.

(1A) A Council must not make a declaration under subsection (1) unless it has given public notice of its intention to make the declaration at least 28 days before making the declaration.

S. 163(1B)
inserted by
No. 27/1997
s. 10.

(1B) In addition to any other requirements specified by this Act, the public notice must—

(a) contain an outline of the proposed declaration; and

(b) set out the date on which it is proposed to make the declaration; and

S. 163(1B)(c)
amended by
No. 109/2003
s. 80(1).

(c) advise that copies of the proposed declaration are available for inspection at the Council office for at least 28 days after the publication of the notice.

S. 163(1C)
inserted by
No. 109/2003
s. 80(2).

(1C) A Council must send a copy of the public notice to each person who will be liable to pay the special rate or special charge within 3 working days of the day on which the public notice is published.

S. 163(2)
substituted by
No. 109/2003
s. 81(1).

(2) Before making a declaration under subsection (1), the Council must determine—

(a) the total amount of the special rates and special charges to be levied; and

(b) the criteria to be used as the basis for declaring the special rates and special charges.

S. 163(2A)
inserted by
No. 109/2003
s. 81(1).

(2A) For the purpose of subsection (2)(a) the total amount of the special rates and special charges to be levied must not exceed the amount calculated in accordance with the formula—

$$R \times C = S$$

where—

R is the benefit ratio determined by the Council in accordance with subsection (2B);

C is the total cost of the performance of the function or the exercise of the power under subsection (1);

S is the maximum total amount that may be levied from all the persons who are liable to pay the special rates or special charges.

- (2B) The benefit ratio is the estimated proportion of the total benefits of the scheme to which the performance of the function or the exercise of the power relates, including special benefits and community benefits, that will accrue as special benefits to all the persons who are liable to pay the special rates or special charges. **S. 163(2B) inserted by No. 109/2003 s. 81(1).**
- (2BA) A Council must not make a declaration under subsection (1) which has been altered from the proposed declaration specified in the public notice if the effect of the alteration is to increase the liability of any person to pay the special rate or special charge to be imposed by the proposed declaration unless— **S. 163(2BA) inserted by No. 67/2008 s. 56.**
- (a) the alteration is made in response to a submission or objection received by the Council in response to the proposed declaration; and
- (b) the increase in the liability of any person to pay the special rate or special charge does not exceed 10%.
- (2C) The Minister may make guidelines for the purposes of subsections (2), (2A) and (2B). **S. 163(2C) inserted by No. 109/2003 s. 81(1).**
- (2D) Guidelines made under subsection (2C) must be published in the Government Gazette. **S. 163(2D) inserted by No. 109/2003 s. 81(1).**

S. 163(3)
amended by
No. 109/2003
s. 81(2).

(3) The Council must specify in the declaration—

(a) the wards, groups, uses or areas for which the special rate or special charge is declared; and

S. 163(3)(ab)
inserted by
No. 109/2003
s. 81(3).

(ab) a description of the function to be performed or the power to be exercised; and

S. 163(3)(ac)
inserted by
No. 109/2003
s. 81(3).

(ac) the total cost of the performance of the function or the exercise of the power; and

S. 163(3)(ad)
inserted by
No. 109/2003
s. 81(3).

(ad) the total amount of the special rates and special charges to be levied; and

(b) the land in relation to which the special rate or special charge is declared; and

(c) the manner in which the special rate or special charge will be assessed and levied; and

(d) details of the period for which the special rate or special charge remains in force.

(4) A Council may levy a special rate or special charge by sending a notice to the person who is liable to pay it.

(5) The notice must contain—

(a) the prescribed information; and

(b) a statement about when the special rate or special charge is payable; and

(c) details of the period for which the special rate or special charge remains in force.

- (6) A Council may use the money from a special rate or special charge for any or all of the following—
- (a) any purpose for which the rate or charge was made and the purchase of land and materials required for that purpose (including land acquired before the Council declared the rate or charge);
 - (b) repayment of money borrowed for anything mentioned in paragraph (a) and of interest on that money;
 - (c) maintenance and repair of damage, management, advertising or security; and
 - (d) any expenses related—
 - (i) to anything mentioned in paragraphs (a) to (c); or
 - (ii) to the declaration or levying of the rate or charge.
- (7) If a private street (within the meaning of section 575(1) of the **Local Government Act 1958**) is constructed wholly or partly at the cost of the owners or occupiers of any land which abuts or fronts the street, the Council may not at any future time recover any further costs in respect of the construction of a component of the private street if that component has been previously constructed to the satisfaction of the Council from the owners or occupiers of the land under this section by way of a special rate or special charge.
- (8) For the purposes of subsection (7) and section 221(6), *construct* and *component* have the same meanings as in section 12 of the **Local Government (Consequential Provisions) Act 1989**.

S. 163(9)
inserted by
No. 67/2008
s. 56(2).

- (9) For the purposes of subsections (1) and (6), *expenses* does not include any expenses incurred or anticipated to be incurred which relate to any proceedings or anticipated proceedings before VCAT, including an application for review under section 185 or an application for a declaration under section 185AA.

S. 163A
inserted by
No. 34/1996
s. 21,
substituted by
No. 27/1997
s. 11.

163A Submissions concerning special rates and charges

A person may make a submission under section 223 in relation to a Council's proposal to make a declaration under section 163.

S. 163B
inserted by
No. 109/2003
s. 82.

163B Objection process relating to certain special rates and charges

- (1) Subject to subsection (2), a Council can only make a declaration under section 163(1) to levy a special rate or special charge to recover an amount that exceeds two thirds of the total cost of the performance of the function or the exercise of the power in accordance with this section.
- (2) This section does not apply if the scheme to which the performance of the function or the exercise of the power relates is—
- (a) a drainage scheme that the Council has declared is required for reasons of public health; or
 - (b) a scheme of a type prescribed by the regulations as a scheme to which this section does not apply.
- (3) Before a Council can make a declaration to which this section applies, the Council must in the public notice to be published under section 163(1A) state—
- (a) which persons have a right to object to the proposed declaration; and

- (b) how those persons may object; and
 - (c) that objections in writing must be lodged with the Council within 28 days of the day on which the public notice is published.
- (4) Any person who will be required to pay the special rate or special charge to be imposed by the proposed declaration is entitled to exercise the right of objection conferred by this section.
- (5) For the purposes of subsection (4), a person who is an occupier is entitled to exercise the right of objection conferred by this section if the person submits documentary evidence with the objection which shows that it is a condition of the lease under which the person is an occupier that the occupier is to pay the special rate or special charge.
- (6) A Council can not make a declaration if the Council receives objections from persons who will be required to pay the special rate or special charge in respect of a majority of the rateable properties in respect of which the special rate or special charge would be imposed.
- (7) The right of objection conferred by this section is in addition to the right to make a submission under section 163A but if the Council receives objections from persons who will be required to pay the special rate or special charge in respect of a majority of the rateable properties in respect of which the special rate or special charge would be imposed, the Council can discontinue the process under that section.

S. 163B(6)
amended by
No. 67/2008
s. 57.

164 Discontinuance of the works and projects for a special rate or special charge

- (1) After complying with the procedure for the levying of a special rate or special charge a Council may—

- (a) discontinue the whole or part of any purpose for which it is charging the special rate or special charge; or
 - (b) resolve not to proceed with the purchase of any land for any such purpose.
- (2) A Council must ensure that those persons who are liable to pay a special rate or special charge referred to in subsection (1) are notified of any decision under that subsection.

165 Receipt of excess money

If a Council receives more money than it requires from the special rate or special charge, it must make a refund which is proportionate to the contributions received by the Council to the current owners of the relevant land.

166 Variation of special rate or special charge

- (1) A special rate or special charge—
- (a) remains in force for the period specified in the declaration of it without any further declaration in any subsequent year; and
 - (b) may be varied in relation to—
 - (i) the amount to be paid; and
 - (ii) the persons on whom it is levied (except as is specifically provided under section 178 or 180); and
 - (iii) the land to which it applies.
- (2) A Council must ensure that those persons who are liable to pay a special rate or special charge which is varied are notified if it is varied.

- | | |
|---|---|
| (3) If a variation of a special rate or special charge will result in— | S. 166(3)
inserted by
No. 109/2003
s. 83. |
| (a) persons being required to pay a special rate or special charge who were not previously required to do so; or | |
| (b) an increase equal to or greater than 10% in the amount of the special rate or special charge payable by a person— | S. 166(3)(b)
amended by
No. 67/2008
s. 58. |
| a Council must comply with subsections (1A), (1B) and (1C) of section 163 as if the variation were a declaration. | |
| (4) If subsection (3) applies, a person may make a submission under section 223. | S. 166(4)
inserted by
No. 109/2003
s. 83. |

Division 2—Payment of rates and charges

167 Payment of rates and charges

- | | |
|---|--|
| (1) A Council must allow a person to pay a rate or charge (other than a special rate or charge) in 4 instalments. | S. 167(1)
substituted by
Nos 22/1992
s. 15(b),
27/1997 s. 12. |
| (2) An instalment is due and payable on the date fixed by the Minister by notice published in the Government Gazette. | S. 167(2)
substituted by
Nos 22/1992
s. 15(b),
27/1997 s. 12. |
| (2A) A Council may allow a person to pay a rate or charge in a lump sum. | S. 167(2A)
inserted by
No. 22/1992
s. 15(b),
amended by
No. 99/1994
s. 3(2)(d),
substituted by
No. 27/1997
s. 12. |

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S. 167(2B)
inserted by
No. 27/1997
s. 12.

(2B) If allowed, a lump sum payment of general rates, municipal charges, service rates or service charges is due and payable on the date fixed by the Minister by notice published in the Government Gazette.

S. 167(2C)
inserted by
No. 27/1997
s. 12.

(2C) Any notice published by the Minister under subsection (2) or (2B)(or any variation of such a notice) must be published at least 3 months before the start of the financial year in respect of which the rate or charge is levied.

S. 167(3)
amended by
No. 67/2008
s. 59(1).

(3) A special rate or special charge is due and must be paid by the date specified in the notice requiring payment, which is a date not less than 28 days after the date of issue of a notice.

S. 167(4)
substituted by
No. 67/2008
s. 59(2).

(4) A person who is liable to pay a special rate or special charge must pay the special rate or special charge—

(a) as a lump sum; or

(b) if the Council has provided an instalment plan and the person has elected to pay the special rate or special charge in accordance with the instalment plan, in accordance with the instalment plan.

S. 167(5)
repealed by
No. 22/1992
s. 15(c), new
s. 167(5)
inserted by
No. 67/2008
s. 59(2).

(5) If the performance of the function or the exercise of the power in respect of which a special rate or special charge is to be levied relates substantially to capital works, the Council must provide an instalment plan in accordance with subsection (6).

S. 167(6)
inserted by
No. 67/2008
s. 59(2).

(6) An instalment plan—

(a) must provide for instalments to be paid over a period of at least 4 years;

(b) may include in the amount of an instalment a component for reasonable interest costs the total of which must not exceed the estimated

borrowing costs of the Council in respect of the performance of the function or the exercise of the power in respect of which the special rate or special charge is to be levied by more than 1%.

168 Incentives for prompt payment

- (1) At the meeting at which a Council declares any rates or charges, the Council may declare that incentives are to be given by it for the payment of those rates and charges before the due date and must include in the declaration details of the circumstances in which an incentive will be given.
- (2) A notice requiring payment of a rate or charge must specify any incentives.

169 Rebates and concessions

- (1) A Council may grant a rebate or concession in relation to any rate or charge—
 - (a) to assist the proper development of the municipal district; or
 - (b) to preserve buildings or places in the municipal district which are of historical or environmental interest; or
 - (c) to restore or maintain buildings or places of historical, environmental, architectural or scientific importance in the municipal district; or
 - (d) to assist the proper development of part of the municipal district.
- (1A) A Council resolution granting a rebate or concession must specify the benefit to the community as a whole resulting from the rebate or concession.

S. 169(1A)
inserted by
No. 109/2003
s. 84(1).

S. 169(1B)
inserted by
No. 109/2003
s. 84(1),
amended by
No. 64/2009
s. 57(1).

- (1B) Unless subsection (1D) applies, a Council may only grant a rebate or concession—
- (a) to owners of specified rateable properties not exceeding one third of the rateable properties in the municipal district; or
 - (b) to owners of rateable properties who undertake to satisfy terms that directly relate to the community benefit as are specified by the Council.

S. 169(1C)
inserted by
No. 109/2003
s. 84(1),
amended by
No. 67/2008
s. 60.

- (1C) If subsection (1B)(a) applies and subsection (1B)(b) does not apply, a person may make a submission under section 223.

S. 169(1D)
inserted by
No. 64/2009
s. 57(2).

- (1D) Without limiting subsection (1), a Council may grant a rebate or concession in relation to any rate or charge, to support the provision of affordable housing, to a registered agency.

S. 169(2)
amended by
No. 109/2003
s. 84(2).

- (2) If a person granted a rebate or concession has not complied with the terms on which the rebate or concession was granted, the Council must by a notice sent to the person—
- (a) require the payment of the whole or part of the rate or charge by a specified date; and
 - (b) require the payment of interest for the late payment of the rate or charge, as if the rebate or concession had not been granted.

S. 169(3)
inserted by
No. 64/2009
s. 57(3).

- (3) In this section, **registered agency** has the same meaning as it has in section 4(1) of the **Housing Act 1983**.

170 Deferred payment

- (1) A Council may defer in whole or in part the payment by a person of any rate or charge which is due and payable for a specified period and

subject to any conditions determined by the Council if it considers that an application by that person shows that the payment would cause hardship to the person.

- (2) On deferral of the payment the person who is liable to make the payment is not liable until the Council sends the person a notice under subsection (3).
- (3) A Council may by a notice sent to a person—
 - (a) require that person to pay the whole or part of any deferred rate or charge by a specified date if—
 - (i) it considers that the person's circumstances have so changed that the payment would no longer cause hardship to the person; or
 - (ii) the person no longer owns or occupies the land in relation to which the rate or charge was levied; and
 - (b) require the payment of interest for the late payment of the rate or charge, as if the deferral had not occurred.

171 Waiver

- (1) The Council may waive the whole or part of any rate or charge or interest in relation to—
 - (a) an eligible recipient under subsection (4); or
 - (b) any other class of persons determined by the Council for the purpose of waiving rates or charges on the grounds of financial hardship.
- (2) A resolution of the Council for the purposes of subsection (1)(b) must include the objectives to be achieved by the waiver.

S. 171(1)
substituted by
No. 109/2003
s. 85.

S. 171(2)
substituted by
No. 109/2003
s. 85.

Local Government Act 1989
No. 11 of 1989
Part 8—Rates and charges on rateable land

S. 171(3)
repealed by
No. 109/2003
s. 85.

* * * * *

S. 171(4)
amended by
Nos 78/1991
s. 7(1),
82/2004
s. 13(Sch.
item 5.1).

- (4) The following provisions apply to the waiver of the whole or part of any rates or charges or interest in relation to eligible recipients within the meaning of the **State Concessions Act 2004** who are entitled to be granted a concession under a relevant concession order made under that Act—

S. 171(4)(a)
repealed by
No. 82/2004
s. 13(Sch.
item 5.2).

* * * * *

S. 171(4)(b)
amended by
No. 13/1990
s. 19(a).

- (b) a person may only apply for a waiver in respect of rateable land or a part of rateable land which is used exclusively for residential purposes by that person and is that person's sole or principal place of residence;

S. 171(4)(ba)
inserted by
No. 78/1991
s. 7(2).

- (ba) in addition, if the person does not own the land or part, he or she may only apply for a waiver if—
- (i) he or she is liable to pay those rates or charges or interest (or an amount in place of, or on account of, those rates or charges or interest), whether under an agreement with the owner or for any other reason; or
 - (ii) he or she holds a residence right in a retirement village (as defined in the **Retirement Villages Act 1986**); or
 - (iii) he or she made a valid application in respect of the land under section 298(1A) of the **Local Government Act 1958**, or continued to have a valid application under

section 298(1AC) of that Act, in the 12 months immediately before the commencement of this section;

- (c) a person may make only one application for each rating period in respect of the same rateable land or same part of rateable land; S. 171(4)(c) amended by No. 82/2004 s. 13(Sch. item 5.3).
- (d) an application must be in the form approved by the Minister administering the **State Concessions Act 2004** and must be made on or before 30 April in the financial year in respect of the rate or charge for which the waiver is sought, but the Minister administering the **State Concessions Act 2004** may approve late applications or extend the closing date for applications, either generally or specifically; S. 171(4)(d) substituted by No. 13/1990 s. 19(b), amended by Nos 99/1994 s. 3(2)(e), 11/2002 s. 3(Sch. 1 item 42), 82/2004 s. 13(Sch. item 5.4(a)(b)).
- (e) the Council must, on receipt of an application which complies with this subsection, waive the amount which is in accordance with the concession order; S. 171(4)(e) amended by No. 82/2004 s. 13(Sch. item 5.5).
- (f) subject to the approval of the Minister administering the **State Concessions Act 2004**, a Council which waives an amount in respect of rateable land or a part of rateable land under this subsection may decide to treat the person who was granted the waiver as having made a continuing application for a waiver in respect of the rateable land or part, unless the person advises the Council that a waiver is no longer sought. S. 171(4)(f) amended by Nos 13/1990 s. 19(c)(i)(ii), 82/2004 s. 13(Sch. item 5.6).
- (5) The Council must not in respect of a person waive an amount under subsection (4) which exceeds the amount paid to the Council by the Government of Victoria in respect of that person. S. 171(5) substituted by No. 82/2004 s. 13(Sch. item 5.7).

S. 171(5AA)
inserted by
No. 82/2004
s. 13(Sch.
item 5.7).

(5AA) An Order under subsection (4)(a) as in force immediately before the commencement of the **State Concessions Act 2004** is deemed to be a concession order within the meaning of that Act in relation to rates, charges or interest payable under this Act until a relevant concession order under that Act is made.

S. 171(5A)
inserted by
No. 78/1991
s. 7(3).

(5A) The Council may also waive an amount of rate or charge or interest payable by a person if the person has a legally enforceable right to recover that amount (whether directly or indirectly) from an eligible recipient who would be eligible to apply for a waiver of that amount under subsection (4) if that eligible recipient was liable to the Council for that amount.

S. 171(5B)
inserted by
No. 78/1991
s. 7(3).

(5B) The Council may only waive the amount under subsection (5A) on the application of the eligible recipient.

(6) A person who—

- (a) gives to a Council any information which is false or misleading in any material particular in respect of an application under this section; or
- (b) fails to notify a Council of any change in circumstances which is relevant to an application or to a waiver granted under this section—

is guilty of an offence.

Penalty: 10 penalty units.

S. 171A
inserted by
No. 109/2003
s. 86.

171A Waiver by application—financial hardship

(1) A person who—

- (a) is suffering financial hardship; or

- (b) would suffer financial hardship if that person paid the full amount of a rate or charge for which he or she is liable—

may apply to a Council for the waiver of the whole or part of any rate or charge or of any interest imposed for late payment.

- (2) The Council may require the applicant—
 - (a) to give further particulars; or
 - (b) to verify particulars—in relation to the application.
- (3) The Council may grant an application if the Council is satisfied that the applicant is a person who is suffering financial hardship if that person paid the full amount of the rate or charge for which he or she is liable.
- (4) A person who—
 - (a) gives to a Council any information which is false or misleading in any material particular in respect of an application under this section; or
 - (b) fails to notify a Council of any change in circumstances which is relevant to an application or to a waiver granted under this section—

is guilty of an offence.

Penalty: 10 penalty units.

172 Council may charge interest on unpaid rates and charges

- (1) A Council may require a person to pay interest on any amounts of rates and charges—
 - (a) which that person is liable to pay; and

S. 172(1)(b)
amended by
No. 22/1992
s. 15(d),
substituted by
No. 27/1997
s. 13(1).

- (b) which have not been paid by the date specified under section 167 for their payment (or, in the case of late notices, by the date specified under section 158(4B)).

S. 172(2)
amended by
No. 78/1991
s. 8(1),
substituted by
No. 27/1997
s. 13(2).

(2) The interest—

- (a) is to be calculated at the rate fixed under section 2 of the **Penalty Interest Rates Act 1983** that applied on the first day of July immediately before the due date for the payment; and
- (b) becomes payable—
 - (i) if the payment was payable in instalments only, on and from the date on which the missed instalment was due; or
 - (ii) if the payment was payable either in instalments or in a lump sum and the first instalment was paid by the date it was due, on and from the date on which the relevant subsequent missed instalment was due; or
 - (iii) if the payment was payable either in instalments or in a lump sum, and neither the first instalment nor the lump sum were paid by the dates the first instalment or the lump sum were due, on and from the date on which each missed instalment was due; and
- (c) continues to be payable until the payment or the recovery of the rates or charges.

S. 172(2)(b)(iii)
substituted by
No. 63/2012
s. 22.

- (2A) The Council may continue to require a person to pay interest in accordance with this section after it obtains a court order requiring the payment of the rates and charges payable (but only until the payment or the recovery of the rates or charges).

S. 172(2A)
inserted by
No. 78/1991
s. 8(2),
substituted by
No. 27/1997
s. 13(2).

* * * * *

S. 172(2B)(2C)
inserted by
No. 78/1991
s. 8(2),
repealed by
No. 27/1997
s. 13(2).

- (3) A Council may exempt any person from paying the whole or part of any interest either generally or specifically.
- (4) A Council may recover interest due to it on rates and charges in the same way as it may recover the rates or charges.

173 Land becoming or ceasing to be rateable land

- (1) If land becomes rateable land after 1 July in any financial year, the rate or charge which is payable on that land for the financial year is the amount which is proportionate to the part of that financial year remaining after the land becomes rateable land.
- (2) If land ceases to be rateable land during a financial year for which a rate or charge has been levied on it, a Council must—
- (a) if any payment of the rate or charge has been made, refund to the current owner of the land an amount proportionate to the part of that financial year remaining after the land ceases to be rateable land; or
- (b) if none of the rate or charge has been paid, require the person who is required to pay the rate or charge to only pay an amount

S. 173(1)
amended by
No. 99/1994
s. 3(2)(f).

proportionate to the part of that financial year before the land ceases to be rateable land.

S. 174
repealed by
No. 76/1997
s. 16.

* * * *

S. 174A
inserted by
No. 13/1990
s. 20.

174A Land which ceases to be urban farm land or residential use land

If rateable land ceases to be urban farm land or residential use land the following provisions apply—

- (a) the person who is liable to pay the rates and charges on that land immediately after it ceases to be urban farm land or residential use land must pay to the relevant Council the sum of money specified in paragraph (b);
- (b) the sum payable is the difference between—
 - (i) the rates and charges and any amount in lieu of rates or charges which were paid or payable for the land for the period since the rateable land became urban farm land or residential use land or the period of 5 years (whichever is the lesser period); and
 - (ii) the rates and charges and any amount in lieu of rates and charges which would have been payable for the land for the relevant period under subparagraph (i) if the rateable land had not been urban farm land or residential use land during that period;
- (c) the Council may exempt any person from paying the whole or part of the sum of money specified in paragraph (b).

175 Person acquiring rateable land

- (1) A person who becomes the owner of rateable land must pay—
- (a) any rate or charge on the land which is current; and
- (b) any arrears of rates or charges (including any interest on those rates or charges) on the land which are due and payable.
- (1AA) If a Council has obtained an award for legal costs in relation to any rate or charge owing by the previous owner of the rateable land, subsection (1) applies to the amount of legal costs remaining unpaid as if the legal costs were arrears of rates and charges.
- (1A) If the previous owner of the rateable land had been paying any rate or charge by instalments at the time the ownership of the land changed, the person who becomes the owner of the land may continue the payment of that rate or charge by instalments.
- (1B) The person who becomes the owner of rateable land may also pay a rate or charge by instalments if the previous owner could have paid it by instalments and the person becomes the owner of the land before the date the first instalment falls due.
- (1C) In all other cases, the person who becomes the owner of rateable land must pay any amount due under subsection (1)—
- (a) by the date it was due to have been paid by the previous owner of the land; or
- (b) if that date has already passed, immediately after the person becomes the owner of the land.

S. 175(1)
amended by
No. 34/1996
s. 23(1).

S. 175(1AA)
inserted by
No. 109/2003
s. 87.

S. 175(1A)
inserted by
No. 34/1996
s. 23(2).

S. 175(1B)
inserted by
No. 34/1996
s. 23(2).

S. 175(1C)
inserted by
No. 34/1996
s. 23(2).

S. 175(1D)
inserted by
No. 34/1996
s. 23(2).

(1D) Subsections (1A) and (1B)—

- (a) do not apply to instalment payments relating to rates or charges that are in arrears; and
- (b) are not to be read as enabling a new owner to obtain the benefit of any concessional rate or charge that the new owner is not entitled to in her, his or its own right.

S. 175(2)
amended by
No. 13/1990
s. 21.

(2) If there is any inconsistency between—

- (a) the amount claimed by a Council or any person to be arrears under subsection (1)(b) in respect of a specific period; and
- (b) the amount appearing on a certificate issued under section 229 as the arrears in respect of that period—

the Council to whom the arrears are payable may recover an amount which is not more than the amount appearing on the certificate and interest which has accrued on the amount appearing on the certificate since the issue of the certificate.

S. 176
repealed by
No. 22/1992
s. 16.

* * * * *

177 Council may require occupier to pay rent

- (1) If any rate or charge is due and unpaid in relation to land, the Council may send a notice to the person who appears from the rate records of the Council to be liable to pay the rate or charge.
- (2) The notice must state—
 - (a) that after 7 days from the date the notice is sent, the occupier of the land may be required by notice sent to that person to pay to the Council the rent then due or further

rent as it falls due by that person for the land;
and

- (b) that the rent must be paid to the Council until the amount of the rate or charge has been paid.
- (3) A payment of rent by a person under this section is a discharge of the debt for that rent and must be treated as payment of rent for the purposes of any tenancy law.
- (4) If a person fails to pay any or all of the rent due under this section, the Council may recover the unpaid amount as a debt due to it by that person.

178 Occupier who pays rates or charges

- (1) An occupier of any rateable land who makes any payment of a rate or charge on the land which is made under section 180 is entitled to deduct the amount from the occupier's rent.
- (2) Subsection (1) does not apply if the occupier has agreed to pay any rate or charge on that land.

179 Invalidity of any rate or charge

- (1) The invalidity of the whole or any part of a rate or charge is not a defence in any proceedings involving a claim for recovery of the rate or charge unless the rate or charge has been quashed in any other proceedings.
- (2) A rate or charge is not invalid only by reason of it being declared after 30 June.

**S. 179(2)
amended by
Nos 99/1994
s. 3(2)(g),
5/2014
s. 14.**

180 Unpaid rate or charge

S. 180(1)
amended by
Nos 57/1989
s. 5(4),
27/1997 s. 14.

- (1) If a rate or charge (including any instalment or any part of a rate or charge) remains unpaid after it is due and payable, the Council may recover it in the Magistrates' Court or by suing for debt.
- (2) If any rate or charge is recovered from an owner of rateable land and an agreement with the owner of the land states that the occupier of the land must pay any rate or charge, the owner may recover the rate or charge from the occupier in the same manner in which the owner may recover rent owing to that owner.
- (3) An occupier who pays any rate or charge under this section need not pay more than the amount of rent owed by the occupier at the time of the demand or the payment.
- (4) Subsection (3) does not apply—
 - (a) if the occupier has agreed to pay any rate or charge; or
 - (b) if, after the Council requests that the occupier disclose the rent and the name and address of the person to whom it is payable, the occupier does not do so.
- (5) For the purposes of this section, the occupier has the burden of proof of showing that—
 - (a) the occupier had not agreed to pay any rate or charge; and
 - (b) the amount of any rate or charge to be paid on any land by that occupier is more than the rent owed by the occupier for the land.

181 Council may sell land to recover unpaid rates or charges

S. 181
amended by
Nos 13/1990
s. 22, 78/1991
s. 9(a)(b),
91/1994
s. 36(6),
substituted by
No. 27/1997
s. 15.

- (1) This section applies if—
- (a) any amount due to a Council for, or in respect of, rates or charges (including enforcement costs and interest) in respect of any rateable land is more than 3 years overdue; and
 - (b) no current arrangement exists for the payment of the amount to the Council; and
 - (c) the Council has a Court order requiring the payment of the amount (or part of the amount).
- (2) The Council may sell the land, or cause the land to be transferred to itself, for an amount equal to or more than the estimated value of the land as set out in a written valuation of the land by a valuer that was made not more than 6 months before the date of the sale or transfer.
- (3) In subsection (2), *valuer* means a person who holds the qualifications or experience specified under section 13DA(2) of the **Valuation of Land Act 1960**.
- (4) For the purposes of subsection (1)(b), an arrangement is not current if any term of the arrangement is not being complied with.
- (5) Before selling the land, or causing it to be transferred, the Council must—
- (a) if it appears from the Register kept under the **Transfer of Land Act 1958** or from any memorial in the office of the Registrar-General that a person has an estate or interest in the land, serve on that person a notice requiring the payment of

S. 181(3)
amended by
No. 94/2009
s. 31(1).

- the amount referred to in subsection (1) accompanied by a copy of this section; and
- (b) ensure that public notice of its intention to conduct the sale, or carry out the transfer, is given; and
 - (c) if the land is to be sold by auction, notify in writing any person who must be served with a notice under paragraph (a) of when and where the auction will be held.
- (6) The Council must comply—
- (a) with subsections (5)(a) and (b) at least 4 weeks before the date of the sale or transfer; and
 - (b) with subsection (5)(c) at least 14 days before the date of the auction.
- (7) The Council may recover the following amounts from the proceeds of a sale of land (or if the land is transferred, may offset from the transfer amount the following amounts)—
- (a) all expenses incurred in connection with the sale or transfer;
 - (b) the amount referred to in subsection (1) and any enforcement expenses and interest associated with that amount;
 - (c) any other amount due to it for, or in respect of, rates or charges (including enforcement costs and interest) in respect of the land.
- (8) If any amount remains after the Council has recovered (or offset) everything it is permitted to recover (or offset) under subsection (7), it must then—

- (a) use that remaining amount to discharge, in their order of priority, any mortgages and other charges in respect of the land, whether registered or not, that it has notice of; and
 - (b) pay any amount remaining to each person who appears to have an estate or interest in the land—
 - (i) in accordance with that person's estate or interest; or
 - (ii) if 2 or more people appear to have an estate or interest but it is not possible to determine from the Register or memorials how their estates or interests stand in relation to each other, in equal shares.
- (9) If any person who is entitled to an amount under subsection (8) cannot be found after reasonable efforts have been made to find her, him or it, the Council may use the amount for its general purposes.
- (10) If no person appears to have an estate or interest in land that has been sold or transferred under this section, the Council may use for its general purposes any amount that remains after it has recovered (or offset) everything it is permitted to recover (or offset) under subsection (7), and paid everything it is required to pay under subsection (8)(a).
- (11) If land that is sold or transferred under this section is land under the **Transfer of Land Act 1958**, the Registrar of Titles—
- (a) must register a transfer of land under this section if the transfer is in a form approved by her or him; and

- (b) must cancel any mortgages or charges registered as encumbrances on the land when registering the transfer of land; and
 - (c) may dispense with the production of the certificate of title for the purpose of registering the transfer.
- (12) The registration of the transfer vests in the transferee all the estate and interest in the land.

Pt 8 Div. 2A
(Heading and
ss. 181A–
181J)
inserted by
No. 39/2015
s. 4.

Division 2A—Environmental upgrade agreements

S. 181A
inserted by
No. 39/2015
s. 4.

181A Environmental upgrade agreement

- (1) Subject to section 181B, the primary parties may enter into an environmental upgrade agreement in respect of rateable land, with an existing building on it, that is entirely or predominantly used for non-residential purposes, to fund works that improve the energy, water or environmental efficiency or sustainability of the building on that rateable land.
- (2) By agreement of the primary parties to an environmental upgrade agreement, the environmental upgrade agreement may also be entered into by any other person that the primary parties consider should be a party to the environmental upgrade agreement.
- (3) In addition to any provisions agreed to by the primary parties and any other parties to an environmental upgrade agreement, an environmental upgrade agreement must comply with, and provide for, the matters specified in section 181D(1) to (3).

181B Conditions to be met before Council may enter into environmental upgrade agreement

S. 181B
inserted by
No. 39/2015
s. 4.

- (1) A Council must not enter into an environmental upgrade agreement unless—
- (a) the Council receives a statutory declaration from the owner of the rateable land, at least 28 days before the agreement is entered into, in accordance with subsection (4); and
 - (b) each occupier, that would be liable to pay for all or part of any environmental upgrade charge levied as a consequence of an environmental upgrade agreement being entered into, is provided with a statement specifying the following—
 - (i) the total amount of the payments that the occupier would be required to pay;
 - (ii) a repayment schedule that details when the occupier's liability would become payable and, if the occupier's liability can be paid by instalment, the amount of each instalment and the timing of each instalment;
 - (iii) that the occupier may consent or object, in writing, to the imposition of the environmental upgrade charge in the manner set out in the statement;
 - (iv) that only an occupier that consents to the imposition of the charge in the manner set out in the statement is liable to pay for all or part of the environmental upgrade charge as set out in the repayment schedule; and
 - (c) an occupier that consents to the imposition of the environmental upgrade charge gives that consent in the manner set out in the

- statement the occupier received under paragraph (b); and
- (d) the total amount of taxes, rates, charges and mortgages owing on the rateable land and specified in a notice from the owner under subsection (3) when added to the total value of the environmental upgrade charges as set out in the proposed agreement is an amount that does not exceed the capital improved value of the land prior to any works that would be undertaken as part of the agreement.
- (2) The owner who intends to be a primary party to the environmental upgrade agreement must advise, in writing, any existing mortgagee in respect of the rateable land to which the agreement will apply—
- (a) that the owner intends to enter into an environmental upgrade agreement; and
 - (b) of the details of all environmental upgrade charges that are expected to be declared by a Council in respect of the rateable land under the environmental upgrade agreement.
- (3) The owner who intends to be a primary party to the environmental upgrade agreement is further required to give a Council notice of the following details (in writing) in respect of the rateable land to which the agreement will apply—
- (a) details of all registered and unregistered mortgages over the rateable land including—
 - (i) the total amount owing in respect of each mortgage; or
 - (ii) if a relevant mortgage is held against 2 or more properties including the rateable land, the proportion of the debt secured by the mortgage that

applies to the rateable land calculated
in accordance with subsection (5);

- (b) details of all taxes, rates and charges owing
on the rateable land (including the total
amount owing in respect of each tax, rate
or charge) imposed by or under an Act.
- (4) The details given by an owner to a Council under
subsection (3) must be accompanied by a statutory
declaration signed by, or on behalf of, the owner
stating—
 - (a) that the owner has complied with
subsection (2); and
 - (b) that the details given to the Council under
subsection (3) are accurate and complete.
- (5) For the purposes of subsection (3)(a)(ii), the
proportion of the debt secured by the mortgage
that applies to the rateable land must be calculated
by distributing the debt between all the properties
against which the mortgage is held in proportion
to the relative capital improved values of the
properties.
- (6) In this section—
existing mortgagee, in respect of rateable land to
which an environmental upgrade agreement
will apply, means any holder of a mortgage
for that land, whether registered or
unregistered.

181C Environmental upgrade charge

- (1) After entering into an environmental upgrade
agreement a Council must, in accordance with
the conditions of that agreement, declare an
environmental upgrade charge or 2 or more
environmental upgrade charges (as the case
requires) in respect of the rateable land that is
the subject of the agreement.

**S. 181C
inserted by
No. 39/2015
s. 4.**

- (2) A Council must levy an environmental upgrade charge by sending a notice to the person liable to pay it.
- (3) A notice under subsection (2) must specify—
 - (a) the name and address of the person liable to pay the charge; and
 - (b) a description of the rateable land in respect of which the charge is being levied; and
 - (c) the environmental upgrade agreement under which the charge is levied; and
 - (d) the amount for which the person specified in the notice is liable; and
 - (e) the manner of payment; and
 - (f) the penalties that may apply if the person fails to pay the charge.
- (4) An environmental upgrade charge is due and must be paid by the date specified in the notice requiring payment, which is a date not less than 28 days after the date of issue of a notice.
- (5) An environmental upgrade charge must be the agreed amount specified in the relevant environmental upgrade agreement.
- (6) Divisions 1, 2 and 3, other than sections 154, 156, 172, 175, 177, 178, 180 and 181, do not apply to an environmental upgrade charge.
- (7) For the purposes of this Division, section 172(1) applies as if for paragraph (b) there were substituted—
 - "(b) which have not been paid by the date specified in the repayment schedule to the environmental upgrade agreement."

- (8) Despite anything to the contrary in this Act, the total amount of an environmental upgrade charge received by a Council from an owner or any occupier or both (as the case requires) must be used by the Council to make repayments to the lending body in accordance with the environmental upgrade agreement.
- (9) For the purposes of subsection (8), the total amount of an environmental upgrade charge received by a Council and to be paid to the lending body does not include—
- (a) the proportion of the charge that accounts for the administrative costs of the Council as specified in the environmental upgrade agreement; and
 - (b) any penalty interest imposed by the Council on an owner or any occupier or both (as the case requires) as a consequence of nonpayment of the environmental upgrade charge.

Note

However, see section 181D(4)(b) which allows an environmental upgrade agreement to make provision for a Council to provide a proportion of any penalty interest received by the Council to the lending body.

- (10) If land for which an environmental upgrade charge has been levied ceases to be rateable land, the owner or any occupier or both (as the case requires) must, despite the land no longer being rateable, continue to pay the charge in accordance with the schedule of repayments specified in the environmental upgrade agreement.

S. 181D
inserted by
No. 39/2015
s. 4.

181D Environmental upgrade agreement provisions

- (1) An environmental upgrade agreement must—
 - (a) be in writing; and
 - (b) outline the works to be undertaken on the rateable land of the owner.
- (2) An environmental upgrade agreement must contain provisions that provide for the lending body advancing funds to an owner on the following conditions—
 - (a) that the owner use the funds advanced to conduct works on the rateable land for the purposes of the environmental upgrade agreement;
 - (b) that the owner or any occupier or both the owner and any occupiers (as the case requires) pay the environmental upgrade charge or charges levied by a Council in respect of the rateable land to which the agreement applies;
 - (c) that a Council uses the funds received under the environmental upgrade charge or charges to repay the lending body the principal amount initially advanced to the owner plus any agreed interest accrued since that advance.
- (3) An environmental upgrade agreement must specify the following—
 - (a) the total amount being advanced by the lending body under the agreement;
 - (b) the total amount of each environmental upgrade charge to be levied under the agreement;

- (c) the repayment schedule in respect of each environmental upgrade charge to be levied by a Council in accordance with the agreement;
 - (d) the total amount of the environmental upgrade charges to be declared by a Council under section 181C in accordance with the agreement;
 - (e) the total amount of any Council administration costs to be included as part of the environmental upgrade charge or charges;
 - (f) that if a Council adjusts an environmental upgrade agreement in accordance with section 181F(1), and as a consequence of that adjustment, refunds an amount to an owner or any occupier or an owner and any occupier (as the case requires) in accordance with section 181F(2), the lending body must reimburse the Council for all or part of the amount refunded if the Council passed all or part of that amount on to the lending body before the Council made the adjustment.
- (4) An environmental upgrade agreement may provide the following—
- (a) that an amount, in addition to any other liabilities a party may have under the agreement, may be payable by a party if a party to the agreement fails to comply with the agreement;
 - (b) that, in the event of nonpayment of an environmental upgrade charge by the owner or any occupiers, if a Council imposes penalty interest rates on the owner or any occupiers as a consequence of that nonpayment, the Council may provide a

proportion of that penalty interest to the lending body.

- (5) A provision of an environmental upgrade agreement must not be contrary to this Division.

S. 181E
inserted by
No. 39/2015
s. 4.

181E Liability of Council to recover environmental upgrade charge

- (1) Subject to subsections (2) and (3), a Council must use its best endeavours to recover an environmental upgrade charge in accordance with any requirements imposed on it by this Act and an environmental upgrade agreement.
- (2) A Council is not liable for any failure by an owner or any occupier or an owner and any occupier (as the case requires) to pay an environmental upgrade charge or charges.
- (3) A failure by an owner or any occupier or an owner and any occupier (as the case requires) under subsection (2) does not make the Council liable to pay the outstanding amount under the environmental upgrade charge or charges to the lending body.

S. 181F
inserted by
No. 39/2015
s. 4.

181F Other responsibilities of Council

- (1) If an environmental upgrade agreement is terminated before all the funds that the lending body agreed to advance to the owner are advanced, a Council must—
- (a) adjust the environmental upgrade charge or charges to reflect the lower amount advanced to the owner; and
- (b) by written notice, advise any person liable to pay the environmental upgrade charge of the adjustment.
- (2) If, as a consequence of an adjustment being made to an environmental upgrade charge under subsection (1), an owner or any occupier has made

payments under the environmental upgrade charge in excess of the adjusted amount, a Council must refund the excess amount paid to the owner or occupier or the owner and the occupier (as the case requires).

181G Quarterly statement

The Chief Executive Officer must ensure that a statement prepared under section 138 includes a record of the following—

- (a) each environmental upgrade agreement entered into in the last quarter, and the rateable land to which the agreement relates;
- (b) each environmental upgrade charge approved in respect of the agreements referred to in paragraph (a), and the value of the charges;
- (c) the total number of environmental upgrade charges in operation in the last quarter;
- (d) the total value of all environmental upgrade charge payments that have fallen due and have not been paid;
- (e) the total value of all environmental upgrade charge payments that are yet to fall due.

S. 181G
inserted by
No. 39/2015
s. 4.

181H Delegation to Chief Executive Officer

- (1) A Council may, by instrument of delegation, delegate to the Chief Executive Officer the following powers—

- (a) the power to enter into an environmental upgrade agreement on behalf of the Council;
- (b) the power to declare and levy an environmental upgrade charge.

S. 181H
inserted by
No. 39/2015
s. 4.

- (2) The Chief Executive Officer must not delegate the power delegated to the Chief Executive Officer under subsection (1) to any other person.

S. 181I
inserted by
No. 39/2015
s. 4.

181I Guidelines

- (1) The Minister administering the **Victorian Energy Efficiency Target Act 2007** may make guidelines for the purposes of this Division including in relation to the following matters—
- (a) the specification of works that are likely to be considered as improving the energy, water or environmental efficiency or sustainability of a building for the purposes of entering into an environmental upgrade agreement;
 - (b) the specification of matters that should be considered by a Council before deciding to offer environmental upgrade agreements;
 - (c) environmental upgrade agreement provisions that may be incorporated into any environmental upgrade agreement;
 - (d) the provision of reports by a Council to the public in relation to the commencement, progress or completion of any works funded by an environmental upgrade agreement.
- (2) Before making guidelines under this section, the Minister administering the **Victorian Energy Efficiency Target Act 2007** must consult with the Minister administering this Act.
- (3) Guidelines made under this section—
- (a) must be published in the Government Gazette; and
 - (b) may be published on the Internet.

**181J Environmental upgrade agreements and charges
under City of Melbourne Act 2001**

S. 181J
inserted by
No. 39/2015
s. 4.

- (1) Any environmental upgrade agreement that was entered into under Part 4B of the **City of Melbourne Act 2001** and that was in force immediately before the repeal of that Part—
 - (a) continues in force as if it had been entered into under this Division; and
 - (b) is taken to be an environmental upgrade agreement under this Division.
- (2) For the avoidance of doubt, the repeal of Part 4B of the **City of Melbourne Act 2001** and the re-enactment of that Part in this Division, is not to be considered as a change of law for the purposes of any environmental upgrade agreement entered into under that Part before its repeal.
- (3) Any environmental upgrade charge that was declared and levied by the City of Melbourne under Part 4B of the **City of Melbourne Act 2001** and that was due and payable immediately before the repeal of that Part—
 - (a) continues to be due and payable as if it had been declared and levied under this Division; and
 - (b) is taken to be an environmental upgrade charge under this Division.
- (4) Without limiting the operation of any provisions of the **Interpretation of Legislation Act 1984** relating to repeal and re-enactment, a provision of Part 4B of the **City of Melbourne Act 2001** specified in Column 1 of the Table is taken to be re-enacted (with or without modifications) by the provision of this Act appearing opposite in Column 2 of the Table.

Local Government Act 1989
No. 11 of 1989
Part 8—Rates and charges on rateable land

<i>Column 1</i>	<i>Column 2</i>
<i>Provision of Part 4B of the City of Melbourne Act 2001</i>	<i>Provision of this Act</i>
Section 27L	Definitions of <i>environmental upgrade agreement, environmental upgrade charge, lending body</i> and <i>primary parties</i> in section 3(1)
Section 27M	Section 181A
Section 27N	Section 181B
Section 27O	Section 181C
Section 27P	Section 181D
Section 27Q(1)	Section 181E(2) and (3)
Section 27Q(2) and (3)	Section 181F
Section 27R	Section 181G
Section 27S	Section 181H

Pt 8 Div. 3
(Heading)
amended by
No. 34/1996
s. 22(1),
substituted by
No. 52/1998
s. 311(Sch. 1
item 55.4).

Division 3—Reviews and appeals

S. 182
repealed by
No. 34/1996
s. 22(2).

* * * *

183 Review of differential rating by VCAT

S. 183
(Heading)
inserted by
No. 67/2008
s. 61(1).
S. 183
substituted by
No. 78/1991
s. 10,
amended by
Nos 91/1994
s. 27(a)–(d),
34/1996
s. 33(c),
substituted by
No. 52/1998
s. 311(Sch. 1
item 55.5).

- (1) An owner or occupier of land whose interests are affected by a decision of the Council to classify or to not classify that land as land of a particular type or class for differential rating purposes may apply to VCAT for review of the decision.
- (2) An application for review must be made within 60 days after the day on which the owner or occupier receives the first notice under section 158(3) following the decision.
- (3) The provisions of Part III of the **Valuation of Land Act 1960** apply to a review under this section with any necessary modifications.

S. 183(1)
amended by
No. 67/2008
s. 61(2).

S. 183(2)
substituted by
No. 63/2012
s. 23.

184 Appeal to County Court

- (1) A person who is aggrieved—
 - (a) by a rate or charge imposed by a Council under this or any other Act; or
 - (b) by anything included or excluded from such a rate or charge—may appeal to the County Court for a review of the rate or charge.

S. 184(1)
amended by
Nos 78/1991
s. 11(a),
99/1994
s. 3(2)(h)(i),
34/1996
s. 24(a),
substituted by
No. 76/1997
s. 17.

Local Government Act 1989
No. 11 of 1989
Part 8—Rates and charges on rateable land

S. 184(1A)
inserted by
No. 76/1997
s. 17.

(1A) This section does not apply to a matter in respect of which an objection or appeal may be made under Part III of the **Valuation of Land Act 1960** or under section 183.

S. 184(1B)
inserted by
No. 76/1997
s. 17.

(1B) The person must lodge the appeal with the Court within 60 days after first receiving written notice of the rate or charge.

(2) The person may only appeal on one or more of the following grounds of appeal—

S. 184(2)(a)
amended by
No. 22/1992
s. 15(e).

(a) in the case of a rate (other than a special rate under section 221), that the land in respect of which the rate was declared was not rateable land;

S. 184(2)(b)
repealed by
No. 78/1991
s. 11(b).

* * * * *

(c) that the rate or charge assessment was calculated incorrectly;

(d) that the person levied with the rate or charge was not liable to be rated.

(3) The County Court may make rules with respect to—

(a) the procedure for applying to the Court; and

(b) proceedings for hearing the application; and

(c) orders, including orders as to costs.

S. 184(4)
repealed by
No. 34/1996
s. 24(b).

* * * * *

185 Application to VCAT

**S. 185
(Heading)**
inserted by
No. 67/2008
s. 62(1).

- (1) A person may apply to VCAT for review of a decision of a Council imposing a special rate or special charge on that person.

S. 185(1)
substituted by
No. 52/1998
s. 311(Sch. 1
item 55.6),
amended by
No. 67/2008
s. 62(2).

- (2) The person must apply—

- (a) within 30 days after the date of issue of a notice to the person of the special rate or special charge; and

S. 185(2)(a)
amended by
No. 34/1996
s. 24(c).

- (b) on the ground that—

- (i) the works and projects or the period of maintenance for the purposes of which the special rate or special charge was imposed are not or will not provide a special benefit to that person; or
- (ii) the basis of distribution of the rate or charge amongst those persons who are liable to pay it is unreasonable; or
- (iii) if the planning scheme for the area contains any relevant policies or specific objectives, the works and projects proposed for the construction of a road or for the drainage of any land are inconsistent with those policies or objectives; or
- (iv) if the planning scheme for the area does not contain any relevant policies or specific objectives, the works and projects proposed for the construction of a road or for the drainage of any land are unnecessary, unreasonable,

S. 185(2)(b)(ii)
amended by
No. 13/1990
s. 31(h).

excessive, insufficient, unsuitable or costly, having regard to the locality or environment and to the probable use of the road or drainage of the land.

S. 185(3)
substituted by
No. 52/1998
s. 311(Sch. 1
item 55.7),
amended by
No. 67/2008
s. 62(3).

- (3) On a review, VCAT may, by order—
- (a) vary the special rate or special charge declared by the Council in relation to its application to the applicant; or
 - (b) set aside the special rate or special charge if satisfied that the ground in subsection (2)(b)(ii), (iii) or (iv) is established; or
 - (c) dismiss the application and confirm the special rate or special charge.

S. 185(4)
substituted by
No. 52/1998
s. 311(Sch. 1
item 55.7),
amended by
No. 67/2008
s. 62(4).

- (4) If VCAT sets aside a special rate or special charge made in a particular year, the Council may declare and levy a new special rate or special charge for that year even if the year has ended.

S. 185AA
inserted by
No. 52/1998
s. 311(Sch. 1
item 55.8),
amended by
No. 67/2008
s. 63(1).

185AA Application for declaration

- (1) A person may apply to VCAT for a declaration concerning the validity of a decision referred to in section 185(1).
- (2) On an application under subsection (1) VCAT may make any declaration it thinks appropriate in the circumstances.
- (3) VCAT's power to make a declaration under this section is exercisable only by a presidential member of VCAT.

S. 185AA(2)
amended by
No. 67/2008
s. 63(2).

S. 185AA(3)
amended by
No. 67/2008
s. 63(3).

185AB Matters VCAT must take into account

In determining an application for review or for a declaration under section 185 or 185AA, VCAT must—

- (a) take into account any relevant planning scheme; and
- (b) where appropriate, have regard to any planning scheme or amendment adopted by a planning authority under the **Planning and Environment Act 1987** but not, as at the date the application is determined, approved by the Minister or the planning authority.

S. 185AB
(Heading)
inserted by
No. 67/2008
s. 64(1).

S. 185AB
inserted by
No. 52/1998
s. 311(Sch. 1
item 55.8),
amended by
Nos 109/2003
s. 93(b),
67/2008
s. 64(2).

S. 185AB(b)
amended by
No. 81/2004
s. 49.

Pt 8A
(Heading and
ss 185A–
185C)
inserted by
No. 33/1995
s. 3,
amended by
Nos 33/1995
s. 3, 34/1996
s. 25, 67/2008
s. 65, 109/2003
s. 88,
substituted by
No. 65/2015
s. 8.

Part 8A—Rate caps

185A Purposes of this Part

The purposes of this Part are—

- (a) to promote the long term interests of ratepayers and the community in relation to sustainable outcomes in the delivery of services and critical infrastructure; and
- (b) to ensure that a Council has the financial capacity to perform its duties and functions and exercise its powers.

185B Base average rate

The *base average rate*, in relation to a Council, means the rate calculated according to the following formula—

$$\text{BAR} = \frac{\text{Rb}}{\text{L}}$$

where—

BAR is the base average rate; and

Rb is the total annualised revenue leviable from general rates, municipal charges and any other prescribed rates or charges on rateable properties within the Council's municipal district as at 30 June in the base year; and

L is the number of rateable properties within the Council's municipal district as at 30 June in the base year.

Note

The total annualised revenue leviable in the base year includes revenue that is budgeted as at 1 July of the base year and the full year effect of annualised supplementary rates.

185C Capped average rate

The *capped average rate*, in relation to a Council, means the rate calculated according to the following formula—

$$\text{CAR} = \frac{\text{Rc}}{\text{L}}$$

where—

CAR is the capped average rate; and

Rc is the total annualised revenue leviable from general rates, municipal charges and any other prescribed rates or charges on rateable properties within the Council's municipal district as at 1 July in the capped year; and

L is the number of rateable properties within the Council's municipal district as at 1 July in the capped year.

Note

The total annualised revenue leviable in the capped year is the revenue that is budgeted as at 1 July of the capped year.

185D Minister may set average rate cap by general Order

S. 185D
inserted by
No. 65/2015
s. 8.

- (1) The Minister may by general Order published in the Government Gazette direct a Council that the capped average rate in respect of a specified financial year must not exceed the base average rate by more than the average rate cap specified in the general Order.
- (2) A general Order made under subsection (1) may be directed to—
 - (a) all Councils; or
 - (b) a class of Councils; or
 - (c) a specified Council.

- (3) Before making a general Order, the Minister must—
 - (a) request advice from the Essential Services Commission for the purposes of adjustment in setting the average rate cap; and
 - (b) have regard to any advice received from the Essential Services Commission as requested under paragraph (a).
- (4) The Essential Services Commission must provide advice to the Minister in accordance with a request made under subsection (3)(a).
- (5) A general Order does not have effect in respect of a capped year unless it is published in the Government Gazette—
 - (a) on or before 31 December in the financial year before the capped year; or
 - (b) on or before such other date fixed by the Minister by notice published in the Government Gazette in the financial year before the capped year.

S. 185E
inserted by
No. 65/2015
s. 8.

185E Council may apply for higher cap

- (1) A Council that is the subject of a general Order may apply to the Essential Services Commission for a special Order specifying a higher cap for one or more specified financial years (up to a maximum of 4 years).
- (2) An application under this section must be made—
 - (a) by 31 March before the first capped year to which the application relates; or
 - (b) by such other date fixed by the Minister by notice published in the Government Gazette.
- (3) An application under this section must be accompanied by the prescribed fee (if any) and must specify—

- (a) a proposed higher cap for each specified financial year; and
 - (b) the reasons for which the Council seeks the higher cap; and
 - (c) how the views of ratepayers and the community have been taken into account in proposing the higher cap; and
 - (d) how the higher cap is an efficient use of Council resources and represents value for money; and
 - (e) whether consideration has been given to reprioritising proposed expenditures and alternative funding options and why those options are not adequate; and
 - (f) that the assumptions and proposals in the application are consistent with the Council's long term strategy and financial management policies set out in the Council's planning documents and annual budget.
- (4) The Essential Services Commission may make guidelines specifying any further matters in respect of applications for a special Order.
- (5) The Essential Services Commission may do any or all of the following in relation to a Council making an application under this section—
- (a) direct the Council to submit the application in a manner and form determined by the Essential Services Commission;
 - (b) direct the Council to provide the Essential Services Commission with any information that the Commission considers would be relevant to the application;
 - (c) provide any further advice or guidance to the Council in relation to the application.

- (6) The Essential Services Commission may make a special Order if satisfied that the higher cap proposed by the Council or another higher cap set by the Commission (but not higher than the higher cap proposed by the Council) is appropriate, having regard to—
- (a) the matters specified in subsection (3); and
 - (b) whether the directions given under subsection (5) (if any) have been complied with; and
 - (c) the Council's record of compliance with any previous general Order and any special Order.
- (7) If the Essential Services Commission makes a special Order in respect of a Council, the applicable cap on rates for the year or years specified in the special Order is the higher cap set out in the special Order.
- (8) If the Essential Services Commission makes a special Order under this section, the Commission must by notice published in the Government Gazette specify—
- (a) that a special Order has been made under this section; and
 - (b) the Council to which the special Order applies; and
 - (c) the higher cap; and
 - (d) each financial year to which the higher cap applies to the Council.

185F Councils must comply with a general Order and any special Order that applies

S. 185F
inserted by
No. 65/2015
s. 8.

- (1) A Council must comply with a general Order and any special Order that applies to it.
- (2) If a Council fails to comply with the general Order and any special Order that applies to it, the failure does not affect the validity of any rates or charges levied in respect of the financial year in respect of which the failure occurred.
- (3) Despite subsection (2), the Minister may by Order published in the Government Gazette declare that a Council's rates or charges levied in respect of a financial year, or part of the Council's rates or charges levied in respect of that financial year, are invalid for all purposes if the Minister is satisfied that the Council has repeatedly and substantially failed to comply with a general Order and any special Order.

185G Review

S. 185G
inserted by
No. 65/2015
s. 8.

- (1) The Minister administering this Act and the Minister administering the **Essential Services Commission Act 2001** must ensure that a review of this Part is completed by 31 December 2021.
- (2) The purpose of the review is to determine—
 - (a) whether the mechanism for setting a cap on rates set out in this Part is still appropriate; and
 - (b) whether this Part is effective or needs to be amended.
- (3) The Minister administering this Act and the Minister administering the **Essential Services Commission Act 2001** must ensure that further reviews are completed periodically every 4 years after the date on which a review is completed under subsection (1).

Part 9—Specific functions, powers and restrictions

Division 1—General provisions

186 Restriction on power to enter into contracts

S. 186
amended by
Nos 22/1992
s. 17(a)(b),
43/1993
s. 15(1)(2),
125/1993
s. 29(1)(2),
substituted by
No. 40/1994
s. 6.

S. 186(1)
amended by
No. 59/1999
s. 6.

- (1) Before a Council enters into a contract for the purchase of goods or services, or for the carrying out of works, to the value of \$100 000 (or such higher amount as may be fixed by Order in Council) or more, it must—
 - (a) give public notice of the purpose of the contract and invite tenders from any person wishing to undertake the contract; or
 - (b) give public notice of the purpose of the contract or the project to which the contract relates and invite expressions of interest from any person interested in undertaking the contract or all, or any part of, the project.
- (2) If a Council invites expressions of interest—
 - (a) it must register those expressions of interest; and
 - (b) when it is ready to enter into the contract, it must invite tenders from some or all of those who registered their interest in undertaking the contract (or the part of the project to which the contract relates).

- (3) The public notice, tenders and expressions of interest must be in the prescribed form (if any) and must contain any details that are prescribed.
- (4) Nothing in this section requires a Council to accept the lowest tender or to accept any tender.
- (5) This section does not apply if—
 - (a) the Council resolves that the contract must be entered into because of an emergency; or
 - (b) the contract is entered into with a Council acting as the agent for a group of Councils and the Council has otherwise complied with this Act; or
 - (c) the contract is entered into in accordance with arrangements approved by the Minister for the purposes of this subsection; or
 - (d) the contract is a type of contract that has been exempted from this section by the regulations.

S. 186(5)(d)
amended by
Nos 27/1997
s. 16, 59/1999
s. 5(c).

* * * * *

S. 186(5)(e)
inserted by
No. 27/1997
s. 16,
repealed by
No. 59/1999
s. 5(b).

- (5A) This section does not apply in respect of a contract if—
 - (a) the contract is a novated contract; and
 - (b) the original contract was entered into in accordance with this section; and
 - (c) the Council has undertaken a due diligence in respect of the new party to the contract.

S. 186(5A)
inserted by
No. 67/2008
s. 66.

S. 186(5A)(c)
amended by
No. 64/2009
s. 58.

- (6) Whenever practicable, a Council must give effective and substantial preference to contracts for the purchase of goods, machinery or material manufactured or produced in Australia or New Zealand.

S. 186A
inserted by
No. 67/2008
s. 67.

186A Procurement policy

- (1) A Council must prepare and approve a procurement policy.
- (2) A Council must within 12 months after the commencement of section 67 of the **Local Government Amendment (Councillor Conduct and Other Matters) Act 2008** prepare and approve a procurement policy.
- (3) A procurement policy must include any matters, practices or procedures which are prescribed for the purposes of this section.
- (4) A Council must have regard to guidelines made under subsection (5) in preparing a procurement policy.
- (5) The Minister may make guidelines with respect to the form or content of a procurement policy.
- (6) Guidelines made under subsection (5) must be published in the Government Gazette.
- (7) At least once in each financial year, a Council must review the current procurement policy and may, in accordance with this section, amend the procurement policy.
- (8) A copy of the current procurement policy must be available for inspection by the public—
 - (a) at the Council office; and
 - (b) on the Council's Internet website.
- (9) A Council must comply with its procurement policy.

- (10) In this section *procurement policy* means the principles, processes and procedures that will apply to all purchases of goods, services and works by the Council.

187 Acquisition and compensation

S. 187
substituted by
No. 13/1990
s. 23.

- (1) A Council may purchase or compulsorily acquire any land which is or may be required by the Council for or in connection with, or as incidental to, the performance of its functions or the exercise of its powers.
- (2) The **Land Acquisition and Compensation Act 1986** applies to this Act and for that purpose—
- (a) the **Local Government Act 1989** is the special Act; and
- (b) the Council is the Authority.

187A Creation of easements

S. 187A
inserted by
No. 43/1993
s. 16(1).

If any right in the nature of an easement or purporting to be an easement or an irrevocable licence is or has been acquired by a Council whether before or after the commencement of the **Local Government Act 1958**, the right is deemed for all purposes to be and to have been an easement even if there is no land vested in the Council which is benefited by the right.

188 Power to accept gifts

A Council's powers in relation to property include the power—

- (a) to accept any devise of real property or any donation, gift or bequest; and
- (b) to agree to carry out any lawful condition to the devise, donation, gift or bequest.

189 Restriction on power to sell land

- (1) Except where section 181 or 191 applies, if a Council sells or exchanges any land it must comply with this section.
- (2) Before selling or exchanging the land the Council must—
 - (a) ensure that public notice of intention to do so is given at least 4 weeks prior to selling or exchanging the land; and
 - (b) obtain from a person who holds the qualifications or experience specified under section 13DA(2) of the **Valuation of Land Act 1960** a valuation of the land which is made not more than 6 months prior to the sale or exchange.
- (3) A person has a right to make a submission under section 223 on the proposed sale or exchange.
- (4) Subsection (3) does not apply to the sale of land that formed part of a road that has been discontinued and which the Council has resolved to sell as the result of a Council exercising its powers under clause 3 of Schedule 10.

S. 189(2)(b)
amended by
Nos 91/1994
s. 36(6),
94/2009
s. 31(2).

S. 189(4)
inserted by
No. 125/1993
s. 23,
amended by
No. 67/2008
s. 68.

190 Restriction on power to lease land

- (1) A Council's power to lease any land to any person is limited to leases for a term of 50 years or less.
- (2) Subject to any other Act, if a Council leases any land to any person subject to any exceptions, reservations, covenants and conditions, it must comply with this section.
- (3) If the lease is to be—
 - (a) for 1 year or more and—
 - (i) the rent for any period of the lease is \$50 000 or more a year; or

- (ii) the current market rental value of the land is \$50 000 or more a year; or
 - (b) for 10 years or more; or
 - (c) a building or improving lease—
the Council must at least 4 weeks before the lease is made publish a public notice of the proposed lease.
- (4) A person has a right to make a submission under section 223 on the proposed lease.

191 Transfer, exchange or lease of land without consideration

- (1) A Council's powers to transfer, exchange or lease any land include the power to do so with or without consideration to—
 - (a) the Crown; or
 - (b) a Minister; or
 - (c) any public body; or
 - (d) the trustees appointed under any Act to be held on trust for public or municipal purposes; or
 - (e) a public hospital within the meaning of the **Health Services Act 1988** or other hospital carried on by an association or society otherwise than for profit or gain to the members of the association or society.
- (2) Any transfer, exchange or lease under this section is valid in law and equity.
- (3) Sections 189 and 190 do not apply to any transfer, exchange or lease under this section.

S. 191(1)(e)
amended by
No. 34/1996
s. 33(d).

192 Use of land for another purpose

- (1) If a Council has acquired any land for a particular purpose the Council may use the land or part of the land for another purpose if the Council is satisfied that—
 - (a) the land or part of the land is not required by the Council for the purpose for which it was acquired; or
 - (b) it is no longer necessary or desirable to use the land or part of the land for the purpose for which it was acquired.
- (2) A person has a right to make a submission under section 223 on the use of any land for another purpose.

193 Entrepreneurial powers

- (1) For the purpose of performing any function or exercising any power conferred on a Council by or under this Act or any other Act a Council may—
 - (a) participate in the formation and operation of a corporation, trust, partnership or other body; and
 - (b) subscribe for or otherwise acquire and dispose of shares in or debentures or other securities of, a corporation; and
 - (c) become a member of a company limited by guarantee; and
 - (d) subscribe for or otherwise acquire and dispose of units in a trust; and
 - (e) acquire and dispose of an interest in a partnership or other body; and

- (f) enter into partnership or into any arrangement for sharing of profits, union of interest, co-operation, joint venture, reciprocal concession or otherwise, with any person or corporation carrying on or engaged in, or about to carry on or engage in, any business or transaction capable of being conducted so as to directly or indirectly benefit the Council.
- (2) If by virtue of any participation, subscription or acquisition under subsection (1), a Council has the right to appoint some person to be a director of or hold office in or under the corporation, trust, partnership or other body the Council may appoint a Councillor, member of Council staff or other person to that office.
- (3) For the purposes of subsection (1)(c) or (1)(d) a Council may nominate a person to hold the shareholding or unit holding on behalf of the Council and the person nominated is to be treated as being the shareholder or unit holder of the shares or units.
- (4) For the purposes of subsection (1), a Council may obtain temporary financial accommodation by way of overdraft (in addition to anything the Council may do under Part 7).
- (5) Before a Council does anything under subsection (1), the Council must have regard to the risks involved and comply with subsections (5A) and (5C). S. 193(5)
substituted by
No. 109/2003
s. 89(1).
- (5A) If the Council proposes to exercise any power under subsection (1), the Council must assess the total investment involved and the total risk exposure. S. 193(5A)
inserted by
No. 34/1996
s. 26,
substituted by
No. 109/2003
s. 89(1).

Local Government Act 1989
No. 11 of 1989
Part 9—Specific functions, powers and restrictions

S. 193(5B)
inserted by
No. 109/2003
s. 89(1).

(5B) If the proposal involves both an investment and a risk exposure, the sum for the purposes of the application of subsection (5C) is the total of the sum of the total investment involved and the total risk exposure.

S. 193(5C)
inserted by
No. 109/2003
s. 89(1).

(5C) If the sum assessed under subsection (5A)—

S. 193(5C)(a)
amended by
No. 67/2008
s. 69.

(a) exceeds whichever is the greater of \$100 000 or 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year, the Council must consider a risk assessment report (including appropriate reporting arrangements) from an appropriately qualified person;

S. 193(5C)(b)
amended by
No. 67/2008
s. 69.

(b) exceeds whichever is the greater of \$500 000 or 5% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year, the Council must—

(i) consider a risk assessment report (including appropriate reporting arrangements) from an appropriately qualified person; and

(ii) obtain the approval of the Minister;

(c) exceeds \$5 000 000, the Council must—

(i) consider a risk assessment report (including appropriate reporting arrangements) from an appropriately qualified person; and

(ii) obtain the approval of the Minister; and

(iii) obtain the approval of the Treasurer.

S. 193(5D)
inserted by
No. 109/2003
s. 89(1).

(5D) The Minister may make guidelines for the purposes of subsections (5A) and (5C).

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|---|--|
| (5E) Guidelines made under subsection (5D) must be published in the Government Gazette. | S. 193(5E)
inserted by
No. 109/2003
s. 89(1). |
| (5F) Subsections (6) to (9) only apply if the approval of the Minister is required as a result of the application of subsection (5C). | S. 193(5F)
inserted by
No. 109/2003
s. 89(1). |
| (5G) Before a Council does anything under subsection (1) that would include participation in the formation or operation of, or any partnership, arrangement or venture with, an entity which would have the power to borrow money in its own right, the Council must obtain the approval of the Minister. | S. 193(5G)
inserted by
No. 109/2003
s. 89(1). |
| (6) The Minister may request a Council to provide any additional information. | |
| (7) The Minister's approval may be given on any condition that the Minister thinks fit, including a condition that a poll of voters be held in respect of a decision of the Council to do anything referred to in subsection (1) or (4). | |
| * * * * | S. 193(8)
repealed by
No. 35/2008
s. 24. |
| (9) The Minister may in respect of a municipal enterprise— | S. 193(9)
amended by
No. 13/1990
s. 24(a). |
| (a) exempt a Council from complying with any requirement or restriction on its powers under any other section of this Act; or | |
| (b) require a Council to comply with that requirement or restriction as varied by the Minister; or | |

Local Government Act 1989
No. 11 of 1989
Part 9—Specific functions, powers and restrictions

S. 193(9)(c)
amended by
Nos 13/1990
s. 24(b)(c),
109/2003
s. 89(2)(a).

(c) on the application of a Council and with the approval of the Treasurer amend his or her approval where the Council has amended its proposal.

S. 193(9)(d)
inserted by
No. 13/1990
s. 24(c),
repealed by
No. 109/2003
s. 89(2)(b).

* * * * *

(10) Section 34 of the **Freedom of Information Act 1982** applies to information given to the Minister under this section as if in that section a reference to information acquired by an agency or a Minister from a business, commercial or financial undertaking were a reference to information acquired by the Minister from a Council under this section.

S. 193(11)
amended by
No. 109/2003
s. 89(3).

(11) If a Council participates in the formation of a corporation, trust, partnership or other body under subsection (1)(a) in which the Council will have a controlling interest, the accounts and records of the corporation, trust, partnership or body are subject to audit and inspection under Part 6 as if they were accounts and records of the Council.

S. 193(12)
inserted by
No. 109/2003
s. 89(4),
amended by
No. 26/2007
s. 113.

(12) In subsection (11), *controlling interest* has the same meaning as it has in section 72(2) of the **Payroll Tax Act 2007**.

S. 193(13)
inserted by
No. 109/2003
s. 89(4).

(13) This section as in force immediately before the commencement of section 89 of the **Local Government (Democratic Reform) Act 2003** continues to apply to and in respect of an

application for approval made under this section as in force before that commencement.

194 Power to compound

A Council may compound with a person—

- (a) who has entered into a contract with the Council; or
- (b) by whom an action or proceeding has been brought or is threatened; or
- (c) against whom an action or proceeding has been brought or is contemplated by the Council.

195 Assistance to a member of Council staff

A Council's powers include the power to—

- (a) enter into a contract for the sale, purchase or lease of a dwelling-house to a member of Council staff; or
- (b) provide a loan or other assistance to enable a member of Council staff to purchase a dwelling-house—

for use as the residence of the member of Council staff.

195A Prohibition of Councillor discretionary funds

A Council must not adopt or implement a policy under which a Councillor is allocated a fixed or other amount of funds for the purpose of enabling the Councillor to nominate—

- (a) a particular person, body or organisation to whom the funds are to be paid; or
- (b) a particular fund in respect of which the funds are to be applied.

**S. 195A
inserted by
No. 53/2015
s. 11.**

196 Regional libraries

S. 196(1)
substituted by
No. 99/1994
s. 12(1).

- (1) This section applies if a Council enters into an agreement with a public body to form a regional library to service the area specified in the agreement.

S. 196(1A)
inserted by
No. 99/1994
s. 12(1).

- (1A) For the purposes of this section, a reference to a public body includes a reference to a regional library.

S. 196(2)
substituted by
No. 99/1994
s. 12(1).

- (2) The agreement has no effect unless it is approved by the Minister by notice published in the Government Gazette.

S. 196(3)
substituted by
No. 99/1994
s. 12(1).

- (3) On the date the agreement takes effect, the regional library that is formed by the agreement becomes a regional library to which subsection (4) applies.

S. 196(4)
amended by
No. 99/1994
s. 12(2).

- (4) A regional library—
- (a) is a body corporate with perpetual succession; and
 - (b) must have a common seal; and
 - (c) may sue or be sued in its corporate name; and
 - (d) is capable of acquiring, holding, dealing with or disposing of property for the purpose of performing any function or power specified in the agreement; and
 - (e) is capable of doing and suffering all acts and things which bodies corporate may by law do and suffer and which are necessary or expedient for performing any function or power specified in the agreement.

- | | |
|--|--|
| (5) The common seal of a regional library must— | S. 196(5)
amended by
No. 99/1994
s. 12(2). |
| (a) bear the title of the regional library and any other word, letter, sign or device which the regional corporation determines should be included; and | S. 196(5)(a)
amended by
No. 99/1994
s. 12(2). |
| (b) be kept at the office of the regional library; and | S. 196(5)(b)
amended by
No. 99/1994
s. 12(2). |
| (c) be used only by resolution of the regional library. | S. 196(5)(c)
amended by
No. 99/1994
s. 12(2). |
| (6) All courts, judges and persons acting judicially must take judicial notice of the imprint of the seal of a regional library on any document and must presume that the document was properly sealed until the contrary is proved. | S. 196(6)
amended by
No. 99/1994
s. 12(2). |
| (7) The following provisions apply to a regional library as if it were a Council and as if the members of its governing body were Councillors— | S. 196(7)
substituted by
No. 99/1994
s. 12(3),
amended by
Nos 27/1997
s. 17, 23/2000
s. 5(a)(b),
substituted by
No. 109/2003
s. 72(3). |
| (a) sections 75 to 81 (except section 75C); | S. 196(7)(a)
amended by
No. 64/2009
s. 59(1). |
| (b) Division 2 of Part 4 (except sections 84 and 89); | S. 196(7)(b)
amended by
No. 63/2012
s. 24. |

S. 196(7)(e)
substituted by
No. 5/2014
s. 15.

- (c) Division 3 of Part 4 except—
 - (i) section 98; and
 - (ii) that a reference to a *senior officer* is to be construed as if paragraph (b) of the definition of *senior officer* were omitted;
- (d) Part 5;
- (e) Part 6, except—
 - (i) section 127(2)(d), (da) and (db); and
 - (ii) section 131(2)(b) and (d); and
 - (iii) section 131(3)(a)(i), (ii), (iii) and (iv); and
 - (iv) section 131(3)(a)(v), to the extent that any other information required by regulations made for the purposes of that subparagraph relates to a matter referred to in section 131(3)(a)(i), (ii), (iii) or (iv); and
 - (v) section 131(4); and
 - (vi) section 132, so far as it relates to a Council's performance statement;
- (f) sections 136, 137, 140, 143 and 147;
- (g) section 186 and sections 189 to 194;
- (h) Part 11 (except sections 221, 225, 226, 227, 227AA, 229 and 230).

S. 196(7A)
inserted by
No. 67/2008
s. 70,
amended by
No. 64/2009
s. 59(2).

- (7A) For the purposes of the application of sections 75 to 81 (except section 75C) by subsection (7)(a), a member of the governing body of a regional library, who is a Councillor or a member of Council staff that was appointed to the governing body by the Council, is taken to not have a conflict of interest in a matter only because he or she is a Councillor or a member of Council staff.

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|--|---|
| (8) If an agreement requires the approval of the Minister to any proposed amendment of the agreement, then an amendment has no effect unless it is approved by the Minister by notice published in the Government Gazette. | S. 196(8)
inserted by
No. 99/1994
s. 12(4). |
| (9) If an agreement does not specify the date on which it is to come into effect, it comes into effect on the date on which notice of the Minister's approval is published in the Government Gazette. | S. 196(9)
inserted by
No. 99/1994
s. 12(4). |
| (10) The parties to an agreement to which this section applies are jointly and severally liable for the debts of the regional library formed under the agreement unless the agreement specifies otherwise. | S. 196(10)
inserted by
No. 99/1994
s. 12(4). |

197 Submissions on regional library agreements

- | | |
|---|---|
| (1) A person has the right to make a submission under section 223 on any proposal by a Council to enter into an agreement referred to in section 196. | S. 197
repealed by
No. 125/1993
s. 30,
new s. 197
inserted by
No. 99/1994
s. 13. |
| (2) A person has the right to make a submission under section 223 on any proposal by a regional library to amend such an agreement. | |

197A Restrictions on the power of a regional library to borrow

A regional library must not borrow money (or obtain any financial accommodation that has the same effect as borrowing money) unless in any particular case—

*	*	*	*	*	S. 197A inserted by No. 99/1994 s. 13.
					S. 197A(a) repealed by No. 109/2003 s. 72(4).

- (b) the amount borrowed (or obtained by way of financial accommodation)—
- (i) is secured over the assets and income of the regional library; and

- (ii) was included in the last budget or revised budget of the regional library (unless it is only used to re-finance an existing loan).

S. 197B
inserted by
No. 99/1994
s. 13.

197B Restriction on power of regional library to delegate its powers

- (1) Despite section 196(4)(e), a regional library may only delegate a power, duty or function to a member of its staff or a special committee and must not delegate—
- (a) its power of delegation;
 - (b) the power to approve any expenditure not provided for in its last budget or revised budget;
 - (c) any of its powers, duties or functions under section 223;
 - (d) any other prescribed power, duty or function.
- (2) A regional library must keep a register of all delegations made by it.

S. 197C
inserted by
No. 99/1994
s. 13,
repealed by
No. 33/1995
s. 4(2)(c).

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S. 197D
inserted by
No. 99/1994
s. 13,
substituted by
No. 109/2003
s. 73.

197D Library Plan

Section 125 applies to a regional library as if—

- (a) a reference to a Council were a reference to a regional library;
- (b) a reference to a Council Plan were a reference to a Library Plan;

(c) for subsection (1) there were substituted—

"(1) A regional library must prepare and approve a Library Plan within 6 months after the date the regional library becomes a body corporate and by 30 June following a general election conducted under section 31(1).".

S. 197D(c)
substituted by
No. 63/2012
s. 25.

197E Attendance at meetings of the governing body of a regional library

- (1) A member of the governing body of a regional library may participate in a meeting of the governing body by electronic means of communication, if permitted under a local law made by the regional library which complies with subsection (2).
- (2) A local law made for the purposes of subsection (1) must—
 - (a) specify how many members must attend the meeting in person; and
 - (b) provide for the application of section 79 to the meeting with any necessary modifications.

S. 197E
inserted by
No. 99/1994
s. 13,
substituted by
No. 109/2003
s. 73,
repealed by
No. 67/2008
s. 71,
new s. 197E
inserted by
No. 63/2012
s. 26.

197F Restriction on power to make local laws

Despite section 196(7)(d), a regional library may only make a local law if the proposed local law has been ratified by all the member Councils of the library.

S. 197F
inserted by
No. 99/1994
s. 13.

197G Winding up of regional libraries

- (1) A regional library may be wound up, in accordance with this section, voluntarily or by order of the Minister.
- (2) A winding up order by the Minister must appoint a liquidator or liquidators and must fix the remuneration to be paid to them.

S. 197G
inserted by
No. 99/1994
s. 13,
substituted by
No. 44/2001
s. 3(Sch.
item 74.2).

- (3) The winding up of a regional library is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the **Corporations (Ancillary Provisions) Act 2001**, subject to the modifications specified in this section, in relation to the provisions of Parts 5.5 (Voluntary winding up) and 5.6 (Winding up generally) of the Corporations Act, subject to the following modifications—
- (a) those provisions apply as if a regional library were a company;
 - (b) a reference in those provisions to ASIC is to be read as a reference to the Minister;
 - (c) a reference in those provisions to the Gazette is to be read as a reference to the Government Gazette;
 - (d) a reference in those provisions to the directors of a company is to be read as a reference to the members of the governing body of the regional library;
 - (e) a reference in those provisions to an order of the Court that a company be wound up is to be read as a reference to an order of the Minister under subsection (1);
 - (f) any other modifications (within the meaning of Part 3 of the **Corporations (Ancillary Provisions) Act 2001**) that are prescribed by the regulations.

Note

Part 3 of the **Corporations (Ancillary Provisions) Act 2001** provides for the application of provisions of the Corporations Act and Part 3 of the ASIC Act as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions.

- (4) On the completion of a winding up, the liquidator or liquidators must publish a notice in the Government Gazette stating that the winding up has been completed and stating the date when the regional library is dissolved.

198 Sewers and drains vested in the Council

- (1) The following are vested in the Council and are under the management and control of the Council—
- (a) public sewers and drains within the municipal district;
 - (b) sewers and drains in and under roads in the municipal district;
 - (c) Works and materials relating to (a) and (b).
- (2) This section does not apply to any sewers and drains vested in another Council or a Minister, the Crown or any public body.

199 Concentration or diversion of drainage

- (1) Before a Council executes in or upon any road any work which will concentrate or divert the drainage flowing on the road and discharge it or permit it to flow on, into or through any land, the Council must comply with this section.
- (2) The Council must give notice of the proposed work to the owner and occupier of any land likely to be affected by the concentration or diversion of the drainage.
- (3) A person has a right to make a submission under section 223 on any proposed work to concentrate or divert drainage.

200 Drainage of land

- (1) A Council may give the owner or occupier of any building or land a notice requiring that person to carry out any work for the drainage of a building or of surface or storm water on any land.
- (2) If the owner or occupier of the building or land does not carry out the work to the satisfaction of the Council, the Council may carry out the work.
- (3) If the Council carries out the work the owner or occupier must repay the cost of carrying out the work to the Council.
- (4) A person has a right to make a submission under section 223 on any notice under this section.

201 Approved schemes

S. 201(1)
amended by
Nos 81/1989
s. 3(Sch.
item 30.3),
125/1993
s. 37(1)(a).

- (1) A Council may construct, operate, control, manage or maintain any works or undertakings which form the whole or part of a scheme declared to be an approved scheme under section 216 of the **Water Act 1989**.
- (2) In carrying out its functions under subsection (1) the Council may exercise any power conferred on the Council under this Act.

Pt 9 Div. 2
(Heading)
substituted by
No. 6/2010
s. 25(5)(Sch. 2
item 6.3) (as
amended by
No. 45/2010
s. 6).

Division 2—Provisions relating to transport

S. 202
repealed by
No. 12/2004
s. 144.

* * * *

203 Transport plan

- (1) A Council may develop and implement a transport plan which facilitates a sustainable transport system that provides for the effective integration of transport and land use.

Note

See section 11 of the **Transport Integration Act 2010**.

- (2) A Council may prepare a transport plan jointly with one or more other Councils.

S. 203 substituted by No. 125/1993 s. 22, repealed by No. 12/2004 s. 144, new s. 203 inserted by No. 6/2010 s. 25(5)(Sch. 2 item 6.2) (as amended by No. 45/2010 s. 6).

203A Transport services

A Council may procure, provide or enable transport services within the municipal district.

S. 203A inserted by No. 6/2010 s. 25(5)(Sch. 2 item 6.2) (as amended by No. 45/2010 s. 6).

204 Council may declare a road to be a public highway or to be open to the public

- (1) A Council may, by notice published in the Government Gazette, declare a road in its municipal district to be a public highway for the purposes of this Act.
- (2) A Council may, by resolution, declare a road that is reasonably required for public use to be open to public traffic.
- (3) A road does not become a public highway by virtue of a Council resolution made under subsection (2).

S. 204 substituted by No. 125/1993 s. 22.

205 Councils to have the care and management of certain roads

- (1) A Council has the care and management of—
- (a) all public highways vested in the Council; and

S. 205 substituted by No. 125/1993 s. 22.

S. 205(1)(c)
amended by
No. 12/2004
s. 145(1).

- (b) all roads that are the subject of a declaration under section 204(2); and
- (c) all public highways on Crown land and roads vested in a Minister (other than freeways and arterial roads within the meaning of the **Road Management Act 2004** and public highways and roads vested in a public authority); and
- (d) all roads that the Council has agreed to have the care and management of.

S. 205(2)
substituted by
No. 12/2004
s. 145(2).

- (2) This section is subject to the **Road Management Act 2004**.

S. 206
substituted by
No. 125/1993
s. 22.

206 Power of Councils over roads

- (1) The powers of a Council in relation to roads in its municipal district include the powers set out in Schedule 10.
- (2) Except as provided in section 207B(1), the exercise of a power under clause 2, 3 or 8(1)(a) of Schedule 10 does not in itself vest the land in a Council.

S. 207
amended by
Nos 13/1990
s. 25(a)(b),
48/1991 s. 69,
substituted by
Nos 125/1993
s. 22, 12/2004
s. 146.

207 Powers of Councils over traffic

Subject to the **Road Safety Act 1986** and any regulations made under that Act, but without limiting any other powers of a Council as a road authority, the powers include the specific traffic management powers set out in Schedule 11.

Example

A Council must obtain the consent of VicRoads before exercising a power under Schedule 11 which if exercised under a regulation made under the **Road Safety Act 1986** in respect of a major traffic control item would require the consent of VicRoads.

207A Submissions under section 223

A person may make a submission under section 223 on the proposed exercise of any power under—

- (a) clauses 1(b), 2, 3, 7 and 8(1)(a) of Schedule 10;
- (b) clauses 9, 10(1)(c), 11 and 12 of Schedule 11;
- (c) sections 204(1) and (2).

S. 207A
inserted by
No. 125/1993
s. 22.

207B Certain land used, or to be used, for roads to vest in Council

- (1) The following land vests in fee simple in the Council (if it is not already vested in the Council) in whose municipal district the land is situated on the date the relevant notice required by Schedule 10 is published in the Government Gazette—
 - (a) land acquired for a road deviation under clause 2 of Schedule 10;
 - (b) land which is a road, or part of a road, which is discontinued as a result of the exercise of a power under clause 2, 3, 7 or 8(1)(a) of Schedule 10.
- (2) However, subsection (1) does not apply if the land is Crown land.
- (2A) Despite subsection (2), if a road on Crown land is discontinued under clause 2 of Schedule 10 and the land on to which the road is to be deviated is not Crown land, the land on which the discontinued road was situated vests in fee simple in the Council in whose municipal district it is situated on the date the notice required by

S. 207B
inserted by
No. 125/1993
s. 22.

S. 207B(2)
substituted by
No. 99/1994
s. 16(1).

S. 207B(2A)
inserted by
No. 99/1994
s. 16(1).

Schedule 10 is published in the Government Gazette.

- (3) On the date the relevant notice is published—
 - (a) the land vests free of all encumbrances other than those referred to in section 207C; and
 - (b) the land is brought under the operation of the **Transfer of Land Act 1958**, if it is not already under the operation of that Act.
- (4) The **Subdivision Act 1988** does not apply to the discontinuance of a road, or a part of a road, under clause 2, 3, 7 or 8(1)(a) of Schedule 10.

S. 207C
inserted by
No. 125/1993
s. 22.

207C Sewers, pipes, wires etc. of public authorities not affected

- (1) Section 207B does not affect any right, power or interest held by a public authority in a road in connection with any sewers, drains, pipes, wires or cables under the control of the authority in or near the road.
- (2) The Registrar of Titles may record as an encumbrance on the relevant folio of the Register any such right, power or interest.
- (3) If a Council seeks the consent of a public authority to the extinguishment of any such right, power or interest, the authority must not unreasonably withhold its consent.
- (4) In this section *public authority* includes—
 - (a) any person who is a licensee within the meaning of the **Electricity Industry Act 2000** or the **Gas Industry Act 2001**; and
 - (b) any person who under the **Pipelines Act 2005** is the holder of a licence to construct and operate a pipeline.

S. 207C(4)
inserted by
No. 31/2006
s. 10.

S. 207C(4)(b)
substituted by
No. 31/2006
s. 11.

207D Registration of titles of land affected by action concerning roads

S. 207D
inserted by
No. 125/1993
s. 22.

- (1) This section applies if—
- (a) land vests in a Council under section 207B;
or
 - (b) a Council takes any action under clause 2, 3, 7 or 8(1)(a) of Schedule 10 or clause 11 of Schedule 11 that affects the title to any land—
- and either section 35 of the **Subdivision Act 1988** does not apply to the land or else there is no present intention to dispose of the land.
- (2) The Council must, if required by the Registrar, give the Registrar a notice of any action referred to in subsection (1)(b) or a transfer of land—
- (a) that is in a form approved by the Registrar;
and
 - (b) that contains all the information required by the Registrar for the purposes of subsection (3); and
 - (c) that states whether or not it has given notice under section 223 in relation to the proposed action.
- (3) On being given that notice or transfer, the Registrar may do anything that is necessary to give effect in the Register under the **Transfer of Land Act 1958** to the vesting or the action taken by the Council.
- (4) Without limiting the power given to him or her by subsection (3), the Registrar may—
- (a) register the transfer of land; and

- (b) if the transfer is not accompanied by a certificate of title, register it in the same way as if it had been accompanied by a certificate of title in the name of the Council as proprietor; and
 - (c) alter folios of the Register, plans of subdivision and any other documents and give notice to people affected by any such alteration if the Council has not already given notice under section 223 that it will consider submissions concerning its intention to exercise a power given to it by Schedule 10 or 11; and
 - (d) require a person to produce any instrument or document other than a certificate of title; and
 - (e) dispense with the production of any document.
- (5) Section 54 of the **Transfer of Land Act 1958** does not apply to any land to which this section applies.

S. 207E
inserted by
No. 125/1993
s. 22.

207E Alterations to titles if land exchanged

- (1) This section only applies if a Council agrees to exchange any land it acquires under Schedule 10 with other land owned by it.
- (2) The registered proprietor, or the mortgagee in possession, of the land may apply to the Registrar of Titles to have the folio of the Register under the **Transfer of Land Act 1958** amended to—
 - (a) include the land obtained from the Council; and
 - (b) exclude the land acquired by the Council from the folio of the Register.

- (3) The Registrar must make the necessary amendments to the Register if the application—
- (a) is in a form approved by the Registrar; and
 - (b) contains all the information required by the Registrar; and
 - (c) is accompanied by the written consent to the application of the proprietor of any mortgage, charge, lease or sub-lease that the land is subject to (if any).
- (4) On the Registrar completing the necessary amendments—
- (a) the land acquired by the Council is freed of any mortgage, charge, lease or sub-lease (if it is not already free of those encumbrances); and
 - (b) the land obtained from the Council becomes subject to any mortgage, charge, lease or sub-lease that the other land was subject to and is to be regarded as if it had always been part of the land described in the folio of the Register.
- (5) The **Subdivision Act 1988** does not apply to land to which this section applies.

* * * * *

S. 207F
inserted by
No. 125/1993
s. 22,
amended by
Nos 107/1995
s. 123, **50/1998**
s. 50,
repealed by
No. 12/2004
s. 144.

S. 208
(Heading)
inserted by
No. 12/2004
s. 147(1),
substituted by
No. 6/2010
s. 203(1)(Sch. 6
item 29.3) (as
amended by
No. 45/2010
s. 22).

**208 Transport Integration Act 2010, Transport
(Compliance and Miscellaneous) Act 1983, Road
Management Act 2004 and Road Safety Act 1986**

S. 208(1)
amended by
Nos 44/1989
s. 42(1),
12/2004
s. 147(2),
6/2010
s. 203(1)(Sch. 6
item 29.4(a))
(as amended
by No. 45/2010
s. 22).

- (1) A Council must not exercise its powers under this Division inconsistently with the functions and powers of the Roads Corporation under the **Transport Integration Act 2010**, the **Transport (Compliance and Miscellaneous) Act 1983**, the **Road Management Act 2004** and the **Road Safety Act 1986** and the regulations under those Acts.

S. 208(2)
amended by
Nos 12/2004
s. 147(3),
6/2010
s. 203(1)(Sch. 6
item 29.4(b))
(as amended
by No. 45/2010
s. 22).

- (2) If a Council is delegated a power under the **Transport Integration Act 2010**, the **Transport (Compliance and Miscellaneous) Act 1983**, the **Road Management Act 2004**, the **Road Safety Act 1986** or the regulations under those Acts, the Council must exercise that power in accordance with the Act or regulations under which the delegation is made.

S. 208AA
inserted by
No. 30/2013
s. 60(Sch.
item 6).

208AA Heavy Vehicle National Law (Victoria)

A Council must not exercise its powers under this Division inconsistently with the functions and powers of the Regulator under the Heavy Vehicle National Law (Victoria) and the national regulations under that Law.

Division 3—Best value principles

Pt 9 Div. 3
(Heading and
ss 208A–
208G)
inserted by
No. 40/1994
s. 3,
amended by
Nos 99/1994
ss 17, 18(1)(2),
33/1995 s. 6,
34/1996 ss 27,
33(e), 27/1997
ss 18–20,
76/1997 s. 18,
substituted as
Pt 9 Div. 3
(Heading and
ss 208A–
208J) by
No 59/1999
s. 4.

208A Best Value Principles to be followed

A Council must comply with the Best Value Principles.

S. 208A
substituted by
No. 59/1999
s. 4.

208B Best Value Principles

The Best Value Principles are—

S. 208B
substituted by
No. 59/1999
s. 4.

- (a) all services provided by a Council must meet the quality and cost standards required by section 208D;
- (b) subject to sections 3C(2)(b) and 3C(2)(e), all services provided by a Council must be responsive to the needs of its community;
- (c) each service provided by a Council must be accessible to those members of the community for whom the service is intended;
- (d) a Council must achieve continuous improvement in the provision of services for its community;
- (e) a Council must develop a program of regular consultation with its community in relation to the services it provides;

S. 208B(b)
amended by
No. 109/2003
s. 7(3).

- (f) a Council must report regularly to its community on its achievements in relation to the principles set out in paragraphs (a), (b), (c), (d) and (e).

S. 208BA
repealed by
No. 59/1999
s. 4.

* * * *

S. 208C
substituted by
No. 59/1999
s. 4.

208C Factors that may be looked at in applying the Principles

In applying the Best Value Principles, a Council may take into account, among other factors—

- (a) the need to review services against the best on offer in both the public and private sectors; and
- (b) an assessment of value for money in service delivery; and
- (c) community expectations and values; and
- (d) the balance of affordability and accessibility of services to the community; and
- (e) opportunities for local employment growth or retention; and
- (f) the value of potential partnerships with other Councils and State and the Commonwealth governments; and
- (g) potential environmental advantages for the Council's municipal district.

S. 208D
substituted by
No. 59/1999
s. 4.

208D Quality and cost standards

- (1) A Council must develop quality and cost standards for the provision of any service it provides for its community.

- (2) A quality or cost standard must set out the performance outcomes determined by the Council in relation to each service.
- (3) In developing quality and cost standards a Council must take into account the factors listed in sections 208C(a), (b), (c), (d) and (e).
- (4) A Council may develop different quality and cost standards for different classes of services.

208E When the Best Value Principles are to be implemented

S. 208E
substituted by
No. 59/1999
s. 4.

- (1) A Council must, on or before 31 December 2000, develop a program for the application of the Best Value Principles.
- (2) A Council must ensure that the program required by subsection (1) is available to the public.
- (3) A Council must apply the Best Value Principles to all of the services it provides on or before 31 December 2005.
- (4) Despite subsection (3), if a Council was providing a service on the commencement of the **Local Government (Best Value Principles) Act 1999** and the service was provided under an agreement between the Council and another person, body or group of people, the Council need not comply with the Best Value Principles in respect of the provision of that service until the expiry of the agreement.

208F Standards to be publicly available

S. 208F
substituted by
No. 59/1999
s. 4.

A Council must ensure that any quality or cost standards it adopts are available for inspection by the public.

S. 208G
substituted by
No. 59/1999
s. 4.

208G Report on Best Value Principles compliance

At least once every year a Council must report to its community on what it has done to ensure that it has given effect to the Best Value Principles.

S. 208H
substituted by
No. 59/1999
s. 4.

208H Ministerial Codes

- (1) The Minister may publish in the Government Gazette one or more Codes in relation to how Councils are to give effect to the Best Value Principles.
- (2) Without limiting the matters a Code may deal with, a Code may—
 - (a) specify how often the Best Value Principles are to be applied to a service;
 - (b) specify the minimum details that quality and cost standards must contain;
 - (c) specify what records are to be kept in relation to the application of the Best Value Principles;
 - (d) specify maximum periods for agreements entered into in accordance with the Best Value Principles.
- (3) A Council must comply with any obligation imposed by such a Code that applies to the Council.
- (4) Any agreement or arrangement entered into by a Council in contravention of subsection (3) is not void only because of that contravention.

S. 208I
substituted by
No. 59/1999
s. 4.

208I Ministerial guidelines

- (1) The Minister may publish in the Government Gazette guidelines for Councils in relation to the Best Value Principles.

- (2) If a Council deals with a matter in accordance with an applicable guideline, it is to be taken to have complied with the Best Value Principles in respect of that matter.

208J Minister must consult

S. 208J
inserted by
No. 59/1999
s. 4.

- (1) Before publishing a Code under section 208H or a guideline under section 208I, the Minister must consult with any local government body that the Minister thinks it appropriate to consult with.
- (2) In this section *local government body* means—
- (a) a Council;
 - (b) an organisation that the Minister considers represents local government interests and that the Minister has declared, by notice published in the Government Gazette, to be a local government body.

Part 10—Inquiries, reviews and suspension of Councils

Division 1—Inquiries and suspension of Councillors

209 Minister may appoint Commissioner and establish inquiry

- (1) The Minister may appoint a person as a Commissioner—
 - (a) to conduct an inquiry into matters relating to the affairs of a Council; and
 - (b) to report in writing to the Minister on those matters—and may at any time revoke that person's appointment.
- (2) The Commissioner—
 - (a) is to be appointed for the period specified in the instrument of appointment; and
 - (b) is eligible for re-appointment; and
 - (c) may resign by a written notice of resignation addressed to the Minister; and
 - (d) if the Commissioner is not employed under the **Public Administration Act 2004** or by any Council, is entitled to be paid the remuneration and allowances which are fixed by the Minister.

S. 209(2)(d)
amended by
Nos 76/1997
s. 24(b),
46/1998
s 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 117.1).

S. 209(3)
amended by
No. 46/1998
s. 7(Sch. 1).

- (3) The Commissioner, with the approval of the Minister, may make use of the services of any employees in the Public Service.

210 Protection of Commissioner

A Commissioner, in the exercise of the Commissioner's functions, powers or duties under this Act, has the same protection and immunity as a judge of the Supreme Court.

211 Rules of evidence do not apply

A Commissioner—

- (a) must thoroughly investigate the matters into which the Commissioner is appointed to inquire; and
- (b) in that investigation, need not have regard to legal procedures and is not bound by the rules of evidence; and
- (c) may inform himself or herself on any matter in any manner which the Commissioner thinks fit.

212 Witnesses may be represented

- (1) A witness before a Commissioner, with the Commissioner's approval, may be represented by another person.
- (2) A person representing a witness may—
 - (a) examine any witnesses; and
 - (b) address the Commissioner on behalf of the witness being represented.
- (3) A Commissioner may make an order—
 - (a) for the payment of the expenses of a witness; or
 - (b) for the payment of costs by a Council.

213 Access of Commissioner to places, documents etc.

- (1) A Commissioner or a person authorised by a Commissioner—
- (a) has complete access to any buildings, places, goods, books or documents; and
 - (b) may make extracts from or take copies of the books or documents—

for the purposes of the inquiry.

- (2) A Commissioner, except in carrying out the Commissioner's functions, powers or duties, must not communicate to any person any information which the Commissioner acquired in carrying out the Commissioner's functions, powers or duties.
- (3) A person authorised under subsection (1) must not communicate to any person other than the Commissioner or a person authorised by the Commissioner any information which the person acquired in the carrying out of any duty under this section.

S. 213(4)
amended by
Nos 67/2008
s. 72, 64/2009
s. 28.

- (4) A person must not obstruct or hinder a Commissioner or person authorised under subsection (1), in the carrying out of a function, power or duty under subsection (1).

Penalty: 60 penalty units.

214 Powers of Commissioner

S. 214(1)
amended by
Nos 69/2009
s. 54(Sch. Pt 2
item 31),
67/2014
s. 147(Sch. 2
item 24.2(a)).

- (1) For the purposes of conducting an inquiry, a Commissioner has in respect of summoning and examining persons and requiring the production of documents the powers which a Board appointed by the Governor in Council had under Division 5 of Part I of the **Evidence (Miscellaneous Provisions) Act 1958** immediately before the repeal of that Division.

- (2) Sections 14, 15 and 16 of the **Evidence (Miscellaneous Provisions) Act 1958**, as in force immediately before their repeal, apply to those powers of the Commissioner with any necessary adaptations.

S. 214(2)
amended by
Nos 69/2009
s. 54(Sch. Pt 2
item 31),
67/2014
s. 147(Sch. 2
item 24.2(b)).

- (3) A Commissioner may make an order that all of the costs of the inquiry are to be paid by the Council.

215 Some proceedings of inquiry may be in private

A Commissioner may hold any (but not all) of the proceedings on an inquiry in private, if the Commissioner considers that the public interest requires they be held in private.

216 Publishing report of Commissioner or proceedings

- (1) A person is not liable to any action or proceedings for publishing in good faith for the information of the public—
- (a) a copy, fair extract or fair abstract of a report of a Commissioner; or
 - (b) a fair and accurate report of proceedings before a Commissioner which were held in public.
- (2) A publication is to be taken to be in good faith for the information of the public if a person makes it without any ill-will or other improper motive towards the person defamed by the publication.

217 Notice to Council

The Minister must give notice to a Council of the reasons for and the subject of an inquiry into that Council.

218 Outcome of inquiry

- (1) If the Minister has received the report of a Commissioner of an inquiry into a Council and considers that—
 - (a) the matter should be referred to the Council; or
 - (b) any action should and may be taken to rectify, mitigate or alter the effects of a Council's action or omission which was a subject of the inquiry; or
 - (c) a Council's action or omission which was a subject of the inquiry was a common practice which should be stopped or changed; or
 - (d) a Council's action or omission occurred on the basis of or in accordance with a local law of the Council, which should be reconsidered; or
 - (e) the Council should give reasons for an action or omission by it; or
 - (f) any other steps should be taken—the Minister may report to the Mayor of the Council and make any recommendations which the Minister thinks fit.
- (2) The Minister may request the Mayor to notify the Minister, within a specified period, of any steps taken or proposed to give effect to the recommendations of the Minister.
- (3) If—
 - (a) the Minister is not satisfied with the steps taken or proposed; or
 - (b) no steps have been taken—subsection (4) applies.

- (4) Until the Minister is satisfied with the steps taken to give effect to the Minister's recommendation—
 - (a) the Treasurer may by order in writing refuse to pay part or all of any money payable or which will become payable to the Council out of the Consolidated Fund or for fees, fines or penalties; or
 - (b) the Minister may authorise any person or may himself or herself take steps to give effect to the recommendation, and in doing so, may enter upon any land and do anything else the Minister considers necessary to carry out those steps.
- (5) This section—
 - (a) must be construed in addition to the powers of the Governor in Council, Treasurer and Minister; and
 - (b) does not prejudice any proceeding or remedy against or liability of the Council.

218A Minister may direct Council regarding its governance

**S. 218A
inserted by
No. 53/2015
s. 40.**

- (1) The Minister may in writing direct the Council to amend, discontinue or replace its governance processes and policies if—
 - (a) the Chief Municipal Inspector or a municipal monitor has advised the Minister that those governance processes and policies require improvement; and
 - (b) the Minister is satisfied that those governance processes and policies require improvement.
- (2) If the Council fails to comply with a direction made under subsection (1), the Minister may take that failure to comply with the direction into account for the purposes of recommending

the suspension of all the Councillors of the Council under section 219(1)(a).

219 Suspension of Councillors

S. 219(1)
substituted by
No. 109/2003
s. 9.

(1) The Minister may recommend to the Governor in Council that all the Councillors of a Council be suspended, if the Minister is satisfied on reasonable grounds—

(a) subject to subsection (1A), that there has been a serious failure to provide good government; or

S. 219(1)(b)
amended by
No. 65/2015
s. 9(a).

(b) that the Council has acted unlawfully in a serious respect; or

S. 219(1)(c)
inserted by
No. 65/2015
s. 9(b).

(c) that the Council has repeatedly and substantially failed to comply with a general Order and any special Order.

S. 219(1A)
inserted by
No. 109/2003
s. 9.

(1A) Before making a recommendation under subsection (1)(a), the Minister must consider what steps the Council has taken to address and remedy the difficulties underlying the failure.

(2) The Governor in Council may by Order in Council do any or all of the following—

(a) suspend all of the councillors of the Council;

(b) appoint an administrator for the Council;

(c) appoint a person to fill a vacancy in the office of administrator;

(d) appoint a temporary administrator in the place of the administrator to act in the administrator's absence or incapacity to act.

- (3) The following provisions apply to the appointment of an administrator of a Council—
- (a) the administrator constitutes the Council and subject to any conditions of that person's appointment, must perform all the functions, powers and duties of the Council, which must be treated as if they were performed by the Council;
 - (b) the administrator's appointment and anything done by the administrator is not invalid only by reason of a defect in relation to the appointment;
 - (c) the administrator is entitled to be paid the remuneration and allowances and is employed on the conditions which are fixed by the Minister and the remuneration and allowances are to be paid by the Council;
 - (d) the administrator—
 - (i) must not, without the Minister's consent, directly or indirectly engage in any paid employment outside the duties of the office of administrator; and
 - (ii) may resign by a written notice of resignation addressed to the Governor in Council;
 - (e) the office of the administrator becomes vacant if the administrator—
 - (i) becomes bankrupt; or
 - (ii) dies; or
 - (iii) is removed or resigns from office; or
 - (iv) is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence; or

S. 219(3)(c)
amended by
No. 109/2003
s. 72(2)(a).

S. 219(3A)
inserted by
No. 125/1993
s. 31.

- (v) becomes incapable of performing the duties of the office.
- (3A) If provision is made in any Act, regulation, rule, by-law, local law, instrument or document for the Mayor, a Councillor or the Chairperson or a member of a committee of the Council to be a member of, or to be represented on, a board, Council, committee, commission or other body, or to be a trustee, or to be a member or director of a company, that provision has effect during the period of administration as if it provided for the administrator, or some other person appointed by the administrator, to be that member, representative, trustee or director.
- (4) The Order in Council takes effect from the date specified in the Order in Council.
- (5) The Order in Council—
 - (a) must be laid before both Houses of Parliament—
 - (i) if Parliament is then sitting, within 7 days after its making; or
 - (ii) if Parliament is not then sitting, within 7 days after the next meeting of Parliament; and
 - (b) may be disallowed by a resolution of either House of Parliament within 7 days after it has been laid before each House.
- (6) If the Order in Council is disallowed—
 - (a) the Governor in Council must by Order in Council fix a day on which—
 - (i) the administrator must go out of office; and
 - (ii) the suspended Councillors must resume office; and

- (b) the disallowance does not affect anything done under the disallowed Order in Council.
- (7) The Order in Council under subsection (2) expires—
- S. 219(7)
substituted by
No. 53/2005
s. 14.
- (a) unless paragraph (b) applies, 1 year after the date of its publication; or
- (b) on the date specified in the Order in Council being a date which is less than 1 year after the date of its publication.
- (8) The suspended Councillors are not Councillors of the Council during the period of suspension.
- (9) On the expiry of the Order in Council, the Councillors resume office and the administrator goes out of office unless—
- S. 219(9)
amended by
No. 109/2003
s. 16(2)(a)(b),
substituted by
No. 67/2008
s. 73(1).
- (a) the Minister has fixed the date on which a general election for the Council is to be held and has published notice of that date in the Government Gazette; or
- (b) a Bill to dismiss the Council has been introduced into the Parliament.
- (9A) The date fixed for the holding of the general election must be a date that occurs within the period of 100 days after the date on which the Order in Council expires.
- S. 219(9A)
inserted by
No. 67/2008
s. 73(1).
- (9B) If the Bill to dismiss the Council has not become an Act which is in operation within the period of 100 days after the date on which the Order in Council expires, the Councillors resume office and the administrator goes out of office immediately after the end of that period.
- S. 219(9B)
inserted by
No. 67/2008
s. 73(1).
- (10) An election under subsection (9)(a) must be held in accordance with the procedures for a general election.
- S. 219(10)
amended by
Nos 109/2003
s. 16(2)(c),
67/2008
s. 73(2).

S. 219(11)
amended by
No. 76/1997
s. 13(c).

- (11) If the election is held, on the public declaration of the election result the administrator goes out of office.

S. 219(12)
amended by
Nos 125/1993
s. 14(l),
76/1997
s. 13(c).

- (12) The Chief Executive Officer must summon a meeting of the Council within 14 days after the public declaration of the election result.

Pt 10 Div. 1A
(Heading and
ss 219AA–
219AF)
inserted by
No. 53/2015
s. 36.

Division 1A—Serious or gross misconduct by Councillor—Exceptional circumstances

S. 219AA
inserted by
No. 53/2015
s. 36.

219AA Application of Division

- (1) This Division applies if—
- (a) a person has made a complaint to the Minister in respect of a Councillor that alleges that the Councillor—
 - (i) is creating a serious risk to the health and safety of Councillors or Council staff; or
 - (ii) is preventing the Council from performing its functions; or
 - (iii) is behaving in a manner that does not accord with the role of a Councillor; and

Note

See section 65 which specifies the role of a Councillor.

- (b) an application has been made—
 - (i) for a Councillor Conduct Panel to make a finding of serious misconduct against the Councillor the subject of the complaint specified in paragraph (a); or
 - (ii) to VCAT alleging gross misconduct by the Councillor the subject of the complaint specified in paragraph (a).
- (2) An application under subsection (1)(b) may be made, but is not required to be made, by the person who has made a complaint under subsection (1)(a).

219AB Referral of complaint to a municipal monitor

S. 219AB
inserted by
No. 53/2015
s. 36.

- (1) The Minister may refer a complaint specified in section 219AA(1)(a) to a suitably qualified municipal monitor for investigation by the municipal monitor.
- (2) A municipal monitor is suitably qualified if the Minister considers that the municipal monitor has relevant experience or expertise for the purposes of conducting the investigation.

219AC Municipal monitor to conduct investigation and prepare a report

S. 219AC
inserted by
No. 53/2015
s. 36.

- (1) A municipal monitor who has received a referred complaint under section 219AB must conduct and complete an investigation into the complaint in accordance with this section—
 - (a) within 10 days after the day that the municipal monitor received the referral; or
 - (b) within such other period agreed to by the Minister after receiving a request from the municipal monitor for an extension of time to conduct and complete the investigation.

- (2) On receiving a referred complaint from the Minister, the municipal monitor must give notice to the following persons—
 - (a) the Councillor who is the subject of the complaint;
 - (b) the Mayor;
 - (c) the Chief Executive Officer.
- (3) Notice under subsection (2) must—
 - (a) be in writing; and
 - (b) specify the period of time that will be taken to conduct and complete the investigation in accordance with subsection (1).
- (4) Within the period specified in subsection (1)(a) or such other period agreed to by the Minister under subsection (1)(b), the municipal monitor must—
 - (a) investigate the complaint; and
 - (b) prepare a report of the municipal monitor's advice and findings specifying—
 - (i) whether the municipal monitor considers that the Councillor the subject of the complaint—
 - (A) is creating a serious risk to the health and safety of Councillors or Council staff; or
 - (B) is preventing the Council from performing its functions; or
 - (C) is behaving in a manner that does not accord with the role of a Councillor; and
 - (ii) the reasons for the municipal monitor's advice and findings; and

- (c) give a copy of the report prepared under paragraph (b) to—
 - (i) the Councillor the subject of the complaint; and
 - (ii) the Minister.
- (5) The copy of the report given to a Councillor under subsection (4)(c)(i) must specify the following—
 - (a) that the Councillor may give a response to the report to the Minister within 5 days of receiving the report;
 - (b) the manner in which any response to the report must be given to the Minister.

219AD Councillor may respond to report of municipal monitor

S. 219AD
inserted by
No. 53/2015
s. 36.

Within 5 days after receiving a copy of a report prepared by a municipal monitor under section 219AC(4)(b), the Councillor who is the subject of the complaint may give to the Minister a response to the report in accordance with section 219AC(5)(b).

219AE Action that may be taken by Minister following municipal monitor report and any Councillor response

S. 219AE
inserted by
No. 53/2015
s. 36.

After receiving the report of the municipal monitor under section 219AC(4)(c)(ii) and any response from the Councillor who is the subject of the complaint under section 219AD, the Minister may—

- (a) in accordance with section 219AF, recommend that the Councillor the subject of the complaint be stood down; or
- (b) take any other action the Minister can take against a Councillor under this Act; or
- (c) take no further action.

S. 219AF
inserted by
No. 53/2015
s. 36.

219AF Councillor may be ordered to stand down

- (1) On the recommendation of the Minister, the Governor in Council may, by Order in Council, stand down a Councillor.
- (2) The Minister may make a recommendation under subsection (1) if—
 - (a) an application has been made to a Councillor Conduct Panel or VCAT alleging serious misconduct or gross misconduct (as the case requires) by the Councillor; and
 - (b) a municipal monitor has given the Minister a report under section 219AC advising the Minister that the Councillor in respect of whom an application specified in paragraph (a) has been made—
 - (i) is creating a serious risk to the health and safety of a Councillor or a member of Council staff; or
 - (ii) is preventing the Council from performing its functions; or
 - (iii) is behaving in a manner that does not accord with the role of Councillor; and
 - (c) the Minister is satisfied that—
 - (i) there is a serious risk to the health and safety of a Councillor or a member of Council staff; or
 - (ii) unless the Councillor is ordered to stand down, the Council will be unable to perform its functions; or
 - (iii) the Councillor is behaving in a manner that does not accord with the role of a Councillor.

- (3) If an Order in Council is made under subsection (1), the Minister must give written notification to—
 - (a) the Councillor who, by Order in Council, must stand down; and
 - (b) the Chief Executive Officer.
- (4) If an Order in Council is made under this section, for the duration of the Order—
 - (a) the allowance of the Councillor ordered to stand down is to be withheld; and
 - (b) the Councillor ordered to stand down must not perform the functions and duties of, or exercise the powers of, a Councillor including—
 - (i) attend any ordinary meetings or special meetings of the Council; and
 - (ii) attend any special committee meetings; and
 - (iii) attend any assembly of Councillors; and
 - (iv) attend Council premises.
- (5) The standing down of a Councillor by Order in Council under this section expires—
 - (a) on the making of a determination by a Councillor Conduct Panel or VCAT in respect of the application; or
 - (b) on the withdrawal of the application to the Councillor Conduct Panel or VCAT; or
 - (c) on the dismissal of the application by the Councillor Conduct Panel or VCAT; or

- (d) on the revocation of the Order in Council by another Order in Council; or
 - (e) 6 months after the Order in Council is made.
- (6) Subject to subsection (7), if an Order in Council is due to expire in accordance with subsection (5)(e), the Minister may make another recommendation to the Governor in Council for the making of a subsequent Order in Council, in accordance with this section, for the standing down of the Councillor based on any further advice given by a municipal monitor to the Minister.
- (7) The subsequent Order in Council—
 - (a) may be made before the first Order in Council standing down the Councillor expires; and
 - (b) must not—
 - (i) come into operation until the first Order in Council standing down the Councillor expires; and
 - (ii) be in operation for a period longer than 6 months.
- (8) If the Councillor Conduct Panel or VCAT (as the case requires) hearing the application against the Councillor does not make a finding of serious misconduct or gross misconduct against the Councillor the subject of the application, the allowance withheld from the Councillor in accordance with subsection (4)(a) must be returned to the Councillor.

Division 2—Electoral representation reviews

Pt 10 Div. 2
(Heading and
s. 220)
amended by
Nos 43/1993
s. 4(a),
76/1997
s. 19(1)(2),
5/2001
s. 30(2)(d),
substituted as
Pt 10 Div. 2
(Heading and
ss 219A–
219G) by
No. 109/2003
s. 32.

219A Purpose of this Division

S. 219A
inserted by
No. 109/2003
s. 32.

The purpose of this Division is to provide for independent reviews of electoral representation by all Councils on a regular basis to provide for fair and equitable representation.

219B Definitions

S. 219B
inserted by
No. 109/2003
s. 32.

In this Division—

review means an electoral representation review;

reviewer means the Victorian Electoral Commission established under section 6 of the **Electoral Act 2002**.

S. 219B def. of
reviewer
substituted by
No. 58/2010
s. 25.

219C When is a review required?

S. 219C
inserted by
No. 109/2003
s. 32.

(1) A review must be conducted—

* * * * *

S. 219C(1)(a)
repealed by
No. 58/2010
s. 26(1)(a).

Local Government Act 1989
No. 11 of 1989
Part 10—Inquiries, reviews and suspension of Councils

S. 219C(1)(b)
amended by
No. 58/2010
s. 26(1)(b).

(b) before every third general election so as not to commence until 2 years before that general election; and

S. 219C(1)(c)
amended by
No. 58/2010
s. 26(1)(c).

(c) in respect of a particular Council, at any other time specified by the Minister by a notice published in the Government Gazette.

S. 219C(2)
repealed by
No. 58/2010
s. 26(2).

* * * * *

S. 219C(3)
amended by
No. 58/2010
s. 26(3)(a).

(3) A notice published under subsection (1)(c) may specify—

(a) the earliest date that the review may commence; and

S. 219C(3)(b)
repealed by
No. 58/2010
s. 26(3)(b).

* * * * *

(c) the date by which the final report must be submitted to the Minister.

S. 219C(4)
inserted by
No. 58/2010
s. 26(4).

(4) The Minister must give notice that a review be conducted in respect of a particular Council under subsection (1)(c) if—

(a) a subdivision review (within the meaning of Division 3) has been conducted under section 219N since the last electoral representation review for the Council; and

- (b) the Minister has subsequently received written notification from the Victorian Electoral Commission under section 219J; and
 - (c) a review is not required under subsection (1)(b) before the next general election.
- (5) The reviewer must notify the Council and the Minister in writing, at least 60 days before a review is to commence, of the date that the review will commence. S. 219C(5)
inserted by
No. 58/2010
s. 26(4).
- (6) The Minister must, on and after the commencement of section 26 of the **Local Government and Planning Legislation Amendment Act 2010**, specify by notice in the Government Gazette a date that is a date before the relevant general election by when the next review in respect of a particular Council must be completed. S. 219C(6)
inserted by
No. 58/2010
s. 26(4).

219D Purpose of review

- (1) The purpose of a review is to recommend— S. 219D
inserted by
No. 109/2003
s. 32.
- (a) the number of Councillors and the electoral structure that provides fair and equitable representation for the persons who are entitled to vote at a general election of the Council;
 - (b) if the municipal district is to be divided into wards, boundaries for the wards which—
 - (i) provide a fair and equitable division of the municipal district; and
 - (ii) satisfy paragraph (c);
 - (c) if paragraph (b) applies, whether the number of voters represented by each Councillor is within 10% of the number derived from the following calculation—

$$\frac{V}{C}$$

where—

V is the number of persons who are entitled to vote at a general election of the Council;

C is the number of Councillors elected to represent individual wards.

- (2) For the purposes of subsection (1)(c), compliance may be determined by reference to the number of voters at the time of the review or by reference to the number of voters projected to be voters on the entitlement date for the next general election.

S. 219E
inserted by
No. 109/2003
s. 32,
repealed by
No. 58/2010
s. 27.

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S. 219F
inserted by
No. 109/2003
s. 32.

219F Conduct of review

- (1) Subject to this section, the reviewer may conduct the review in any manner that the reviewer considers appropriate.
- (2) The matters specified in regulations for the purposes of this Division must be considered in the conduct of the review and the making of recommendations.
- (3) The reviewer may appoint any person the reviewer considers necessary to assist in the conduct of the review.
- (4) The reviewer must publish a notice in a newspaper generally circulating in the municipal district of the relevant Council specifying that—
 - (a) a review is to be conducted and what the purpose of the review is;

- (b) any person may make a preliminary written submission by the date specified in the notice, being a date not less than 28 days after the notice is published.

S. 219F(4)(b)
amended by
No. 58/2010
s. 28(1).

* * * * *

S. 219F(5)
repealed by
No. 58/2010
s. 28(2).

- (6) After considering any preliminary submissions, the reviewer must prepare a preliminary report containing—
- (a) a preferred option (including a map) as to the number of Councillors and the electoral structure, and if it is proposed that the municipal district be divided into wards, the boundaries of those wards; and
 - (b) if the reviewer considers it to be appropriate, alternative options (including maps) to the preferred option.
- (7) The reviewer must publish a notice in a newspaper generally circulating in the municipal district of the relevant Council specifying that—
- (a) a preliminary report has been prepared in the review;
 - (b) the preliminary report is available for inspection at the Council office and at the office of the reviewer specified in the notice;
 - (c) a copy of the preliminary report can be obtained upon payment of the prescribed fee from the place specified in the notice;
 - (d) any person may make a written submission by the date specified in the notice, being a date not less than 28 days after the notice is published, and may request in the

S. 219F(7)(d)
amended by
No. 58/2010
s. 28(3).

submission that the person meet with the reviewer to discuss their submission.

(8) The Council must ensure that a copy of the preliminary report is available for inspection at the office of the Council during normal office hours.

(9) The reviewer must—

- (a) consider any written submissions received under subsection (7); and
- (b) arrange for any person who has so requested, to be heard in person; and
- (c) after complying with paragraphs (a) and (b), prepare a final report.

S. 219F(10)
amended by
No. 44/2011
s. 8(1).

(10) Subject to subsection (10A), the reviewer must, not later than 6 months before the general election in respect of which the review is to be implemented, submit a copy of the final report to the Council and the Minister.

S. 219F(10A)
inserted by
No. 44/2011
s. 8(2).

(10A) In respect of a review which is to be implemented for the 2012 general election, the reviewer must, not later than 5 months before the 2012 general election, submit a copy of the final report to the Council and the Minister.

(11) The Council must ensure that—

- (a) the final report is available for inspection at the office of the Council during normal office hours for the period of at least 3 months after the report is received;
- (b) a copy of the final report can be obtained upon payment of the prescribed fee from the office of the Council during normal office hours.

219G Implementation of review

S. 219G
inserted by
No. 109/2003
s. 32.

- (1) The Minister may recommend to the Governor in Council the making of such orders under section 220Q as are necessary to implement the final report.
- (2) An order referred to in subsection (1) may provide that the changes are to have effect for the purposes of the next general election.
- (3) A Council must provide any information or assistance to the Minister that the Minister may request for the purposes of this section.

Division 3—Subdivision reviews

Pt 10 Div. 3
(Heading and
ss 219H–
219O)
inserted by
No. 109/2003
s. 32.

219H Application of Division

S. 219H
inserted by
No. 109/2003
s. 32.

This Division applies to a Council if the Victorian Electoral Commission considers that—

- (a) the boundaries for the wards of a Council are unlikely to meet the requirement specified in section 219D(1)(c) at the time of the next general election; and
- (b) the Council is not scheduled to conduct an electoral representation review under Division 2 before the next general election.

219I Definitions

S. 219I
inserted by
No. 109/2003
s. 32.

In this Division—

reviewer means the Victorian Electoral Commission established under section 6 of the **Electoral Act 2002**;

S. 219I def. of
reviewer
substituted by
No. 58/2010
s. 29.

subdivision review means a subdivision review conducted under section 219N.

S. 219J
inserted by
No. 109/2003
s. 32.

219J Duty of Victorian Electoral Commission

If this Division applies to a Council, the Victorian Electoral Commission must not later than 2 years before the Council is to hold a general election notify the Minister in writing that this Division applies to the Council.

S. 219K
inserted by
No. 109/2003
s. 32,
substituted by
No. 58/2010
s. 30.

219K Power of Minister

If the Minister receives notice from the Victorian Electoral Commission under section 219J in relation to a Council, the Minister may—

- (a) require the reviewer to conduct a subdivision review of the Council; and
- (b) notify the Council that a subdivision review is required.

S. 219L
inserted by
No. 109/2003
s. 32.

219L Purpose of subdivision review

The purpose of a subdivision review is to consider the location of the boundaries for the wards of the Council which will meet the requirement specified in section 219D(1)(c).

S. 219M
inserted by
No. 109/2003
s. 32,
repealed by
No. 58/2010
s. 31.

* * * * *

S. 219N
inserted by
No. 109/2003
s. 32.

219N Conduct of subdivision review

- (1) Subject to this section, the reviewer may conduct the subdivision review in any manner that the reviewer considers appropriate.
- (2) The reviewer may engage in community consultation in conducting the subdivision review.

- (3) The reviewer must, not later than 6 months before the general election in respect of which the subdivision review is to be implemented, submit a copy of the subdivision review report to the Council and the Minister.

219O Implementation of subdivision review

S. 219O
inserted by
No. 109/2003
s. 32.

- (1) The Minister may recommend to the Governor in Council the making of such orders under section 220Q as are necessary to implement the subdivision review report.
- (2) A Council must provide any information or assistance to the Minister that the Minister may request for the purposes of this section.

**Division 4—Review and subdivision
review expenses**

Pt 10 Div. 4
(Heading and
s. 219P)
inserted by
No. 58/2010
s. 32.

219P Victorian Electoral Commission's expenses

S. 219P
inserted by
No. 58/2010
s. 32.

The Victorian Electoral Commission may send to each Council an account of the reasonable expenses incurred as a consequence of the reviewer conducting an electoral representation review under section 219F or a subdivision review under section 219N.

Part 10A—Local government panels

Pt 10A
(Heading and
ss 220A–
220E)
inserted by
No. 43/1993
s. 3,
substituted by
No. 27/1997
s. 21.

220A Local government panels

The Minister may establish one or more local government panels—

- (a) to conduct a review of any matter relating to local government restructuring;
- (b) to advise her or him on any other matter.

S. 220B
substituted by
No. 27/1997
s. 21.

220B Membership of panels

- (1) A local government panel may consist of up to 5 people.
- (2) The Minister may appoint one of the members of a local government panel to be the chairperson of the panel.

S. 220C
substituted by
No. 27/1997
s. 21.

220C Conditions of appointment

- (1) A member of a local government panel holds office on the terms and conditions determined by the Minister.

S. 220C(2)
repealed by
No. 46/1998
s. 7(Sch. 1).

* * * * *

S. 220D
substituted by
No. 27/1997
s. 21.

220D Panel proceedings

Subject to any direction of the Minister, a local government panel may regulate its own proceedings.

220E Improper use of information

A person who is, or has been, a member of a local government panel must not make improper use of any information acquired as a member of the panel to gain, or to attempt to gain, directly or indirectly, a pecuniary or other advantage for himself or herself or for any other person.

Penalty: 120 penalty units.

S. 220E
substituted by
No. 27/1997
s. 21,
amended by
No. 64/2009
s. 29.

Pt 10B
(Heading and
ss 220F–
220O)
inserted by
No. 43/1993
s. 3,
amended by
No. 125/1993
s. 14(l),
substituted as
Pt 10B
(Heading and
ss 220F–220I)
by No.
27/1997 s. 21.

Part 10B—Local government restructuring reviews

S. 220F
substituted by
No. 27/1997
s. 21.

220F Terms of review must be publicised

- (1) This section applies if the Minister establishes a local government panel to conduct a review of any matter relating to local government restructuring.
- (2) The Minister must publish a notice in a newspaper generally circulating in any relevant municipal district or neighbourhood of the terms of reference of the review.

S. 220G
substituted by
No. 27/1997
s. 21.

220G Conduct of the review

A local government panel may conduct a review of any matter relating to local government restructuring in any way it thinks appropriate and may have regard to any matter that it considers to be relevant.

S. 220H
substituted by
No. 27/1997
s. 21.

220H Legal proceedings excluded

No proceedings—

- (a) seeking the grant of any relief or remedy in the nature of certiorari, prohibition, mandamus or quo warranto, or the grant of a declaration or an injunction; or

(b) seeking any order under the **Administrative Law Act 1978**—

(whether on the ground of absence of jurisdiction or any other ground) may be brought against any local government panel, or any member of a local government panel, the Minister, or any other person in respect of any review under this Part, or any proceedings relating to such a review or any other act, matter or thing incidental to the conduct of such a review.

220I Supreme Court—limitation of jurisdiction

It is the intention of section 220H to alter or vary section 85 of the **Constitution Act 1975**.

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S. 220I
substituted by
No. 27/1997
s. 21.

Ss 220J–220O
repealed by
No. 27/1997
s. 21.

Pt 10C
(Heading and
ss 220P–
220T)
inserted by
No. 43/1993
s. 3.

Part 10C—Restructuring Orders

S. 220P
inserted by
No. 43/1993
s. 3,
substituted by
No. 27/1997
s. 22.

220P Operation of this Part

The Minister must not recommend to the Governor in Council that an Order in Council be made in relation to a matter under section 220Q(a), (b), (d), (e) or (f) unless the Minister—

- (a) established a local government panel to conduct a review of the matter; and
- (b) has considered the report of the panel on the matter.

S. 220Q
inserted by
No. 43/1993
s. 3.

220Q Power to make Orders

The Governor in Council may on the recommendation of the Minister make an Order in Council to do any one or more of the following—

- (a) alter the boundaries of a municipal district by adding or removing an area to or from an existing municipal district or an outlying district;
- (b) constitute a new municipal district by amalgamating existing municipal districts;
- (c) declare an existing boundary of a municipal district;
- (d) re-constitute an existing Council;
- (e) constitute a new Council;
- (f) abolish an existing Council;
- (g) constitute a Council as a Shire, Rural City or City;

- (h) give a name to, or alter the name of, a Council;
- (i) divide a municipal district into wards;
- (j) re-constitute a municipal district as an un-subdivided municipal district;
- (k) alter the boundaries of the wards of a municipal district by adding or removing an area to or from an existing ward;
- (l) alter the number of wards into which a municipal district is divided;
- (m) give a name to, or alter the name of, a ward of a municipal district;
- (n) alter the number of Councillors assigned to a Council or each ward;

S. 220Q(l)
amended by
No. 76/1995
s. 12.

* * * * *

S. 220Q(na)
inserted by
No. 33/1995
s. 19(3),
substituted by
No. 76/1997
s. 20,
repealed by
No. 109/2003
s. 7(4).

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S. 220Q(nb)
inserted by
No. 76/1997
s. 20,
amended by
No. 5/2001
s. 30(2)(e),
repealed by
No. 109/2003
s. 7(4).

- (o) provide for the interim administration of a new or re-constituted Council until an election is held.

S. 220R
inserted by
No. 43/1993
s. 3.

220R Matters which may be included in Order

- (1) The Governor in Council may by Order in Council provide for any matter necessary or convenient to give effect to this Part or to any other Order in Council under this Part and to enable the effective implementation of any restructuring.
- (2) Without limiting the generality of subsection (1), an Order in Council may provide for—
 - (a) any property, income, assets, rights, liabilities, expenses or other matters to be apportioned, settled, transferred, adjusted or determined;
 - (b) the appointment, transfer, redundancy or classification of Council staff and any matters relating to the remuneration and emoluments of such staff including superannuation and long service leave;
 - (c) the appointment, conditions of appointment and the powers and functions of any persons appointed to administer a new or re-constituted Council until an election is held;
 - (d) existing Councillors to go out of office and the election of new Councillors to be elected in the numbers, for the wards and the terms specified in the Order;
 - (e) the holding of elections having regard to the provisions of this Act and the regulations dealing with enrolment for and voting at Council elections and the election of Councillors, with such modifications as may be specified in the Order;
 - (f) the application, continuation, amendment or revocation of existing local laws;

- (fa) the holding of the first electoral representation review under Division 2 of Part 10 after the restructuring has been implemented;
- (g) transitional provisions in relation to any act, matter or thing done or required to be done by or in relation to any Council affected by the Order in Council.
- (3) If an Order in Council provides for the appointment of persons to administer a new or re-constituted Council until an election is held, those persons by virtue of this Act—
- (a) are deemed to be the Councillors of the Council and together to constitute the Council as Councillors; and
 - (b) have and may exercise and discharge the responsibilities, liabilities, rights, powers, authorities, duties and functions conferred or imposed upon—
 - (i) a Council or a former Council by or under any Act;
 - (ii) Councillors generally or upon the Councillors of a former Council by or under any Act;
 - (iii) the persons so appointed by the Order in Council.

S. 220R(2)(fa)
inserted by
No. 109/2003
s. 33(2).

220S General provisions relating to Orders

- (1) An Order in Council made under this Part—
- (a) must specify a day or days upon which the Order in Council comes into operation;
 - (b) upon being published in the Government Gazette has the like force and effect as if it were expressly enacted in this Act;

S. 220S
inserted by
No. 43/1993
s. 3.

- (c) may be amended or revoked by another Order in Council;
 - (d) has full force and effect despite any non-compliance with any of the matters required by this Act as preliminary to the making of the Order.
- (2) An Order in Council made under this Part may—
- (a) apply generally or be limited in its application by reference to specified matters or things;
 - (b) apply differently according to different factors or subject to specified exceptions;
 - (c) leave any matter or things to be from time to time determined, applied, dispensed with or regulated by a person or body specified in the Order;
 - (d) confer powers or impose duties in connection with the Order on a person or body specified in the Order;
 - (e) apply, adopt or incorporate, with or without modification, the provisions of any Act or of any regulations made under any Act;
 - (f) contain provisions of a savings and transitional nature consequent on the making of the Order, including providing for the construction of references in any instrument or in any other document of any kind;
 - (g) provide that during a transitional period specified in the Order the provisions of the **Local Government Act 1989** specified in the Order apply as varied or modified by the Order;

- (h) modify the application of the **Valuation of Land Act 1960** by providing that existing valuations are to be used until a date specified in the Order;
 - (i) modify the application of section 3(2) of the **Local Government (Consequential Provisions) Act 1989**;
 - (j) provide for the manner in which or conditions subject to which any contracts or leases may be entered into by or with a Council during any period specified in the Order and specify any penalty (including a surcharge under section 240A) which is to apply in respect of any non-compliance. S. 220S(2)(j)
amended by
No. 109/2003
s. 76.
- (3) Without limiting the generality of subsection (2)(g), an Order in Council may provide for—
- (a) the non-application of sections 5(3) and 91(1) during a transitional period specified in the Order;
 - (b) the fixing or alteration of the entitlement date for the purposes of any election;
 - (c) the non-application of sections 71, 74, 74A, 74B, 74C and 75 to persons appointed to administer a new or re-constituted Council; S. 220S(3)(c)
amended by
No. 109/2003
s. 56.
 - (d) the alteration of the date under section 130 by which a Council must adopt its first budget; S. 220S(3)(d)
amended by
No. 109/2003
s. 72(2)(b).
 - (e) the period within which a Council Plan in accordance with section 125 must be prepared; S. 220S(3)(e)
amended by
No. 109/2003
s. 72(2)(c)(i)(ii).
 - (f) the non-application of all or any of the requirements of section 157 as specified in the Order during a transitional period specified in the Order;

- (g) the alteration of the date under section 158 by which the Council must declare its rates and charges.

S. 220T
inserted by
No. 43/1993
s. 3,
substituted by
No. 27/1997
s. 23.

220T Panel review not needed for minor boundary changes

The Minister may, without complying with section 220P, recommend that an Order in Council be made to give effect to minor boundary changes if she or he certifies to the Governor in Council that—

- (a) the proposed changes are of a minor nature only; and
- (b) any Council whose municipal district is affected by the proposed changes has approved of the proposed changes; and
- (c) public notice of the proposed changes has been given in the municipal district or districts affected by the proposed changes.

Part 11—General

221 Service charges on non-rateable land

- (1) A Council may impose in relation to any land in its municipal district which is not rateable land an annual service charge for any of the following services which the Council provides or which the Council is prepared and able to provide—
 - (a) the provision of a water supply;
 - (b) the collection and disposal of refuse;
 - (c) the provision of sewage services;
 - (d) any other prescribed service.
- (2) The service charge under this section may be imposed on the basis of any criteria specified by the Council.
- (3) A Council may declare in relation to any land in its municipal district which is not rateable land and is not Crown land a special rate or charge in respect of street construction.
- (4) The provisions of Part 8 which relate to special rates and charges apply to a special rate or charge under subsection (3) with any necessary adaptations.
- (5) A special rate or charge under subsection (3) may be declared and levied together with a special rate or charge under section 163.
- (6) If a private street (within the meaning of section 575(1) of the **Local Government Act 1958**) is constructed wholly or partly at the cost of the owners or occupiers of any land which abuts or fronts the street, the Council may not at any future time recover any further costs in respect of the construction of a component of the private street if that component has been previously constructed to the satisfaction of the

Council from the owners or occupiers of the land under this section as a special rate or special charge.

S. 222
amended by
Nos 22/1992
s. 18, 109/2003
s. 12(2)(c),
substituted by
No. 67/2008
s. 74.

222 Right of inspection

- (1) A Council must ensure that a prescribed document is available for inspection at all reasonable times.
- (2) A person is entitled upon payment of the relevant fee to—
 - (a) inspect a prescribed document; and
 - (b) make a copy of a prescribed document.
- (3) A Council may fix reasonable fees for the inspection and copying of a prescribed document.

223 Right to make submission

S. 223(1)
amended by
No. 125/1993
s. 37(1)(b),
substituted by
No. 67/2008
s. 75(1).

- (1) The following provisions apply if a person is given a right to make a submission to the Council under this section (whether under this or any other Act)—
 - (a) the Council must publish a public notice—
 - (i) specifying the matter in respect of which the right to make a submission applies;
 - (ii) containing the prescribed details in respect of that matter;
 - (iii) specifying the date by which submissions are to be submitted, being a date which is not less than 28 days after the date on which the public notice is published;
 - (iv) stating that a person making a submission is entitled to request in the submission that the person wishes to appear in person, or to be represented by a person specified in the submission,

at a meeting to be heard in support of the submission;

- (b) if a request has been made under paragraph (a)(iv), the Council must—
 - (i) provide the person with the opportunity to be heard in support of the submission in accordance with the request at a meeting of the Council or of a committee determined by the Council;
 - (ii) fix the day, time and place of the meeting;
 - (iii) give reasonable notice of the day, time and place of the meeting to each person who made a request;
- (c) if the committee determined under paragraph (b)(i) is not responsible for making the decision in respect of which the submissions have been made, the committee must provide a report on its proceedings, including a summary of hearings, to the Council or the special committee which is responsible for making the decision;
- (d) the Council or special committee responsible for making the decision must—
 - (i) consider all the submissions made under this section and any report made under paragraph (c);
 - (ii) notify in writing, each person who has made a separate submission, and in the case of a submission made on behalf of a number of persons, one of those persons, of the decision and the reasons for that decision.

S. 223(3)
inserted by
No. 13/1990
s. 26.

(2) If a proposal by the Council involves the exercise of powers at the same time under more than one section giving a right to make a submission and written submissions are received under more than 1 of those sections the submission procedure may be carried out in respect of all the written submissions at the same time.

S. 223(4)
inserted by
No. 67/2008
s. 75(2).

(3) Despite section 98, a Council may authorise the appropriate members of Council staff to carry out administrative procedures necessary to enable the Council to carry out its functions under this section.

(4) A member of a committee specified in subsection (1)(b)(i) is subject to section 79 as if that member were a member of a special committee.

S. 223A
inserted by
No. 27/1997
s. 24,
amended by
Nos 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 117.1),
67/2008 s. 76,
substituted by
No. 53/2015
s. 41.

223A Appointment of Chief Municipal Inspector

(1) The Integrity Minister may appoint a Chief Municipal Inspector who is employed under Division 5 of Part 3 of the **Public Administration Act 2004**.

(2) The Chief Municipal Inspector has the following functions—

- (a) to investigate and prosecute any possible offences under this Act;
- (b) to examine any possible breaches of this Act;
- (c) to investigate any allegations of misconduct, serious misconduct and gross misconduct by a Councillor;
- (d) to make an application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor;

- (e) to make an application to VCAT for a finding of gross misconduct by a Councillor;
 - (f) any other function conferred on the Chief Municipal Inspector by or under this Act.
- (3) The Chief Municipal Inspector has all the powers necessary to perform the Chief Municipal Inspector's functions.
- (4) The Chief Municipal Inspector may, by instrument, delegate any power, duty or function of the Chief Municipal Inspector under this Act to any person who has, in the Chief Municipal Inspector's opinion, appropriate skills or knowledge to perform that power, duty or function other than this power of delegation.
- (5) A person delegated any power, duty or function by the Chief Municipal Inspector under subsection (4) is by virtue of that delegation an inspector of municipal administration.

223B Powers of the Chief Municipal Inspector

S. 223B
(Heading)
inserted by
No. 53/2015
s. 42(1).

S. 223B
inserted by
No. 27/1997
s. 24.

- (1) The Chief Municipal Inspector may examine, investigate and prosecute—
- (a) any matter relating to a Council's operations or to Council elections or electoral matters; and
 - (b) any possible breaches of this Act.

S. 223B(1)
amended by
No. 53/2015
s. 42(2).

S. 223B(2)
amended by
No. 53/2015
s. 42(3)(a).

(2) The Chief Municipal Inspector may, by notice in writing, require a person to—

S. 223B(2)(a)
amended by
No. 53/2015
s. 42(3)(b).

(a) produce any document (whether or not specifically identified in the notice) in the person's custody or control that relates to any matter that the Chief Municipal Inspector may examine or investigate; and

(b) give all reasonable assistance in connection with an examination or investigation; and

S. 223B(2)(c)
amended by
No. 53/2015
s. 42(3)(b).

(c) appear before the Chief Municipal Inspector for examination on oath and to answer questions.

S. 223B(3)
amended by
No. 53/2015
s. 42(4).

(3) The Chief Municipal Inspector may administer an oath.

S. 223B(4)
amended by
Nos 67/2008
s. 77, 53/2015
s. 42(5).

(4) The Chief Municipal Inspector may take possession of any document produced under subsection (2) for so long as the Chief Municipal Inspector considers necessary.

S. 223B(5)
amended by
No. 53/2015
s. 42(6).

(5) However, while the Chief Municipal Inspector retains possession of such a document, the Chief Municipal Inspector must permit any person who would be entitled to inspect the document if it were not in the Chief Municipal Inspector's possession to inspect the document at any reasonable time.

S. 223B(6)
amended by
No. 53/2015
s. 42(7).

(6) A person appearing before the Chief Municipal Inspector is entitled to be represented by another person.

- (7) If the Chief Municipal Inspector considers at any time that any matter referred to the Chief Municipal Inspector by the IBAC under section 73 of the **Independent Broad-based Anti-corruption Commission Act 2011** appears to involve conduct that is corrupt conduct, the Chief Municipal Inspector must inform the IBAC.

S. 223B(7)
inserted by
No. 30/2016
s. 83(1).

223C Offences relating to investigations

S. 223C
inserted by
No. 109/2003
s. 74.

- (1) A person must not—

S. 223C(1)
amended by
No. 64/2009
s. 30.

- (a) refuse or fail to comply with a requirement of the Chief Municipal Inspector to the extent to which that person is able to comply; or

S. 223C(1)(a)
amended by
No. 53/2015
s. 43(1)(a).

- (b) give information which the person knows is false or misleading to the Chief Municipal Inspector; or

S. 223C(1)(b)
amended by
No. 53/2015
s. 43(1)(b).

- (c) when appearing before the Chief Municipal Inspector—

S. 223C(1)(c)
amended by
No. 53/2015
s. 43(1)(c).

- (i) refuse to take an oath or affirmation; or

- (ii) make a false or misleading statement.

Penalty: 240 penalty units or imprisonment for 2 years or both.

- (2) If a person fails to comply with a requirement made by the Chief Municipal Inspector and does not prove that the person had a lawful excuse for the failure, the Chief Municipal Inspector may certify the failure in writing to the Supreme Court.

S. 223C(2)
amended by
No. 53/2015
s. 43(2).

(3) The Supreme Court may inquire into the failure and may—

S. 223C(3)(a)
amended by
No. 53/2015
s. 43(3)(a).

(a) make an order requiring the person to comply with the requirement made by the Chief Municipal Inspector within the period fixed by the Supreme Court; or

S. 223C(3)(b)
amended by
No. 53/2015
s. 43(3).

(b) instead of or in addition to an order under paragraph (a), if the Supreme Court is satisfied that the person failed without lawful excuse to comply with the requirement of the Chief Municipal Inspector punish the person as if the person had been guilty of contempt of court.

S. 223CA
inserted by
No. 53/2015
s. 44.

223CA Municipal monitor

- (1) The Minister may appoint a person to be a municipal monitor to a Council.
- (2) A municipal monitor is not, in respect of their office as a municipal monitor, subject to the **Public Administration Act 2004**.
- (3) A person who is appointed as a municipal monitor and who is not subject to the **Public Administration Act 2004** is entitled to be paid the amounts, and on the terms, fixed by the Minister.
- (4) The Minister must give the Council written notice of any appointment of a municipal monitor made to it under subsection (1) which specifies the amounts the municipal monitor is entitled to be paid and the terms of the appointment.
- (5) The Council must pay a municipal monitor the amounts specified in the notice under subsection (4).

223CB Functions of municipal monitor

A municipal monitor has the following functions—

- (a) to monitor Council governance processes and practices;
- (b) to advise the Council about governance improvements the Council should make;
- (c) to report to the Minister on any steps or actions taken by the Council to improve its governance and the effectiveness of those steps or actions;
- (d) to investigate any referred complaint received from the Minister under section 219AB;
- (e) to provide advice to, and prepare a report for, the Minister in accordance with section 219AC about a Councillor in respect of whom a complaint has been made;
- (f) to monitor and report to the Minister on any other matters determined by the Minister.

S. 223CB
inserted by
No. 53/2015
s. 44.

223CC Powers of municipal monitor

- (1) A municipal monitor may examine and investigate—
 - (a) any matter relating to a Council's operations or to Council elections or electoral matters; and
 - (b) a Councillor on receiving a complaint in respect of that Councillor from the Minister under section 219AB; and
 - (c) any possible breaches of this Act.

S. 223CC
inserted by
No. 53/2015
s. 44.

- (2) A municipal monitor may, by notice in writing, require a person—
 - (a) to produce any document (whether or not specifically identified in the notice) in the person's custody or control that relates to any matter that the municipal monitor may examine or investigate; and
 - (b) to give all reasonable assistance in connection with an examination or investigation; and
 - (c) to appear before the municipal monitor for examination on oath and to answer questions.
- (3) A municipal monitor may administer an oath.
- (4) A municipal monitor may take possession of any document produced under subsection (2) for so long as the municipal monitor considers necessary.
- (5) However, while a municipal monitor retains possession of the document, the municipal monitor must permit any person who would be entitled to inspect the document if it were not in the municipal monitor's possession to inspect the document at any reasonable time.
- (6) A person appearing before a municipal monitor is entitled to be represented by another person.
- (7) If a municipal monitor considers at any time that any matter referred to the municipal monitor by the IBAC under section 73 of the **Independent Broad-based Anti-corruption Commission Act 2011** appears to involve conduct that is corrupt conduct, the municipal monitor must inform the IBAC.

S. 223CC(7)
inserted by
No. 30/2016
s. 83(2).

224 Authorised officers

- (1) A Council may appoint any person other than a Councillor to be an authorised officer for the purposes of the administration and enforcement of any Act, regulations or local laws which relate to the functions and powers of the Council. **S. 224(1) amended by No. 125/1993 s. 26(2).**
- (1A) A Council must maintain a register that shows the names of all people appointed by it to be authorised officers. **S. 224(1A) inserted by No. 125/1993 s. 26(3).**
- (2) The Council must issue an identity card to each authorised officer.
- (3) An identity card must—
- (a) contain a photograph of the authorised officer; and
 - (b) contain the signature of the authorised officer; and
 - (c) be signed by a member of Council staff appointed for the purpose.
- (3A) If a Council appoints a police officer to be an authorised officer under subsection (1), for the purposes of this section the police officer's certificate of identity is deemed to be an identity card issued under section 224(2) and is deemed to comply with section 224(3). **S. 224(3A) inserted by No. 99/1994 s. 19.**
- (4) An authorised officer must produce his or her identity card upon being requested to do so.
- (5) An action taken or thing done by an authorised person is not invalidated by the failure of an authorised officer to produce his or her identity card.
- (6) For the purposes of this section, an authorised officer may demand the name and address of a person who has committed, or who the authorised officer reasonably suspects has committed or is **S. 224(6) amended by No. 125/1993 s. 26(4).**

about to commit, an offence against any Act, regulation or local law in respect of which he or she is appointed.

S. 224(6A)
inserted by
No. 125/1993
s. 26(5).

- (6A) In making such a demand, the authorised officer must inform the person of the grounds on which the demand is made in sufficient detail to enable the person to understand the nature of the offence or suspected offence.

Penalty: 10 penalty units.

- (7) An authorised officer may enter any land or building in the municipal district at any reasonable time to carry out and enforce this or any other Act or any regulation or local law.

S. 224(8)
amended by
No. 64/2009
s. 31.

- (8) A person is guilty of an offence and liable to a fine not exceeding 60 penalty units if he or she—
- (a) refuses to give his or her name and address upon demand by an authorised officer; or
 - (b) obstructs or hinders an authorised officer while performing his or her duty; or
 - (c) falsely represents himself or herself to be an authorised officer.

S. 224A
inserted by
No. 99/1994
s. 20.

224A Police may act as authorised officers to enforce certain local laws

- (1) This section applies if a provision of a local law of a Council regulates the use, possession or consumption of alcohol.
- (2) The Council may publish a notice in the Government Gazette identifying the provision of the local law and stating that any police officer may enforce that provision.
- (3) If the Council publishes such a notice, any police officer may enforce the provision as if he or she was appointed to be an authorised officer under section 224 with respect to the provision.

- (4) For the purposes of subsection (3), a police officer's certificate of identity is deemed to be an identity card issued under section 224(2) and is deemed to comply with section 224(3).

225 When Council or other person can carry out required work

- (1) If a person fails to carry out any work which he or she is required to carry out by a Council under any Act, regulation or local law—
- (a) any other person may with the approval of the Council cause the work to be carried out; or
 - (b) the Council may carry out the work.
- (2) Any other person who carries out the work may recover the cost of carrying out the work from the person who failed to do it.
- (3) If the Council carries out the work the Council may recover the cost of carrying out the work from the person who failed to do it.

226 Right of owner to carry out required work on occupied land

- (1) If the owner of any land is required to carry out any work by a Council under any Act, regulation or local law the owner may give a written notice to the occupier of the land—
- (a) stating particulars of the work to be carried out; and
 - (b) requiring the occupier to permit the owner and any other person to enter the land and carry out the work.
- (2) If the occupier of the land does not comply with a notice within 7 days of being given the notice the owner of the land may apply to a magistrates' court for an order.

(3) The magistrates' court may make an order requiring the occupier of the land to permit the owner and any other person to enter the land and carry out the work.

(4) The occupier of the land must comply with the order.

Penalty: 10 penalty units.

(5) While the occupier of the land fails to comply with the order the owner of the land is excused from any penalty for failing to carry out the work.

227 Recovery of money owed to Council by former owner or occupier

If a former owner or occupier of any building or land in respect of which that person owes money (other than rates or charges or money for personal services carried out by the Council) to a Council does not pay the money, the Council may require the payment of all or part of the money from the present owner or occupier of the building or land.

S. 227AA
inserted by
No. 20/1996
s. 23.

227AA Recovery of costs and fees under Housing Act 1983

A Council may recover from the owner of a house subject to a declaration under section 64 of the **Housing Act 1983**, section 56 of the **Housing Act 1958**, or section 8 of the **Slum Reclamation and Housing Act 1938**—

(a) the reasonable cost of inspecting the house for the purpose of ascertaining whether it complies with the regulations as defined in section 62 of the **Housing Act 1983** or for the purpose of determining whether the Council should exercise its powers under section 68A of the **Housing Act 1983**;

(b) any fees or expenses incurred by the Council in connection with the registration, or the cancellation of the registration, of a charge

under section 67(2) of the **Housing Act 1983** or in connection with the lodging of a notice under clause 6(2) of Schedule 6 to the **Housing Act 1983** that a declaration (as defined in section 62 of that Act) has ceased to operate.

227A Council may charge interest on unpaid money

S. 227A
inserted by
No. 22/1992
s. 19.

(1) A Council may require a person to pay interest on any amount of money (other than rates and charges)—

- (a) which that person owes to the Council; and
- (b) which has not been paid by the due date.

(2) The interest—

- (a) is to be calculated at the rate set from time to time for the purposes of this section by the Council; and
- (b) becomes payable—
 - (i) on and from the date on which the money became due; or
 - (ii) in the case of a court order requiring payment of the money, on and from the date of the court order; and
- (c) continues to be payable until the payment or recovery of the money.

(3) The interest rate specified by the Council must not be more than the rate fixed under section 2 of the **Penalty Interest Rates Act 1983**.

S. 227A(3)
substituted by
No. 23/2000
s. 6.

* * * * *

S. 227A(4)
repealed by
No. 23/2000
s. 6.

- (5) If the Council sets a new interest rate, the new rate takes effect on the date set by the Council and applies from that date to all money (other than interest) owing to the Council on that date.

S. 228
substituted by
No. 13/1990
s. 27.

228 Indemnity provision

S. 228(1)
amended by
Nos 43/1993
s. 4(b)(c),
46/1998
s. 7(Sch. 1),
54/1998
s. 22(a)(b),
109/2003
s. 93(c),
67/2008 s. 78.

- (1) The Crown must indemnify and keep indemnified the Minister and the Secretary and any member of a local government panel against all actions or claims (whether arising during or after the term of office or employment of the Minister or Secretary or member of the panel) in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of any function or power conferred on the Minister or Secretary or member of the panel by or under this Act.
- (2) Part II of the **Crown Proceedings Act 1958** applies in respect of any proceedings to which subsection (1) applies.

229 Land information certificate

S. 229(1)
amended by
No. 13/1990
s. 28.

- (1) A person may apply to a Council for a certificate specifying the prescribed information in relation to matters affecting any land in the municipal district.

- (2) An application for a certificate must be—

- (a) in the prescribed form; and
(b) sent to the Chief Executive Officer together with the prescribed fee.

S. 229(2)(b)
amended by
No. 125/1993
s. 14(l).

- (3) In addition to the prescribed information a Council may provide in the certificate any other information concerning the land as the Council considers in its absolute discretion to be relevant.

- (4) A Council does not incur any liability in respect of any information provided in addition to the prescribed information in good faith.
- (5) A certificate is conclusive proof as at the date it is given of the prescribed information stated in the certificate.

230 Notice in relation to disposition of land

- (1) A prescribed person must, in relation to the disposition of any land, give notice—
 - (a) in a prescribed form containing prescribed particulars; and
 - (b) to prescribed persons; and
 - (c) within a prescribed period.
- (2) A person is guilty of an offence if he or she contravenes this section without having a reasonable excuse.

Penalty: 10 penalty units.

231 Notice in relation to acquisition of land

- (1) A prescribed person must, in relation to the acquisition of any land, give notice—
 - (a) in a prescribed form containing prescribed particulars; and
 - (b) to prescribed persons; and
 - (c) within a prescribed period.
- (2) A person is guilty of an offence if he or she contravenes this section without having a reasonable excuse.

Penalty: 10 penalty units.

S. 231
repealed by
No. 125/1993
s. 14(m),
new s. 231
inserted by
No. 109/2003
s. 90.

232 Proceedings

S. 232(1)
amended by
Nos 13/1990
s. 29(a),
46/1998
s. 7(Sch. 1),
109/2003
s. 93(c),
67/2008 s. 79.

- (1) The Secretary, a Council or a person authorised by the Council either generally or in a particular case may institute proceedings in the corporate name of the Council for—
 - (a) the recovery of any rates, charges, fees or other money due to the Council under any Act, regulation or local law; or
 - (b) the enforcement of any provision of any Act, regulation or local law for which the Council is responsible; or
 - (c) the recovery of any penalty or surcharge in relation to any offence under any Act, regulation or local law the enforcement of which is the responsibility of the Council; or
 - (d) any other purpose specified by the Council.

S. 232(2)
amended by
No. 125/1993
s. 14(n).

- (2) A Chief Executive Officer or person authorised by the Council either generally or in a particular case may represent the Council in all respects as though he or she was the party concerned in any proceedings in which the Council is a party or has an interest.

S. 232(3)
inserted by
No. 13/1990
s. 29(b).

- (3) Proceedings for a summary offence under this Act may be commenced within the period of 3 years after the commission of the alleged offence.

233 Service on a Council

Any document required to be served on or given to a Council may be served on or given to the Council by—

- (a) delivering the document to a member of Council staff at the Council office; or
- (b) sending the document by post to the Council's postal address.

234 Service on a person

- (1) Any document required to be served on or given to a person (other than a Council) under this Act, the regulations or any local law may be served on or given to the person by—
 - (a) delivering the document to the person; or
 - (b) leaving the document at his or her usual or last known place of residence or business with a person apparently not less than 16 years of age and apparently residing or employed at that place; or
 - (c) sending the document by post addressed to the person at his or her last known place of residence or business.
- (2) If a document is required to be served on or given to the owner or occupier of any land and his or her name is not known the document may be addressed to "the owner" or "the occupier".
- (3) The document may be put up on a conspicuous position on the land if the name and address of the owner are not known and there is no occupier of the land.
- (4) If a document required to be served on or given to an owner or occupier of any land by a Council is properly served on or given to the owner or occupier of the land the document is binding on every subsequent owner or occupier of the land.

S. 234(1)(b)
amended by
No. 78/1991
s. 13(e).

235 Evidence of service

A statutory declaration by a person who has served or given a document in accordance with this Act stating the manner, place, date and time the document was served or given is evidence of the document having been served or given.

236 Power of delegation

S. 236(2)
amended by
Nos 46/1998
s. 7(Sch. 1),
109/2003
s. 93(c),
67/2008 s. 80.

- (1) The Minister may by instrument of delegation delegate to an officer or employee of the Department any power, duty or function of the Minister other than this power of delegation.
- (2) The Secretary may by instrument of delegation delegate to an officer or employee of the Department any power, duty or function of the Secretary other than this power of delegation.

237 Council records and information

S. 237(1)
amended by
Nos 46/1998
s. 7(Sch. 1),
109/2003
s. 93(c),
67/2008 s. 81,
37/2014
s. 10(Sch.
item 99.3).

- (1) If a police officer is investigating any matter relating to a Council and it appears to the Secretary that he or she should have access to Council records the Secretary may in writing authorise the inspection of the records.
- (2) If any money is provided to a Council by the State or a Minister or government department, the Minister administering this Act may require the Council to provide the other Minister with any information relating to the expenditure or use of that money.
- (3) Any person who refuses to permit the inspection of the records under subsection (1) or to provide information required by the Minister is guilty of an offence.

Penalty: 10 penalty units.

237A Council to provide information relating to land to inspectors of livestock

S. 237A
inserted by
No. 60/2012
s. 71.

A Council must make available to the Secretary to the Department of Primary Industries any information relating to land in the municipal

district of that Council that has been requested in writing by the Secretary in accordance with section 121A of the **Livestock Disease Control Act 1994**.

238 Obstructing Council

Any person who obstructs a Council or a member of Council staff in the performance of anything the Council or the member is empowered to do by any Act, regulation or local law is guilty of an offence and liable to a fine not exceeding 60 penalty units.

S. 238
amended by
No. 64/2009
s. 32.

238A False written declaration

A person who is required to make a written declaration by or under this Act or the regulations as a candidate, scrutineer or voter or as a person submitting a how-to-vote card must not knowingly make a declaration which is false.

S. 238A
inserted by
No. 35/2008
s. 25,
amended by
No. 64/2009
s. 33.

Penalty: 120 penalty units

239 Persons who are liable for offences

- (1) A person who aids, abets, counsels or procures or is in any way knowingly concerned in the commission of an offence against this Act or any regulation or local law made under this Act is guilty of that offence and liable to the penalty for that offence.
- (2) If 2 or more persons are responsible for the same offence against this Act or any regulation or local law made under this Act each of those persons is liable to the penalty provided for that offence and the liability of each of them is independent of the liability of any other person.

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S. 239(3)(4)
repealed by
No. 13/2013
s. 33.

S. 239(5)
repealed by
No. 13/1990
s. 30.

S. 239A
inserted by
No. 13/2013
s. 34.

* * * *

**239A Criminal liability of officers of bodies corporate—
failure to exercise due diligence**

- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.
- (2) For the purposes of subsection (1), the following provisions are specified—
 - (a) section 59(1);
 - (b) section 59(2).
- (3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to—
 - (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
 - (d) any other relevant matter.
- (4) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the

body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.

- (5) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.

- (6) In this section—

body corporate has the same meaning as corporation has in section 57A of the Corporations Act;

officer in relation to a body corporate means—

- (a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or
- (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.

240 Penalties

* * * * *

S. 240(1)
repealed by
No. 64/2009
s. 34.

- (2) Unless expressly provided to the contrary any penalty recovered for an offence against this Act or any regulation or local law made under this Act must be paid to—
- (a) the Council which recovered the penalty; or
 - (b) the Council on whose behalf the penalty was recovered.
- S. 240(2)
amended by
No. 109/2003
s. 72(2)(d).

240A Imposition of a surcharge

S. 240A
inserted by
No. 109/2003
s. 75.

S. 240A(1)
substituted by
No. 67/2008
s. 82(1).

- (1) This section applies if section 76 or 228 do not apply and the Secretary considers that—
 - (a) any expenditure has been incurred in contravention of any Act, regulation or local law; or
 - (b) any deficiency or loss has been incurred by the misconduct of a Councillor or a member of the Council staff; or
 - (c) any money which should have been brought into account has not been brought into account.

S. 240A(2)
amended by
No. 67/2008
s. 82(2).

- (2) The Secretary may by notice in writing require the Councillor or member of the Council staff to show cause why he or she should not be surcharged.
- (3) The surcharge must not exceed the amount of the expenditure, deficiency or loss or the amount which has not been brought into account.

S. 240A(4)
amended by
No. 67/2008
s. 82(3).

- (4) If the Councillor or member of the Council staff does not show cause to the satisfaction of the Secretary, the Secretary may by notice in writing impose the surcharge.

S. 240A(5)
amended by
No. 67/2008
s. 82(4).

- (5) A person whose interests are affected by a decision of the Secretary imposing a surcharge may apply to VCAT for review of the decision.
- (6) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for

the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

240B Payment of the surcharge

S. 240B
inserted by
No. 109/2003
s. 75.

- (1) A surcharge is a debt due and payable to the Council by the person on whom it is imposed.
- (2) The Council is entitled to deduct any amount towards the discharge of the amount of the surcharge from any allowances or other benefit payable to the person on whom the surcharge is imposed.
- (3) If the person on whom a surcharge is imposed is a Councillor who does not pay the surcharge within 3 months of it being imposed or confirmed on a review, the person becomes incapable of continuing to be or becoming a Councillor until the surcharge is paid.

241 Evidence of ownership

The following is evidence that a person is the owner or occupier of any land in any proceedings for an offence against this Act or any regulation or local law made under this Act—

- (a) evidence that the person proceeded against is liable to be rated in respect of the land;
- (b) evidence by the certificate of the Registrar of Titles or an Assistant Registrar of Titles authenticated by the seal of the Office of Titles that any person is the registered proprietor of an estate in fee-simple or of a leasehold estate held of the Crown in the land;

- (c) evidence by the certificate of the Registrar-General or a Deputy Registrar-General authenticated by the seal of the Registrar-General that any person appears from the memorial of any deed, conveyance or instrument to be the last registered owner of the land.

S. 242
amended by
No. 78/1991
s. 12(a).

242 Evidentiary provisions

- (1) Until evidence is given to the contrary proof is not required as to any of the following—
 - (a) the constitution of a Council;
 - (b) the election of Councillors as Councillors of a Council;
 - (c) the size, location or boundaries of a municipal district;
 - (d) the size, location or boundaries of a ward;
 - (e) the fact that a place is located within a municipal district;
 - (f) the appointment of any person as a member of a committee or as a member of Council staff;
 - (g) the appointment of a member of Council staff to do an act or for a particular purpose;
 - (h) the authority to bring any proceedings;
 - (i) the making of a resolution by a Council;
 - (j) the making of a local law;
 - (k) that a document purporting to be issued by a Council was issued by the Council;
 - (l) the declaration of any rate or charge;
 - (m) the validity of the contents of any Council records or minutes;

- (n) the correctness of the markings on a voters' roll used in an election or a copy or extract certified by the returning officer of that voters' roll indicating the names of voters who did not vote at the election.
- (2) A certificate certifying any matter relating to the contents of any document kept by a Council and purporting to be signed by the Chief Executive Officer is admissible in any proceedings as evidence of the matters appearing in the certificate.
- (3) All courts, judges and people acting judicially must take judicial notice of such a signature and must presume that the certificate was properly signed until the contrary is proved.
- * * * *
- S. 242(2)
inserted by
No. 78/1991
s. 12(b),
amended by
No. 125/1993
s. 14(o).
- S. 242(3)
inserted by
No. 78/1991
s. 12(b).
- S. 242A
inserted by
No. 50/1998
s. 51,
repealed by
No. 67/2008
s. 83.

243 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act including, but not limited to, the matters and things specified in Schedule 12.
- (2) A power conferred by this Act to make regulations may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and

- (b) so as to make, as respects the cases in relation to which it is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.
- (3) Regulations made under this Act may be made—
 - (a) so as to apply—
 - (i) at all times or at a specified time; or
 - (ii) throughout the whole of the State or in a specified part of the State; or
 - (iii) as specified in both subparagraphs (i) and (ii); and
 - (b) so as to require a matter affected by the regulations to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or body or a specified class of persons or bodies; and
 - (c) so as to apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—
 - (i) wholly or partially or as amended by the regulations; or

- (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
 - (iii) as formulated, issued, prescribed or published from time to time; and
 - (d) so as to leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by any government department, Council or public authority or any officer thereof; and
 - (e) so as to confer powers or impose duties in connection with the regulations on any government department, Council or public authority or any officer thereof; and
 - (f) so as to apply, adopt or incorporate, with or without modification, the provisions of any Act or of any regulations made under any Act as in force at a particular time; and
 - (g) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified; and
 - (h) so as to impose a penalty not exceeding 20 penalty units for a contravention of the regulations.
- (4) If under subsection (3)(c)(iii) a regulation has applied, adopted or incorporated any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published from time to time and that document, code, standard, rule, specification or method is at any time amended, until the Minister causes notice to be published in the Government

S. 243(3)(h)
amended by
No. 64/2009
s. 35.

Gazette of that amendment, the document, code, standard, rule, specification or method is to be taken to have not been so amended.

- (5) A power conferred by this Act to make regulations providing for the imposition of fees may be exercised by providing for all or any of the following matters—
- (a) specific fees;
 - (b) maximum or minimum fees;
 - (c) maximum and minimum fees;
 - (d) scales of fees according to the value of goods or services provided for the fees;
 - (e) the payment of fees either generally or under specified conditions or in specified circumstances;
 - (f) the reduction, waiver or refund, in whole or in part, of the fees.
- (6) If under subsection (5)(f) regulations provide for a reduction, waiver or refund, in whole or in part, of a fee, the reduction, waiver or refund may be expressed to apply either generally or specifically—
- (a) in respect of certain matters or transactions or classes of matters or transactions; or
 - (b) in respect of certain documents or classes of documents; or
 - (c) when an event happens; or
 - (d) in respect of certain persons or classes of persons; or

- (e) in respect of any combination of matters, transactions, documents, events or persons—
and may be expressed to apply subject to specified conditions or in the discretion of any specified person or body.
- (7) A fee that may be imposed by regulation is not limited to an amount that is related to the cost of providing a service.
- (8) Regulations made under item 1, 3, 4, 5, 5B, 6 or 7 of Schedule 12 may make provision for any act, matter or thing necessary to give effect to the regulations and are valid notwithstanding any inconsistency with any provisions of Schedules 2 and 3. S. 243(8) amended by No. 15/1992 s. 14.
- (8A) Any regulations made under this Act for or with respect to the issuing of film permits must not be inconsistent with the film friendly principles. S. 243(8A) inserted by No. 51/2014 s. 9(Sch. 2 item 8.4).
- (9) Regulations made under this Act may be disallowed in whole or in part by resolution of either House of the Parliament in accordance with the requirements of section 23(2) of the **Subordinate Legislation Act 1994** which disallowance is deemed disallowance by Parliament for the purposes of that Act. S. 243(9) amended by No. 34/1996 s. 33(f).

Pt 12
(Heading and
ss 244–264)
inserted by
No. 86/1998
s. 26,
amended by
No. 55/2000
ss 3–5,
repealed by
No. 109/2003
s. 16(3), new
Pt 12
(Heading and
s. 244)
inserted by
No. 58/2010
s. 33.

Part 12—Savings and transitional provisions

S. 244
inserted by
No. 58/2010
s. 33.

244 Local Government (Consequential Provisions) Act 1989

Despite the repeal of the **Local Government (Consequential Provisions) Act 1989** (the *1989 Act*) by the **Local Government and Planning Legislation Amendment Act 2010**, sections 5(4) and 12 of that 1989 Act continue to apply as if that 1989 Act had not been repealed.

S. 245
inserted by
No. 13/2013
s. 36.

245 Transitional provision—Statute Law Amendment (Directors' Liability) Act 2013

- (1) For the avoidance of doubt, section 239A applies with respect to an offence against a provision specified in subsection (2) of that section that is alleged to have been committed by a body corporate on or after the commencement of section 34 of the **Statute Law Amendment (Directors' Liability) Act 2013**.
- (2) This section does not limit section 14 of the **Interpretation of Legislation Act 1984**.

246 Local Government Amendment (Performance Reporting and Accountability) Act 2014—financial year commencing on 1 July 2013

S. 246
inserted by
No. 5/2014
s. 16.

Despite the amendments made to this Act by sections 6, 7, 8, 9, 10, 11 (except subsection (1)) and 12 of the **Local Government Amendment (Performance Reporting and Accountability) Act 2014**, sections 125, 126, 127, 128, 129, 130, 131, 132 and 133, as in force immediately before 18 April 2014, continue to apply in relation to the financial year which commenced on 1 July 2013.

247 Transitional provision—Local Government Amendment (Improved Governance) Act 2015—Councillor Conduct Panel matters

S. 247
inserted by
No. 53/2015
s. 76.

- (1) This section applies if—
 - (a) before the commencement day an application has been made under section 81B; and
 - (b) a decision in respect of that application has not yet been determined.
- (2) On and after the commencement day, the Councillor Conduct Panel must hear, or finish hearing and determine the application in accordance with Divisions 1A and 1B of Part 4 and Schedule 5 as in force immediately before that day.
- (3) If after the Councillor Conduct Panel has determined the application under subsection (2), the Councillor Conduct Panel authorises an applicant to make an application to VCAT for a finding of serious misconduct against a Councillor under section 81J(1)(b) as in force immediately before the commencement day, VCAT must hear the application in accordance with—
 - (a) Divisions 1A and 1B of Part 4; and

(b) Part 13B of Schedule 1 to the Victorian Civil and Administrative Tribunal Act 1998—

as in force immediately before that day.

(4) If after the Councillor Conduct Panel has determined the application under subsection (2), a party affected by that Councillor Conduct Panel decision wishes to apply to VCAT for review of that decision, the party's application and VCAT's review of the decision must be in accordance with—

(a) Divisions 1A and 1B of Part 4; and

(b) Part 13B of Schedule 1 to the Victorian Civil and Administrative Tribunal Act 1998—

as in force immediately before the commencement day.

(5) In this section—

Amending Act means the **Local Government Amendment (Improved Governance) Act 2015**;

commencement day means the day section 12 of the Amending Act comes into operation.

S. 248
inserted by
No. 53/2015
s. 76.

248 Transitional provision—Local Government Amendment (Improved Governance) Act 2015—VCAT review

(1) This section applies if—

(a) before the commencement day, an application to a Councillor Conduct Panel has been determined; and

(b) before, on or after that day, a party affected by that Councillor Conduct Panel decision applies to VCAT for review of that decision.

(2) On and after the commencement day, VCAT must review the decision of the Councillor Conduct Panel in accordance with—

- (a) Divisions 1A and 1B of Part 4; and
- (b) Part 13B of Schedule 1 to the Victorian Civil and Administrative Tribunal Act 1998—

as in force immediately before that day.

(3) In this section—

Amending Act means the **Local Government Amendment (Improved Governance) Act 2015**;

commencement day means the day section 12 of the Amending Act comes into operation.

249 Transitional provision—Local Government Amendment (Improved Governance) Act 2015—VCAT matters (by referral, on grounds of gross misconduct or for review)

S. 249
inserted by
No. 53/2015
s. 76.

(1) This section applies if, before the commencement day, an application—

- (a) made under section 81B that has been referred to VCAT under section 81D; or
- (b) made under section 81E; or
- (c) authorised by a Councillor Conduct Panel under section 81J(1)(b); or
- (d) for review under section 81Q—

has not been determined by VCAT.

(2) On and after the commencement day, VCAT must, subject to subsection (3), determine the application in accordance with—

- (a) Divisions 1A and 1B of Part 4; and

- (b) Part 13B of Schedule 1 to the Victorian Civil and Administrative Tribunal Act 1998—
as in force immediately before that day.
- (3) If, on or after the commencement day, VCAT refers a matter the subject of an application to which this section applies to a Councillor Conduct Panel under section 81L as in force immediately before that day, a Councillor Conduct Panel formed for the purposes of that section may make a direction in accordance with that section.
- (4) In this section—

Amending Act means the **Local Government Amendment (Improved Governance) Act 2015**;

commencement day means the day section 12 of the Amending Act comes into operation.

S. 250
inserted by
No. 53/2015
s. 76.

**250 Transitional provision—Local Government Amendment (Improved Governance) Act 2015—
Inspectors of municipal administration**

- (1) This section applies if, immediately before the commencement day, a person appointed by the Minister or the Integrity Minister to be an inspector of municipal administration under section 223A as in force immediately before that day has not concluded his or her term of appointment.
- (2) On and after the commencement day, a person to whom this section applies may continue to act as an inspector of municipal administration, exercising the powers and performing the functions of an inspector of municipal administration, as in force under this Act immediately before the commencement day, until the person's term of appointment ceases.

(3) In this section—

Amending Act means the **Local Government Amendment (Improved Governance) Act 2015**;

commencement day means the day section 39 of the Amending Act comes into operation.

251 Transitional provision—Local Government Amendment (Improved Governance) Act 2015—Electoral Reform

S. 251
inserted by
No. 53/2015
s. 76.

Despite the commencement of Division 4 of Part 2 of the **Local Government Amendment (Improved Governance) Act 2015**, this Act continues to apply to any election before the next general election on 22 October 2016 as if those amendments, other than the amendment made by section 65 of the **Local Government Amendment (Improved Governance) Act 2015** which inserts new section 93B in this Act, had not been made.

Local Government Act 1989
No. 11 of 1989
Schedules

Schedules

Sch. 1
amended by
Nos 60/1995
s. 28(2),
37/2002 s. 31,
repealed by
No. 109/2003
s. 7(2).

* * * *

Schedule 2—Provisions with respect to the holding of an election

Section 41

1 Victorian Electoral Commission to conduct elections

Sch. 2 cl. 1
(Heading)
inserted by
No. 53/2015
s. 66(1).

(1) The Victorian Electoral Commission is
responsible for conducting elections and polls
under this Act.

Sch. 2 cl. 1(1)
substituted by
No. 53/2015
s. 66(2).

* * * * *

Sch. 2 cl. 1(2)
amended by
Nos. 125/1993
s. 14(p),
substituted by
No. 99/1994
s. 21,
amended by
Nos 103/1995
s. 20(a)(b),
24/1999
s. 49(a)(i)(ii),
23/2002
s. 198(9)(a)(b),
109/2003
s. 33(3),
repealed by
No. 53/2015
s. 66(3).

* * * * *

Sch. 2 cl. 1(3)
substituted by
No. 99/1994
s. 21,
repealed by
No. 53/2015
s. 66(3).

* * * * *

Sch. 2
cl. 1(4)(5)
repealed by
No. 53/2015
s. 66(3).

Local Government Act 1989
No. 11 of 1989
Schedule 2—Provisions with respect to the holding of an election

Sch. 2 cl. 1(6)
amended by
No. 53/2015
s. 66(4).

(6) The returning officer may by instrument of delegation delegate to any authorised person any power or duty of the returning officer other than this power of delegation.

Sch. 2 cl. 1(7)
amended by
No. 53/2015
s. 66(5).

- (7) The Victorian Electoral Commission may appoint—
- (a) authorised persons to exercise the powers or duties delegated to them; and
 - (b) interpreters for the purposes of an election.
- (8) A person who is a candidate at the election or a Councillor of the Council in respect of which the election is to be held cannot be appointed or act as a returning officer, authorised person or interpreter at the election or otherwise assist in the conduct of the election.

2 Declaration before carrying out duties

Sch. 2 cl. 2(1)
amended by
Nos 54/1998
s. 3(1)(e),
53/2015 s. 67.

(1) A returning officer must before acting as the returning officer for the first time make a declaration in writing containing the details required by the regulations.

Sch. 2 cl. 2(2)
amended by
No. 54/1998
s. 3(1)(e).

(2) Any person appointed to be an authorised person or interpreter at an election must make a declaration in writing containing the details required by the regulations before carrying out any duties at that election.

3 Notice of election

Sch. 2 cl. 3(1)
amended by
No. 53/2015
s. 68.

(1) Not less than 40 days nor more than 60 days before an election, the Victorian Electoral Commission must give public notice of the election.

- (2) The public notice must specify that nominations will be received at the place specified in the public notice by the Victorian Electoral Commission during the period beginning on the day that the certified voters' roll becomes available and ending at 12 noon on the 32nd day before election day.

Sch. 2 cl. 3(2)
amended by
Nos 15/1992
s. 15, 76/1995
s. 13(a),
54/1998
ss 11, 13(1),
109/2003
s. 23(b),
35/2008
s. 26(1)(2),
53/2015 s. 68.

4 Returning officer to give election advice

The returning officer may give any advice to members of the public relating to the conduct of an election that the returning officer considers appropriate.

5 Nomination form

- (1) A candidate for election must—

- (a) complete a nomination form containing the details required by the regulations; and

Sch. 2
cl. 5(1)(a)
substituted by
No. 54/1998
s. 3(1)(f),
amended by
No. 109/2003
s. 23(c).

- (b) sign the nomination form; and

Sch. 2
cl. 5(1)(b)
amended by
No. 109/2003
s. 23(c).

- (c) make a declaration in writing containing the details required by the regulations; and

Sch. 2
cl. 5(1)(c)
amended by
No. 54/1998
s. 3(1)(e).

Local Government Act 1989
No. 11 of 1989
Schedule 2—Provisions with respect to the holding of an election

Sch. 2
cl. 5(1)(d)
amended by
Nos 11/2001
s. 3(Sch.
item 42.4),
109/2003
s. 34(1),
53/2015
s. 69(1).

(d) pay to the Victorian Electoral Commission the nomination fee of \$250 or such higher amount as is prescribed in cash or by cheque drawn on account of an authorised deposit-taking institution.

Sch. 2
cl. 5(1A)
inserted by
No. 35/2008
s. 26(4),
amended by
No. 53/2015
s. 69(2).

(1A) A candidate must sign the declaration referred to in subclause (1)(c) in the presence of the returning officer.

Sch. 2
cl. 5(1B)
inserted by
No. 35/2008
s. 26(4),
repealed by
No. 53/2015
s. 69(3).

* * * * *

Sch. 2 cl. 5(2)
amended by
Nos 109/2003
s. 23(c),
15/1992
s. 5(3),
substituted by
No. 53/2015
s. 69(4).

(2) A candidate must be named in a nomination form by specifying the surname and the given name, or one or more of the given names and the address under which the candidate is on the voters' roll.

Sch. 2 cl. 5(3)
amended by
No. 109/2003
s. 23(c).

(3) If a candidate has changed his or her name from that which appears on the voters' roll, the candidate must attach evidence of the change of name to the nomination form.

(4) The candidate's name is to appear on the ballot-paper in the form specified in the notice under subclause (2).

Sch. 2 cl. 5(5)
amended by
No. 53/2015
s. 69(5).

(5) For the purposes of subclause (4) a given name may be specified by—
(a) an initial standing for that name; or

Local Government Act 1989
No. 11 of 1989
Schedule 2—Provisions with respect to the holding of an election

- | | |
|--|---|
| (b) a commonly accepted variation of that name, including an abbreviation or an alternative form of that name; or | Sch. 2
cl. 5(5)(b)
amended by
No. 15/1992
s. 16. |
| (c) a commonly used other name specific to the candidate by which the candidate is usually identified. | Sch. 2
cl. 5(5)(c)
inserted by
No. 15/1992
s. 16. |
| (6) A name cannot be specified on a ballot-paper under subclause (5)(c) unless the candidate produces evidence to the satisfaction of the returning officer that the proposed name is a commonly used other name specific to the candidate by which the candidate is usually identified. | Sch. 2 cl. 5(6)
inserted by
No. 15/1992
s. 16. |
| (7) A title or other designation cannot be included with, or as part of, the name of a candidate on a ballot-paper. | Sch. 2 cl. 5(7)
inserted by
No. 15/1992
s. 16. |

6 Validity of candidature

- | | |
|---|---|
| (1) A person is not eligible to be a candidate for election if— | |
| (a) the nomination form is not properly completed; or | Sch. 2
cl. 6(1)(a)
amended by
No. 109/2003
s. 23(c). |
| (b) the nomination fee has not been paid. | Sch. 2
cl. 6(1)(b)
amended by
No. 109/2003
s. 34(2). |
| (2) The returning officer can only reject a nomination— | Sch. 2 cl. 6(2)
amended by
No. 99/1994
s. 22,
substituted by
No. 109/2003
s. 52(2). |
| (a) if section 70(6) or 70(7) applies; or | |

Local Government Act 1989
No. 11 of 1989
Schedule 2—Provisions with respect to the holding of an election

Sch. 2
cl. 6(2)(b)
amended by
No. 53/2015
s. 70(1)(a).

(b) if clause 5 has not been complied with.

Sch. 2
cl. 6(2)(c)
repealed by
No. 53/2015
s. 70(1)(b).

* * * * *

Sch. 2 cl. 6(3)
amended by
No. 109/2003
s. 23(a).

(3) If the returning officer is satisfied that clause 5 has been complied with, the returning officer cannot reject the nomination because of—

(a) any possible defect or error in the qualification of the candidate; or

(b) any formal defect or error.

Sch. 2
cl. 6(3A)
inserted by
No. 109/2003
s. 52(3),
substituted by
Nos 35/2008
s. 27, 53/2015
s. 70(2).

(3A) The returning officer must reject as being void a nomination from a person who is not enrolled on the voters' roll for the municipality.

Sch. 2
cl. 6(4)–(6)
repealed by
No. 109/2003
s. 52(4).

* * * * *

Sch. 2
cl. 6(6A)
inserted by
No. 33/1995
s. 19(4),
amended by
No. 54/1998
s. 12,
repealed by
No. 109/2003
s. 52(4).

* * * * *

Sch. 2 cl. 6(7)
amended by
No. 109/2003
s. 23(c).

(7) The returning officer must return any rejected nomination form to the person who submitted it.

- (8) If the returning officer becomes aware before the election day that a nomination to which subclause (2)(a) applies has not been rejected, the following provisions apply to that nomination—
- (a) if practicable, the returning officer must give public notice before the election day of the name of the person whose nomination is void;
 - (b) the returning officer must take all practicable steps to remove the name of the person whose nomination is void from the ballot-papers;
 - (c) if the returning officer receives a completed ballot-paper on which the name of the person whose nomination is void has not been removed, the name of that person and any figure next to the name are to be treated as removed and the ballot-paper is to be given effect to in the voter's order of preference in respect of the remaining candidates.

Sch. 2 cl. 6(8)
inserted by
No. 109/2003
s. 52(5),
amended by
No. 53/2015
s. 70(3).

7 Withdrawal of nomination

- (1) A candidate may withdraw a nomination before 12 noon on the 32nd day before election day.
- (2) A notice of withdrawal must contain the details required by the regulations and must be signed by the candidate.
- (3) The returning officer must keep the nomination form.

Sch. 2 cl. 7(1)
amended by
Nos 76/1995
s. 13(a),
54/1998
s. 13(1),
109/2003
s. 23(a),
35/2008
s. 26(1)(2).

Sch. 2 cl. 7(2)
substituted by
No. 54/1998
s. 3(1)(g).

Sch. 2 cl. 7(3)
amended by
No. 109/2003
s. 23(c).

Sch. 2 cl. 7(4)
substituted by
No. 109/2003
s. 34(3).

- (4) The returning officer must retain the nomination fee paid by a candidate who withdraws their nomination under this clause.

Sch. 2 cl. 8
repealed by
No. 15/1992
s. 17(a), new
Sch. 2 cl. 8
inserted by
No. 43/1993
s. 17,
amended by
Nos 76/1995
s. 14, 109/2003
ss 23(c), 34(4),
substituted by
No. 53/2015
s. 71.

8 Retirement of a candidate

- (1) A candidate may retire before a declaration of an election is made or, if an election is to be held, before the day of the election, only in accordance with this clause.
- (2) A candidate may retire before the day of an election if the retirement will result in an uncontested election.
- (3) If clause 9A(5) applies to a candidate, the retirement of the candidate takes effect on and from the date the returning officer sends the candidate advice under clause 9A(4)(b).
- (4) To retire in any other circumstance, one of the following must apply to the candidate—
 - (a) the candidate is not qualified to be a candidate as required by section 28(1);
 - (b) the candidate is disqualified by section 29(1) or (2).
- (5) If subclause (4)(a) or (b) applies to a candidate, the candidate may retire by giving the returning officer—
 - (a) a written statement specifying that the candidate is not qualified to be a candidate as required under section 28(1) or is disqualified by section 29(1) or (2) (as appropriate) and include or attach evidence in support of that statement; and
 - (b) a notice of retirement signed by the candidate.

- (6) Retirement in accordance with subclause (2) or (5) takes effect on the returning officer receiving—
 - (a) the notice of retirement; and
 - (b) if subclause (4) applies, the written statement specified in subclause (5).
- (7) If practicable, the returning officer must give public notice of a retirement before the day of the election.
- (8) The following provisions apply if the candidate has retired in accordance with subclause (5) or is taken to have retired under clause 9A(5)—
 - (a) if the retirement of the candidate is effective after the ballot-papers have been printed the returning officer must take all practicable steps to remove the name of the retiring candidate from the ballot-papers;
 - (b) if the returning officer receives a completed ballot-paper on which the name of the retiring candidate has not been removed, the name of the retiring candidate and any figure next to the name are to be treated as removed and the ballot-paper is to be given effect in the voter's order of preference in respect of the remaining candidates;
 - (c) if a candidate retires, or is taken to have retired, after 4 p.m. on the Monday before the day of the election, the returning officer may permit the remaining candidates to remove the name of the retiring candidate from their how-to-vote cards in a manner approved by the returning officer.
- (9) The returning officer must keep the nomination form.

- (10) The returning officer must retain the nomination fee paid by a candidate who retires under this clause or who is taken to have retired under clause 9A(5).

Sch. 2 cl. 9
substituted by
No. 15/1992
s. 17(b).

9 Death of a candidate

Sch. 2 cl. 9(1)
amended by
Nos 76/1995
s. 13(a),
54/1998
s. 13(1),
109/2003
s. 23(a),
35/2008
s. 26(1),
67/2008
s. 84(1).

- (1) If a candidate dies before 12 noon on the 32nd day before election day, the nomination becomes void.

Sch. 2 cl. 9(2)
amended by
Nos 76/1995
s. 13(b),
54/1998
s. 13(1),
substituted by
No. 109/2003
s. 35(1),
amended by
No. 35/2008
s. 26(1)(3).

- (2) If a candidate dies after 12 noon on the 32nd day before election day but before the close of voting in the election, the following provisions apply—
- (a) if the candidate dies after the ballot-papers have been printed, the returning officer must take all practicable steps to remove the name of the dead candidate from the ballot-papers;
 - (b) if the returning officer receives a completed ballot-paper on which the name of the dead candidate has not been removed, the name of the dead candidate and any figure next to the name are to be treated as removed and the ballot-paper is to be given effect to in the voter's order of preference in respect of the remaining candidates;
 - (c) if the candidate dies after 4 p.m. on the Monday before election day, the returning officer may permit the remaining candidates to remove the name of the dead candidate

from their how-to-vote cards in a manner
approved by the returning officer.

- (3) The returning officer must keep the nomination form.

Sch. 2 cl. 9(3)
amended by
No. 109/2003
s. 23(c).

- (4) The returning officer must return the nomination fee to the candidate's personal representative.

Sch. 2 cl. 9(4)
substituted by
No. 109/2003
s. 35(2).

9A Returning officer may query qualifications of candidate

Sch. 2 cl. 9A
inserted by
No. 53/2015
s. 72.

- (1) The returning officer must send written notice to a candidate for election if the returning officer believes that the candidate—

- (a) is not qualified to be a candidate for the office of Councillor under section 28(1); or
- (b) may be disqualified from nominating as a candidate under section 29(1) or (2).

- (2) A notice under subclause (1)—

- (a) must be—

- (i) personally served; or
- (ii) sent by post or email to the postal or email address specified in the candidate's nomination form; and

- (b) must specify that the returning officer believes that the candidate—

- (i) may not be qualified to be a candidate for the office of Councillor under section 28(1); or
- (ii) is disqualified from nominating as a candidate under section 29(1) or (2); and

- (c) must specify the reasons for that belief; and

- (d) must invite the candidate to submit written reasons explaining why the candidate should not be prevented from being a candidate for election; and
 - (e) must specify the date by which the candidate must submit written reasons (being a date not less than 1 day after the date of the returning officer's written notice).
- (3) The returning officer must take action in accordance with subsection (4) if the returning officer—
 - (a) receives reasons from the candidate explaining why the candidate should not be prevented from being a candidate for election but the returning officer is satisfied that the candidate is not qualified as specified in subsection (1)(a) or is disqualified as specified in subsection (1)(b); or
 - (b) does not receive any written submission from the candidate.
- (4) The returning officer must—
 - (a) if nominations for the election have not closed, reject the nomination of the candidate and advise the candidate that the nomination has been rejected and the reasons for that rejection; or
 - (b) if nominations for the election have closed but the declaration of the election has not been made, advise the candidate that they are retired from the election and give reasons for retiring the candidate.

- (5) For the purposes of subclause (4)(b)—
- (a) the candidate's nomination is void from the date that advice is sent to the candidate by the returning officer; and
 - (b) the candidate is taken to have retired from the election on and from the date the advice is sent.
- (6) The reasons given to a candidate by the returning officer under subclause (4)(a) or (b) must be in writing.

10 Filling of vacancies

- (1) If—

- (a) the number of candidates; or

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Sch. 2
cl. 10(1)(b)
repealed by
No. 15/1992
s. 17(c).

- (c) the withdrawal, retirement or death of a candidate—

Sch. 2
cl. 10(1)(c)
amended by
Nos 76/1995
s. 15, 109/2003
s. 36(1).

means that the number of candidates is equal to or less than the number of vacancies to be filled at an election, the returning officer must declare the candidate or candidates to be elected and give public notice of the declaration.

- (2) If the returning officer declares the candidate or candidates to be elected under subclause (1)(a), the declaration must be made—

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Sch. 2
cl. 10(2)(a)
amended by
Nos 76/1995
s. 13(c),
54/1998
s. 13(1),
35/2008
s. 26(1)(2).

(a) in the case of a by-election, immediately
after 12 noon on the 32nd day before
election day; or

Sch. 2
cl. 10(2)(b)
amended by
No. 109/2003
s. 36(2).

(b) in the case of any other election, in
accordance with clause 23.

Sch. 2
cl. 10(2A)
inserted by
No. 109/2003
s. 36(3).

(2A) If a by-election is required following the death or
resignation of a candidate, the vacancy is deemed
to have occurred on election day.

(3) If there are no candidates for an election the
election fails and the returning officer must give
public notice that the election has failed.

Sch. 2 cl. 10(4)
amended by
Nos 76/1995
s. 13(c),
54/1998
s. 13(1),
35/2008
s. 26(1).

(4) A vacancy caused if there is no candidate or the
number of candidates is less than the number of
vacancies is to be treated as an extraordinary
vacancy occurring on the 32nd day before election
day.

Sch. 2
cl. 10(4A)
inserted by
No. 109/2003
s. 36(4).

(4A) A vacancy to which subclause (4) applies is to be
filled at a by-election held using the voters' roll
certified for the general election in respect of
which the vacancy has arisen.

Sch. 2 cl. 10(5)
repealed by
No. 15/1992
s. 17(d).

* * * * *

(6) If the number of candidates exceeds the number of
vacancies to be filled, an election must be held.

- (7) The returning officer must give notice of—
- (a) an extraordinary vacancy under subclause (4); and
 - (b) an election under subclause (6).

11 Availability of nomination information

Sch. 2 cl. 11
substituted by
No. 109/2003
s. 38.

- (1) The returning officer must ensure that nomination forms are available for inspection during ordinary office hours at the returning officer's office.
- (2) The returning officer may provide a list of candidates for an election which specifies contact details for each candidate.

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Sch. 2 cl. 12
amended by
No. 15/1992
ss 18, 20,
repealed by
No. 76/1995
s. 16(1).

* * * * *

Sch. 2 cl. 13
amended by
No. 15/1992
s. 19(a)(b),
repealed by
No. 76/1995
s. 16(1).

14 Ballot-papers

- (1) Ballot-papers for an election must contain the details required by the regulations.
- (2) The returning officer must as soon as practicable after 12 noon on the 32nd day before election day hold a ballot by lot whether manually or by electronic means to determine the order in which the name of each candidate is to appear on the ballot-paper.

Sch. 2 cl. 14(1)
substituted by
No. 54/1998
s. 3(1)(h).

Sch. 2 cl. 14(2)
amended by
Nos 76/1995
s. 13(c),
54/1998
s. 13(1),
35/2008
ss 26(1)(2), 28.

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Sch. 2 cl. 14(3)
repealed by
No. 109/2003
s. 37.

* * * *

- (4) If in the opinion of the returning officer a similarity in the names of 2 or more candidates is likely to cause confusion, the returning officer may arrange for the names of the candidates to be printed with a description or addition to distinguish them from each other.

Sch. 2 cl. 14(5)
inserted by
No. 54/1998
s. 14.

- (5) Despite subclause (4), a ballot-paper must not contain any reference to the allegiance of a candidate to any political party or other cause or to the fact that a candidate has no such allegiance.

Sch. 2 cl. 14(6)
inserted by
No. 54/1998
s. 14.

- (6) Subclause (5) does not apply to the name of a candidate.

15 Scrutineers

Sch. 2 cl. 15(1)
substituted by
No. 76/1995
s. 16(2)(a).

- (1) A candidate may appoint 1 or more scrutineers.

Sch. 2 cl. 15(2)
substituted by
No. 15/1992
s. 21(a),
repealed by
No. 76/1995
s. 16(2)(a).

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Sch. 2
cl. 15(2A)
inserted by
No. 15/1992
s. 21(a),
substituted by
No. 54/1998
s. 3(1)(i).

- (2A) The appointment of a scrutineer must be made in writing containing the details required by the regulations and must be delivered to the returning officer.

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(2B) A separate form must be used for each appointment of a scrutineer.

Sch. 2
cl. 15(2B)
inserted by
No. 15/1992
s. 21(a).

(3) A person cannot be appointed as a scrutineer if he or she is—

(a) a Councillor of the Council; or

(b) a candidate at the election; or

(c) a candidate at any other election conducted simultaneously with that election in relation to the same Council; or

Sch. 2
cl. 15(3)(c)
amended by
Nos 15/1992
s. 21(b),
54/1998 s. 15.

(d) a person appointed by the Victorian Electoral Commission to be involved in the conduct of the election.

Sch. 2
cl. 15(3)(d)
inserted by
No. 54/1998
s. 15,
amended by
Nos 24/1999
s. 49(b)(i)(ii),
23/2002
s. 198(10)
(a)(b),
substituted by
Nos 109/2003
s. 33(4),
53/2015 s. 73.

(4) Before a scrutineer can act as a scrutineer she or he must make a written declaration containing the details required by the regulations.

Sch. 2 cl. 15(4)
substituted by
No. 54/1998
s. 3(1)(j).

* * * *

Sch. 2
cl. 15(5)–(9)
repealed by
No. 76/1995
s. 16(2)(b).

* * * *

Sch. 2 cl. 16
repealed by
No. 76/1995
s. 16(1).

17 Power to keep the peace

(1) The returning officer and any person authorised by the returning officer for the purpose have the following powers—

Sch. 2
cl. 17(1)(a)
amended by
No. 109/2003
s. 29(g).

(a) to maintain and enforce order and keep the peace at any election or voting centre;

(b) without any warrant to cause any person who—

Sch. 2
cl. 17(1)(b)(i)
amended by
No. 109/2003
s. 29(h).

(i) obstructs the approaches to any voting centre; or

Sch. 2
cl. 17(1)(b)(ii)
amended by
No. 67/2008
s. 84(2).

(ii) behaves in a disorderly manner—

Sch. 2
cl. 17(1)(b)(iii)
repealed by
No. 76/1995
s. 16(1).

* * * *

to be removed;

(c) without warrant to cause any person reasonably suspected of committing an offence against this Act to be arrested.

Sch. 2
cl. 17(2)(3)
repealed by
No. 76/1995
s. 16(1).

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Sch. 2
cls 18–22
repealed by
No. 76/1995
s. 16(1).

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23 Declaration of result

- (1) The returning officer must as soon as practicable on or after election day publicly declare the result of the election by giving the name or names of the candidate or candidates elected.
- (2) The returning officer must as soon as practicable after publicly declaring the result—
 - (a) give public notice of—
 - (i) the name or names of the Councillor or Councillors elected; and
 - (ii) the order in which the Councillors were elected; and
 - (b) advise the Minister of the result.

24 Refund of deposit

The nomination fee paid for or on behalf of a candidate must be repaid to the candidate on the certificate of the returning officer if—

- (a) the candidate is declared elected; or
- (b) the total number of first preference votes in the candidate's favour is at least equal to 4% of the total number of first preference votes in favour of all the candidates in the election.

Sch. 2 cl. 24
amended by
No. 109/2003
s. 34(5).

24A Retained nomination fee to be paid to Council

Any nomination fee retained by the returning officer in accordance with this Schedule must be paid to the Council.

Sch. 2 cl. 24A
inserted by
No. 53/2015
s. 74.

25 Death or incapacity of an elected candidate before the declaration of the result

- (1) The death or incapacity of an elected candidate after the close of voting but before the declaration of the result does not affect the declaration of the election of any other elected candidates.

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- (2) The vacancy arising as a result of the death or incapacity of the elected candidate is to be treated as an extraordinary vacancy occurring on the day on which the candidate would have been declared elected.

Sch. 2 cl. 26
repealed by
No. 76/1995
s. 16(1).

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Schedule 3—Provisions with respect to voting and the counting of votes and polls of voters

Section 42

Part 1—Voting

1 Marking of ballot-papers

- (1) A person must mark his or her vote on the ballot-paper in the prescribed manner.
- (2) A ballot-paper can only be rejected if it is not marked as prescribed.
- (3) Except as otherwise expressly provided, a ballot-paper is to be given effect to according to the voter's intention so far as the voter's intention is clear.

2 Disadvantaged voters

- (1) This clause applies to any voter who—
 - (a) is wholly or partially blind; or
 - (b) is unable to read or write; or
 - (c) has severe difficulty in reading or writing; or
 - (d) is not sufficiently familiar with the English language to vote without assistance and an interpreter is not available.
- (2) After receiving a ballot-paper, the voter may request—
 - (a) a person nominated by the voter; or
 - (b) an authorised person—to assist the voter to mark the ballot-paper or to mark the ballot-paper as the voter instructs.

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Sch. 3
cl. 2(2A)
inserted by
No. 54/1998
s. 16.

(2A) The voter may also request—

- (a) a person nominated by the voter; or
- (b) an authorised person—

to complete any certificate or declaration that must accompany a postal vote or to sign such a certificate or declaration on the voter's behalf.

Sch. 3 cl. 2(3)
amended by
Nos 76/1995
s. 16(3)(a),
109/2003
s. 29(i).

(3) If the voter makes the request at a voting centre, an authorised person must be present when the ballot-paper is marked and at the request of the voter may inspect the ballot-paper before it is placed in the ballot-box.

(4) The voter may indicate the manner in which he or she wants to mark his or her vote by presenting a statement in writing.

Sch. 3 cl. 2(5)
amended by
Nos 76/1995
s. 16(3)(b),
34/1996
s. 33(g),
29/2006
s. 3(Sch. 1
item 18).

(5) If subclause (3) applies, the person assisting the voter must without allowing the manner in which the ballot-paper has been marked to be disclosed, deposit it in the ballot-box and leave the voting centre.

Sch. 3 cls 3, 4
repealed by
No. 76/1995
s. 16(4).

* * * * *

Part 2—General provisions

5 Place where votes to be counted

Sch. 3 cl. 5(1)
amended by
No. 15/1992
s. 22,
repealed by
No. 76/1995
s. 16(4).

* * * * *

(2) The returning officer must advise each candidate before election day where the count is to be made.

5A Use of electronic counting equipment and systems

Sch. 3 cl. 5A
inserted by
No. 109/2003
s. 39.

- (1) The returning officer may use electronic counting equipment and systems to assist in the counting of votes at an election.
- (2) The regulations may—
 - (a) modify the procedure specified in this Schedule to facilitate the use of electronic counting equipment and systems;
 - (b) prescribe types of electronic counting equipment and systems.

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Sch. 3 cls 6–8
repealed by
No. 76/1995
s. 16(4).

**Part 3—Result where only one councillor
is to be elected**

9 Only two candidates

If only 1 Councillor is to be elected and there are only 2 candidates the result is to be determined as follows—

- (a) the candidate who has received the greater number of first preference votes is to be declared elected by the returning officer;
- (b) if the 2 candidates have received an equal number of votes the result is to be determined by lot by the returning officer.

10 More than two candidates

If only 1 Councillor is to be elected and there are more than 2 candidates the result is to be determined as follows—

- (a) the candidate who has received the greatest number of first preference votes if that number constitutes an absolute majority of votes is to be declared elected by the returning officer;
- (b) ***Absolute majority of votes*** means a number of votes greater than one-half of the total number of ballot-papers (excluding ballot-papers which are rejected) and if necessary includes the vote by lot;
- (c) if no candidate has received an absolute majority of votes, the returning officer upon receipt of the several sealed parcels from any authorised person and with the assistance of any authorised persons and in the presence and subject to the inspection of any 1 scrutineer, if present, appointed by each candidate but of no other person, must—
 - (i) open all the sealed parcels containing used ballot-papers; and
 - (ii) arrange such ballot-papers together with the allowed postal ballot-papers, if any, by placing in a separate parcel all those on which a first preference is indicated for the same candidate and preference votes are also duly given for all the remaining candidates, omitting ballot-papers which are rejected; and
 - (iii) declare the candidate who has received the fewest first preference votes a defeated candidate; and
 - (iv) distribute the ballot-papers counted to the defeated candidate amongst the non-defeated candidates next in order of the voters' preference; and

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- (v) after the distribution again ascertain the total number of votes given to each non-defeated candidate;
- (d) the candidate who has then received the greatest number of votes if that number constitutes an absolute majority of votes is to be declared elected by the returning officer;
- (e) if no candidate then has an absolute majority of votes the process of declaring the candidate who has the fewest votes a defeated candidate and distributing the ballot-papers counted to the defeated candidate amongst the non-defeated candidates next in order of the voters' preference is to be repeated until 1 candidate has received an absolute majority of votes and is declared elected by the returning officer;
- (f) if on any count 2 or more candidates have an equal number of votes and 1 of them has to be declared a defeated candidate, the result is to be determined—
 - (i) by declaring whichever of those candidates had the fewest votes at the last count at which those candidates had a different number of votes to be defeated; or
 - (ii) if a result is still not obtained or there has been no count, by lot by the returning officer;
- (g) if on the final count 2 candidates have an equal number of votes, the result is to be determined by lot by the returning officer.

**Sch. 3 cl. 10(f)
substituted by
No. 109/2003
s. 41(1).**

**Sch. 3 cl. 10(g)
substituted by
Nos 109/2003
s. 41(1),
38/2005
s. 21(1).**

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Sch. 3 Pt 4
(Heading and
cl. 11)
repealed by
No. 109/2003
s. 40(a).

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Sch. 3 Pt 4A
(Heading)
inserted by
No. 33/1995
s. 22,
amended by
No. 76/1997
s. 4(2),
substituted by
Nos 54/1998
s. 18(a),
109/2003
s. 40(b).

Part 4A—Result where two or more councillors are to be elected

Sch. 3 cl. 11A
inserted by
No. 33/1995
s. 22,
amended by
Nos 76/1997
s. 4(3)
(ILA s. 39B(3)),
54/1998
s. 18(b),
5/2001
s. 30(2)(f)(i)(ii),
repealed by
No. 109/2003
s. 40(c).

* * * * *

11B 2 or more Councillors to be elected

- (1) The result is to be determined as set out in this clause.
- (2) In this clause—

continuing candidate means a candidate not
already elected or excluded from the count;

quota means the number determined by dividing
the number of first preference votes by
1 more than the number of candidates

required to be elected and by increasing the
quotient so obtained (disregarding any
remainder) by 1;

surplus votes means the number, if any, of votes
in excess of the quota of each elected
candidate.

- (3) A reference to votes of or obtained or received by
a candidate includes votes obtained or received by
the candidate on any transfer.
- (4) The returning officer upon receipt of the several
sealed parcels from any authorised person and
with the assistance of any authorised persons and
in the presence and subject to the inspection of
any 1 scrutineer, if present, appointed by each
candidate but of no other person must—
 - (a) open all the sealed parcels containing used
ballot-papers; and
 - (b) arrange the ballot-papers together with the
allowed postal ballot-papers, if any, by
placing in a separate parcel all those on
which a first preference is indicated for the
same candidate and preference votes are also
duly given for all the remaining candidates,
omitting ballot-papers which are rejected;
and
 - (c) ascertain—
 - (i) the number of first preference votes
given for each candidate; and
 - (ii) the total number of first preference
votes.
- (5) A quota is to be determined.
- (6) Any candidate who has received a number of first
preference votes equal to or greater than the quota
is to be declared duly elected by the returning
officer.

- (7) Unless all the vacancies have been filled, the surplus votes of each elected candidate are to be transferred to the continuing candidates as follows—
- (a) the number of surplus votes of the elected candidate is to be divided by the number of first preference votes received by the elected candidate and the resulting fraction is the transfer value;
 - (b) the total number of ballot-papers of the elected candidate that express the first preference vote for the elected candidate and the next available preference for a particular continuing candidate is to be multiplied by the transfer value;
 - (c) the number obtained under paragraph (b) (disregarding any fraction) is to be added to the number of first preference votes of the continuing candidate and all those ballot-papers are to be transferred to the continuing candidate.
- (8) Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any transfer under subclause (7) is to be declared duly elected by the returning officer.
- (9) Unless all the vacancies have been filled, the surplus votes, if any, of any candidate elected under subclause (8) or elected subsequently under this subclause are to be transferred to the continuing candidates in accordance with subclause (7) and any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of the transfer is to be declared duly elected by the returning officer.

- (10) If a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer of the surplus votes of a particular elected candidate under subclause (7) or (9), no votes of any other candidate are to be transferred to the continuing candidate.
- (11) For the purposes of the application of subclause (7) in relation to a transfer of the surplus votes of an elected candidate under subclause (9) or (14), each ballot-paper of the elected candidate obtained by the elected candidate on a transfer is to be dealt with as if—
 - (a) any vote it expressed for the elected candidate were a first preference vote; and
 - (b) the name of any other candidate previously elected or excluded had not been on the ballot-paper; and
 - (c) the numbers indicating subsequent preferences had been altered accordingly.
- (12) If, after the counting of first preference votes or the transfer of any surplus votes of elected candidates, no candidate has, or less than the number of candidates required to be elected have, received a number of votes equal to the quota, the candidate who has the fewest votes is to be excluded and all that candidate's votes are to be transferred to the continuing candidates as follows—
 - (a) the total number of ballot-papers of the excluded candidate that express the first preference vote for the excluded candidate and the next available preference for a particular continuing candidate are to be transferred at a transfer value of 1 for each ballot-paper and added to the number of votes of the continuing candidate and all

- those ballot-papers are to be transferred to
the continuing candidate;
- (b) the total number, if any, of other votes obtained by the excluded candidate on transfers are to be transferred from the excluded candidate beginning with the highest transfer value and ending with the ballot papers received at the lowest transfer value, as follows—
- (i) the total number of ballot papers received by the excluded candidate at a particular transfer value and expressing the next available preference for a particular continuing candidate is to be multiplied by that transfer value; and
 - (ii) the number so obtained (disregarding any fraction) is to be added to the number of votes of the continuing candidate; and
 - (iii) all those ballot papers are to be transferred to the continuing candidate.
- (13) Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of a transfer of votes of an excluded candidate under subclause (12) or (16) is to be declared duly elected by the returning officer.
- (14) Subject to subclause (15), unless all the vacancies have been filled, the surplus votes, if any, of a candidate elected under subclause (13) are to be transferred in accordance with subclause (7).
- (15) If a candidate elected under subclause (13) is elected before all the votes of the excluded candidate have been transferred, the surplus votes, if any, of the elected candidate are not to be transferred until the remaining votes of

the excluded candidate have been transferred in accordance with subclause (12) to continuing candidates.

- (16) Subject to subclause (18), if after the transfer of all the votes of an excluded candidate no continuing candidate has received a number of votes greater than the quota—
- (a) the continuing candidate who has the fewest votes must be excluded; and
 - (b) that candidate's votes must be transferred in accordance with subclause (12).
- (17) If a candidate is elected as a result of a transfer of ballot papers under subclauses (12) and (16), no other ballot papers of an excluded candidate are to be transferred to the candidate so elected.
- (18) In respect of the last vacancy for which 2 continuing candidates remain, the continuing candidate who has the larger number of votes is to be elected notwithstanding that that number is below the quota.
- (19) Despite any other provision of this clause, if the number of continuing candidates is equal to the number of remaining unfilled vacancies, those candidates are to be declared duly elected by the returning officer.
- (20) Subject to subclauses (21), (22) and (23), if after any count or transfer, 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 size of the surpluses, the largest surplus being transferred first.
- (21) Subject to subclause (23), if after any count or transfer, 2 or more candidates have equal surpluses, 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

Sch. 3
cl. 11B(17)
amended by
No. 10/2005
s. 3(Sch. 1
item 14).

Sch. 3
cl. 11B(18)
amended by
No. 38/2005
s. 21(2).

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candidates at the last count or transfer at which each of those candidates had a different number of votes, the surplus of the candidate with the largest number of votes at that count or transfer being transferred first.

- (22) For the purposes of subclause (21), if there has been no count or transfer the returning officer must determine the order in which the surpluses are to be dealt with.
- (23) If after any count or transfer, a candidate obtains surplus votes, those surplus votes are not to be transferred before the transfer of any surplus votes obtained by any other candidate on an earlier count or transfer.
- (24) If on any count or transfer 2 or more candidates have the fewest number of votes and the candidate who has the fewest number of votes is required to be excluded, the result is to be determined—
- (a) by declaring whichever of those candidates had the fewest votes at the last count at which those candidates had a different number of votes to be excluded; or
 - (b) if a result is still not obtained or there has been no count or transfer, by lot by the returning officer.
- (25) If on the final count or transfer 2 candidates have an equal number of votes, the result is to be determined by lot by the returning officer.

Sch. 3
cl. 11B(24)
substituted by
No. 109/2003
s. 41(2).

Sch. 3
cl. 11B(25)
substituted by
Nos 109/2003
s. 41(2),
38/2005
s. 21(3).

- (26) If a candidate is elected by reason that—
- (a) the number of first preference votes received by the candidate; or

- (b) the aggregate of first preference votes
received by the candidate and all other votes
obtained by the candidate on transfers—

is equal to the quota, all the ballot-papers
expressing those votes are to be set aside as finally
dealt with.

- (27) For the purposes of this clause each of the
following constitutes a separate transfer—

- (a) a transfer under subclause (7), (9) or (14) of
all the surplus votes of an elected candidate;
- (b) a transfer in accordance with
subclause (12)(a) of all first preference votes
of an excluded candidate;
- (c) a transfer in accordance with
subclause (12)(b) of all the votes of an
excluded candidate or candidates, as the case
may be, at a particular transfer value.

Sch. 3
cl. 11B(27)(c)
substituted by
No. 35/2008
s. 29.

Part 5—Miscellaneous provisions

12 Adjournment of count

* * * * *

Sch. 3 cl. 12(1)
repealed by
No. 15/1992
s. 23.

- (2) The returning officer may from time to time
adjourn the count of votes.
- (3) If the count of votes is adjourned the returning
officer must advise the scrutineers and the
authorised persons of the adjournment.

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Sch. 3
cl. 12(4)–(6)
repealed by
No. 76/1995
s. 16(4).

13 Recount of votes

Sch. 3 cl. 13(1)
substituted by
No. 109/2003
s. 42(1).

(1) At any time before a candidate has been declared elected, the returning officer may—

- (a) if he or she thinks fit; or
- (b) at the written request of the candidate specifying reasons—

open any sealed parcel containing ballot-papers and recount the ballot-papers.

Sch. 3
cl. 13(1A)
inserted by
No. 54/1998
s. 17,
substituted by
No. 109/2003
s. 42(1).

(1A) The following applies to recounts—

- (a) a recount may be conducted at the discretion of the returning officer;
- (b) the returning officer may conduct one or more recounts;
- (c) the returning officer must make reasonable efforts to notify candidates or their representatives before a recount is conducted.

Sch. 3
cl. 13(1B)
inserted by
No. 54/1998
s. 17,
repealed by
No. 109/2003
s. 42(1).

* * * * *

(2) In conducting a recount the returning officer—

- (a) has the same powers as the authorised person in determining the number of votes for each candidate; and
- (b) may reverse any decision in relation to the allowance and admission or disallowance and rejection of any ballot-paper.

- (3) A candidate is not entitled to be present at a recount.
- (4) In respect of each candidate only one scrutineer for each authorised person involved in the recounting of ballot-papers can be present at any one time.
- (5) Clause 15 of Schedule 2 applies to the scrutineers as if they had been appointed under that clause.

Sch. 3
cl. 13(4)
substituted by
No. 109/2003
s. 42(2).

14 Report on election by returning officer

Sch. 3 cl. 14
amended by
No. 76/1995
s. 16(4),
substituted by
No. 109/2003
s. 43.

- (1) The returning officer must prepare a report to the Chief Executive Officer on the conduct of the election within the period of 3 months after election day.
- (2) The report must include a certified record of the number of ballot-papers and declarations printed, issued, used, spoiled and returned.
- (3) The Chief Executive Officer must ensure that the report is submitted to the Council at the earliest practicable meeting of the Council held after the report is received by the Chief Executive Officer.

Sch. 3 cl. 14(1)
substituted by
No. 35/2008
s. 30(1).

Sch. 3 cl. 14(3)
substituted by
No. 35/2008
s. 30(2).

15 Ballot material and records to be secured and stored

All ballot material and records in respect of an election must be dealt with, kept and stored in accordance with the regulations.

Sch. 3 cl. 15
amended by
No. 125/1993
s. 14(q),
substituted by
No. 109/2003
s. 44.

Part 6—Provisions relating to polls of voters

Sch. 3 cl. 16
amended by
No. 76/1997
s. 12(3)(a),
repealed by
No. 35/2008
s. 31.

* * * *

17 Conduct of the poll

(1) The following provisions apply to a poll
conducted under this Part—

Sch. 3
cl. 17(1)(a)
substituted by
No. 54/1998
s. 3(1)(k).

(a) ballot-papers to be used in the poll must
contain the details required by the
regulations;

Sch. 3
cl. 17(1)(b)
substituted by
No. 76/1997
s. 12(3)(b).

(b) the poll must be held on a Saturday and must
start at 8 a.m. and close at 6 p.m. (unless all
voting at the poll is to be by means of postal
voting);

Sch. 3
cl. 17(1)(ba)
inserted by
No. 43/1993
s. 18.

(ba) a voter is only entitled to one vote at a poll;

Sch. 3
cl. 17(1)(c)
amended by
Nos 13/1990
s. 6(2),
125/1993
s. 14(q),
substituted by
No. 35/2008
s. 32(1),
amended by
No. 53/2015
s. 75.

(c) a scrutineer may be appointed in writing by
the Minister or the returning officer;

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No. 11 of 1989
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polls of voters

- | | |
|--|---|
| (d) not later than 7 days after the poll has been held the returning officer must notify the Minister and the Council of— | Sch. 3
cl. 17(1)(d)
amended by
No. 35/2008
s. 32(2). |
| (i) the number of voters on the voters' roll;
and | |
| (ii) the number of voters on the voters' roll who voted for the decision or proposed decision; and | Sch. 3
cl. 17(1)(d)(ii)
amended by
No. 13/1990
s. 6(2). |
| (iii) the number of voters on the voters' roll who voted against the decision or proposed decision; | Sch. 3
cl. 17(1)(d)(iii)
amended by
No. 13/1990
s. 6(2). |
| (e) the provisions of this Act (other than sections 40, 44, 45 and 46) and the regulations dealing with enrolment for and voting at council elections and the election of councillors so far as they are not abrogated by this Part apply with the alterations and adaptations which are necessary to polls under this Part; | Sch. 3
cl. 17(1)(e)
amended by
Nos 76/1997
s. 13(d),
109/2003
ss 7(5), 93(d). |
| (f) a poll is carried if— | |
| (i) the number of valid votes recorded is not less than one-third of the number of voters on the voters' roll; and | |
| (ii) a majority of the valid votes recorded are against the decision or proposed decision of the Council; | Sch. 3
cl. 17(1)(f)(ii)
amended by
No. 13/1990
s. 6(2). |
| (g) if a poll is carried a Council must not proceed with its decision or proposed decision; | Sch. 3
cl. 17(1)(g)
amended by
No. 13/1990
s. 6(2). |

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polls of voters

Sch. 3
cl. 17(1)(h)
amended by
No. 13/1990
s. 6(2).

- (h) if a poll is not carried the Council may proceed with its decision or proposed decision;
- (i) the Council must give public notice of the result of the poll.

Schedule 3A—Provisions with respect to filling extraordinary vacancies

Sch. 3A
inserted by
No. 54/1998
s. 19.

Part 1—Preliminary matters

1 Definitions

In this Schedule—

eligible candidate means a person who—

- (a) was a candidate at the relevant election;
and
- (b) did not withdraw or retire from, and
was not elected at, that election; and
- (c) is still eligible to be elected as a
Councillor;

relevant election means the election at which the
vacating Councillor was elected;

vacating Councillor means the person whose
departure created the extraordinary vacancy
(even if that person never became a
Councillor).

2 Exclusion of candidate

- (1) The returning officer must exclude from
participation in a countback any candidate which
the returning officer knows has died or has
otherwise ceased to be eligible to be elected as a
Councillor.
- (2) An exclusion under subclause (1) may be made—
 - (a) before the public notice is published under
clause 6; or
 - (b) after the public notice is published under
clause 6 unless the countback procedure has
been commenced.

Sch. 3A cl. 2
substituted by
No. 35/2008
s. 33.

3 Filling of multiple vacancies

- (1) If there is more than one extraordinary vacancy to be filled at any time, the extraordinary vacancy that occurred first is to be filled first.
- (2) If, in the opinion of the returning officer, it is impossible to determine which vacancy occurred first, the vacating Councillor who was elected first (either at the same election or in point of time) is deemed to have left her or his office before the other vacating Councillor or Councillors.
- (3) If it is still not possible to determine which vacancy occurred first despite subclause (2), the returning officer must determine by lot which extraordinary vacancy is to be filled first.
- (4) The returning officer may comply with clause 6 in respect of an extraordinary vacancy even while she or he or another returning officer is complying with those subclauses in respect of another extraordinary vacancy.

Sch. 3A
cl. 3(4)
amended by
No. 35/2008
s. 34.

Sch. 3A cl. 4
amended by
No. 109/2003
s. 46(1),
substituted by
No. 35/2008
s. 35.

4 Procedure if there are no eligible candidates

If there are no eligible candidates, the countback fails and clause 7A applies.

5 Procedure if there is only one eligible candidate

- (1) This clause applies if there is only one eligible candidate.
- (2) The returning officer must invite in writing the candidate to complete a written declaration specifying that the candidate is still eligible to be a Councillor.
- (3) A written declaration under subclause (2) must be given to the returning officer within 14 days of the date of the written invitation.

Sch. 3A cl. 5
amended by
No. 109/2003
s. 46(1),
substituted by
No. 35/2008
s. 35.

- (4) If the candidate complies with this clause, the returning officer must declare the candidate elected in accordance with clause 17.
- (5) If the candidate does not comply with this clause, the countback fails and clause 7A applies.

6 Procedure if there is more than one eligible candidate

- (1) This clause applies if there is more than one eligible candidate.
- (2) Within 14 days of the extraordinary vacancy occurring, the returning officer must—
 - (a) publish a public notice in accordance with subclause (3); and
 - (b) give written notice in accordance with subclause (3) to each eligible candidate at their last known address.
- (3) The public notice and the written notice must specify—
 - (a) the date, time and place for the conduct of the countback;
 - (b) that an eligible candidate is entitled to appoint scrutineers for the countback;
 - (c) the contact details of the returning officer.
- (4) The date for the conduct of the countback must be the date which is at least 14 days after the date of the public notice which in the opinion of the returning officer is the earliest practicable date to conduct the countback.
- (5) The countback must be conducted in accordance with Part 2.

Sch. 3A cl. 6
amended by
No. 109/2003
s. 46(1),
substituted by
No. 35/2008
s. 35.

Sch. 3A cl. 7
amended by
No. 109/2003
s. 46(1),
substituted by
No. 35/2008
s. 35.

7 Conduct of countback

- (1) The returning officer must make reasonable efforts to notify the candidate who would be declared elected as a result of the countback and invite the candidate to complete a written declaration within 48 hours that the candidate is still eligible to become a Councillor.
- (2) If the candidate completes the written declaration under subclause (1), clause 17 applies.
- (3) If the candidate does not complete the written declaration under subclause (1), a further count is to be conducted as soon as is practicable after the period in subclause (1) has expired until—
 - (a) a candidate who would be declared elected as a result of the countback and is invited to complete a written declaration within 48 hours that the candidate is still eligible to become a Councillor does so; or
 - (b) if there is only one candidate remaining, the candidate is invited to complete a written declaration within 48 hours that the candidate is still eligible to become a Councillor and does so; or
 - (c) there are no eligible candidates remaining.
- (4) For the purposes of the application of subclause (3), each time the process is repeated, the preferences for any candidate who has failed to complete the written declaration when invited to do so are excluded in the countback.
- (5) If subclause (3)(a) or (3)(b) applies, clause 17 applies.
- (6) If subclause (3)(c) applies, the countback has failed and clause 7A applies.

7A Procedure if the countback fails

Sch. 3A cl. 7A
inserted by
No. 35/2008
s. 35.

- (1) If the countback fails or the returning officer is otherwise unable to fill the extraordinary vacancy by a countback—
 - (a) the returning officer must notify the Chief Executive Officer;
 - (b) a by-election must be held to fill the extraordinary vacancy.
- (2) Despite clause 3(1), by-elections to fill 2 or more vacancies may be held at the same time.

8 Other matters

Sch. 3A cl. 8
amended by
No. 35/2008
s. 36.

Clauses 15 and 17 of Schedule 2 and clauses 12 and 13 of Schedule 3 apply to a countback of votes.

Part 2—Countback procedure

* * * * *

Sch. 3A cl. 9
repealed by
No. 109/2003
s. 46(2).

10 Counting of votes at a countback

Sch. 3A cl. 10
repealed by
No. 109/2003
s. 45, new
Sch. 3A cl. 10
inserted by
No. 35/2008
s. 37.

- (1) The returning officer may count the votes at a countback manually or by the use of electronic counting equipment and systems.
- (2) The returning officer must not use electronic counting equipment and systems unless the returning officer, after conducting any tests for the purpose that the returning officer considers appropriate, certifies in writing that—
 - (a) the electronic form of the ballot-papers is an accurate copy of all the ballot-papers on which a vote was cast in the relevant election; and

- (b) the countback can be conducted using electronic counting equipment and systems.
- (3) If the countback is conducted using electronic counting equipment and systems, the returning officer may modify the process applying under clauses 11 to 16 to the extent necessary to facilitate the use of the electronic counting equipment and systems.

11 Relevant ballot-papers to be ascertained

The following ballot-papers must be brought together—

- (a) if the vacating Councillor obtained a quota on first preferences, all the ballot-papers on which those preferences are marked; or
- (b) if the vacating Councillor was elected after a transfer or transfers of ballot-papers—
 - (i) all the ballot-papers counted to the vacating Councillor at the time that she or he was elected; and
 - (ii) if the vacating Councillor was declared elected under clause 11B(19) of Schedule 3 following the exclusion of a candidate, all of the ballot-papers that—
 - (A) were not transferred to her or him from that candidate or those candidates because it was unnecessary; and
 - (B) showed a next available preference for the vacating Councillor.

12 Votes to be transferred from vacating Councillor to eligible candidates

- (1) Those ballot-papers must then be transferred to the participating eligible candidates in accordance with the next available preference shown on the ballot-papers, at their respective transfer values, beginning with the ballot-papers with the highest transfer value and ending with the ballot-papers with the lowest transfer value, and must be transferred as follows—
 - (a) the total number of ballot-papers of a particular transfer value that show the next available preference for a particular participating eligible candidate must be multiplied by that transfer value; and
 - (b) the number obtained under paragraph (a) (disregarding any fraction) must be credited as votes to that candidate; and
 - (c) all those ballot-papers must be transferred to that candidate.
- (2) The transfer value of a ballot-paper is—
 - (a) in the case of a ballot-paper received by the vacating Councillor as a first preference—1;
 - (b) in the case of a ballot-paper received by the vacating Councillor after the count of first preferences, but before the transfer at which she or he was elected—the transfer value at which it was received by the vacating Councillor;
 - (c) in the case of a ballot-paper received by the vacating Councillor at the transfer at which she or he was elected—the number obtained by dividing the number of votes by which the vacating Councillor, immediately before that transfer, was short of the quota, by the

- number of ballot-papers transferred to the
vacating Councillor at that transfer;
- (d) in the case of a ballot-paper specified in
clause 11(b)(ii)—the transfer value at which
the ballot-paper would have been transferred
to the vacating Councillor if a transfer had
been necessary.
- (3) For the purposes of this clause—
- (a) a preference expressed for one of the
following people is to be disregarded—
- (i) the vacating Councillor; or
 - (ii) a person elected at the relevant election
or at a countback of votes; or
 - (iii) a person who is not participating in the
countback of votes; and
- (b) a preference that has been disregarded is to
be taken to be substituted for the next
available preference on the ballot-paper that
is not for a person listed in paragraph (a)(i),
(ii) or (iii); and
- (c) a first preference for a participating eligible
candidate who was excluded at the relevant
election that appears on a ballot-paper that
was transferred to the vacating Councillor is
to be counted for that candidate.

**13 Countback to be stopped if absolute majority
obtained**

- (1) After the transfers required by clause 12 have
been completed, if a participating eligible
candidate has an absolute majority the returning
officer must declare that candidate to be elected.

- (2) For the purposes of this clause, a candidate has an absolute majority if the number of votes credited to that candidate is more than 50% of the total number of votes credited to all the participating eligible candidates after the transfers.

14 Next stage (if necessary)

- (1) If no participating eligible candidate has an absolute majority of votes, the participating eligible candidate with the fewest votes must be excluded.
- (2) The excluded candidate's ballot-papers must be transferred to the continuing participating eligible candidates in accordance with the preferences shown on those ballot-papers, at their respective transfer values, beginning with the ballot-papers with the highest transfer value and ending with those with the lowest transfer value, as follows—
- (a) the total number of ballot-papers received by the excluded candidate at a particular transfer value and expressing the next available preference for a particular continuing eligible candidate must be multiplied by that transfer value; and
 - (b) the number obtained under paragraph (a) (disregarding any fraction) must be added to the number of votes of that continuing candidate; and
 - (c) all those ballot-papers must be transferred to that continuing candidate.
- (3) The transfer value of a ballot-paper for the purposes of this clause is the same as the transfer value set out in clause 12(2).
- (4) After doing this in respect of each continuing participating eligible candidate, if a candidate has an absolute majority the returning officer must declare that candidate to be elected.

- (5) For the purposes of this clause, a candidate has an absolute majority if the number of votes credited to that candidate is more than 50% of the total number of votes credited to all the continuing participating eligible candidates after the transfers and additions required by subclause (2).

15 Process if vote equal

- (1) If—
- (a) a participating eligible candidate must be excluded; and
 - (b) 2 or more of the continuing participating eligible candidates having the fewest votes have an equal number of votes after the process referred to in clause 13 or clause 14—

the candidate who had the fewest votes at the last count or transfer at which they had an unequal number of votes is to be excluded.

- (2) If there is no stage at which the 2 or more continuing participating eligible candidates had an unequal number of votes, the returning officer must decide by lot which candidate is to be excluded.

16 Final stage (if necessary)

- (1) If no participating eligible candidate has an absolute majority of votes the process described in clause 14 must be repeated until—
- (a) a participating eligible candidate receives an absolute majority within the meaning of clause 14(5); or
 - (b) there are only 2 continuing participating eligible candidates, neither of whom has an absolute majority of votes.

- (2) If subclause (1)(b) applies, the returning officer must declare to be elected the candidate who had the most votes at the last count or transfer at which the 2 candidates had an unequal number of votes.
- (3) If there is no stage at which the 2 candidates had an unequal number of votes, the returning officer must decide by lot which candidate is to be elected.

17 Declaration of result

- (1) As soon as possible after the election of a candidate, the returning officer must publicly declare that candidate to be elected.
- (2) The returning officer must as soon as is practicable after making such a declaration—
 - (a) give public notice of the name of the person elected; and
 - (b) advise the Minister of the result.

* * * * *

Sch. 3A cl. 18
repealed by
No. 109/2003
s. 45.

19 Replacement of a Councillor elected at a countback

- (1) In this clause—

first vacating Councillor means a vacating Councillor who was elected at a general election;

later vacating Councillor means a vacating Councillor who was elected to the office held by the first vacating Councillor as a result of a countback of votes under this Schedule (even if she or he is not the immediate successor of the first vacating Councillor).

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- (2) If an extraordinary vacancy is caused by the departure of a later vacating Councillor, a reference in this Part (other than in subclause (1)) to *vacating Councillor* is to be read as a reference to the first vacating Councillor.

Sch. 3A Pt 3
(Heading and
cls 20–22)
inserted by
No. 109/2003
s. 46(3),
repealed by
No. 35/2008
s. 38.

* * * * *

Schedule 4—Provisions relating to municipal electoral tribunals

Section 44

1 Constitution

A Tribunal is to be constituted by a magistrate or acting magistrate appointed by the Attorney-General.

Sch. 4 cl. 1
amended by
No. 34/1996
s 28(1)(a)(b),
substituted by
No. 109/2003
s. 22(6).

2 Terms and conditions

(1) Each member of a Tribunal—

- (a) holds office on the terms and conditions specified in the instrument of appointment; and
- (b) is entitled to be paid remuneration and travelling and other allowances as are specified; and
- (c) is not in respect of the office of member subject to the **Public Administration Act 2004**.

Sch. 4
cl. 2(1)(c)
amended by
Nos 76/1997
s. 24(c),
46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 117.2).

(2) A member of a Tribunal may resign by writing signed by the member and delivered to the Attorney-General.

Sch. 4
cl. 2(2)
amended by
No. 109/2003
s. 22(7).

(3) The Attorney-General may remove a member of a Tribunal from office.

Sch. 4
cl. 2(3)
amended by
No. 109/2003
s. 22(7).

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Sch. 4 cl. 2(4)
repealed by
No. 42/1995
s. 224(Sch. 2
item 23).

Sch. 4 cl. 2(5)
inserted by
No. 34/1996
s. 28(1)(c).

* * * * *

- (5) The appointment as a member of the Tribunal of a person who, at the time of his or her appointment, held the office of magistrate under section 7 of the **Magistrates' Court Act 1989** or acting magistrate under section 9 of that Act ceases at the time the person ceases to hold office as a magistrate or acting magistrate (unless the appointment has already ceased).

3 Procedure of a Tribunal

- (1) A Tribunal—
- (a) must, in hearing any matter, act according to equity and good conscience without regard to technicalities or legal forms; and
 - (b) is bound by the rules of natural justice; and
 - (c) is not required to conduct any proceedings in a formal manner.
- (2) All proceedings before a Tribunal must be open to the public.
- (3) A Tribunal may adjourn any proceedings to any time and place.
- (4) Except as provided in this Act and any regulations, the procedure of a Tribunal is in its discretion.

4 Evidence

- (1) A Tribunal is not bound by rules or practice as to evidence but may inform itself in relation to any matter in any manner it thinks fit.

- (2) Evidence before a Tribunal—
 - (a) may be given orally or in writing or partly orally and partly in writing; and
 - (b) may be given on oath or affirmation.
- (3) A member of a Tribunal may administer an oath or take an affirmation or declaration.
- (4) Evidence given before a Tribunal must not be used in any civil or criminal proceedings other than proceedings for an offence against this Act or perjury.
- (5) A Tribunal may of its own motion or on the application of any party to the proceedings before it issues to any person a summons to appear before the Tribunal to give evidence or to produce any documents specified in the summons.

5 Appearance before a Tribunal

A party to any proceedings before a Tribunal may be represented before the Tribunal by any person authorised by that party.

6 Protection of members, legal practitioners, persons and witnesses

- (1) A member of a Tribunal has in the performance of duties as a member the same protection and immunity as a judge of the Supreme Court.
- (2) An Australian legal practitioner or other person appearing before a Tribunal on behalf of a party has the same protection and immunity as an Australian legal practitioner has in appearing for a party in proceedings in the Supreme Court.
- (3) A person summoned to attend or appearing before a Tribunal as a witness has the same protection, and is, in addition to the penalties provided by this

Sch. 4 cl. 6(2)
amended by
No. 35/1996
s. 453(Sch. 1
item 52(a)(b)),
substituted by
No. 18/2005
s. 18(Sch. 1
item 61.1).

Act, subject to the same liabilities, as a witness in proceedings in the Supreme Court.

Sch. 4 cl. 6(4)
inserted by
No. 18/2005
s. 18(Sch. 1
item 61.2),
repealed by
No. 17/2014
s. 160(Sch. 2
item 57.1).

* * * * *

7 Failure of witnesses to attend

A witness served with a summons to appear as a witness before a Tribunal must not without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report from day to day unless excused or released from further attendance by the Tribunal.

Penalty: 10 penalty units or imprisonment for three months.

8 Refusal to be sworn or to answer questions

A person appearing as a witness before a Tribunal must not without reasonable excuse—

- (a) refuse or fail to comply with a requirement to take an oath or make an affirmation or declaration; or
- (b) refuse or fail to answer a question that the person is required to answer by a member of the Tribunal; or
- (c) refuse or fail to produce a document that the person was required to produce by a summons.

Penalty: 10 penalty units or imprisonment for three months.

9 Contempt of a Tribunal

A person must not—

- (a) insult a member of a Tribunal in or in relation to the exercise of the powers or functions of a member; or
- (b) repeatedly interrupt the proceedings of a Tribunal; or
- (c) create a disturbance or take part in creating or continuing a disturbance in or near a place where a Tribunal is sitting; or
- (d) do any other act or thing that would if a Tribunal were a Court of record constitute a contempt of that Court.

Penalty: 10 penalty units or imprisonment for three months.

10 Costs

A Tribunal may make any order as to costs as it thinks just.

11 Enforcement of costs order

- (1) Costs awarded to a party are a debt due to that party and are recoverable in the Magistrates' Court.
- (2) The party in whose favour an order as to costs is made may enforce the order by filing a copy of the order in the Magistrates' Court in accordance with the **Magistrates' Court Act 1989** and paying the prescribed filing fee.
- (3) A copy of a determination of the Tribunal signed by a member of the Tribunal is evidence of the order as to costs.
- (4) A copy of the order filed under subclause (2) is deemed to be an order of the Magistrates' Court and may be enforced accordingly.

Sch. 4 cl. 11
inserted by
No. 43/1993
s. 19.

Local Government Act 1989
No. 11 of 1989

Sch. 5
substituted by
No. 15/1992
s. 24(1),
amended by
Nos 43/1993
s. 20, 125/1993
s. 37(1)(c),
76/1995
s. 13(d),
52/1998
s. 311(Sch. 1
item 55.9),
54/1998
ss 3(1)(l)(m),
13(2),
repealed by
No. 109/2003
s. 28(3), new
Sch. 5
inserted by
No. 67/2008
s. 19,
amended by
Nos 17/2014
s. 160(Sch. 2
item 57.2),
64/2009 s. 60,
63/2012 s. 27,
repealed by
No. 53/2015
s. 37.

* * * *

Schedule 6—Provisions with respect to equal employment opportunity

Section 96

Part 1—Definitions

1 Definitions

In this Schedule—

designated group means a class of persons with a common characteristic or attribute which is declared by Order in Council of the Governor in Council to be a designated group;

discrimination means an act or omission that contravenes a provision of Part 4, 6 or 7 of the **Equal Opportunity Act 2010**;

Sch. 6 cl. 1
def. of
discrimination
substituted by
No. 42/1995
s. 223(Sch. 1
item 3),
amended by
No. 16/2010
s. 209(Sch.
item 4).

employment matters includes—

- (a) recruitment procedure and selection procedure for appointment or engagement of persons as members of Council staff; and
- (b) promotion and transfer of members of Council staff; and
- (c) training and staff development for members of Council staff; and
- (d) remuneration and conditions of service of members of Council staff;

equal employment opportunity program means a program which is designed to eliminate discrimination against and promote equal

opportunity for women and persons in designated groups in relation to employment matters;

Sch. 6 cl. 1
def. of
trade union
amended by
No. 13/1990
s. 31(i),
substituted by
No. 58/2010
s. 34.

trade union means—

- (a) an employee organisation within the meaning of section 12 of the Fair Work Act 2009 of the Commonwealth;
- (b) an association of employees that is registered or recognised as a trade union (however described) under the law of a State or a Territory of the Commonwealth;
- (c) an association of employees a principal purpose of which is the protection and promotion of the employees' interest in matters concerning their employment.

Part 2—Equal employment opportunity programs

2 Equal employment opportunity programs

A Council with 40 or more members of Council staff must commence the development and implementation of an equal employment opportunity program on the day on which section 96 comes into operation.

3 Contents of equal employment opportunity program

Without limiting the generality of the definition of *equal employment opportunity program* in clause 1, the equal employment opportunity program must provide for action to be taken—

- (a) to inform members of Council staff of the contents of the equal employment opportunity program and of the results of any monitoring and evaluation of the equal

employment opportunity program under paragraph (i); and

- (b) to confer responsibility for the development and implementation of the equal employment opportunity program (including a continuous review of the equal employment opportunity program) on a person having sufficient authority and status within the management of the Council to enable the person properly to develop and implement the equal employment opportunity program; and
- (c) to establish an equal employment opportunity consultative committee comprising representatives of—
 - (i) trade unions having members employed by the Council; and
 - (ii) management of the Council; and
 - (iii) if the representatives referred to in subparagraph (i) or (ii) so determine, persons with expertise in areas which are relevant to the development and implementation of the equal employment opportunity program—

to advise the person responsible for the development and implementation of the equal employment opportunity program on the development and implementation of the equal employment opportunity program and on any other related matters; and

- (d) to consult with each trade union which has members who are affected by the proposal for the development and implementation of the equal employment opportunity program; and

- (e) to consult with members of Council staff in the development and implementation of the equal employment opportunity program, especially with members of Council staff who are women or persons in designated groups; and
- (f) for the collection and recording of statistics and related information concerning employment matters in the Council, including the number, classification and types of jobs of—
 - (i) members of Council staff of either sex; and
 - (ii) members of Council staff in designated groups; and
- (g) to consider policies and examine practices of the Council in relation to employment matters to identify—
 - (i) any policies or practices that discriminate against women or persons in designated groups; and
 - (ii) any patterns (whether ascertained statistically or otherwise) of lack of equality of opportunity in respect of women and persons in designated groups; and
- (h) to set—
 - (i) the particular objectives to be achieved by the equal employment opportunity program; and
 - (ii) the quantitative and other indicators against which the effectiveness of the equal employment opportunity program is to be assessed; and

- (i) to monitor and evaluate the implementation of the equal employment opportunity program and to assess—
 - (i) the achievement of those objectives; and
 - (ii) the effectiveness of the equal employment opportunity program by comparing statistics and information collected and recorded under paragraph (f) with the indicators against which the effectiveness of the equal employment opportunity program is to be assessed.

4 Regard to be had to equal employment opportunity program

A Council must take any action necessary to give effect to its equal employment opportunity program and any person who exercises powers in relation to employment matters on behalf of the Council must have regard to the equal employment opportunity program in exercising those powers.

5 Council may use special tests and qualifications

Despite anything to the contrary in this Act, a Council may determine and use special tests and qualifications to enhance recruitment and promotion of persons in any designated group.

6 Exemptions from this Part

- (1) On application by a Council, the Governor in Council may by Order in Council grant an exemption from the requirements of this Part to the Council in relation to a specific designated group.
- (2) The exemption is valid for the period of time specified in the Order in Council containing it.

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Sch. 7
amended by
Nos 13/1990
s. 13(c),
22/1992
ss 4(1), 7(2)(a),
repealed by
No. 125/1993
s. 11(1).

* * * * *

Schedule 8—Provisions with respect to local laws

Section 123

Without derogating from any other principles the following
apply to local laws:

- 1 A local law must—
 - (a) accord with the letter and intent of the enabling Act;
 - (b) in the case of a principal local law, clearly set out as part of its text—
 - (i) the objectives of the local law; and
 - (ii) the precise provision authorising the local law;
 - (c) be directed towards those objectives and not go beyond them;
 - (d) adopt the means of achieving those objectives which appear likely to involve the least burden or the greatest advantage on the community;
 - (e) wherever appropriate, set performance standards rather than prescribe detailed requirements as to the manner in which those standards shall be achieved;
 - (f) be expressed plainly and unambiguously, consistently with the language of the enabling Act and in accordance with modern standards of drafting applying in the State of Victoria.
- 2 A local law must not—
 - (a) exceed the powers conferred by the Act under which the local law purports to be made;
 - (b) without clear and express authority in the enabling Act—
 - (i) have any retrospective effect;
 - (ii) impose any tax or fee, or any fine, imprisonment or other penalty;

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Schedule 8—Provisions with respect to local laws

- (iii) purport to shift the onus of proof to a person accused of an offence;
- (iv) provide for any further delegation of powers delegated by the Act;
- (c) be inconsistent with the principles, objectives or intent of the enabling Act;
- (d) make unusual or unexpected use of the powers conferred by the Act under which the local law is made having regard to the general objectives, intention or principles of that Act;
- (e) embody principles of major substance or controversy or contain any matter which principles or matter should properly be dealt with by an Act and not by subordinate legislation;
- (f) unduly trespass on rights and liberties of the person previously established by law;
- (g) unduly make rights and liberties of the person dependent upon administrative and not upon judicial decisions;
- (h) be inconsistent with principles of justice and fairness;
- (i) duplicate, overlap or conflict with other statutory rules or legislation;
- (j) restrict competition unless it can be demonstrated that—
 - (i) the benefits of the restriction to the community as a whole outweigh the costs; and
 - (ii) the objectives of the local law can only be achieved by restricting competition.

Sch. 8 cl. 2(j)
inserted by
No. 54/1998
s. 20(1).

Local Government Act 1989
No. 11 of 1989

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Sch. 8A
inserted by
No. 22/1992
s. 20,
amended by
No. 33/1995
s. 4(2)(e),
repealed by
No. 34/1996
s. 29.

Sch. 9
amended by
No. 109/2003
s. 72(2)(e).

Schedule 9—Provisions relating to securities

Section 149

1 Protection of security holders

If a Council grants a security in compliance with this Act the security is good and valid as against the Council in favour of the security holder without fraud and in good faith.

2 Priority of security holders

- (1) Security holders in different loans secured by a charge over the same income or assets have priority as to principal and interest according to the priority of the granting of the security.
- (2) Security holders in the same loan rank equally as between themselves.

3 No claim against Consolidated Fund

A security holder does not have any claim against the Consolidated Fund.

4 Appointment of receivers

- (1) This clause applies if a Council defaults in the payment of any principal money or interest secured by a security.
- (2) On the petition of the security holder the Supreme Court may appoint up to 3 receivers of the relevant income of the Council.
- (3) A receiver is deemed to be an officer of the Supreme Court.
- (4) A receiver is entitled to remuneration as is fixed by the Supreme Court.
- (5) A receiver must act under the direction of the Supreme Court.
- (6) The Supreme Court may remove a receiver.

- (7) The Supreme Court may appoint a receiver in the place of a receiver who has been removed or dies.

5 Powers of receivers

- (1) A receiver is entitled to receive the relevant rates and charges payable to the Council.
- (2) For the purposes of this clause a receiver has the powers which a Council has with respect to rates and charges under Part 8.

6 Application of money

A receiver holds all the money received by the receiver after payment of costs and expenses and his or her remuneration for the benefit of the security holders according to their respective priorities and the balance for the Council.

Sch. 10
amended by
No. 81/1989
s. 3(Sch.
item 30.4),
substituted by
No. 125/1993
s. 24.

Schedule 10—Powers of Councils over roads

1 Power to construct and maintain roads

A Council may—

- (a) make, maintain and repair roads; and
- (b) fix and alter the level of roads.

2 Power to deviate roads

- (1) A Council may deviate a road through private land, Crown land or land held by licensees under the **Land Act 1958** (whether or not the land is subject to any rights of way).
- (2) However, in the case of a proposed deviation—
 - (a) through Crown land; or
 - (b) which would result in the vesting of land in a Council under section 207B(2A)—this power may only be exercised after the Council has obtained the consent of the Minister administering the **Land Act 1958**.
- (3) Before starting any work to give effect to a deviation, the Council must publish a notice in the Government Gazette describing the deviation.

Sch. 10 cl. 2(2)
substituted by
No. 99/1994
s. 16(2).

3 Power to discontinue roads

A Council may, in addition to any power given to it by sections 43 and 44 of the **Planning and Environment Act 1987**—

- (a) discontinue a road, or part of a road, by a notice published in the Government Gazette; and
- (b) sell the land from that road (if it is not Crown land), transfer the land to the Crown or itself or retain the land.

4 Power to take road making materials

- (1) A Council may enter and take from—
- (a) any waterway; or
 - (b) any Crown land reserved under the **Crown Land (Reserves) Act 1978** for the supply of sand, gravel, stone or other materials—
any materials necessary for making or maintaining anything which the Council under this Act may make or maintain.
- (2) Before a Council may exercise this power, it must give at least 14 days notice in writing of its intention to exercise the power—
- (a) to the Secretary of the Department of Sustainability and Environment; and
 - (b) to the owner and occupier of any land referred to in subclause (1).
- (3) The Council must also advise the owner and occupier of that land in writing of anything it has done on, or to, the land in the exercise of any power given to it by subclause (1).

Sch. 10
cl. 4(2)(a)
amended by
No. 109/2003
s. 93(e).

Sch. 10
cl. 4(2)(b)
amended by
No. 34/1996
s. 33(h).

5 Power to name roads, erect signs and require premises to be numbered

- (1) A Council may—
- (a) approve, assign or change the name of a road; and
 - (b) erect signs on a road; and
 - (c) approve, assign and change the number of a road and any premises next to a road; and
 - (d) require people to number their premises and to renew those numbers.

Sch. 10 cl. 5(2)
substituted by
Nos 27/1997
s. 27, 7/1998
s. 23.

- (2) The Council, in exercising a power under paragraph (a) of subclause (1) must act in accordance with the guidelines in force for the time being under the **Geographic Place Names Act 1998** and must advise the Registrar under that Act of the action it has taken under that paragraph.

6 Power to establish survey marks

A Council may cause standard survey marks to be established in roads.

7 Power to fix road alignment

Sch. 10 cl. 7(2)
amended by
No. 47/2004
s. 71(Sch.
item 2).

- (1) A Council may fix the alignment of a road by a notice published in the Government Gazette.
- (2) If the road is vested in the Crown, or a body representing the Crown, the Council may only exercise this power after it has obtained the approval of the Surveyor-General after he or she has consulted the Surveyor and Chief Draughting Officer in the Office of Titles.

Sch. 10 cl. 7(3)
amended by
No. 47/2004
s. 71(Sch.
item 2).

- (3) In the case of any other road, the Council may only exercise this power after it has obtained the approval of the Surveyor and Chief Draughting Officer in the Office of Titles.

8 Power to narrow or widen roads

- (1) A Council may—
- (a) narrow or widen a road; and
 - (b) allow a person to make minor repairs or alterations to a building between the old alignment and the new alignment.
- (2) In relation to the establishment of permanent marks, the exercise of the power conferred by subclause (1)(a) is subject to the **Survey Co-ordination Act 1958**.

- (3) Before starting any work to give effect to the narrowing or widening of a road, the Council must publish a notice in the Government Gazette describing the narrowing or widening.

9 Power to provide for temporary roads

A Council may provide temporary roads.

10 Powers concerning fences, gates and by-passes

A Council may—

- (a) permit the erection and maintenance of gates and fences on or near roads;
- (b) permit the construction of by-passes for unfenced roads and for this purpose to require—
 - (i) the removal of any gate;
 - (ii) the erection of notices giving warning of the by-pass;
 - (iii) the maintenance of the by-pass and notices;
- (c) revoke the permission given under paragraphs (a) and (b) and require the removal of the gates, fences, notices and by-passes.

11 Power concerning holes and other dangers

A Council may—

- (a) fill any hole or excavation in or near a road;
- (b) remove any cause of possible damage to a road, or of danger to anyone or anything using the road;
- (c) erect or restore any fence near any hole or excavation that is near a road;
- (d) require a person to do any of the things listed in paragraphs (a), (b) and (c).

12 Powers concerning crossings over footpaths and channels

A Council may—

- (a) make a bridge or crossing over any footpath or channel next to a road to enable a person using the road to have access to land on the other side of the footpath or channel;
- (b) maintain, repair or reconstruct the bridge or crossing;
- (c) permit a person to do anything the Council may do under paragraph (a) or (b);
- (d) require a person to do anything the Council may do under paragraph (a) or (b).

Schedule 11—Powers of Councils over traffic

Sch. 11
amended by
No. 44/1989
s. 42(2)(a)–(c),
substituted by
No. 125/1993
s. 24.

1 Powers concerning parking

Sch. 11 cl. 1
amended by
No. 33/1995
s. 11(a)(b).

- (1) A Council may fix, rescind or vary—
- (a) the days, hours and periods of time for which, and the conditions on which, vehicles may stand in a parking area in any highway or other parking area; and
 - (b) fees for any vehicles standing in a parking area and the manner of payment of those fees; and
 - (c) the fee for residents of any area which the Council sets aside as an area in which a resident parking scheme is to operate that allows a vehicle to stand in a parking area in any road in the area regardless of the fixed parking periods for that area.
- (2) In this clause *highway* and *parking area* have the meanings they have in the **Road Safety Act 1986** (or any regulations made under that Act).

2 Power to issue special parking permits

A Council may issue a special parking permit to any disabled person to enable him or her to leave a vehicle standing on different conditions from those fixed under any part of clause 1.

Sch. 11 cl. 3
amended by
No. 33/1995
s. 11(c)(d).

3 Power to remove unregistered or abandoned vehicles

- (1) A Council may—
- (a) move or impound any unregistered vehicle or vehicle considered by it to be abandoned (and anything in, on or attached to, the vehicle);
 - (b) keep the vehicle in the place to which it has been moved or any other place;
 - (c) return the vehicle to its owner on payment of a fee; and
 - (d) sell, destroy or give away the vehicle (and anything in, on or attached to, the vehicle) if the owner of the vehicle has not paid the fee within 14 days of the Council impounding the vehicle.

Sch. 11
cl. 3(1)(d)
amended by
No. 63/2012
s. 28(1).

- (1A) Before exercising the power conferred by subclause (1)(d), the Council must take reasonable steps to notify the owner of the vehicle that the vehicle has been impounded and may be sold, destroyed or given away unless the specified fee is paid within 14 days.
- (2) The Council, and anyone who obtains the vehicle from the Council under subclause (1)(d), is not liable to the owner of the vehicle or any other person in respect of any action taken under that subclause.
- (3) The fee set for the purposes of subclause (1)(c) must not exceed an amount that reasonably represents the cost to the Council of impounding, moving, keeping and releasing the vehicle (including any relevant overhead and other indirect costs).

Sch. 11
cl. 3(1A)
inserted by
No. 63/2012
s. 28(2).

- (4) For the purposes of subclause (1), a Council may consider that a vehicle has been abandoned if the vehicle has not been moved for 2 months.

Sch. 11 cl. 3(4)
inserted by
No. 63/2012
s. 28(3).

4 Power to move obstructing vehicles

A Council may move or impound any vehicle that is causing an unlawful obstruction, or that is unlawfully parked or left standing in an area designated by the Minister, and may charge the owner of the vehicle a fee of up to the amount of the fee set for the purposes of clause 3(1)(c).

Sch. 11 cl. 4
amended by
No. 33/1995
s. 11(e).

5 Power to move other obstructions

A Council may—

- (a) move any thing that encroaches on or obstructs the free use of a road or that reduces the breadth, or confines the limits, of a road (including any thing placed on the road under clause 9, 10 or 11);
- (b) require any person responsible for, or in control of, the thing to move it.

Sch. 11 cl. 5(a)
amended by
No. 109/2003
s. 92(a)(b).

6 Power to restrict traffic near a construction site

For the purposes of enabling works to be carried out on or over a road, or land next to a road, a Council may—

- (a) fence off and occupy part of the road;
- (b) erect a structure or temporary crossing for vehicles on, or over, the road;
- (c) permit a person to do anything the Council may do under paragraph (a) or (b).

7 Power to close road on seasonal basis

A Council may close a road, or part of a road, for a particular period during the year.

8 Power to erect and remove works and structures

- (1) A Council may erect and remove any works or structures—
- (a) to protect passengers, pedestrians and drivers on a road; or
 - (b) to regulate traffic on a road.

Sch. 11 cl. 8(2)
repealed by
No. 12/2004
s. 147(4).

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9 Power to place obstructions or barriers on a road permanently

- (1) A Council may block or restrict the passage or access of vehicles on a road by placing and maintaining any permanent barrier or other obstruction on the road.
- (2) A Council must not exercise this power unless it has considered a report from the Roads Corporation concerning the exercise of the power.
- (3) The exercise of this power is subject to any direction of the Minister.
- (4) This clause does not apply to a freeway or an arterial road within the meaning of the **Road Management Act 2004**, unless the Council has the consent of the Roads Corporation.

Sch. 11 cl. 9(4)
amended by
No. 12/2004
s. 147(5).

10 Power to place obstructions or barriers on a road temporarily

- (1) A Council may block or restrict the passage or access of vehicles on a road by placing and maintaining any temporary barrier or other obstruction on the road—

- (a) for as long as is necessary to prevent any injury to any person or damage to any property (including damage to the road itself); or
 - (b) for as long as is necessary for a procession, public ceremony or function; or
 - (c) for a genuine traffic diversion experiment.
- (2) A Council must not exercise the power given to it under subclause (1)(c) unless it has considered a report from the Roads Corporation concerning the exercise of the power.
- (3) This clause does not apply to a freeway or an arterial road within the meaning of the **Road Management Act 2004**, unless the Council has the consent of the Roads Corporation.

Sch. 11
cl. 10(3)
amended by
No. 12/2004
s. 147(5).

11 Powers concerning shopping malls

A Council may declare a road, or a part of a road, to be a shopping mall and may prohibit or restrict the entry of motor vehicles into any such mall.

12 Power to restrict use of road by vehicles of a certain size etc.

- (1) A Council may prohibit or restrict the use of a road by any motor vehicle of, or over, a certain size or weight.
- (2) Despite anything to the contrary in section 223, if in the opinion of the Council the use of a road by motor vehicles of, or over, a certain weight poses an immediate risk of danger to people or damage to property (including damage to the road itself), the Council may exercise a power under this clause before it makes a final decision on the exercise of the power.

13 Power to determine speed limits

A Council may determine speed limits for vehicles on a road.

14 Power to prohibit traffic on unsafe roads

A Council may prohibit or restrict traffic on a road that it considers is unsafe for that traffic.

Sch. 11A
inserted by
No. 43/1993
s. 5,
amended by
Nos 33/1995
s. 10(a)–(c),
34/1996
s. 33(i),
repealed by
No. 27/1997
s. 26(2).

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Schedule 12—Regulations

Section 243

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|----|---|--|
| 1 | Any matter relating to enrolment and the preparation of voters' rolls. | |
| 2 | Providing for exemptions from and the enforcement of compulsory voting. | |
| 3 | Providing for a system of early voting including the empowering of a returning officer to issue guidelines relating to electoral material in relation to pre-poll voting. | Sch. 12 cl. 3 amended by Nos 15/1992 s. 25(1)(a), 109/2003 s. 29(j). |
| 4 | Providing for a system of postal voting. | |
| 5 | Enabling an election to be held by postal voting or by attendance voting. | Sch. 12 cl. 5 amended by No. 54/1998 s. 21. |
| 5A | Providing for unenrolled voters to lodge a vote at an election. | Sch. 12 cl. 5A inserted by No. 15/1992 s. 25(1)(b). |
| 5B | Any matter relating to the holding of a poll of voters. | Sch. 12 cl. 5B inserted by No. 15/1992 s. 25(1)(b). |
| 6 | Enabling the use of electronic equipment for elections and the counting of votes. | |
| 7 | Providing for mobile voting centres. | Sch. 12 cl. 7 amended by No. 109/2003 s. 29(k). |
| 8 | Providing for any matter relating to the approval and registration of how-to-vote cards, including prescribing a right to apply to the Victorian Civil and Administrative Tribunal for a review of specified decisions. | Sch. 12 cl. 8 amended by No. 15/1992 s. 24(2), substituted by No. 109/2003 s. 28(4). |

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- 9 Prescribing the matters in respect of which a Council must keep accounts and records.
- 10 Prescribing the manner and form in which the accounts and records must be kept.
- 11 Prescribing the entries to be made in accounts and records.

Sch. 12
cl. 11A
inserted by
No. 40/1994
s. 7(a),
repealed by
No. 59/1999
s. 5(d).

* * * *

Sch. 12
cl. 11B
inserted by
No. 99/1994
s. 23.

- 11B Prescribing how the cost of a benefit, allowance or item of remuneration is to be calculated for the purposes of the definition of ***total remuneration*** in section 3(1).

- 12 Providing for the establishment of loan funds, reserve funds and other prescribed funds.

Sch. 12
cl. 12A
inserted by
No. 53/2015
s. 38.

- 12A Prescribing provisions to be included in the Councillor Code of Conduct.

Sch. 12
cl. 12B
inserted by
No. 53/2015
s. 38.

- 12B Prescribing matters to be included in the Councillor Code of Conduct.

Sch. 12
cl. 12C
inserted by
No. 53/2015
s. 38.

- 12C Prescribing processes for the conduct of the internal resolution procedure of a Council.

- 13 Providing for the handling or disposal of unclaimed money.

- 14 Providing for the dismissal or the reduction in status of members of Council staff.

- 15 Prescribing rights of appeal against dismissal or reduction in status.

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Schedule 12—Regulations

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|-----|---|--|
| 16 | Providing for the payment of long service leave and other benefits to members of Council staff. | |
| 17 | Providing for termination and redundancy of members of Council staff, payments on termination and redundancy and appeals relating to termination and redundancy. | |
| 17A | Prescribing details with respect to the preparation and content of local laws. | Sch. 12
cl. 17A
inserted by
No. 64/2009
s. 61. |
| 18 | Prescribing fees and deposits for the purposes of this Act. | |
| 19 | Prescribing forms for the purposes of this Act. | |
| 20 | Any matter relating to Division 3 of Part 9 including—
(a) exempting a service or a class of service from the application of the Division;
(b) requiring Councils to report on any matter under the Division and specifying the form and contents of the reports. | Sch. 12 cl. 20
inserted by
No. 40/1994
s. 7(b),
substituted by
No. 59/1999
s. 7. |
| 21 | Exempting classes of contract from section 186. | Sch. 12 cl. 21
inserted by
No. 40/1994
s. 7(b). |
| 22 | Any matters to be considered under section 219F in the conduct of an electoral representation review and the making of recommendations relating to the number of Councillors, electoral structures and ward boundaries. | Sch. 12 cl. 22
inserted by
No. 109/2003
s. 33(5). |
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Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 16 November 1988

Legislative Council: 11 April 1989

The long title for the Bill for this Act was "A Bill to reform the law relating to Local Government in Victoria."

The **Local Government Act 1989** was assented to on 9 May 1989 and came into operation as follows:

Sections 1–96, 98, 99, 111–124, 186–206, 208–220, 222–228, 231–243, Schedules 1–6, 8, 10–12 on 1 November 1989: Government Gazette 1 November 1989 page 2798; section 101 on 1 March 1991; sections 97, 100, 102–110, Schedule 7 on 1 October 1991; sections 125–185, 207, 221, 229, 230, Schedule 9 on 1 October 1992: Government Gazette 4 July 1990 page 2022.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in

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a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

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2 Table of Amendments

This publication incorporates amendments made to the **Local Government Act 1989** by Acts and subordinate instruments.

Transport (Amendment) Act 1989, No. 44/1989

Assent Date: 6.6.89
Commencement Date: S. 42(1) on 1.11.89: s. 2(4); s. 42(2) on 1.11.89: s. 2(5)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Water (Consequential Amendments) Act 1989, No. 81/1989

Assent Date: 5.12.89
Commencement Date: 1.11.90: Government Gazette 15.8.90 p. 2473
Current State: All of Act in operation

Local Government (Amendment) Act 1990, No. 13/1990

Assent Date: 8.5.90
Commencement Date: Ss 1, 2, 6, 31, 39(2), 40–42, 44–46 on 8.5.90: s. 2(2)(a); ss 23, 37, 38, 39(1)(3) on 9.5.89: s. 2(2)(b); ss 3–5, 7–22, 24–30, 32–36, 43 on 8.5.90: Special Gazette (No. 20) 8.5.90 p. 1
Current State: All of Act in operation

Subdivision (Miscellaneous Amendments) Act 1991, No. 48/1991

Assent Date: 25.6.91
Commencement Date: S. 69 on 25.6.91: s. 2(4)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government (Rating) Act 1991, No. 78/1991 (as amended by No. 22/1992)

Assent Date: 3.12.91
Commencement Date: Ss 19, 26 on 1.11.89: s. 2(1); s. 25 on 1.10.92: s. 2(2); s. 28(1) on 9.5.89: s. 2(3); s. 28(2) on 8.5.90: s. 2(4); rest of Act on 3.12.91: s. 2(5)
Current State: All of Act in operation

Local Government Act 1989
No. 11 of 1989
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Local Government (Elections) Act 1992, No. 15/1992

Assent Date: 2.6.92
Commencement Date: Ss 1, 2, 5–7, 9–25 on 3.6.92: Government Gazette 3.6.92 p. 1306; ss 3, 4 on 20.5.93: Government Gazette 20.5.93 p. 1188—see **Interpretation of Legislation Act 1984**; s. 8 on 25.5.95: Government Gazette 25.5.95 p. 1216
Current State: All of Act in operation

Local Government (Financial) Act 1992, No. 22/1992

Assent Date: 16.6.92
Commencement Date: All of Act (*except* ss 3, 19, 20) on 16.6.92: s. 2(1); s. 19 on 1.10.92: s. 2(3); s. 20 on 1.10.92: s. 2(4); s. 3 on 1.10.93: Government Gazette 9.9.93 p. 2496
Current State: All of Act in operation

Caravan Parks and Movable Dwellings (Amendment) Act 1993, No. 23/1993

Assent Date: 25.5.93
Commencement Date: Ss 1, 2 on 25.5.93: s. 2(1); rest of Act on 1.11.93: Government Gazette 23.9.93 p. 2601
Current State: All of Act in operation

Local Government (General Amendment) Act 1993, No. 43/1993

Assent Date: 1.6.93
Commencement Date: Ss 1–6, 8, 10, 11, 13, 15–20, 22, 24, 26 on 1.6.93: s. 2(1); s. 12 on 1.10.93: s. 2(3); ss 23, 25 on 2.9.93: Government Gazette 2.9.93 p. 2454; ss 14, 21 on 1.10.93: Government Gazette 23.9.93 p. 2602; s. 7 on 31.3.94: Government Gazette 31.3.94 p. 771; s. 9 on 25.5.95: Government Gazette 25.5.95 p. 1216
Current State: All of Act in operation

City of Melbourne Act 1993, No. 98/1993

Assent Date: 18.11.93
Commencement Date: S. 12 on 28.9.93: s. 2(2); rest of Act on 18.11.93: s. 2(1)
Current State: All of Act in operation

Local Government (Miscellaneous Amendments) Act 1993, No. 125/1993

Assent Date: 7.12.93
Commencement Date: S. 37(2) on 3.12.91: s. 2(2); s. 37(3) on 1.6.93: s. 2(3); rest of Act (*except* ss 4(2), 6, 9) on 7.12.93: s. 2(4); ss 4(2), 6, 9 on 1.10.95: s. 2(1)
Current State: All of Act in operation

Financial Management Act 1994, No. 18/1994 (as amended by No. 75/1994)

Assent Date: 10.5.94
Commencement Date: Pt 1 (ss 1–8), ss 60, 61 on 10.5.94: s. 2(1); rest of Act on 1.7.94: s. 2(2)
Current State: All of Act in operation

Local Government Act 1989
No. 11 of 1989
Endnotes

Local Government (Competitive Tendering) Act 1994, No. 40/1994

Assent Date: 7.6.94
Commencement Date: Ss 1, 2 on 7.6.94: s. 2(1); rest of Act (*except* s. 6) on 1.10.94: s. 2(4); s. 6 on 1.10.94: s. 2(3)
Current State: All of Act in operation

Valuation of Land (Amendment) Act 1994, No. 91/1994

Assent Date: 6.12.94
Commencement Date: Pt 1 (ss 1, 2), ss 5–9, 38, 39 on 6.12.94: s. 2(1); ss 3, 36, 37 on 1.1.95: s. 2(2); ss 4, 35 on 1.10.94: s. 2(3); Pt 3 (ss 10–34) on 23.1.95: Government Gazette 19.1.95 p. 121
Current State: All of Act in operation

Crown Lands Acts (Amendment) Act 1994, No. 96/1994

Assent Date: 13.12.94
Commencement Date: Pt 1 (ss 1, 2) on 13.12.94: s. 2(1); rest of Act on 26.1.95: Government Gazette 26.1.95 p. 163
Current State: All of Act in operation

Local Government (Amendment) Act 1994, No. 99/1994

Assent Date: 13.12.94
Commencement Date: All of Act (*except* ss 7, 25) on 13.12.94: s. 2(1); s. 7 on 1.1.96: s. 2(3); s. 25 on 1.1.96: s. 2(4)
Current State: All of Act in operation

Constitution (Court of Appeal) Act 1994, No. 109/1994

Assent Date: 20.12.94
Commencement Date: Pt 1 (ss 1, 2) on 20.12.94: s. 2(1); rest of Act on 7.6.95: Special Gazette (No. 41) 23.5.95 p. 1
Current State: All of Act in operation

Local Government (Further Amendment) Act 1995, No. 33/1995

Assent Date: 6.6.95
Commencement Date: All of Act (*except* ss 4, 5) on 6.6.95: s. 2(1); ss 4, 5 on 1.7.95: s. 2(2)
Current State: All of Act in operation

Equal Opportunity Act 1995, No. 42/1995

Assent Date: 14.6.95
Commencement Date: S. 224 on 5.10.95: Government Gazette 28.9.95 p. 2731; s. 223(Sch. 1 item 3), Sch. 2 item 23 on 1.1.96: Government Gazette 21.12.95 p. 3571
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Trade Measurement (Administration) Act 1995, No. 60/1995

Assent Date: 20.6.95
Commencement Date: S. 28(2) on 1.1.96: Government Gazette 7.12.95 p. 3381
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government Act 1989
No. 11 of 1989
Endnotes

Local Government (Elections) Act 1995, No. 76/1995

Assent Date: 14.11.95
Commencement Date: 14.11.95
Current State: All of Act in operation

The Constitution Act Amendment (Amendment) Act 1995, No. 103/1995

Assent Date: 5.12.95
Commencement Date: 5.12.95
Current State: All of Act in operation

Melbourne City Link Act 1995, No. 107/1995

Assent Date: 12.12.95
Commencement Date: S. 123 on 14.12.95: Special Gazette (No. 120)
14.12.95 p. 3
Current State: This information relates only to the provision/s
amending the **Local Government Act 1989**

Housing (Amendment) Act 1996, No. 20/1996

Assent Date: 2.7.96
Commencement Date: 28.5.96: s. 2
Current State: All of Act in operation

Local Government (Amendment) Act 1996, No. 34/1996 (as amended by
No. 76/1997)

Assent Date: 29.10.96
Commencement Date: All of Act (*except* ss 6(2), 8, 13, 14, 30(2)) on
29.10.96: s. 2(1); s. 13 on 20.4.98: Government
Gazette 9.4.98 p. 778; ss 6(2), 8, 14, 30(2) on 1.7.98:
s. 2(3)
Current State: All of Act in operation

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 item 52) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Local Government Act 1989**

Shop Trading Reform Act 1996, No. 38/1996

Assent Date: 6.11.96
Commencement Date: S. 13 on 26.11.96: Government Gazette 21.11.96
p. 2971
Current State: This information relates only to the provision/s
amending the **Local Government Act 1989**

Local Government (Further Amendment) Act 1997, No. 27/1997

Assent Date: 27.5.97
Commencement Date: All of Act (*except* s. 18) on 27.5.97: s. 2(1); s. 18 on
1.7.97: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Local Government Act 1989**

Local Government Act 1989
No. 11 of 1989
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Local Government (Miscellaneous Amendment) Act 1997, No. 76/1997

Assent Date: 25.11.97
Commencement Date: All of Act (*except* ss 5(1), 6, 15, 18) on 25.11.97:
s. 2(1); ss 5(1), 6 on 12.12.97: Government Gazette
11.12.97 p. 3364; ss 15, 18 on 31.3.98: Government
Gazette 11.12.97 p. 3365
Current State: This information relates only to the provision/s
amending the **Local Government Act 1989**

Audit (Amendment) Act 1997, No. 93/1997

Assent Date: 16.12.97
Commencement Date: S. 28(Sch. item 18) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Local Government Act 1989**

Geographic Place Names Act 1998, No. 7/1998

Assent Date: 21.4.98
Commencement Date: S. 23 on 31.12.98: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Local Government Act 1989**

Victorian Plantations Corporation (Amendment) Act 1998, No. 35/1998

Assent Date: 19.5.98
Commencement Date: S. 17 on 26.6.98: Government Gazette 25.6.98 p. 1561
Current State: This information relates only to the provision/s
amending the **Local Government Act 1989**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Local Government Act 1989**

Melbourne City Link (Exhibition Street Extension) Act 1998, No. 50/1998

Assent Date: 2.6.98
Commencement Date: 2.6.98: s. 2
Current State: All of Act in operation

**Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998,
No. 52/1998**

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 items 55.1–55.9) on 1.7.98: Government
Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s
amending the **Local Government Act 1989**

Local Government (Amendment) Act 1998, No. 54/1998

Assent Date: 13.10.98
Commencement Date: 13.10.98
Current State: All of Act in operation

Local Government Act 1989
No. 11 of 1989
Endnotes

Local Government (Governance and Melton) Act 1998, No. 86/1998

Assent Date: 17.11.98
Commencement Date: Pt 3 (s. 26) on 17.11.98: s. 2(1)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Rail Corporations (Further Amendment) Act 1998, No. 98/1998

Assent Date: 24.11.98
Commencement Date: S. 47 on 29.4.99: Government Gazette 29.4.99 p. 967
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government (Melbourne City Council Rates) Act 1999, No. 23/1999

Assent Date: 25.5.99
Commencement Date: 25.5.99
Current State: All of Act in operation

The Constitution Act Amendment (Amendment) Act 1999, No. 24/1999

Assent Date: 25.5.99
Commencement Date: 8.6.99: s. 2
Current State: All of Act in operation

Audit (Amendment) Act 1999, No. 53/1999

Assent Date: 14.12.99
Commencement Date: S. 26(Sch. item 15) on 1.1.00: Government Gazette 23.12.99 p. 2764
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government (Best Value Principles) Act 1999, No. 59/1999

Assent Date: 21.12.99
Commencement Date: 22.12.99: s. 2
Current State: All of Act in operation

Local Government (Governance) Act 2000, No. 23/2000

Assent Date: 16.5.00
Commencement Date: 17.5.00: s. 2
Current State: All of Act in operation

Local Government (Restoration of Local Democracy to Melton) Act 2000, No. 55/2000

Assent Date: 31.10.00
Commencement Date: Ss 3, 4 on 1.11.00: s. 2(1); s. 5 on 17.10.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

City of Melbourne Act 2001, No. 5/2001

Assent Date: 8.5.01
Commencement Date: S. 30 on 9.5.01: Special Gazette (No. 67) 9.5.01 p. 1
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government Act 1989
No. 11 of 1989
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Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001

Assent Date: 8.5.01
Commencement Date: S. 3(Sch. item 42) on 1.6.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 74) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Statute Law (Further Revision) Act 2002, No. 11/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. 1 item 42) on 24.4.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Electoral Act 2002, No. 23/2002

Assent Date: 12.6.02
Commencement Date: S. 198 on 1.9.02: Government Gazette 29.8.02 p. 2333
Current State: This information relates only to the provision/s amending **Local Government Act 1989**

Environment Protection (Resource Efficiency) Act 2002, No. 37/2002

Assent Date: 18.6.02
Commencement Date: S. 31 on 1.7.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government (Democratic Reform) Act 2003, No. 109/2003

Assent Date: 9.12.03
Commencement Date: Ss 3–7, 9, 15–18, 21, 22, 24, 25, 32, 33, 35(1), 36, 37, 40–42, 46–51, 52(1)(2)(4)(5), 54–56, 61, 64–69, 78, 79, 84–88, 92, 93 on 10.12.03: Special Gazette (No. 230) 10.12.03 p. 3; ss 34, 35(2) on 7.1.04: Special Gazette (No. 230) 10.12.03 p. 3; ss 71–76 on 1.2.04: s. 2(2); ss 80, 82, 83 on 13.2.04: Special Gazette (No. 230) 10.12.03 p. 3; ss 53, 57–60, 62, 63, 70 on 31.7.04: Government Gazette 29.7.04 p. 2120; s. 81 on 20.8.04: Government Gazette 29.7.04 p. 2120; s. 89 on 29.10.04: Government Gazette 28.10.04 p. 2978; ss 10–12, 14, 19, 20, 23, 27–31, 38, 39, 43–45, 52(3), 90 on 31.12.04: s. 2(4)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Road Management Act 2004, No. 12/2004

Assent Date: 11.5.04
Commencement Date: Ss 143–147 on 1.7.04: s. 2(2)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government Act 1989
No. 11 of 1989
Endnotes

Surveying Act 2004, No. 47/2004

Assent Date: 16.6.04
Commencement Date: S. 71(Sch. item 2) on 1.1.05: s. 2(2)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Planning and Environment (General Amendment) Act 2004, No. 81/2004

Assent Date: 16.11.04
Commencement Date: S. 49 on 23.5.05: Government Gazette 19.5.05 p. 930
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

State Concessions Act 2004, No. 82/2004

Assent Date: 16.11.04
Commencement Date: S. 13(Sch. item 5) on 1.3.05: s. 2(2)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 117) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Statute Law Revision Act 2005, No. 10/2005

Assent Date: 27.4.05
Commencement Date: S. 3(Sch. 1 item 14) on 28.4.05: s. 2
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 61) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Electoral Legislation (Further Amendment) Act 2005, No. 38/2005

Assent Date: 27.7.05
Commencement Date: S. 21 on 28.7.05: s. 2
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government (Amendment) Act 2005, No. 41/2005

Assent Date: 27.7.05
Commencement Date: 28.7.05: s. 2
Current State: All of Act in operation

Local Government (Further Amendment) Act 2005, No. 53/2005

Assent Date: 13.9.05
Commencement Date: S. 14 on 13.9.05: s. 2
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government Act 1989
No. 11 of 1989
Endnotes

Statute Law (Further Revision) Act 2006, No. 29/2006

Assent Date: 6.6.06
Commencement Date: S. 3(Sch. 1 item 18) on 7.6.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Energy Legislation (Miscellaneous Amendments) Act 2006, No. 31/2006

Assent Date: 13.6.06
Commencement Date: S. 10 on 14.6.06: s. 2(1), s. 11 on 1.4.07: s. 2(2)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Infringements (Consequential and Other Amendments) Act 2006, No. 32/2006

Assent Date: 13.6.06
Commencement Date: S. 94(Sch. item 30) on 1.7.06: Government Gazette 29.6.06 p. 1315
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Payroll Tax Act 2007, No. 26/2007

Assent Date: 26.6.07
Commencement Date: S. 113 on 1.7.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Fair Trading and Consumer Acts Further Amendment Act 2008, No. 2/2008

Assent Date: 11.2.08
Commencement Date: S. 57 on 12.2.08: s. 2(1)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Relationships Act 2008, No. 12/2008

Assent Date: 15.4.08
Commencement Date: S. 73(1)(Sch. 1 item 38) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government Amendment (Elections) Act 2008, No. 35/2008

Assent Date: 5.8.08
Commencement Date: Ss 3–38 on 15.8.08: s. 2
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government Amendment (Councillor Conduct and Other Matters) Act 2008, No. 67/2008

Assent Date: 18.11.08
Commencement Date: Ss 4–19, 26–84 on 19.11.08: s. 2(1); ss 20–25 on 2.12.08: Government Gazette 27.11.08 p. 2755
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government Act 1989
No. 11 of 1989
Endnotes

Local Government Amendment (Conflicting Duties) Act 2009, No. 53/2009

Assent Date: 8.9.09
Commencement Date: 9.9.09: s. 2
Current State: All of Act in operation

Local Government Amendment (Offences and Other Matters) Act 2009, No. 64/2009

Assent Date: 17.11.09
Commencement Date: Ss 36–61 on 8.12.09: Special Gazette (No. 455) 8.12.09 p. 1; ss 4–35 on 1.2.10: Special Gazette (No. 455) 8.12.09 p. 1
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Planning Legislation Amendment Act 2009, No. 66/2009

Assent Date: 17.11.09
Commencement Date: S. 8 on 18.11.09: s. 2
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 80) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 2 item 31) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Valuation of Land Amendment Act 2009, No. 94/2009

Assent Date: 15.12.09
Commencement Date: S. 31 on 1.5.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Transport Integration Act 2010, No. 6/2010 (as amended by No. 45/2010)

Assent Date: 2.3.10
Commencement Date: Ss 25(5)(Sch. 2 item 6), 203(1)(Sch. 6 item 29) on 1.7.10: Special Gazette (No. 256) 30.6.10 p. 1
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Equal Opportunity Act 2010, No. 16/2010

Assent Date: 27.4.10
Commencement Date: S. 209(Sch. item 4) on 1.8.11: s. 2(4)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government Act 1989
No. 11 of 1989
Endnotes

Local Government and Planning Legislation Amendment Act 2010, No. 58/2010

Assent Date: 14.9.10
Commencement Date: Ss 3–34 on 24.9.10: Government Gazette 23.9.10 p. 2186
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Marine Safety Act 2010, No. 65/2010

Assent Date: 28.9.10
Commencement Date: S. 420(Sch. 3 item 9) on 1.7.12: s. 2(2)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Statute Law Revision Act 2011, No. 29/2011

Assent Date: 21.6.11
Commencement Date: S. 3(Sch. 1 item 55) on 22.6.11: s. 2(1)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government Amendment (Electoral Matters) Act 2011, No. 44/2011

Assent Date: 6.9.11
Commencement Date: Ss 3–8 on 1.1.12: s. 2(2)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Associations Incorporation Reform Act 2012, No. 20/2012

Assent Date: 1.5.12
Commencement Date: S. 226(Sch. 5 item 19) on 26.11.12: Special Gazette (No. 384) 20.11.12 p. 1
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Primary Industries and Food Legislation Amendment Act 2012, No. 60/2012

Assent Date: 23.10.12
Commencement Date: S. 71 on 1.12.12: Special Gazette (No. 399) 27.11.12 p. 1
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government Legislation Amendment (Miscellaneous) Act 2012, No. 63/2012

Assent Date: 30.10.12
Commencement Date: Ss 3–19, 21, 24–28 on 31.10.12: s. 2(1); ss 20, 22, 23 on 1.7.13: s. 2(3)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Planning and Environment Amendment (General) Act 2013, No. 3/2013

Assent Date: 19.2.13
Commencement Date: Ss 7, 13 on 22.7.13: Special Gazette (No. 250) 2.7.13 p. 1
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government Act 1989
No. 11 of 1989
Endnotes

Statute Law Amendment (Directors' Liability) Act 2013, No. 13/2013

Assent Date: 13.3.13
Commencement Date: Ss 33–36 on 14.3.13: s. 2
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Heavy Vehicle National Law Application Act 2013, No. 30/2013

Assent Date: 4.6.13
Commencement Date: S. 60(Sch. item 6) on 10.2.14: Special Gazette (No. 28) 4.2.14 p. 1
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Workplace Injury Rehabilitation and Compensation Act 2013, No. 67/2013

Assent Date: 12.11.13
Commencement Date: S. 649(Sch. 9 item 22) on 1.7.14: s. 2(1)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government Amendment (Performance Reporting and Accountability) Act 2014, No. 5/2014

Assent Date: 11.2.14
Commencement Date: Ss 4–10, 11(2)–(5), 12, 15, 16 on 18.4.14: s. 2(1); ss 11(1), 13, 14 on 1.1.15: s. 2(2)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Legal Profession Uniform Law Application Act 2014, No. 17/2014

Assent Date: 25.3.14
Commencement Date: S. 160(Sch. 2 item 57) on 1.7.15: Special Gazette (No. 151) 16.6.15 p. 1
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 99) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Filming Approval Act 2014, No. 51/2014

Assent Date: 12.8.14
Commencement Date: S. 9(Sch. 2 item 8) on 1.3.15: s. 2(2)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Privacy and Data Protection Act 2014, No. 60/2014

Assent Date: 2.9.14
Commencement Date: S. 140(Sch. 3 item 29) on 17.9.14: Special Gazette (No. 317) 16.9.14 p. 1
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

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Inquiries Act 2014, No. 67/2014

Assent Date: 23.9.14
Commencement Date: S. 147(Sch. 2 item 24) on 15.10.14: Special Gazette (No. 364) 14.10.14 p. 2
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government Legislation Amendment (Environmental Upgrade Agreements) Act 2015, No. 39/2015

Assent Date: 8.9.15
Commencement Date: Ss 3, 4 on 1.11.15: Special Gazette (No. 317) 27.10.15 p. 1
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government Amendment (Improved Governance) Act 2015, No. 53/2015

Assent Date: 27.10.15
Commencement Date: Ss 6, 7, 9, 11, 64, 65 on 18.11.15: Special Gazette (No. 349) 18.11.15 p. 1; ss 4, 5, 8, 10, 12, 14–55, 57–63, 66–76 on 1.3.16: Special Gazette (No. 25) 23.2.16 p. 1; ss 13, 56 on 1.9.16: s. 2(2)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government Amendment (Fair Go Rates) Act 2015, No. 65/2015

Assent Date: 1.12.15
Commencement Date: Ss 3–9 on 2.12.15: s. 2
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Integrity and Accountability Legislation Amendment (A Stronger System) Act 2016, No. 30/2016

Assent Date: 31.5.16
Commencement Date: S. 83 on 1.7.16: Special Gazette (No. 194) 21.6.16 p. 1
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government Amendment Act 2016, No. 46/2016

Assent Date: 31.8.16
Commencement Date: S. 3 on 31.8.16: s. 2
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Freedom of Information Amendment (Office of the Victorian Information Commissioner) Act 2017, No. 20/2017

Assent Date: 16.5.17
Commencement Date: S. 134(Sch. 1 item 11) on 1.9.17: s. 2(3)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

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Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017, No. 49/2017

Assent Date: 26.9.17
Commencement Date: Ss 79, 80 on 1.12.17: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Local Government Act 1989**

State Taxation Acts Further Amendment Act 2017, No. 67/2017

Assent Date: 19.12.17
Commencement Date: S. 78 on 20.12.17: s. 2(4)
Current State: This information relates only to the provision/s
amending the **Local Government Act 1989**

3 Amendments Not in Operation

There are no amendments which were Not in Operation at the date of this publication.

4 Explanatory details

No entries at date of publication.