

# Local Government Bill

## Exposure Draft

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**Victoria**

# **Local Government Bill**

## **Exposure Draft**

### **Part 1—Preliminary**

#### **1 Purpose**

The purpose of this Act is to give effect to section 74A(1) of the **Constitution Act 1975** which 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 Commencement

- (1) Section 1 and this section come into operation on the day after the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in subsection (2) does not come into operation before 31 December 2019, it comes into operation on that day.

## 3 Definitions

- (1) In this Act—

***Audit and Risk Committee*** means the Audit and Risk Committee established by a Council under section 52;

***auditor*** means the Auditor-General;

***bullying*** by a Councillor means the Councillor repeatedly behaves unreasonably towards another Councillor or a member of Council staff and that behaviour creates a risk to the health and safety of that other Councillor or member of Council staff;

***capital improved value*** 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 realise 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;

***Chief Executive Officer*** means the person appointed by a Council under section 43 to be its Chief Executive Officer or any person acting in that position;

***Chief Executive Officer Employment and Remuneration Policy*** means a Chief Executive Officer Employment and Remuneration Policy developed by a Council under section 44;

***Chief Municipal Inspector*** means the person appointed under section 216;

***close of the roll*** means 4 p.m. on the day that is—

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

***Community Asset Committee*** means a Community Asset Committee established by a Council under section 62;

***community engagement policy*** means a community engagement policy adopted and maintained by a Council under section 54;

***community engagement principles*** means the principles specified in section 55;

***Community Vision*** means a Community Vision maintained by a Council under section 83;

***confidential information*** means the following information—

- (a) Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released;
- (b) Council security information, being information that if released is likely to endanger the security of Council



property, Councillors or members of Council staff;

- (c) land use planning information, being information that if prematurely released is likely to encourage speculation in land values;
  - (d) law enforcement information, being information which if released would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person;
  - (e) legal privileged information, being information to which legal professional privilege or client legal privilege applies;
  - (f) personal information, being information which if released would result in the unreasonable disclosure of information relating to the personal affairs of any person;
  - (g) private commercial information, being information provided by a business, commercial or financial undertaking that relates to trade secrets or information that if released would unreasonably expose the business, commercial or financial undertaking to disadvantage;
  - (h) internal resolution information, being information specified in section 181(4);
  - (i) Councillor Conduct Panel confidential information, being information specified in section 204;
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- (j) information prescribed by the regulations to be confidential information for the purposes of this definition;

***corporation*** includes—

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

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

***Council meeting*** means a Council meeting that complies with section 59(1);

***Council Plan*** means a Council Plan prepared and adopted by a Council under section 85;

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

***Councillor Code of Conduct*** means the Councillor Code of Conduct developed by a Council under section 179;

***Councillor Conduct Officer*** means the person appointed in writing by the Chief Executive Officer to be the Councillor Conduct Officer for the Council under section 185;

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***Councillor Conduct Panel*** means a panel formed by the Principal Councillor Conduct Registrar under section 191;

***delegated committee*** means a delegated committee appointed by a Council under section 61;

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

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

- (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;

***donation period*** means the period—

- (a) commencing on whichever is the later of—
  - (i) 30 days after the last general election for the Council; or
  - (ii) 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
- (b) ending 30 days after election day in the current election for the Council;

***election day*** means the day of an election determined under section 271 or 274;

***election manager*** means—

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

***election period*** means the period that—

- (a) starts at the time that nominations close on nomination day; and
- (b) ends at 6 p.m. on election day;

***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 that is only announcing the holding of a meeting;

***electoral representation advisory panel*** means a panel established under section 15(1);

***environmental upgrade agreement*** means an agreement entered into in accordance with section 134;

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***environmental upgrade charge*** means a charge declared under section 136;

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

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

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

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

***financial management principles*** means the principles specified in section 96;

***general Order*** means an Order made by the Minister under section 141;

***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;

***gift disclosure threshold*** means \$500 or a higher amount or value prescribed by the regulations;

***good governance*** has the meaning given by section 7(2);

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***Governance Rules*** means Governance Rules developed by a Council under section 58;

***gross misconduct*** by a Councillor means behaviour that demonstrates that a Councillor—

- (a) is not of good character; or
- (b) is otherwise not a fit and proper person to hold the office of Councillor;

***how-to-vote card*** 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;

***IBAC*** means the Independent Broad-based Anti-corruption Commission established under section 12 of the **Independent Broad-based Anti-corruption Commission Act 2011**;

***Integrity Minister*** means the Minister administering section 216;

***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
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- (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;

***member of Council staff*** means a natural person appointed by the Chief Executive Officer (other than an independent contractor under a contract for services or a volunteer) under section 47 to enable—

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

**Note**

The Chief Executive Officer is also a member of Council staff—see section 43(5).

***misconduct*** by a Councillor means any of the following—

- (a) the failure by a Councillor to comply with the Council's internal resolution procedure;
- (b) the failure by a Councillor to comply with a written direction given by the Council after the Council's internal resolution procedure has been completed;
- (c) the repeated contravention of the Councillor Code of Conduct after an arbiter has made a finding on a



previous occasion that the Councillor failed to comply with the Councillor Code of Conduct;

***municipal community*** includes—

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

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

***Municipal Monitor*** means a person appointed to be a Municipal Monitor to a Council under section 213;

***municipal rates*** means municipal rates declared under section 103;

***nomination day*** means the last day on which nominations to be a candidate at a Council election may be received in accordance with this Act and the regulations;

***overarching governance principles*** means the principles specified in section 8(2);

***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 188 for the purposes of forming Councillor Conduct Panels;

*person* in relation to Divisions 1 to 9 of Part 9, means a natural person who has attained the age of 18 years;

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

*Principal Accounting Officer* means the person designated by a Council as the officer responsible for managing the Council's finances;

*Principal Councillor Conduct Registrar* means the person appointed by the Secretary to be the Principal Councillor Conduct Registrar under section 183;

*principal place of residence* has the same meaning as it has in section 3 of the **Electoral Act 2002**;

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

*Privacy and Data Protection Deputy Commissioner* means the Privacy and Data Protection Deputy Commissioner appointed under the **Privacy and Data Protection Act 2014**;

*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 a Territory of the Commonwealth, or the Commonwealth;

*public transparency policy* means a public transparency policy adopted under section 56;

*public transparency principles* means the principles specified in section 57;

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

***rateable land*** means any land that is rateable under section 101;

***rateable property***, in relation to Division 6 of Part 5 or Division 1 of Part 9, means an occupancy which—

- (a) is required to be separately valued under section 13DC of the **Valuation of Land Act 1960**; and
- (b) is rateable land but does not include an occupancy that is used, or is intended to be used, for the sole purpose of—
  - (i) parking a single ***motor vehicle*** within the meaning of section 3(1) of the **Road Safety Act 1986**; or
  - (ii) mooring a single ***vessel*** within the meaning of section 3(1) of the **Marine Safety Act 2010**; or
  - (iii) storage, being a single lockable unit with a floor area not exceeding 25 square metres;

***restructuring advisory panel*** means a panel established by the Minister under section 253(1);

***Secretary*** means Secretary to the Department;

***serious misconduct*** by a Councillor means any of the following—

- (a) the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor;

- (b) the failure of a Councillor to comply with a direction of a Councillor Conduct Panel to provide information to the Councillor Conduct Panel;
- (c) 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;
- (d) bullying by a Councillor of another Councillor or a member of Council staff;
- (e) the disclosure by a Councillor of information the Councillor knows, or should reasonably know, is confidential information;
- (f) the failure by a Councillor to disclose a conflict of interest and to exclude themselves from the decision making process when required to do so in accordance with this Act;
- (g) conduct by a Councillor that contravenes the requirement that a Councillor must not direct, or seek to direct, a member of Council staff;

***service charges*** means service charges declared under section 103;

***service performance principles*** means the principles specified in section 145(2);

***special Order*** means an Order made by the ESC under section 142;

***special purpose charges*** means special purpose charges declared under section 111;

***strategic planning principles*** means the principles specified in section 84(2);

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***supporting principles*** means the principles specified in section 8(3);

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

***VEC*** 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;

***voting centre*** means a place appointed by the election manager for voting at an election as—

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

***ward*** means a subdivision of a municipal district;

***workforce plan*** means a workforce plan developed and maintained by the Chief Executive Officer of a Council under section 45(4)(a).

- (2) In this Act, ***electoral matter*** 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 election manager for the purposes of conducting an election.
  - (3) Without limiting the generality of the definition of ***electoral matter***, 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—
    - (a) the election; or
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- (b) a candidate in the election; or
  - (c) an issue submitted to, or otherwise before, the voters in connection with the election.
- (4) 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.
- (5) 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.
- (6) Subsection (4) or (5) does not apply if an intention contrary to the effect of that subsection appears in the description.
- (7) If a municipal district is not subdivided, a reference to **ward** is to be taken to be a reference to the municipal district.
- (8) 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.
- (9) For the purposes of subsection (8), ***resolution of the Council*** means the following—
- (a) a resolution made at a Council meeting;
  - (b) a resolution made at a meeting of a delegated committee;

- (c) the exercise of a power or the performance of a duty or function of the Council by a member of Council staff or a Community Asset Committee under delegation.

#### **4 Objectives of Act**

The objectives of this Act are to ensure that—

- (a) local government continues to be constituted as a democratically elected tier of Government in Victoria; and
- (b) Councils are constituted as representative bodies that are accountable, transparent, collaborative, efficient and engaged with their communities; and
- (c) Councils have the functions and powers necessary to enable Councils to perform their role.

#### **5 Transport Integration Act 2010**

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

#### **6 Filming Approval Act 2014**

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

## **Part 2—Councils**

### **Division 1—Role and powers of a Council**

#### **7 Role of a Council**

- (1) The role of a Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community.
- (2) A Council provides good governance if it complies with section 8.
- (3) In performing its role, a Council may—
  - (a) perform any duties or functions or exercise any powers conferred on a Council by or under this Act or any other Act; and
  - (b) perform any other functions that the Council determines are necessary to enable the Council to perform its role.
- (4) If it is necessary to do so for the purpose of performing its role, a Council may perform a function outside its municipal district.

#### **8 Overarching governance principles and supporting principles**

- (1) A Council must in the performance of its role give effect to the overarching governance principles.
- (2) The following are the overarching governance principles—
  - (a) Council decisions are to be made and actions taken in accordance with the relevant law;
  - (b) priority is to be given to achieving the best outcomes for the municipal community, including future generations;



- (c) the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted;
  - (d) the municipal community is to be engaged in strategic planning and strategic decision making;
  - (e) innovation and continuous improvement is to be pursued;
  - (f) collaboration with other Councils and Governments and statutory bodies is to be sought;
  - (g) the ongoing financial viability of the Council is to be ensured;
  - (h) regional, state and national plans and policies are to be taken into account in strategic planning and decision making;
  - (i) the public accountability of the Council must be recognised and the transparency of Council decisions, actions and information is to be ensured.
- (3) In giving effect to the overarching governance principles, a Council must take into account the following supporting principles—
- (a) the community engagement principles;
  - (b) the public transparency principles;
  - (c) the strategic planning principles;
  - (d) the financial management principles;
  - (e) the service performance principles.

## **9 General power**

- (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
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convenient to be done in connection with the performance of its role.

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

#### **10 Power of delegation**

- (1) A Council may by instrument of delegation delegate to—

- (a) the members of a delegated committee; or
- (b) the Chief Executive Officer—

any power, duty or function of a Council under this Act or any other Act other than a power, duty or function specified in subsection (2).

- (2) The following are specified for the purposes of subsection (1)—

- (a) the power of delegation;
  - (b) the power to elect a Mayor or Deputy Mayor;
  - (c) the power to appoint the Chief Executive Officer, whether on a permanent or acting basis;
  - (d) the power to approve or amend the Council Plan;
  - (e) the power to adopt or amend any policy that the Council is required to adopt under this Act;
  - (f) the power to adopt or amend the Governance Rules;
  - (g) the power to appoint members to a delegated committee;
  - (h) the power to make, amend or revoke a local law;
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- (i) the power to approve the budget or revised budget;
  - (j) the power to borrow money;
  - (k) subject to section 136(4), the power to declare a municipal rate, service charge or special purpose charge;
  - (l) any power prescribed by the regulations for the purposes of this subsection.
- (3) A delegation may be made subject to any conditions or limitations specified in the instrument of delegation.
- (4) A delegation that includes the power to enter into a contract or make any expenditure must specify a maximum monetary limit that cannot be exceeded.
- (5) A Council must review, within the period of 12 months after a general election, all delegations which have been made under this section and are still in force.
- (6) A Council must keep a public register of delegations made under this section.

**Note**

See section 46 for the power of delegation of a Chief Executive Officer.

## **Division 2—Constitution of a Council**

### **11 How is a Council constituted?**

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

### **12 Constitution of a Council**

- (1) A Council must consist of not fewer than 5 Councillors and not more than 12 Councillors.

- (2) The Mayor and Deputy Mayor are Councillors of the Council.
- (3) The number of Councillors of a Council for the purposes of subsection (1) is to be determined in accordance with the criteria prescribed by the regulations.
- (4) A Council may be constituted so that it consists of—
  - (a) all Councillors elected to represent the municipal district as a whole; or
  - (b) all Councillors elected to represent multi-member wards into which the municipal district is divided with an equal number of Councillors to represent each ward; or
  - (b) all Councillors elected to represent single member wards into which the municipal district is divided.

### **13 Council is a body corporate**

- (1) 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.
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- (2) The common seal of a Council must—
  - (a) bear the name of the Council 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 Governance Rules.
- (3) 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.

#### **14 Electoral structure of a Council**

- (1) 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 in relation to the electoral structure of a Council—
  - (a) specify or alter the total number of Councillors to be elected for the Council;
  - (b) specify that the municipal district of the Council is to be an un-subdivided municipal district;
  - (c) specify that the municipal district of the Council is to be subdivided into a specified number of wards;
  - (d) alter the number of wards into which the municipal district of the Council is subdivided;
  - (e) specify or alter the number of Councillors to be elected for each ward of the municipal district of the Council;

- (f) alter the boundaries of wards of the municipal district of the Council by adding or removing an area to, or from, an existing ward;
    - (g) give a name to, or alter the name of, a ward of the municipal district of the Council.
  - (2) Before recommending the making of an Order in Council under this section that provides for the subdivision of a municipal district into wards or alteration of the wards of a municipal district, the Minister must seek to ensure that—
    - (a) each ward has approximately an equal number of voters per Councillor; and
    - (b) the number of voters per Councillor in a ward does not vary from the average number of voters per Councillor in any other ward by more than 10 per cent.
  - (3) An Order in Council made under this section—
    - (a) must specify a day or days upon which the Order in Council comes into operation; and
    - (b) may provide that the new electoral structure of the Council has effect for the purposes of, and from, the next general election of the Council; and
    - (c) may provide that the alterations to the electoral structure of the Council specified in the Order in Council are described in a map lodged in the Central Plan Office or with the VEC as specified in the Order in Council; and
    - (d) upon being published in the Government Gazette has the like force and effect as if it were expressly enacted in this Act; and
    - (e) may be amended or revoked by another Order in Council; and
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- (f) 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 in Council.

## **15 Electoral structure review**

- (1) The Minister may, before recommending the making of an Order in Council under section 14, establish an electoral representation advisory panel to advise the Minister in relation to the electoral structure of a Council.
- (2) The Minister may request the electoral representation advisory panel to provide advice to the Minister with respect to any or all of the following—
  - (a) whether the municipal district of the Council should be un-subdivided or divided into wards;
  - (b) what the boundaries of any ward or wards of the municipal district of a Council should be;
  - (c) any other matter relating to the electoral structure of the Council that the Minister requires advice on.
- (3) An electoral structure recommended by an electoral representation advisory panel must—
  - (a) provide fair and equitable representation; and
  - (b) facilitate good governance; and
  - (c) comply with any criteria prescribed by the regulations for the purposes of this section.
- (4) An electoral representation advisory panel must conduct the review in accordance with the directions given by the Minister in respect of the review.

- (5) The directions must include a process for community engagement.
- (6) The Minister or a person engaged by the Minister to support a review by an electoral representation advisory panel may send to the Council in respect of which the review is being conducted an account of the reasonable expenses incurred as a consequence of the review.
- (7) The Council must pay the account received under subsection (6).

#### **16 Ward boundary review**

- (1) This section applies if the Minister receives advice from the VEC that the number of voters per Councillor in one or more wards of the municipal district of the Council will vary from the average number of voters per Councillor in any other ward by more than 10 per cent by the time that the next general election is to be held.
- (2) If this section applies, the Minister may request the VEC to—
  - (a) conduct a review of the boundaries of the wards of the municipal district of the Council specified in the request; and
  - (b) provide a report to the Minister containing recommendations in respect of any changes required to the boundaries of the wards of the municipal district of the Council specified in the request.
- (3) Subject to this section, the VEC may conduct the review in any manner that the VEC considers appropriate.
- (4) In conducting the review, the VEC must ensure that a process of community engagement is followed.



- (5) The VEC may send to the Council in respect of which the review is being conducted an account of the reasonable expenses incurred as a consequence of the review.
- (6) The Council must pay the account received under subsection (5).
- (7) The Minister may recommend to the Governor in Council that an Order in Council be made under section 14 to implement the recommendations made in the report under subsection (2).

### **Division 3—The Mayor and the Deputy Mayor**

#### **17 Role of the Mayor**

The role of the Mayor is to—

- (a) chair Council meetings; and
- (b) be the principal spokesperson for the Council; and
- (c) lead engagement with the municipal community on the development of the Council Plan; and
- (d) report to the municipal community, at least once each year, on the implementation of the Council Plan; and
- (e) promote behaviour among Councillors that meets the standards set out in the Councillor Code of Conduct; and
- (f) assist Councillors to understand their role; and
- (g) take a leadership role in ensuring the regular review of the performance of the Chief Executive Officer; and

- (h) provide advice to the Chief Executive Officer when the Chief Executive Officer is setting the agenda for Council meetings; and
- (i) perform civic and ceremonial duties on behalf of the Council.

### **18 Specific powers of the Mayor**

- (1) The Mayor has the following specific powers—
  - (a) to appoint a Councillor to be the chair of a delegated committee;
  - (b) to direct a Councillor, subject to any procedures or limitations specified in the Governance Rules, to leave a Council meeting if the behaviour of the Councillor is preventing the Council from conducting its business;
  - (c) to require the Chief Executive Officer to report to the Council on the implementation of a Council decision.
- (2) An appointment under subsection (1)(a) prevails over any appointment of a chair of a delegated committee by the Council.

### **19 When does the office of Mayor become vacant?**

The office of Mayor becomes vacant—

- (a) at the time and on the day of the election of the next Mayor; or
  - (b) on the day the Mayor resigns from the office of Mayor by giving the Chief Executive Officer a written notice of resignation; or
  - (c) on the day the Mayor ceases to hold the office of Councillor; or
  - (d) on the day the Mayor's office as a Councillor is suspended for any period; or
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- (e) on the day the Mayor becomes ineligible to hold the office of Mayor as a result of a decision by a Councillor Conduct Panel; or
- (f) on the day the office of Mayor is declared vacant by the Council in accordance with section 20.

## **20 Declaration of office of Mayor to be vacant**

- (1) A Council may only declare the office of Mayor vacant in accordance with this section.
- (2) A notice of motion to declare the office of Mayor vacant must be—
  - (a) signed by an absolute majority of the Councillors; and
  - (b) lodged with the Chief Executive Officer at least 14 days before the day on which the meeting to consider the motion is proposed; and
  - (c) provided to each Councillor by the Chief Executive Officer without delay.
- (3) The office of Mayor can only be declared vacant if the motion to declare the office of Mayor vacant is passed by a majority of at least three-quarters of all of the Councillors in office.
- (4) For the purposes of subsection (2)(a), *absolute majority* means the number of Councillors which is greater than half the total number of the Councillors of a Council.

## **21 Role and powers of the Deputy Mayor**

The Deputy Mayor must perform the role of the Mayor and may exercise any of the powers of the Mayor if—

- (a) the Mayor is unable for any reason to attend a Council meeting or part of a Council meeting; or

- (b) the Mayor is incapable of performing the duties of the office of Mayor for any reason, including illness; or
- (c) the office of Mayor is vacant.

**22 When does the office of Deputy Mayor become vacant?**

The office of Deputy Mayor becomes vacant—

- (a) at the time and on the day of the election of the next Mayor; or
- (b) on the day the Deputy Mayor resigns from the office of Deputy Mayor by giving the Chief Executive Officer a written notice of resignation; or
- (c) on the day the Deputy Mayor ceases to hold the office of Councillor; or
- (d) on the day the Deputy Mayor's office as a Councillor is suspended for any period; or
- (e) on the day the Deputy Mayor becomes ineligible to hold the office of Deputy Mayor as a result of a decision by a Councillor Conduct Panel.

**23 Local Government Mayoral Advisory Panel**

- (1) The Minister may establish and maintain an advisory panel to be called the Local Government Mayoral Advisory Panel.
  - (2) The role the Local Government Mayoral Advisory Panel is to provide advice to the Minister on matters relating to local government in Victoria referred by the Minister.
  - (3) The members of the Local Government Mayoral Advisory Panel—
    - (a) must be appointed by the Minister; and
    - (b) must include at least 5 Mayors.
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- (4) The terms of reference of the Local Government Mayoral Advisory Panel are to be determined by the Minister.
- (5) Meetings of the Local Government Mayoral Advisory Panel are to be chaired by the Minister.

## **Division 4—Election of Mayor and Deputy Mayor**

### **24 Application of Division**

This Division applies to the election of the Mayor and Deputy Mayor of a Council other than the Melbourne City Council.

### **25 Election of Mayor**

- (1) At a Council meeting that is open to the public, the Councillors must elect a Councillor to be the Mayor of the Council.
- (2) Subject to section 202(2)(d) and (3), any Councillor is eligible for election or re-election to the office of Mayor.
- (3) The meeting to elect the Mayor must—
  - (a) be chaired by the Chief Executive Officer; and
  - (b) subject to this section, conduct the election process in accordance with the Governance Rules.
- (4) Subject to subsections (5) and (6), the Mayor must be elected by an absolute majority of the Councillors.
- (5) If an absolute majority of the Councillors cannot be obtained at the meeting, the Council may resolve to conduct a new election at a later specified time and date.

- (6) If only one Councillor is a candidate for Mayor, the meeting must declare that Councillor to be duly elected as Mayor.
- (7) In this section, *absolute majority* means the number of Councillors which is greater than half the total number of the Councillors of a Council.

**26 When is a Mayor to be elected?**

- (1) A Mayor is to be elected no later than 1 month after the date of a general election.
- (2) The Mayor of the Greater Geelong City Council must be elected for a 2 year term.
- (3) Before the election of the Mayor, a Council, other than the Greater Geelong City Council, must determine by resolution whether the Mayor is to be elected for a 1 year or a 2 year term.
- (4) If the Mayor is elected for a 1 year term, the next election of the Mayor must be held on a day to be determined by the Council that is as close to the end of the 1 year term as is reasonably practicable.
- (5) If the Mayor is to be elected for a 2 year term, the next election of the Mayor must be held on a day to be determined by the Council that is as close to the end of the 2 year term as is reasonably practicable.
- (6) A Mayor is to be elected within one month after any vacancy in the office of Mayor occurs.
- (7) The election of a Mayor after the period specified in this section does not invalidate the election.
- (8) A Councillor elected to fill a vacancy in the office of Mayor caused other than by the expiration of a 1 year or a 2 year term serves the remaining period of the previous Mayor's term.

## **27 Election of Deputy Mayor**

- (1) The Councillors must, immediately after electing a Mayor at a meeting under section 26, elect another Councillor to the office of Deputy Mayor.
- (2) Subsections (2) to (7) of section 26 apply to the election of a Deputy Mayor as if any reference in those subsections to the Mayor was a reference to the Deputy Mayor.

## **Division 5—Councillors**

### **28 Role of a Councillor**

- (1) The role of every Councillor is—
    - (a) to participate in the decision making of the Council; and
    - (b) to represent the interests of the municipal 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 municipal community; and
    - (b) act with integrity; and
    - (c) participate in the responsible allocation of the resources of the Council; and
    - (d) facilitate and participate in effective communication between the Council and the municipal community; and
    - (e) acknowledge and support the role of the Mayor.
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- (3) The role of a Councillor does not include the performance of any responsibilities or functions of the Chief Executive Officer.

**29 Term of office of a Councillor**

The term of office of a Councillor—

- (a) commences on the day that the Councillor takes the oath or affirmation of office; and
- (b) ends at 6 a.m. on the day of the next general election for the Council.

**30 Oath or affirmation of office**

- (1) A person elected to be a Councillor is not capable of acting as a Councillor until the person has taken the oath or affirmation of office in the manner prescribed by the regulations.
- (2) The oath or affirmation 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, whether or not the oath or affirmation was taken at a Council meeting.

**31 Failure to take oath or affirmation of office**

The office of a Councillor becomes vacant if a person elected to be a Councillor does not take the oath or affirmation of office within 3 months after the day on which the person was declared elected.

**32 Qualification to be a Councillor**

- (1) A person is qualified to be a Councillor of a Council if the person—
  - (a) has attained the age of 18 years; and



- (b) is an Australian citizen or an eligible British subject referred to in section 48(1)(a) of the **Constitution Act 1975**; and
  - (c) is enrolled on the voters' roll for the Council; and
  - (d) is not a person to whom subsection (2) applies.
- (2) A person is not qualified to be a Councillor of a Council if the person—
- (a) would not be entitled to be enrolled on the voters' roll of the Council if a voters' roll was prepared at the particular time and does not obtain another entitlement to be on the voters' roll of the Council within 50 days; or
  - (b) is 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
  - (c) is 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
  - (d) is 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; or
  - (e) is a member of Council staff of the Council; or
  - (f) is an undischarged bankrupt; or
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- (g) has property that is subject to control under the law relating to bankruptcy; or
  - (h) is of unsound mind; or
  - (i) has failed to take the oath or affirmation of office of Councillor at any Council when required under this Act during the current term of office of that Council; or
  - (j) has been disqualified from being a Councillor after a finding of gross misconduct by VCAT and the period of disqualification specified in the order made by VCAT has not expired; or
  - (k) has been convicted of the offence of failing to lodge an election campaign donation return during the current term of the Council; or
  - (l) has been convicted of an offence against this Act in the preceding 8 years for which the maximum penalty is at least 120 penalty units or a period of imprisonment; or
  - (m) has been convicted of an offence in the preceding 8 years, committed when the person 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 a Territory of the Commonwealth, or the law of the Commonwealth.
- (3) For the purposes of subsection (2)(a), if the only entitlement that a person has is an entitlement to be enrolled as a resident of a 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.
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### **33 Councillor ceasing to hold office**

- (1) A Councillor ceases to hold the office of Councillor and the office of the Councillor becomes vacant if the Councillor—
  - (a) ceases to be qualified to be a Councillor; or
  - (b) dies; or
  - (c) resigns in writing delivered to the Chief Executive Officer; or
  - (d) is ousted from office; or
  - (e) subject to this section, is absent from meetings of the Council for a period of 4 consecutive months 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 a Council meeting—
  - (a) while any proceeding for ouster from office of the Councillor is pending; or
  - (b) while the Councillor is suspended from office.
- (4) A Councillor is not to be taken to be absent from meetings of the Council during the period of 6 months immediately after the Councillor—
  - (a) becomes a natural parent of a child; or
  - (b) becomes the spouse or de facto partner of a person who is a natural parent of a child; or
  - (c) has adopted a child under the age of 16 years—and has responsibility for the care of the child.

- (5) A person who has resigned as a Councillor cannot revoke the resignation after it has been delivered to the Chief Executive Officer.

**34 Ouster from office**

- (1) The Minister, the Chief Municipal Inspector or a Council of which a particular Councillor is a member may apply to the Supreme Court for the ouster from the office of Councillor of any person whom the Minister, the Chief Municipal Inspector or the Council believes is declared elected or holds the office of Councillor 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.

**35 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; and
- (b) is not entitled to receive a Councillor allowance for the term of the suspension unless this Act otherwise provides; and
- (c) must return all Council equipment and materials to the Council at the beginning of any term of suspension that will exceed 2 months in duration.

**36 Penalty for acting as a Councillor when not qualified**

- (1) Any person acting as a Councillor who knows or should reasonably know that they—
- (a) are not qualified to be a Councillor; or

(b) have ceased to hold the office of Councillor—

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.

(2) If a person is found guilty or convicted of an offence under subsection (1), the court may order that the person return to the Council any allowances, reimbursements, equipment or materials the person received as a result of acting as a Councillor for the period that the person acted as a Councillor when not qualified to do so.

(3) A person who—

(a) acts as a Councillor while not qualified to be a Councillor; and

(b) engages in conduct that would constitute an offence under this Act if that person were a Councillor—

is guilty of that offence as if that person were a Councillor.

### **Division 6—Entitlements**

#### **37 Minister may set allowances for Mayors, Deputy Mayors and Councillors**

(1) The Minister may by notice published in the Government Gazette specify the following—

(a) the amounts of allowances payable by a Council to the Mayor, the Deputy Mayor or a Councillor;

(b) the amount of annual increments to be applied to allowances;

(c) the time and manner in which allowances must be paid.

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(2) A notice under subsection (1) may make different provision for—

- (a) Mayors, Deputy Mayors and Councillors; and
- (b) different Councils or different categories of Councils.

### **38 General provisions relating to allowances**

(1) A Mayor or a Deputy Mayor is entitled to receive from the Council an allowance as a Mayor or a Deputy Mayor.

(2) A Councillor is entitled to receive from the Council an allowance as a Councillor.

(3) A Mayor or a Deputy Mayor is not entitled to receive an allowance as a Councillor while the Mayor or Deputy Mayor is receiving an allowance as a Mayor or a Deputy Mayor.

(4) A Council cannot pay an allowance to a Mayor, Deputy Mayor or Councillor that exceeds the relevant applicable allowance fixed by the Minister under section 37.

(5) A Mayor, Deputy Mayor or Councillor may elect—

- (a) to receive the entire allowance to which they are entitled; or
- (b) to receive a specified part of the allowance to which they are entitled; or
- (c) to receive no allowance.

### **39 Reimbursement of expenses of Councillors and members of a delegated committee**

(1) A Council must reimburse a Councillor or a member of a delegated committee for out-of-pocket expenses which the Council is satisfied—

- (a) are bona fide expenses; and

- (b) have been reasonably incurred in the performance of the role of Councillor or member of a delegated committee; and
  - (c) are reasonably necessary for the Councillor or member of a delegated committee to perform that role.
- (2) A Council must provide details of all reimbursements under this section to the Audit and Risk Committee.

#### **40 Council expenses policy**

- (1) A Council must adopt and maintain an expenses policy in relation to the reimbursement of out-of-pocket expenses for Councillors and members of delegated committees.
- (2) A policy adopted by a Council under this section must—
  - (a) specify procedures to be followed in applying for reimbursement and in reimbursing expenses; and
  - (b) comply with any requirements prescribed by the regulations in relation to the reimbursement of expenses; and
  - (c) provide for the reimbursement of child care costs where the provision of child care is reasonably required for a Councillor or member of a delegated committee to perform their role; and
  - (d) have particular regard to expenses incurred by a Councillor who is a carer in a care relationship within the meaning of section 4 of the **Carers Recognition Act 2012**.

#### **41 Resources and facilities for the Mayor and Councillors**

- (1) A Council must make available to the Mayor and the Councillors the resources and facilities reasonably necessary to enable them to effectively perform their role.
- (2) Without limiting the generality of subsection (1), a Council must—
  - (a) consider the support that may be required by a Mayor, Deputy Mayor or Councillor because of a disability or other special needs; and
  - (b) have particular regard to the support that may be required by a Councillor who is a carer in a care relationship within the meaning of section 4 of the **Carers Recognition Act 2012**.

#### **42 Indemnity provision**

A Council must indemnify and keep indemnified each Councillor and member of a delegated committee against all actions or claims whether arising during or after their term of office 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, delegated committee, Councillor or member of a delegated committee by or under this Act or any other Act.

### **Division 7—Chief Executive Officer and members of Council staff**

#### **43 The Chief Executive Officer**

- (1) Subject to this section, a Council must appoint a natural person to be its Chief Executive Officer in accordance with its Chief Executive Officer



Employment and Remuneration Policy under section 44.

- (2) A Chief Executive Officer must be appointed under a contract of employment with the Council that does not exceed 5 years.
- (3) A Chief Executive Officer is eligible to be re-appointed under a new contract of employment under subsection (2).
- (4) If there is a vacancy in the office of Chief Executive Officer or the Chief Executive Officer is unable to perform the duties of the office of Chief Executive Officer, the Council must appoint a person to be the Acting Chief Executive Officer.
- (5) The Chief Executive Officer or an Acting Chief Executive Officer is a member of Council staff.
- (6) A Council must comply with any requirements prescribed by the regulations in relation to the employment of a Chief Executive Officer.

#### **44 Chief Executive Officer Employment and Remuneration Policy**

- (1) A Council must develop, adopt and keep in force a Chief Executive Officer Employment and Remuneration Policy.
- (2) A Chief Executive Officer Employment and Remuneration Policy must—
  - (a) provide for the Council to obtain independent professional advice in relation to the matters dealt with in the Chief Executive Officer Employment and Remuneration Policy; and
  - (b) provide for the following—
    - (i) the recruitment and appointment process;

- (ii) provisions to be included in the contract of employment;
  - (iii) performance monitoring;
  - (iv) an annual review.
- (3) A Council must ensure that the Chief Executive Officer Employment and Remuneration Policy is consistent with the remuneration principles contained in the Government of Victoria's Policy on Executive Remuneration in Public Entities.

#### **45 Functions of the Chief Executive Officer**

- (1) A Chief Executive Officer is responsible for—
- (a) supporting the Mayor and the Councillors in the performance of their roles; and
  - (b) ensuring the effective and efficient management of the day to day operations of the Council.
- (2) Without limiting the generality of subsection (1)(a), this responsibility includes the following—
- (a) ensuring that the decisions of the Council are implemented without undue delay;
  - (b) ensuring that the Council receives timely and reliable advice about its obligations under this Act or any other Act;
  - (c) supporting the Mayor in the performance of the Mayor's role as Mayor;
  - (d) setting the agenda for Council meetings after consulting the Mayor;
  - (e) when requested by the Mayor, reporting to the Council in respect of the implementation of a Council decision;

- (f) 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 **Workplace Injury Rehabilitation and Compensation Act 2013**.

**Note**

See clause 15 of Schedule 1 to the **Workplace Injury Rehabilitation and Compensation Act 2013**.

- (3) Without limiting the generality of subsection (1)(b), this responsibility includes the following—
    - (a) establishing and maintaining an organisational structure for the Council;
    - (b) being responsible for all staffing matters, including appointing, directing, managing and dismissing members of Council staff;
    - (c) managing interactions between members of Council staff and Councillors and ensuring that policies, practices and protocols that support arrangements for interaction between members of Council staff and Councillors are developed and implemented;
    - (d) performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act.
  - (4) For the purposes of subsection (3)(a), a Chief Executive Officer must—
    - (a) develop and maintain a workforce plan that—
      - (i) describes the organisational structure of the Council; and
      - (ii) specifies the projected staffing requirements for a period of at least 4 years; and
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- (iii) sets out measures to seek to ensure gender equity, diversity and inclusiveness; and
  - (b) inform the Council before implementing an organisational restructure that will affect the capacity of the Council to deliver the Council Plan; and
  - (c) consult members of Council staff affected by a proposed organisational restructure, before implementing the organisational restructure.
- (5) A Council and the Chief Executive Officer must, in giving effect to gender equity, comply with any processes and requirements prescribed by the regulations for the purposes of this subsection.
- (6) A Chief Executive Officer must ensure that the Mayor, Deputy Mayor, Councillors and members of Council staff have access to the workforce plan.

#### **46 Delegations by Chief Executive Officer**

- (1) The Chief Executive Officer may by instrument of delegation delegate any power, duty or function of the Council that has been delegated to the Chief Executive Officer by the Council to—
  - (a) a member of Council staff; or
  - (b) the members of a Community Asset Committee.
- (2) The Chief Executive Officer may by instrument of delegation delegate any power, duty or function conferred by this Act on the Chief Executive Officer, other than this power of delegation and the power of delegation under subsection (1), to a member of Council staff.
- (3) A delegation under this section to a member of Council staff may be made to—
  - (a) a person named in the delegation; or

- (b) the holder of an office or position specified in the delegation.
- (4) A delegation under this section to the members of a Community Asset Committee is to be exercised subject to the terms and conditions specified by the Chief Executive Officer, which must include the following—
  - (a) the specified limit on any financial delegation and the specified purpose for which the financial delegation may be used;
  - (b) compliance with specified governance requirements to ensure appropriate standards of probity are met;
  - (c) specified monitoring and reporting of the activities and performance of the Community Asset Committee.
- (5) A Chief Executive Officer must submit an annual report to the Council in relation to the activities and performance of a Community Asset Committee in respect of which the members have been given a delegation under this section.
- (6) A Chief Executive Officer must keep a register of delegations made under this section.

#### **47 Members of Council staff**

- (1) A Chief Executive Officer may appoint as many members of Council staff as are required under the workforce plan to enable the functions of the Council under this Act or any other Act to be performed.
  - (2) For the purposes of section 107A(1)(o) of the **Evidence (Miscellaneous Provisions) Act 1958**, a senior officer of a Council is a senior member of Council staff who is authorised in writing by the Chief Executive Officer to witness statutory declarations.
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- (3) A Chief Executive Officer must not appoint as a member of Council staff any person who has been a Councillor of the Council within 2 years after the person ceases to hold that office.
- (4) Any appointment that contravenes subsection (3) is void.

#### **48 Code of conduct for members of Council staff**

- (1) A Chief Executive Officer must develop and implement a code of conduct for members of Council staff.
- (2) A code of conduct for members of Council staff must include a gift policy that contains—
  - (a) a requirement for members of Council staff to disclose all gifts above a specified level; and
  - (b) provisions providing for disclosed gifts to be recorded in a gift register.
- (3) A code of conduct for members of Council staff must include—
  - (a) procedures for dealing with alleged and actual breaches of conflict of interest under this Act; and
  - (b) provisions for the Chief Executive Officer to take disciplinary action against a member of Council staff.
- (4) The Chief Executive Officer must ensure that members of Council staff have access to the code of conduct for members of Council staff.

#### **49 Long service leave**

A Council must implement appropriate long service leave arrangements for members of Council staff in accordance with the regulations.

**50 Validity of decisions**

Anything done by a person purporting to act as a Chief Executive Officer or as a member of Council staff is not invalid merely because that person's contract of employment as a Chief Executive Officer or member of Council staff was void at the time the thing was done.

**51 Indemnity provision for Chief Executive Officer and members of Council staff**

A Council must indemnify and keep indemnified the Chief Executive Officer and each member of Council staff against all actions or claims whether arising during or after their term of office in respect of anything necessarily done or reasonably done or omitted to be done in good faith—

- (a) in the performance of a duty or a function or the exercise of a power under this Act, the regulations or a local law or any other Act; or
- (b) in the reasonable belief that the act or omission was in the performance of a duty or a function or the exercise of a power under this Act, the regulations or a local law or any other Act.

**Division 8—Audit and Risk Committee**

**52 Council must establish an Audit and Risk Committee**

- (1) A Council must establish an Audit and Risk Committee.
  - (2) An Audit and Risk Committee is not a delegated committee.
  - (3) An Audit and Risk Committee must—
    - (a) include members who are Councillors of the Council; and
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- (b) consist of a majority of members who are not Councillors of the Council and who collectively have—
  - (i) expertise in financial management and risk; and
  - (ii) experience in public sector management; and
- (c) not include any person who is a member of Council staff.
- (4) The chairperson of an Audit and Risk Committee must not be a Councillor of the Council.
- (5) Sections 162 and 164 and Division 2 of Part 7 apply to a member of the Audit and Risk Committee who is not a Councillor as if the member were a member of a delegated committee.
- (6) A Council may pay a fee to a member of an Audit and Risk Committee who is not a Councillor of the Council.

### **53 Audit and Risk Committee Charter**

- (1) A Council must prepare and approve an Audit and Risk Committee Charter.
  - (2) The Audit and Risk Committee Charter must specify the functions and responsibilities of the Audit and Risk Committee including the following—
    - (a) monitor the compliance of Council policies and procedures with—
      - (i) the overarching governance principles; and
      - (ii) this Act and the regulations and any Ministerial directions;
    - (b) monitor Council financial and performance reporting;
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- (c) monitor and provide advice on risk management and fraud prevention systems and controls;
    - (d) oversee internal and external audit functions.
  - (3) An Audit and Risk Committee must adopt an annual work program.
  - (4) An Audit and Risk Committee must—
    - (a) undertake an annual assessment of its performance against the Audit and Risk Committee Charter; and
    - (b) provide a copy of the annual assessment to the Chief Executive Officer for tabling at the next Council meeting.
  - (5) An Audit and Risk Committee must—
    - (a) prepare a biannual audit and risk report that describes the activities of the Audit and Risk Committee and includes its findings and recommendations: and
    - (b) provide a copy of the biannual audit and risk report to the Chief Executive Officer for tabling at the next Council meeting.
  - (6) The Chief Executive Officer must—
    - (a) ensure the preparation and maintenance of agendas, minutes and reports of the Audit and Risk Committee; and
    - (b) table reports of the Audit and Risk Committee at meetings of the Council when required by this Act and when requested by the chairperson of the Audit and Risk Committee.
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## **Part 3—Council decision making**

### **Division 1—Community accountability**

#### **54 Community engagement policy**

- (1) A Council must adopt and maintain a community engagement policy.
- (2) A community engagement policy must—
  - (a) give effect to the community engagement principles; and
  - (b) be capable of being applied in relation to any of the Council's strategic planning or policy development; and
  - (c) describe the type and form of community engagement proposed, having regard to the significance and complexity of the matter the subject of community engagement and the level of resourcing required; and
  - (d) specify a process for informing the municipal community of the outcome of the community engagement; and
  - (e) include any other matters prescribed by the regulations.
- (3) Without limiting the generality of subsection (2)(c), community engagement in the development of the Council Plan and the first Council budget after a general election must be undertaken in collaboration with the municipal community.

#### **55 The community engagement principles**

The following are the community engagement principles—

- (a) a community engagement process must have a clearly defined objective and scope;

- (b) participants in community engagement must have access to objective, relevant and timely information to inform their participation;
- (c) participants in community engagement must be representative of the persons and groups affected by the matter the subject of the community engagement;
- (d) participants in community engagement are entitled to support to enable meaningful and informed engagement;
- (e) participants in community engagement are informed of the ways in which the community engagement process will influence Council decision making.

**56 Public transparency policy**

- (1) A Council must adopt and maintain a public transparency policy.
- (2) A public transparency policy must—
  - (a) give effect to the public transparency principles; and
  - (b) describe the ways in which Council documents and information are to be made publicly available; and
  - (c) subject to section 57(1)(a), specify which Council documents and information must be publicly available, including all policies, plans and reports required under this Act or any other Act.

## **57 The public transparency principles**

- (1) The following are the public transparency principles—
  - (a) Council information must be publicly available unless—
    - (i) the information is confidential by virtue of this Act or any other Act; or
    - (ii) public availability of the information would be contrary to the public interest;
  - (b) Council information must be understandable and accessible to members of the municipal community;
  - (c) public awareness of the availability of Council information must be facilitated.
- (2) For the purposes of the public transparency principles, *information* includes documents.

## **Division 2—Procedure and proceedings**

### **58 Governance Rules**

- (1) A Council must develop, adopt and keep in force Governance Rules for or with respect to the following—
  - (a) the conduct of meetings of the Council;
  - (b) the conduct of meetings of delegated committees;
  - (c) the conduct of joint meetings of Councils;
  - (d) the form and availability of meeting records;
  - (e) the election of the Mayor and the Deputy Mayor;
  - (f) the disclosure of a conflict of interest by a member of Council staff when providing advice to the Council;

- (g) any other matters prescribed by the regulations.
- (2) The Governance Rules must provide for a Council to—
  - (a) consider and make decisions on any matter being considered by the Council fairly and on the merits; and
  - (b) institute decision making processes to ensure that any person whose rights will be directly affected by a decision of the Council is entitled to communicate their views and have their interests considered.
- (3) A Council must comply with its Governance Rules.

## **59 Council meetings**

- (1) A Council meeting is a meeting of the Council at which—
  - (a) all the Councillors are, subject to this Act, entitled to attend and vote; and
  - (b) no other person is entitled to vote; and
  - (c) a decision to do an act, matter or thing is made by a resolution of the Council.
- (2) Except as provided in this Act and subject to the Governance Rules, the conduct of Council meetings is in the Council's discretion.
- (3) A quorum at a Council meeting is an absolute majority.
- (4) A question before a Council meeting is to be determined as follows—
  - (a) each Councillor present at a Council meeting who is entitled to vote is entitled to one vote;

- (b) voting at a meeting must not be in secret, but if the meeting is closed to the public, a Councillor is not required to divulge their vote to the public;
  - (c) the question is determined in the affirmative by a majority of the Councillors present at a meeting at the time the vote is taken voting in favour of the question;
  - (d) subject to subsection (5), if the number of votes in favour of the question is half the number of Councillors present at the meeting at the time the vote is taken, the Mayor has a second vote;
  - (e) for the purpose of determining the result of a vote, a Councillor attending the meeting who does not vote is to be taken to have voted against the question.
- (5) Subsection (4)(d) does not apply where the question is—
- (a) a vote to declare the office of Mayor vacant;  
or
  - (b) the election of a Mayor or a Deputy Mayor.
- (6) In this section, ***absolute majority*** means the number of Councillors which is greater than half the total number of the Councillors of a Council.

## **60 Joint meetings of Councils**

- (1) Two or more Councils may determine to hold a joint meeting.
  - (2) A joint meeting is a meeting of each Council for the purposes of this Act.
  - (3) A joint meeting is to be constituted by the Councillors and the number of Councillors determined by the Councils holding the joint meeting.
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- (4) Subject to subsection (5), section 59 applies to a joint meeting as if it were a Council meeting but the Chairperson of the meeting does not have a second vote.
- (5) A joint meeting must comply with any requirements prescribed by the regulations.

#### **61 Delegated committees**

- (1) A Council may make a delegation under section 10 to the members of a delegated committee.
- (2) A delegated committee—
  - (a) must include at least 2 Councillors; and
  - (b) must be chaired by a Councillor appointed by the Council or the Mayor; and
  - (c) may include any other persons appointed to the delegated committee by the Council who are entitled to vote.
- (3) Subject to any express variations specified in the Council's Governance Rules, section 59 (other than subsection (1)) applies to a meeting of a delegated committee as if—
  - (a) the Chairperson was the Mayor; and
  - (b) the members were Councillors.

#### **62 Community Asset Committee**

- (1) A Council may establish a Community Asset Committee and appoint as many members to the Community Asset Committee as the Council considers necessary to enable the Community Asset Committee to achieve the purpose specified in subsection (2).

- (2) A Council may only establish a Community Asset Committee for the purpose of managing a community asset in the municipal district.

**Note**

See section 46 for delegation to members of a Community Asset Committee by the Chief Executive Officer.

**63 Meetings to be open to the public unless specified circumstances apply**

- (1) A Council or delegated committee must keep a meeting open to the public unless the Council or delegated committee considers it necessary to close the meeting to the public because a circumstance specified in subsection (2) applies.
- (2) The circumstances are—
- (a) the meeting is to consider confidential information; or
  - (b) security reasons; or
  - (c) it is necessary to do so to enable the meeting to proceed in an orderly manner.
- (3) If the circumstance specified in subsection (2)(b) or (2)(c) applies, the meeting can only be closed to the public if the Council or delegated committee has made arrangements to enable the proceedings of the meeting to be viewed by members of the public as the meeting is being held.
- (4) For the purposes of subsection (3), the arrangements may include provision to view the proceedings on the Internet or on closed circuit television.
- (5) If a Council or delegated committee determines that a meeting is to be closed to the public, the Council or delegated committee must record the reason for determining to close the meeting



to the public in minutes of the meeting that are available for public inspection.

**64 Council decision making where quorum cannot be maintained**

- (1) This section applies if a Council cannot maintain a quorum because of the number of Councillors who have a conflict of interest in a decision in regard to a matter.
- (2) The Council must consider whether the decision can be made by dealing with the matter in an alternative manner.
- (3) For the purposes of subsection (2), an *alternative manner* may include—
  - (a) resolving to split the matter into 2 or more separate parts, so that a quorum can be maintained for each separate part; or
  - (b) making prior decisions on component parts of the matter at a meeting for which a quorum can be maintained, before deciding the overall matter at a meeting for which a quorum can be maintained.
- (4) If a Council is unable to use an alternative manner, the Council must decide to establish a delegated committee to make the decision in regard to the matter consisting of—
  - (a) all the Councillors who have not disclosed a conflict of interest in regard to the matter; and
  - (b) any other person or persons that the Council considers suitable.
- (5) Section 61(2)(a) does not apply to a delegated committee established under subsection (4).

## **65 Validity of proceedings**

Proceedings of a Council or a delegated 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) a Councillor or member not being qualified or having ceased to be a Councillor or member; or
- (d) any failure to keep a Council meeting open to the public.

## **66 Governance Rules to include election period policy**

- (1) A Council must include an election period policy in its Governance Rules.
- (2) An election period policy must prohibit any Council decision during the election period for a general election that—
  - (a) relates to the appointment or remuneration of the Chief Executive Officer but not to the appointment or remuneration of an Acting Chief Executive Officer; or
  - (b) commits the Council to expenditure exceeding 1 per cent of the Council's income from municipal rates and charges in the preceding financial year; or
  - (c) the Council considers could be reasonably deferred until the next Council is in place; or
  - (d) the Council considers should not be made during an election period.
- (3) An election period policy must prohibit any Council decision during the election period for a general election or a by-election that would enable

the use of Council's resources in a way that is intended to influence, or is likely to influence, voting at the election.

- (4) A Council decision made in contravention of subsection (2)(a) or (b) is invalid.
- (5) Any person who suffers any loss or damage as a result of acting in good faith on a Council decision that is invalid by virtue of subsection (4) is entitled to compensation from the Council for that loss or damage.

**Note**

See section 3(8) and (9) in relation to a resolution of the Council.

**67 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.

**Division 3—Local laws**

**68 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 Act or any other Act.
- (2) A local law must be consistent with the local law requirements.
- (3) A local law is inoperative to the extent that it is inconsistent with the local law requirements.

- (4) A local law is a subordinate instrument for the purposes of the **Interpretation of Legislation Act 1984**.
- (5) Despite subsection (3), a local law is not invalid only because there is an error in any notice published under this Division.

## **69 Local law requirements**

The local law requirements are as follows—

- (a) a local law must not be inconsistent with any Act (including the **Charter of Human Rights and Responsibilities Act 2006**) or regulations;
- (b) a local law must not duplicate or be inconsistent with a planning scheme that is in force in the municipal district;
- (c) a local law for or with respect to the issuing of film permits must not be inconsistent with the film friendly principles;
- (d) a local law must not exceed the power to make local laws conferred by this Act or any other authorising Act;
- (e) a local law must be consistent with the objectives of this Act or any other authorising Act;
- (f) a local law must be expressed as clearly and unambiguously as is reasonably possible;
- (g) unless there is clear and express power to do so under this Act or any other authorising Act, a local law must not—
  - (i) seek to have a retrospective effect; or
  - (ii) impose any tax, fee, fine, imprisonment or other penalty; or

- (iii) authorise the sub-delegation of powers delegated under the local law;
- (h) a local law must comply with any details prescribed in the regulations relating to the preparation and content of local laws.

## **70 Making a local law**

- (1) Before a Council makes a local law it must comply with the following procedure.
- (2) The Council must make a local law in accordance with its community engagement policy.
- (3) The Council must publish a notice stating—
  - (a) the objectives of the proposed local law; and
  - (b) the intended effect of the proposed local law; and
  - (c) that a copy of the proposed local law is available for inspection—
    - (i) at the Council's office; and
    - (ii) on the Council's Internet site; and
  - (d) the community engagement process that applies in respect of the making of the local law.
- (4) A notice under subsection (3) must be published—
  - (a) on the Council's Internet site; and
  - (b) in any other manner prescribed by the regulations for the purposes of this section.
- (5) The Council must ensure that a copy of the proposed local law is available for inspection—
  - (a) at the Council's office; and
  - (b) on the Council's Internet site.

(6) If—

- (a) the Council proposes to alter a proposed local law in respect of which notice has been given under subsection (3); and
- (b) the alteration will affect the rights or responsibilities of any person—

the Council must conduct a further community engagement process in respect of the proposed alteration.

(7) Before a Council makes a local law, a Council must obtain a certificate from a qualified person stating that the person is of the opinion that the proposed local law is consistent with the local law requirements.

(8) For the purposes of subsection (7), ***qualified person*** means a person who—

- (a) is an Australian lawyer who has been admitted to the legal profession for at least 5 years; and
- (b) is not a Councillor of the Council.

(9) The certificate obtained under subsection (7) must be tabled at the Council meeting at which the proposed local law is to be made.

(10) After a local law is made, the Council must publish a notice stating—

- (a) the title of the local law; and
  - (b) the objectives of the local law; and
  - (c) the effect of the local law; and
  - (d) that a copy of the local law is available for inspection—
    - (i) at the Council's office; and
    - (ii) on the Council's Internet site.
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- (11) A notice under subsection (10) must be published—
  - (a) on the Council's Internet site; and
  - (b) in any other manner prescribed by the regulations for the purposes of this section.
- (12) The Council must ensure that a copy of the local law is available for inspection—
  - (a) at the Council's office; and
  - (b) on the Council's Internet site.

#### **71 Incorporation by reference**

- (1) A local law may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method as 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 of that amendment, the document, code, standard, rule, specification or method is to be taken to have not been so amended.

- (3) A notice under subsection (2) must be published—
  - (a) on the Council's Internet site; and
  - (b) in any other manner prescribed by the regulations for the purposes of this section.
- (4) The Council must ensure that a copy of any document, code, standard, rule, specification or method which contains any matter incorporated in a local law is available for inspection—
  - (a) at the Council's office; and
  - (b) on the Council's Internet site.

## **72 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, good, 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.
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### **73 Delegation and discretionary authority**

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 or bodies; and
- (b) leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by the Council; and
- (c) delegate to the Chief Executive Officer 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
  - (iii) do any act, matter or thing necessary or incidental to the performance or exercise of any function or power by the Council; and
- (d) authorise the Chief Executive Officer to delegate a power referred to in paragraph (c) to the holder of an office or position as a member of Council staff.

### **74 Penalties**

(1) A local law may—

- (a) prescribe a penalty not exceeding 20 penalty units for a contravention of a local law; and
- (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.

#### **75 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.

#### **76 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.

- (2) 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**.
- (3) The local law must specify—
  - (a) the amount of the fixed penalty; and
  - (b) the person or class of persons who may issue a notice of infringement.

#### **77 Recovery of penalty**

Any penalty recovered for an offence against a local law is to be paid to the Council that made the local law.

#### **78 Commencement of local law**

- (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 70(10) or 71(4) 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
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section 70(10) or 71(4) 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.

#### **79 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.

#### **80 Revocation by Governor in Council**

- (1) A local law may be revoked in whole or in 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 the local law is consistent with the local law requirements; and
  - (b) any other matter the Minister considers to be appropriate.

#### **81 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.

## **Division 4—Good practice guidelines**

### **82 Minister may issue good practice guidelines**

- (1) The Minister may issue good practice guidelines for or with respect to any matter under this Act or the regulations relating to compliance by Councils.
- (2) Good practice guidelines must be published on an Internet site maintained by the Department.
- (3) Compliance by a Council with a relevant good practice guideline can be used as evidence that the Council has complied with the corresponding requirement under this Act or the regulations.

## **Part 4—Planning and financial management**

### **Division 1—Strategic planning**

#### **83 Community Vision**

- (1) A Council must maintain a Community Vision that is developed with its municipal community.
- (2) The scope of the Community Vision is a period of at least the next 10 financial years.
- (3) A Community Vision must describe the municipal community's vision for the future of the municipality.

#### **84 Strategic planning principles**

- (1) A Council must undertake the preparation of its Council Plan and other strategic plans in accordance with the strategic planning principles.
- (2) The following are the strategic planning principles—
  - (a) an integrated approach to planning, monitoring and performance reporting is to be adopted;
  - (b) strategic planning must address the Community Vision;
  - (c) strategic planning must take into account the resources needed for effective implementation;
  - (d) strategic planning must identify and address the risks to effective implementation;
  - (e) strategic planning must provide for ongoing monitoring of progress and regular reviews to identify and address changing circumstances.

## **85 Council Plan**

- (1) A Council must prepare and adopt a Council Plan by the next 30 June after a general election for a period of at least the next 4 financial years.
- (2) A Council Plan must include the following—
  - (a) the strategic direction of the Council;
  - (b) strategic objectives for achieving the strategic direction;
  - (c) strategies for achieving the objectives for a period of at least the next 4 financial years;
  - (d) strategic indicators for monitoring the achievement of the objectives;
  - (e) a description of the Council's initiatives and priorities for services, infrastructure and amenity;
  - (f) any other matters prescribed by the regulations.

## **86 Financial Plan**

- (1) A Council must develop, adopt and keep in force a Financial Plan.
- (2) The scope of a Financial Plan is a period of at least the next 10 financial years.
- (3) A Financial Plan must include the following in the manner and form prescribed by the regulations—
  - (a) statements describing the financial resources required to give effect to the Council Plan and other strategic plans of the Council;
  - (b) information about the decisions and assumptions that underpin the forecasts in the statements specified in paragraph (a);



- (c) statements describing any other resource requirements that the Council considers appropriate to include in the Financial Plan;
- (d) any other matters prescribed by the regulations.

#### **87 Asset Plan**

- (1) A Council must develop, adopt and keep in force an Asset Plan.
- (2) The scope of an Asset Plan is a period of at least the next 10 financial years.
- (3) An Asset Plan must include the following—
  - (a) information about maintenance, renewal, acquisition, expansion, upgrade, disposal and decommissioning in relation to each class of infrastructure asset under the control of the Council;
  - (b) any other matters prescribed by the regulations.

#### **88 Revenue and Rating Plan**

A Council must prepare and adopt a Revenue and Rating Plan by the next 30 June after a general election for a period of at least the next 4 financial years.

### **Division 2—Budget processes**

#### **89 The budget**

- (1) A Council must prepare and adopt a budget for each financial year and the subsequent 3 financial years by—
  - (a) 30 June each year; or
  - (b) any other date fixed by the Minister by notice published in the Government Gazette.

- (2) A Council must ensure that the budget contains the following—
- (a) financial statements in the form and containing the information required by the regulations;
  - (b) a general description of the services, infrastructure, and initiatives specified in the Council Plan to be funded in the budget;
  - (c) major initiatives identified by the Council as priorities in the Council Plan, to be undertaken during each financial year;
  - (d) for services to be funded in the budget, the prescribed indicators and measures of service performance that are required to be reported against by this Act;
  - (e) the total amount that the Council intends to raise by municipal rates and service charges;
  - (f) a statement as to whether the municipal rates will be raised by the application of a uniform rate or a differential rate;
  - (g) a description of any fixed component of the municipal rates, if applicable;
  - (h) if the Council proposes to declare a differential rate for any property, the matters specified in section 105(1);
  - (i) any other information required by the regulations.
- (3) 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 or any other financial year; or

- (b) that the Council has made an application to the ESC for a special Order and is waiting for the outcome of the application; or
- (c) that a special Order has been made in respect of the Council and specifying the rate cap that applies for the financial year or any other financial year.

#### **90 Revised budget**

- (1) A Council must prepare and adopt a revised budget before the Council—
  - (a) can make a variation to the declared municipal rates or service charges; or
  - (b) can undertake any borrowings that have not been approved in the budget; or
  - (c) can make a change to the budget that the Council considers should be the subject of community engagement.
- (2) The Council must ensure that a revised budget contains all the information required by the regulations.
- (3) A Council must adopt a revised budget as soon as is practicable after it has been developed.

#### **91 Preparation of budget or revised budget**

A Council must develop the budget and any revised budget in accordance with—

- (a) the financial management principles; and
- (b) its community engagement policy.

#### **92 Quarterly budget report**

- (1) As soon as practicable after the end of each quarter of the financial year, the Chief Executive Officer must ensure that a quarterly budget report is presented to the Council at a Council meeting which is open to the public.

- (2) A quarterly budget report must include—
  - (a) a comparison of the actual and budgeted results to date; and
  - (b) an explanation of any material variations; and
  - (c) any other matters prescribed by the regulations.
- (3) In addition, the second quarterly report of a financial year must include a statement by the Chief Executive Officer as to whether a revised budget is, or may be, required.

### **Division 3—Reporting**

#### **93 Annual report**

- (1) A Council must prepare an annual report in respect of each financial year.
- (2) An annual report must contain the following—
  - (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;
  - (e) a copy of the auditor's report on the financial statements under Part 3 of the **Audit Act 1994**;
  - (f) any other matters prescribed by the regulations.
- (3) The report of operations of the Council must contain the following—
  - (a) a statement of progress on implementation of the Council Plan, which includes the results of the strategic indicators;

- (b) a statement of progress in relation to the major initiatives identified in the budget or a revised budget;
  - (c) the results, in the prescribed form, of the Council's assessment against the prescribed governance and management checklist;
  - (d) the prescribed indicators of service performance for the services provided by the Council and funded in the budget during the financial year, the prescribed measures relating to those indicators and the results achieved in relation to those performance indicators and measures;
  - (e) any other information prescribed by the regulations.
- (4) The performance statement must be prepared in accordance with the regulations and contain the following—
- (a) the prescribed indicators of service performance for the services provided by the Council and funded in the budget for the financial year, the prescribed measures relating to those indicators and the results achieved in relation to those performance indicators and measures;
  - (b) the prescribed indicators of financial performance, the prescribed measures relating to those indicators and the results achieved in relation to those performance indicators and measures;
  - (c) the prescribed indicators of sustainable capacity performance, the prescribed measures relating to those indicators and the results achieved in relation to those performance indicators and measures;
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- (d) any other information prescribed by the regulations.
- (5) The financial statements must—
  - (a) include any other information required by the regulations; and
  - (b) be prepared in accordance with the regulations.

#### **94 Preparation of annual report**

- (1) As soon as practicable after the end of the financial year, a Council must cause to be prepared in accordance with section 93, the performance statement and financial statements of the Council for 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 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 persons prescribed by the regulations for the purposes of this subsection.
- (4) 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.

- (5) The auditor must not sign a report under subsection (4) or under Part 3 of the **Audit Act 1994** unless the performance statement or the financial statements (as applicable) have been certified under subsection (3).
- (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.

**95 Meeting to consider annual report**

- (1) For the purposes of section 17(d), the Mayor must report on the implementation of the Council Plan by presenting the annual report at a Council meeting open to the public.
- (2) The Council meeting must be held—
  - (a) in the year of a general election, on a day not later than the day before election day; and
  - (b) in any other year, within 4 months of the end of the financial year.

**Division 4—Financial management**

**96 Financial management principles**

The following are the financial management principles—

- (a) revenue, expenses, assets, liabilities, investments and financial transactions must be managed in accordance with a Council's financial policies and strategic plans;

- (b) financial risks must be monitored and managed prudently having regard to economic circumstances;
- (c) financial policies and strategic plans, including the Revenue and Rating Plan, must be developed which seek to provide stability and predictability in the financial impact on the municipal community;
- (d) accounts and records that explain the financial operations and financial position of the Council must be kept.

#### **97 Financial policies**

- (1) A Council must prepare and adopt financial policies that give effect to the financial management principles.
- (2) A financial policy must include any matters prescribed by the regulations.

#### **98 Investments**

A Council may invest any money—

- (a) in Government securities of the Commonwealth; and
  - (b) in securities guaranteed by the Government of Victoria; and
  - (c) with an ADI; and
  - (d) with any financial institution guaranteed by the Government of Victoria; and
  - (e) on deposit with an eligible money market dealer within the meaning of the Corporations Act; and
  - (f) in any other manner approved by the Minister, either generally or specifically, to be an authorised manner of investment for the purposes of this section.
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**99 Borrowings**

A Council cannot borrow money unless the proposed borrowings were included in the budget or a revised budget.

**100 Accounts and records**

- (1) The Principal Accounting Officer of a Council must ensure that there are kept proper accounts and records of the transactions and financial affairs of the Council.
- (2) A failure by a Council to keep proper accounts and records and the reason for that failure must be reported in the annual report.

## Part 5—Rates and charges

### Division 1—Declaration of rates and charges

#### 101 Rateable land

- (1) All land is rateable unless it is—
- (a) charitable purpose land; or
  - (b) memorial or ex-servicemen purpose land; or
  - (c) public purpose land; or
  - (d) religious purpose land.

- (2) For the purposes of this section—

*charitable purpose land* means land used exclusively for charitable purposes;

*memorial or ex-servicemen purpose land* means land held in trust and used exclusively—

- (a) 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
- (b) as a sub-branch of the Returned Services League of Australia; or
- (c) by the Air Force Association (Victoria Division); or
- (d) by the Australian Legion of Ex-Servicemen and Women (Victorian Branch);

*public purpose land* means land which is—

- (a) property of the Crown, or property which 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; and

- (b) unoccupied or used exclusively for public or municipal purposes;
- religious purpose land*** means land which is vested in, or held in trust for, a religious body and is used exclusively for the purposes of—
- (a) a residence of a practising minister of religion; or
  - (b) the education and training of persons to be ministers of religion.
- (3) For the purposes of the definition of ***public purpose land***, 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 the **Transport (Compliance and Miscellaneous) Act 1983**.
- (4) For the purposes of the definitions of ***charitable purpose land*** and ***public purpose land***, any part of land is not used exclusively for charitable purposes or public purposes if—
- (a) a house or flat on that part of the land is used as a residence and is exclusively occupied by persons including a person who must live there to carry out certain duties of employment; or
  - (b) it is used by the Metropolitan Fire and Emergency Services Board.
- (5) Without limiting the generality of subsection (1), if a part of any land is used to perform activities which are incidental to, and further, a purpose
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specified in that subsection, that part of the land is not rateable.

**102 Council must use the capital improved value system of valuation**

A Council must use the capital improved value system of valuation for the purpose of declaring municipal rates and service charges.

**103 Council may declare municipal rates and service charges**

- (1) A Council may declare municipal rates and service charges on rateable land.
- (2) A Council may declare that municipal rates will be raised by the application of a uniform rate or a differential rate.

**104 Uniform rate**

- (1) If a Council declares that municipal rates will be raised by the application of a uniform rate, the Council must specify a percentage as the uniform rate in the budget.
- (2) The Council must determine the municipal rate for any rateable land by multiplying the value of the rateable land by the uniform rate percentage.
- (3) The Council must specify the objective of, and reasons for applying, a uniform rate—
  - (a) in the budget; and
  - (b) on its Internet site.

**105 Differential rate**

- (1) If a Council declares a differential rate for any rateable land, the Council must specify the following in the budget and on its Internet site—
  - (a) a definition of the type or class of rateable land which is to be subject to a differential rate;

- (b) the criteria for identifying the type or class of rateable land which is to be subject to a differential rate, including any or all of the following—
    - (i) its uses;
    - (ii) the geographic location, other than location on the basis of whether or not the land is within a specific ward;
    - (iii) planning scheme zoning;
    - (iv) the types of buildings situated on it;
    - (v) any other criteria that the Council determines is relevant;
  - (c) the levels of each differential rate, the amount of rates payable in relation to each type or class of rateable land which is subject to a differential rate and the proportion of total rates this represents;
  - (d) the objectives and reasons for the level of each differential rate;
  - (e) any other information that the Council considers it necessary to make available.
- (2) The highest differential rate in a municipal district must be no more than 4 times the lowest differential rate in the municipal district.
  - (3) A Council must have regard to any Ministerial guidelines made under section 84 before declaring a differential rate for any rateable land.
  - (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 section 82.
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### 106 Municipal rates—fixed component

- (1) A Council may declare a fixed component of its municipal rates to cover some of the administrative costs of the Council.
- (2) If a Council declares a fixed component of its municipal rates, the Council must specify the amount of the fixed component in the budget.
- (3) A Council's total revenue from the fixed component of its municipal rates in a financial year must not exceed 10 per cent of the sum total of the Council's municipal rates in that financial year.
- (4) A person may apply to a Council for an exemption from the payment of the fixed component of the municipal rates 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 land 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.
- (5) In subsection (4)—

*single farm enterprise* means 2 or more rateable properties—

  - (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.
- (6) An application must be in the form and made  
within the period determined by the Council.
- (7) The Council may require the applicant—
  - (a) to give further particulars; or
  - (b) to verify particulars—in relation to the application.

#### **107 Service charge**

- (1) A Council may declare a service charge in relation  
to any rateable land or non-rateable land for the  
provision of any of the following services—
    - (a) the collection and disposal of refuse;
    - (b) drainage;
    - (c) any other service prescribed by the  
regulations.
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- (2) A service charge may be assessed and declared on the basis of any criteria, including land value, as specified by the Council.
- (3) If a Council declares a service charge, the Council must specify the amount of the service charge in the budget.

#### **108 Declaring rates and charges**

A Council must at least once in respect of each financial year declare by the date specified in section 89(1)(a) or (b) for the following financial year—

- (a) the total amount which the Council intends to raise by municipal rates and service charges;
- (b) whether the municipal rates will be raised by the application of—
  - (i) a uniform rate; or
  - (ii) differential rates.

#### **109 Municipal rates and service charges to be levied on each occupancy**

- (1) If the Council levies a municipal rate or service charge on any land, the Council must separately levy that municipal rate or service charge in respect of each part 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 municipal rates or service charges that apply to that land in accordance with the value that each separately owned part of that land bears in relation to the value of that land as a whole.



## **110 Liability to pay municipal rates and service charges**

- (1) The owner of land is liable to pay the municipal rates and service 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 municipal rates and service charges.
- (3) If there is a person who is the private occupier or lessee of the land and the land is land on which municipal rates and service charges could not be declared if there were no such occupier or lessee, that person is liable to pay the municipal rates and service charges.
- (4) 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.
- (5) 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 municipal rates and service charges on that land as if it is rateable land.
- (6) 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 municipal rates and service charges on that land as if it is rateable land.
- (7) A person who is a licensee of vested land under Part 3A of the **Victorian Plantations Corporation Act 1993** is liable to pay the municipal rates and service charges on that land as if it is rateable land.

- (8) A municipal rate or service charge which is declared in relation to land and is unpaid and any unpaid interest on such a municipal rate or service charge and any costs awarded to a Council by a court or in any proceedings in relation to such a municipal rate or service charge or interest are a first charge on the land.

## **Division 2—Special purpose charges**

### **111 Special purpose charge**

- (1) A Council may declare a special purpose charge on rateable land for the purposes of—
- (a) paying any expenses; or
  - (b) repaying (with interest) any advance made to, or debt incurred or loan raised by, the Council—

in relation to the provision of works or services in the performance of a function or the exercise of a power of the Council.

- (2) A Council must only declare a special purpose charge on rateable land if the owner or occupier of the rateable land will derive a special benefit from the provision of the proposed works or services to which the proposed special purpose charge will relate.
- (3) For the purposes of subsection (2), *special benefit* means a benefit that is additional to, or greater than, the benefits available to owners or occupiers of other rateable land which will not be subject to the proposed special purpose charge.
- (4) A Council may declare a special purpose charge in relation to non-rateable land for the purposes of street construction, as if the non-rateable land was rateable land.

**112 Conditions relating to special purpose charge**

- (1) Before making a declaration of a special purpose charge, a Council must determine—
  - (a) the total amount of the special purpose charge to be levied; and
  - (b) the criteria to be used as the basis for declaring the special purpose charge.
- (2) Before determining the matters specified in subsection (1), the Council must be satisfied on reasonable grounds that the proposed special purpose charge complies with the conditions specified in subsection (3).
- (3) The specified conditions are as follows—
  - (a) the estimated cost of the proposed works and services must be comparable with the estimated cost of works and services of that kind;
  - (b) the proportion of the estimated total cost of the proposed works and services to be collected by levying the proposed special purpose charge must not exceed the proportion of the special benefit to be derived compared to the benefit to the municipal community;
  - (c) the criteria to be used to apportion the proposed special purpose charge between the persons who will be required to pay the special purpose charge must be fair and reasonable having regard to the nature of the proposed works and services and the relative special benefit to each person.

**113 Engagement requirements relating to special purpose charge**

- (1) Before declaring a special purpose charge, a Council must—
  - (a) undertake an engagement process in respect of the proposed special purpose charge; and
  - (b) ensure that the engagement process includes the matters specified in this section.
- (2) The Council must provide the following to any person who will be required to pay the special purpose charge—
  - (a) a written notice of intention to levy the proposed special purpose charge in accordance with subsection (3);
  - (b) the opportunity to make a submission and be heard in relation to the proposed special purpose charge;
  - (c) if section 114 applies, an opportunity to object in writing.
- (3) A written notice of intention to levy a proposed special purpose charge must specify the following—
  - (a) the proposed works or services;
  - (b) the total cost of the works or services;
  - (c) the amount of the special purpose charge that the person would be required to pay;
  - (d) the repayment arrangements that would apply;
  - (e) how the person may make a submission and be heard.

- (4) If section 114 applies, the written notice under subsection (3) must also state the following—
  - (a) that the person has a right to object to the proposed declaration;
  - (b) how the person may object;
  - (c) that objections in writing must be lodged with the Council within 28 days of the day specified on the written notice as the date of issue of the written notice.

#### **114 Objection process**

- (1) A Council can only make a declaration of a special purpose charge to recover an amount that exceeds two-thirds of the total cost of the provision of the works and services in the performance of the function or the exercise of the power in accordance with this section.
  - (2) Before a Council can make a declaration of a special purpose charge to which this section applies, the Council must send a written notice in accordance with section 113 to every person who will be required to pay the special purpose charge.
  - (3) The following persons have the right to object to a special purpose charge to which this section applies—
    - (a) an owner of the land;
    - (b) if the land is non-residential land, an occupier of the land.
  - (4) A Council must not make a declaration of a special purpose charge if the Council receives written objections from persons who are entitled to object under subsection (3) in respect of a majority of the rateable properties on which the Council had proposed to impose the special purpose charge.
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**115 Declaring and levying a special purpose charge**

- (1) A Council must not declare a special purpose charge if—
  - (a) more than 12 months has elapsed since the Council gave written notice of intention to levy the proposed special purpose charge under section 113; or
  - (b) the declaration varies from the written notice of intention to levy the proposed special purpose charge under section 113 to the extent that it would result in an increase of 10 per cent or more in the amount that would be required to be paid by any person.
- (2) A Council may levy a special purpose charge by sending a notice to the person who is liable to pay it.
- (3) The notice to levy a special purpose charge must contain the information prescribed by the regulations.

**116 Discontinuance of a special purpose charge**

- (1) After complying with the procedure for the levying of a special purpose charge, a Council may—
  - (a) discontinue the whole or part of any purpose for which it is charging the special purpose 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 purpose charge referred to in subsection (1) are notified of any decision under that subsection.

**117 Receipt of excess money**

If a Council receives more money than it requires from the special purpose charge, it must make a refund which is proportionate to the contributions received by the Council to the current owners of the relevant land.

**118 Variation of special purpose charge**

- (1) A special purpose charge remains in force for the period specified in the declaration of it without any further declaration in any subsequent year.
- (2) A Council cannot make a variation of a special purpose charge that would—
  - (a) require a person to pay an additional amount that would exceed by 10 per cent or more, after allowing for any relevant increase in the Melbourne Consumer Price Index, the amount of the special purpose charge specified as payable by that person in the notice levying the special purpose charge; or
  - (b) apply the special purpose charge to land that was not included in the notice levying the special purpose charge.
- (3) A Council must ensure that those persons who are liable to pay a special purpose charge which is varied are sent a notice of variation specifying details of the variation.

**119 Application to VCAT**

- (1) A person whose interests are affected by a special purpose charge may apply to VCAT for review of the decision of the Council to—
  - (a) levy the special purpose charge; or
  - (b) vary the special purpose charge.

- (2) The person must apply within 60 days of the date of issue of the notice levying the special purpose charge or of the notice of variation.
  - (3) An application must be based on any or all of the following grounds—
    - (a) neither the person required to pay the special purpose charge nor the land to which it applies will derive a special benefit from the works or services in respect of which the special purpose charge is levied;
    - (b) the Council has not complied with the requirements of this Division before declaring or levying the special purpose charge.
  - (4) On a review, VCAT may, by order—
    - (a) declare that rateable land is to be excluded from the special purpose charge if VCAT is satisfied that the owner or occupier of the rateable land will not derive a special benefit from the proposed works and services; or
    - (b) set aside the special purpose charge; or
    - (c) amend the variation of the special purpose charge; or
    - (d) set aside the variation of the special purpose charge; or
    - (e) dismiss the application and confirm the special purpose charge or the variation of the special purpose charge; or
    - (f) make any other declaration that VCAT considers appropriate in the circumstances.
  - (5) If VCAT sets aside a special purpose charge or a variation of a special purpose charge made in a particular year, the Council may declare and levy a new special purpose charge or variation of the
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special purpose charge for that year even if the year has ended.

### **Division 3—Payment of municipal rates, service charges and special purpose charges**

#### **120 Levying of municipal rates and service charges**

- (1) A Council may levy municipal rates and service charges by sending a notice to the person who is liable to pay them.
- (2) At the written request of the person liable to pay municipal rates or service charges, the Council may send the notice to a person specified in the written request.
- (3) The notice must contain the matters prescribed by the regulations.
- (4) The notice must be issued at least 28 days before the date on which the payment of the municipal rates or service charges is due.
- (5) A failure to comply with subsection (4) 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 28 days after the date on which the notice relating to that payment is sent.
- (6) If a Council has declared more than one municipal rate or service charge for the year, it may levy any of those municipal rates or service charges as a combined municipal rate or service charge.

#### **121 Payment**

- (1) A Council must allow a person to pay a municipal rate or service charge in 4 instalments or as a lump sum.

- (2) A Council may also provide other options for the payment of a municipal rate or service charge.
- (3) A payment of a municipal rate or service charge is due and payable on the date or dates fixed by the Minister for the purposes of subsection (1) by a notice published in the Government Gazette.
- (4) A special purpose 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) A person who is liable to pay a special purpose charge must pay the special purpose 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 purpose charge in accordance with the instalment plan, in accordance with the instalment plan.
- (6) If the performance of the function or the exercise of the power in respect of which a special purpose charge is to be levied relates substantially to capital works, the Council must provide an instalment plan in accordance with subsection (7).
- (7) 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—
    - (i) 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 purpose charge is to be levied by more than 1 per cent; or

- (ii) include any interest included in the costs calculated under section 111(1)(b).

## **122 Council may charge interest**

- (1) A Council may require a person to pay interest on any amounts of municipal rates or service charges—
  - (a) which that person is liable to pay; and
  - (b) which have not been paid by the date specified for their payment.
- (2) The interest under subsection (1) becomes payable—
  - (a) if the payment was payable in instalments only, on and from the date on which the missed instalment was due; or
  - (b) if the payment was payable either in instalments or in a lump sum and the first instalment was paid by the date due, on and from the date on which the relevant subsequent missed instalment was due; or
  - (c) 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 continues to be payable until the payment or the recovery of the municipal rates or service charges.

- (3) A Council may require a person to pay interest on any amounts of special purpose charges—
  - (a) which that person is liable to pay; and
  - (b) which have not been paid by the date specified in the notice of payment.
- (4) The interest under subsection (3) becomes payable on and from the date specified in subsection (3)(b) and continues to be payable until the payment or the recovery of the special purpose charges.
- (5) The interest 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.
- (6) 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 municipal rates, service charges or special purpose charges payable until the payment or the recovery of the municipal rates, service charges or special purpose charges is made.
- (7) A Council may recover interest due to it on municipal rates, service charges or special purpose charges in the same way as it may recover the municipal rates, service charges or special purpose charges.
- (8) A Council may exempt any person from paying the whole or part of any interest either generally or specifically.

### **123 Incentives for prompt payment**

- (1) A Council may declare that incentives are to be given by it for the payment of municipal rates, service charges or special purpose charges before the due date.

- (2) The notice requiring payment of a municipal rate, service charge or special purpose charge must specify any incentives.

#### **124 Rebates and concessions**

- (1) A Council may grant a rebate or concession in relation to any municipal rate, service charge or special purpose charge if the Council determines that it is consistent with the performance of the Council's role to do so.
- (2) A Council resolution granting a rebate or concession must specify—
  - (a) the amount of the rebate or concession; and
  - (b) the benefit to the community as a whole resulting from the rebate or concession.
- (3) If a person granted a rebate or concession has not complied with the terms on which the rebate or concession was granted, the Council by a notice sent to the person may require the payment—
  - (a) of the whole or part of the municipal rate, service charge or special purpose charge; and
  - (b) of interest for the late payment of the municipal rate, service charge or special purpose charge—as if the rebate or concession had not been granted.

#### **125 Deferred payment**

- (1) If a Council considers that an application by a person shows that the payment of a municipal rate, service charge or special purpose charge would cause hardship to the person, the Council may defer in whole or in part the payment by the person of any municipal rate, service charge or special purpose charge which is due and payable—
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- (a) for a specified period; and
  - (b) subject to any conditions determined by the Council.
- (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) If a Council considers that—
  - (a) a person's circumstances have so changed that the payment of a municipal rate, service charge or special purpose charge would no longer cause hardship to the person; or
  - (b) the person no longer owns or occupies the land in relation to which the municipal rate, service charge or special purpose charge was levied—

the Council may by a notice sent to the person require that person to pay the whole or part of any deferred municipal rate, service charge or special purpose charge and interest for the late payment of the municipal rate, service charge or special purpose charge, as if the deferral had not occurred.

## **126 Waiver**

- (1) The Council may waive the whole or part of any rate or charge or interest in relation to—
  - (a) an eligible recipient within the meaning of the **State Concessions Act 2004**; or
  - (b) any other person on the grounds of financial hardship.
- (2) A person may only apply for a waiver in respect of rateable land or a part of rateable land which is that person's sole or principal place of residence.

- (3) If the person is not the owner of the rateable land or part of the rateable land, the person may only apply for a waiver if the person—
  - (a) is liable to pay the municipal rates, service charges or special purpose charges or interest (or an amount in place of, or on account of, the municipal rates, service charges or special purpose charges or interest), whether under an agreement with the owner or for any other reason; or
  - (b) holds a residence right in a retirement village (as defined in the **Retirement Villages Act 1986**).
- (4) A person may make only one application for each rating period in respect of the same rateable land or same part of rateable land.
- (5) An application for the purposes of subsection (1)(a) must be—
  - (a) in the form approved by the Minister administering the **State Concessions Act 2004**; and
  - (b) made on or before 30 April in the financial year in respect of the municipal rate, service charge or special purpose charge for which the waiver is sought.
- (6) An application for the purposes of subsection (1)(b) must be—
  - (a) in the form approved by the Council; and
  - (b) made on or before the date fixed by the Council in respect of the municipal rate, service charge or special purpose charge for which the waiver is sought.

- (7) A person who intentionally, recklessly or negligently—
- (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.

#### **127 Review by VCAT**

- (1) A person whose interests are affected by a decision of the Council to impose a municipal rate or service charge or to include or exclude anything from a municipal rate or service charge may apply to VCAT for review of the decision on one or more of the following grounds—
- (a) the land in respect of which the municipal rate or service charge was declared is not rateable land;
  - (b) the municipal rate or service charge assessment was calculated incorrectly;
  - (c) the person on whom the municipal rate or service charge was levied was not liable to be levied;
  - (d) if differential rates apply, the classification of the rateable land as land of a particular type or class was incorrect.
- (2) An application for review must be made within 60 days after the day on which the person receives the first notice of payment following the decision.



- (3) The provisions of Part III of the **Valuation of Land Act 1960** apply to a review under this section on the ground specified in subsection (1)(d) with any necessary modifications.

#### **Division 4—Recovery of municipal rates, service charges and special purpose charges**

##### **128 Unpaid municipal rate, service charge or special purpose charge**

- (1) If a municipal rate, service charge or special purpose charge (including any instalment or any part of a municipal rate, service charge or special purpose 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 municipal rate, service charge or special purpose charge is recovered from an owner of rateable land and an agreement with the owner of the land states that the occupier of the property must pay any municipal rate, service charge or special purpose charge, the owner may recover the municipal rate, service charge or special purpose 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 municipal rate, service charge or special purpose charge under this section need not pay more than the amount of rent owed by the occupier at the time of the demand for the payment.
- (4) An occupier of any property who makes any payment of a municipal rate, service charge or special purpose charge on the property is entitled to deduct the amount from the occupier's rent despite anything to the contrary in any lease or agreement relating to the occupancy of the property unless subsection (5) applies.

- (5) Subsections (3) and (4) do not apply—
  - (a) if the occupier has agreed to pay any municipal rate, service charge or special purpose 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.
- (6) 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 municipal rate, service charge or special purpose charge; and
  - (b) the amount of any municipal rate, service charge or special purpose charge to be paid on any property by that occupier is more than the rent owed by the occupier for the property.

**129 Council may require occupier to pay rent**

- (1) If any municipal rate, service charge or special purpose charge is due and unpaid in relation to property, the Council may send a notice to the person who appears from the rate records of the Council to be liable to pay the municipal rate, service charge or special purpose charge.
- (2) The notice must state—
  - (a) that after 7 days from the date the notice is sent, the occupier of the property 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 property; and

- (b) that the rent must be paid to the Council until the amount of the municipal rate, service charge or special purpose 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.
- (5) This section applies despite any rent collection arrangements entered into by the occupier of the property.

**130 Council may sell property to recover unpaid municipal rates, service charges or special purpose charges**

- (1) If—
  - (a) any amount due to a Council for, or in respect of, municipal rates, service charges or special purpose 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, or a current arrangement for the payment of the amount is not being complied with; and
  - (c) the Council has a court order requiring the payment of the amount (or part of the amount)—

the Council may sell the property, or cause the property to be transferred to itself, for an amount equal to or more than the estimated value of the property as set out in a written valuation of the

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property by a valuer that was made not more than 6 months before the date of the sale or transfer.

- (2) In subsection (1), **valuer** means a person who holds the qualifications or experience specified under section 13DA(2) of the **Valuation of Land Act 1960**.
- (3) Before selling the property, or causing the property 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 property, serve on that person at least 4 weeks before the proposed date of the transfer or sale a notice requiring the payment of the amount referred to in subsection (1); and
  - (b) ensure that its intention to conduct the sale, or carry out the transfer, is subject to public notice for at least 4 weeks before the date of the proposed sale or transfer; and
  - (c) if the property 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 at least 14 days before the date of the proposed auction; and
  - (d) if the property is occupied, notify in writing the occupier to vacate the property within 14 days of receiving the notice.
- (4) The following amounts may be recovered from the proceeds of a sale of property or offset from the transfer amount of the property—
  - (a) all reasonable 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 the Council for, or in respect of, municipal rates, service charges or special purpose charges (including enforcement costs and interest) in respect of the property.
  - (5) If any amount remains after the Council has recovered or offset everything it is permitted to recover or offset under subsection (5), the Council must then—
    - (a) use that remaining amount to discharge, in their order of priority, any mortgages and other charges in respect of the property, whether registered or not, that the Council has notice of; and
    - (b) pay any amount remaining to each person who appears to have an estate or interest in the property—
      - (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.
  - (6) If any person who is entitled to an amount under subsection (5), including any person who appears to have an estate or interest in the property, cannot be found after all reasonable efforts have been made to find the person, the Council may use the amount for its general purposes.
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- (7) 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 the Registrar of Titles; 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.
- (8) The registration of the transfer vests in the transferee all the estate and interest in the land.

### **131 Person acquiring rateable land**

- (1) A person who becomes the owner of rateable land must pay—
- (a) any municipal rates, service charges or special purpose charges on the property which are current; and
  - (b) subject to subsection (2), any arrears of municipal rates, service charges or special purpose charges (including any interest) on the property which are due and payable; and
  - (c) if the Council has obtained an award of legal costs, any legal costs in relation to the municipal rates, service charges or special purpose charges on the property owing by the previous owner of the rateable land.
- (2) A Council may only recover an amount under subsection (1)(b) which is not more than—
- (a) the amount appearing on the certificate issued under section 162; and
-

- (b) interest which has accrued on the amount appearing on the certificate since the issue of the certificate.

### **132 Property becoming or ceasing to be rateable land**

- (1) If property becomes rateable land after 1 July in any financial year, the municipal rate, service charge or special purpose 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 property ceases to be rateable land during a financial year for which a municipal rate, service charge or special purpose charge has been levied on it, a Council must—
  - (a) if any payment of the municipal rate, service charge or special purpose charge has been made, refund to the current owner of the property an amount proportionate to the part of that financial year remaining after the property ceases to be rateable land; or
  - (b) if none of the municipal rate, service charge or special purpose charge has been paid, require the person who is required to pay the municipal rate, service charge or special purpose charge to only pay an amount proportionate to the part of that financial year before the property ceases to be rateable land.
- (3) Nothing in this section requires a Council to repay any municipal rates, service charge or special purpose charge in respect of any property that were due and paid before the date on which the current owner acquired the property.

**133 Invalidity of any municipal rate, service charge or special purpose charge**

- (1) The invalidity of the whole or any part of a municipal rate, service charge or special purpose charge is not a defence in any proceedings involving a claim for recovery of the municipal rate, service charge or special purpose charge unless the municipal rate, service charge or special purpose charge has been quashed in any other proceedings.
- (2) A municipal rate, service charge or special purpose charge is not invalid only by reason of it being declared after 30 June.

**Division 5—Environmental upgrade agreements**

**134 Environmental upgrade agreement**

- (1) Subject to section 135, a Council may enter into an environmental upgrade agreement in respect of rateable land with an existing building on it, to fund works that improve the energy, water or environmental efficiency or sustainability of the building on that rateable land with—
  - (a) the owner of the rateable land; and
  - (b) a lending body, unless the Council is the lending body; and
  - (c) any other person that the other parties to the agreement agree should be a party to the agreement and agrees to be a party to the agreement.
- (2) Sections 135(1)(b) and (c) and 137 do not apply to an environmental upgrade agreement in respect of rateable land that is used for a residential purpose.
- (3) The Minister administering the **Victorian Energy Efficiency Target Act 2007** may, after consultation with the Minister, publish guidelines



in the Government Gazette specifying the types of works to be funded by an environmental upgrade agreement.

- (4) A Council must have regard to the guidelines published under subsection (3) before entering into an environmental upgrade agreement.
- (5) An environmental upgrade agreement must—
  - (a) be in writing; and
  - (b) outline the works to be undertaken on the rateable land of the owner; and
  - (c) contain provisions that provide for the lending body to advance specified funds to conduct the works; and
  - (d) provide for the Council to levy an environmental upgrade charge on the rateable land; and
  - (e) provide for the Council to use the funds received under the environmental upgrade charge—
    - (i) to repay the lending body the principal amount initially advanced to the owner plus any agreed interest accrued since that advance; and
    - (ii) for an agreed administrative charge to be retained by the Council.

**135 Conditions to be met before entering into environmental upgrade agreement**

- (1) Before entering into an environmental upgrade agreement, the owner of the rateable land—
  - (a) must give the Council details in writing of—
    - (i) 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; and
  - (ii) all registered and unregistered mortgages over the rateable land; and
  - (b) must notify any existing mortgagee of the intention to enter into an environmental upgrade agreement; and
  - (c) may obtain the written agreement of an occupier to pay the environmental upgrade charge that will apply in respect of their occupancy.
- (2) A Council must not enter into an environmental upgrade agreement unless the Council is satisfied that the total amount of taxes, rates, charges and mortgages owing on the rateable land when added to the total value of the environmental upgrade charge 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 environmental upgrade agreement.

### **136 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 in respect of the rateable land that is the subject of the environmental upgrade agreement.
- (2) Subject to the provisions of the environmental upgrade agreement, the environmental upgrade charge may be varied to provide for any of the following—
  - (a) a variation in the works;
  - (b) a variation in the cost of the works;

- (c) an additional penalty interest in the event of a failure to pay the charge in accordance with the environmental upgrade agreement.
- (3) This Part applies to an environmental upgrade charge as if it were a service charge.
- (4) A Council may, by instrument of delegation, delegate to the Chief Executive Officer the power to declare and levy an environmental upgrade charge.
- (5) The Chief Executive Officer must not delegate the power delegated to the Chief Executive Officer under subsection (4) to any other person.

**137 Liability of occupier to pay environmental upgrade charge**

- (1) Despite any provision of any existing lease or agreement between an owner of a rateable land which is subject to an environmental upgrade charge and an occupier, the occupier is not liable to pay any part of the environmental upgrade charge unless the occupier or a previous occupier of the rateable property has specifically agreed in writing to pay the environmental upgrade charge.
- (2) If an occupier or a previous occupier has agreed in writing to pay an environmental upgrade charge and the occupier fails to do so by the due date, the occupier is liable to pay any penalty interest accruing as a result of that failure.

**138 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 the environmental upgrade agreement.

- (2) A Council is not liable for any failure by an owner or any occupier to pay an environmental upgrade charge.
- (3) A failure by an owner or any occupier under subsection (2) does not make the Council liable to pay the outstanding amount under the environmental upgrade charge to the lending body.

## **Division 6—Rate caps**

### **139 Purposes of this Division**

The purposes of this Division 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.

### **140 Definitions**

In this Division—

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

***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—

- (a) municipal rates; and
- (b) rates under the **Cultural  
and Recreational Lands  
Act 1963**; and
- (c) service charges prescribed  
by the regulations—

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.

**base year** means the financial year preceding the  
capped year;

**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—

- (a) municipal rates; and

(b) rates under the **Cultural and Recreational Lands Act 1963**; and

(c) service charges prescribed by the regulations—

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.

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

**CPI** means the Forecast Melbourne Consumer Price Index as published in the Budget Papers as tabled by the Treasurer in the Parliament each year;

**higher cap** means an amount expressed as the average rate cap proposed by a Council.

**141 Minister may set average rate cap by general Order**

- (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 defined by reference to any criteria, factor, condition or circumstance specified in the general Order; or
  - (c) a Council or Councils specified in the general Order.
- (3) Before making a general Order, the Minister must—
  - (a) request advice from the ESC for the purposes of adjustment in setting the average rate cap; and
  - (b) have regard to any advice received from the ESC as requested under paragraph (a).
- (4) The ESC 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.

#### **142 Council may apply for higher cap**

- (1) A Council that is the subject of a general Order may apply to the ESC 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 higher cap for each specified financial year; and
    - (b) the reasons for which the Council seeks the higher cap; and
    - (c) the community engagement process that has been undertaken in relation to 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 strategic plans and financial policies.
  - (4) The ESC may make guidelines specifying any further matters in respect of applications for a special Order.
  - (5) The ESC 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 ESC;
-



- (b) direct the Council to provide the ESC with any information that the ESC considers would be relevant to the application;
    - (c) provide any further advice or guidance to the Council in relation to the application.
  - (6) The ESC may make a special Order if satisfied that the higher cap or another cap set by the ESC (but not higher than the higher cap) 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 ESC makes a special Order in respect of a Council, the applicable cap on rates for the year or years is the cap set out in the special Order or in the general Order in respect of that financial year, whichever is the greater.
  - (8) If the ESC makes a special Order under this section, the ESC 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 applicable cap set under subsection (7); and
    - (d) each financial year to which the applicable cap set under subsection (7) applies to the Council.
-

**143 Councils must comply with a general Order and any special Order that applies**

- (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 municipal rates or service charges levied in respect of the financial year in respect of which the failure occurred.
- (3) Despite subsection (2), if the Minister is satisfied that the Council has repeatedly and substantially failed to comply with a general Order and any special Order, the Minister may by Order published in the Government Gazette declare that—
  - (a) a Council's municipal rates or service charges levied in respect of a financial year; or
  - (a) a specified part of the Council's municipal rates or service charges levied in respect of that financial year—are invalid for all purposes.

**144 Review**

- (1) The Minister administering this Act and the Minister administering the **Essential Services Commission Act 2001** must ensure that a review of this Division 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 Division is still appropriate; and

- (b) whether this Division 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 6—Council operations**

### **Division 1—Service performance**

#### **145 Service performance principles**

- (1) A Council must plan and deliver services to the municipal community in accordance with the service performance principles.
- (2) The following are the service performance principles—
  - (a) services should be provided in an equitable manner and be responsive to the diverse needs of the municipal community;
  - (b) services should be accessible to the members of the municipal community for whom the services are intended;
  - (c) quality and costs standards for services set by the Council should provide good value to the municipal community;
  - (d) a Council should seek to continuously improve service delivery to the municipal community in response to performance monitoring;
  - (e) service delivery must include a fair and effective process for considering and responding to complaints about service provision.

#### **146 Complaints policy**

- (1) A Council must develop and maintain a complaints policy that includes a process for—
    - (a) dealing with complaints made to the Council; and
    - (b) reviewing any action, decision or service in respect of which the complaint is made.
-

- (2) A review process must provide for a review that is independent of—
  - (a) the person who took the action; and
  - (b) the person who made the decision; and
  - (c) the person who provided the service.
- (3) For the purposes of the complaints policy—
  - complaint* includes the communication, whether orally or in writing, to the Council by a person of their dissatisfaction with—
    - (a) the quality of an action taken, decision made or service provided by a member of Council staff or a contractor engaged by the Council; or
    - (b) the delay by a member of Council staff or a contractor engaged by the Council in taking an action, making a decision or providing a service;
  - decision* does not include a policy or decision made by the Council or a member of Council staff or a contractor engaged by the Council that is otherwise subject to statutory review.

## **Division 2—Procurement**

### **147 Procurement Policy**

- (1) A Council must prepare and adopt a Procurement Policy which specifies the principles, processes and procedures applying in respect of the purchase of goods and services by the Council, including for the carrying out of works.
- (2) A Procurement Policy must seek to promote open and fair competition.

- (3) A Procurement Policy must include the following—
  - (a) a description of the circumstances in which the Council must invite a tender or seek an expression of interest;
  - (b) a description of how the Council will seek collaboration with other Councils and public bodies in the procurement of goods or services;
  - (c) any other matters prescribed by the regulations.
- (4) A Council must review its Procurement Policy at least once during each 4 year term of the Council.

#### **148 Procurement**

- (1) A Council must comply with its Procurement Policy before entering into a contract for the purchase of goods or services or the carrying out of works.
- (2) The Chief Executive Officer must ensure that any report to the Council that recommends entering into a procurement agreement includes information in relation to any opportunities for collaboration with other Councils or public bodies which may be available.

### **Division 3—Beneficial enterprises**

#### **149 Beneficial enterprises**

- (1) For the purpose of performing its role, a Council may participate in any of the following beneficial enterprises—
    - (a) become a member of a corporation, trust or other body;
    - (b) acquire shares in a corporation, trust or other body;
-

- (c) enter into a partnership or joint venture with any other person or body.
- (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)(a) or (b), 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.

**150 Process before participating in beneficial enterprises**

- (1) A Council must in participating in a beneficial enterprise under section 149—
  - (a) assess the total investment involved and the total risk exposure and ensure that its total risk exposure does not exceed its total investment; and
  - (b) if section 149(1)(a) or (b) applies, ensure that the corporation is a limited corporation; and
  - (c) have regard to the risks involved; and
  - (d) establish risk management arrangements; and
  - (e) implement regular performance monitoring and reporting arrangements in relation to the beneficial enterprise; and
  - (f) ensure that any changes to the operation or purpose of the beneficial enterprise are reported to the Council; and

- (g) identify and manage any risks associated with any changes to the operation or purpose of the beneficial enterprise.
- (2) A Council must report on the operations and performance of each beneficial enterprise in its annual report.

## **Division 4—Powers in relation to land**

### **151 Acquisition and compensation**

- (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 2018** is the special Act; and
  - (b) the Council is the Authority.
- (3) Any purchase or compulsory acquisition of land by a Council under this section must be undertaken in accordance with the Council's community engagement policy.

### **152 Creation of easements**

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.



### **153 Restriction on power to sell or exchange land**

- (1) Except where section 155 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) at least 4 weeks prior to selling or exchanging the land, publish notice of intention to do so—
    - (i) on the Council's Internet site; and
    - (ii) in any other manner prescribed by the regulations for the purposes of this subsection; and
  - (b) undertake public consultation in accordance with its community engagement policy; and
  - (c) 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.

### **154 Lease of 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, and except where section 155 applies, if a Council leases any land to any person subject to any exceptions, reservations, covenants and conditions, it must comply with this section.
  - (3) A Council must include any proposal to lease land in a financial year in the budget, where the lease is—
-

- (a) for 1 year or more and—
  - (i) the rent for any period of the lease is \$100 000 or more a year; or
  - (ii) the current market rental value of the land is \$100 000 or more a year; or
- (b) for 10 years or more.
- (4) If a Council proposes to lease land to which subsection (3) does not apply, the Council must enter into the lease in accordance with the Council's community engagement policy.

**155 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 153 and 154 do not apply to any transfer, exchange or lease under this section to a person or body specified in subsection (1).

## **Division 5—Carrying out works on land**

### **156 When Council or other person can carry out required work**

- (1) If a person fails to carry out any work which the person 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 or engages any other person to carry out the work, the Council may recover the cost of carrying out the work from the person who failed to do it.

### **157 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 the 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 an order made under subsection (3).  
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.

### **Division 6—Unpaid money**

#### **158 Recovery of money owed to Council by former owner or occupier**

- (1) 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, subject to subsection (2), require the payment of all or part of the money from the present owner or occupier of the building or land.
- (2) A Council may only recover an amount under subsection (1) which is not more than—
  - (a) the amount appearing on the certificate issued under section 160; and
  - (b) interest which has accrued on the amount appearing on the certificate since the issue of the certificate.

#### **159 Council may charge interest on unpaid money**

- (1) A Council may require a person to pay interest on any amount of money (other than municipal rates, service charges and special purpose 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**.
- (4) 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.

## **Division 7—Land information**

### **160 Land information certificate**

- (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 form prescribed by the regulations; and
    - (b) sent to the Chief Executive Officer.
  - (3) An applicant must pay the prescribed fee to the Council for the issue of a certificate.
-

- (4) 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.
- (5) A Council does not incur any liability in respect of any information provided in addition to the prescribed information in good faith.
- (6) A certificate is conclusive proof as at the date it is given of the prescribed information stated in the certificate.

**161 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 the person contravenes this section without having a reasonable excuse.

Penalty: 10 penalty units.

## **Part 7—Council integrity**

### **Division 1—Improper conduct**

#### **162 Misuse of position**

- (1) A person who is, or has been, a Councillor or member of a delegated committee must not intentionally misuse their 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.
- (2) A person who contravenes subsection (1) is guilty of an indictable offence.

Penalty: Level 5 imprisonment (10 years maximum).

- (3) 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 delegated committee include—
  - (a) making improper use of information acquired as a result of the position the person held or holds; or
  - (b) disclosing information that is confidential information; or
  - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff; or
  - (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that the person 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.
- (4) 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 delegated committees; and
  - (b) does not prevent the institution of any criminal or civil proceedings in respect of that liability.

### **163 Directing a member of Council staff**

A Councillor must not intentionally 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 this Act or any other Act; or
- (d) in relation to advice provided to the Council or a delegated committee, including advice in a report to the Council or delegated committee.

Penalty: 120 penalty units.



## **164 Confidential information**

- (1) Unless subsection (2) applies, a person who is, or has been, a Councillor, a member of a delegated committee or a member of Council staff, must not intentionally or recklessly disclose information that the person knows, or should reasonably know, is confidential information.

Penalty: 120 penalty units.

- (2) A person who is, or has been, a Councillor, a member of a delegated committee or a member of Council staff, may disclose information that the person knows, or should reasonably know, 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 by a law enforcement agency.
-

## Division 2—Conflict of interest

### 165 Definitions

(1) In this Division—

*domestic partner* of a relevant person means—

- (a) a domestic partner within the meaning of section 3(1) of the **Guardianship and Administration Act 1986**; and
- (b) a person with whom the relevant person is in a registrable caring relationship or a registrable domestic relationship within the meaning of section 5 of the **Relationships Act 2008**;

*family member* means—

- (a) a spouse or domestic partner of the relevant person; or
- (b) a parent, grandparent, sibling, child, grandchild, step-parent, step-sibling or step-child of the relevant person or of their spouse or domestic partner; or
- (c) any other relative that regularly resides with the relevant person;

*matter* means a matter with which a Council, delegated 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 delegated committee in respect of the matter; or
- (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—

- (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 delegated committee who is not a Councillor; or
  - (c) member of Council staff.
- (2) For the purposes of this Division, a relevant person has a ***conflict of interest*** if the relevant person has—
- (a) a general conflict of interest within the meaning of section 166; or
  - (b) a material conflict of interest within the meaning of section 167.

## **166 General conflict of interest**

- (1) Subject to section 168, a relevant person has a general conflict of interest in a matter if an impartial, fair-minded person would consider that the person's private interests could result in that person acting in a manner that is contrary to their public duty.
- (2) For the purposes of subsection (1)—

***private interests*** means any interest of a relevant person that does not derive from their public duty and does not include an interest that is only a matter of personal opinion or belief;

*public duty* means the responsibilities and obligations that a relevant person has to members of the public in their role as a relevant person.

**167 Material conflict of interest**

- (1) Subject to section 168, a relevant person has a *material conflict of interest* in respect of a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter.
- (2) The benefit may arise or the loss incurred—
  - (a) directly or indirectly; or
  - (b) in a pecuniary or non-pecuniary form.
- (3) For the purposes of this section, any of the following is an *affected person*—
  - (a) the relevant person;
  - (b) a family member of the relevant person;
  - (c) a body corporate of which the relevant person or their spouse or domestic partner is a Director or a member of the governing body;
  - (d) an employer of the relevant person, unless the employer is the Crown or a statutory body established by or under any Act for a public purpose and is not affected by the matter;
  - (e) a business partner of the relevant person;
  - (f) a person for whom the relevant person is a consultant, contractor or agent;
  - (g) a beneficiary under a trust or an object of a discretionary trust of which the relevant person is a trustee;
  - (h) a person from whom the relevant person has received a disclosable gift.

- (4) For the purposes of subsection (3)(h), *disclosable gift* means one or more gifts with a total value of, or more than, the gift disclosure threshold, received from a person in the 5 years preceding the decision on the matter—
- (a) if the relevant person held the office of Councillor, was a member of Council staff or was a member of a delegated committee at the time the gift was received; or
  - (b) if the gift was, or gifts were, or will be, required to be disclosed as an election campaign donation.

#### **168 Exemptions**

Despite sections 166 and 167, a conflict of interest does not arise if any of the following applies—

- (a) the conflict of interest is so remote or insignificant that it could not be reasonably regarded as capable of influencing the actions or decisions of the relevant person in relation to the matter;
  - (b) the interest that would give rise to a conflict of interest is held in common with a substantial proportion of the residents, ratepayers or electors of the municipal district and does not exceed the interest held by the other residents, ratepayers or electors;
  - (c) the relevant person does not know the circumstances that give rise to the conflict of interest, and could not be reasonably expected to know those circumstances;
  - (d) the interest only arises because the relevant person is the representative of the Council on a not-for-profit organisation that has an interest in the matter and the relevant person receives no personal advantage from the not-for-profit organisation;
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- (e) the interest only arises because a member of the relevant person's family is a member but not an office-holder of a not-for-profit sporting club or not-for-profit community organisation;
- (f) the interest only arises because the relevant person is a member of an organisation that has expressed an opinion or advocated for an outcome in regard to the matter;
- (g) the interest arises in relation to a decision by a Councillor on a matter that is prescribed to be exempt by the regulations.

**169 Disclosure of conflict of interest**

- (1) This section applies in respect of a conflict of interest in respect of a matter—
    - (a) to be considered at a Council meeting; or
    - (b) to be considered at a meeting of a delegated committee; or
    - (c) that arises in the course of the exercise of a power of delegation by a member of Council staff; or
    - (d) that arises in the course of the exercise of a statutory function under this Act or any other Act.
  - (2) A relevant person who has a conflict of interest in respect of a matter must—
    - (a) disclose the conflict of interest; and
    - (b) exclude themselves from the decision making process in relation to that matter, including any discussion or vote on the matter at any Council meeting or delegated committee, and any action in relation to the matter.
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- (3) A relevant person who fails to comply with subsection (2) in respect of a conflict of interest that is a material conflict of interest is guilty of an offence against this Act.

Penalty: 120 penalty units.

- (4) If a relevant person who fails to comply with subsection (2) in respect of a conflict of interest that is a general conflict of interest is a Councillor who has been previously—

- (a) convicted of a conflict of interest offence against this Act; or
- (b) subject to a finding of serious misconduct by a Councillor Conduct Panel for a conflict of interest breach—

the relevant person is guilty of an offence against this Act.

Penalty: 120 penalty units.

- (5) If a relevant person who fails to comply with subsection (2) in respect of a conflict of interest that is a material conflict of interest or a general conflict of interest is a Councillor, an application may be made under section 189 to a Councillor Conduct Panel alleging serious misconduct.
- (6) If a relevant person who fails to comply with subsection (2) is the Chief Executive Officer, the Mayor must notify the Chief Municipal Inspector as soon as practicable after the Mayor becomes aware that the Chief Executive Officer has failed to comply with subsection (2).
- (7) If a relevant person who fails to comply with subsection (2) is a member of Council staff other than the Chief Executive Officer, the Chief Executive Officer—
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- (a) must notify the Chief Municipal Inspector as soon as practicable after the Chief Executive Officer becomes aware that the member of Council staff has failed to comply with subsection (2); and
  - (b) must deal with the failure to comply with subsection (2) in accordance with the code of conduct for members of Council staff.
- (8) If a relevant person who fails to comply with subsection (2) is a person other than a Councillor or a member of Council staff, the Chief Executive Officer must notify the Council and make a recommendation to the Council as to the action that is to be taken.

**170 Disclosure of conflict of interest at other meetings**

- (1) This section applies in respect of a conflict of interest in respect of a matter at a meeting conducted under the auspices of the Council that is not a meeting specified in section 169(1)(a) or (b).
- (2) A Councillor who has a conflict of interest in respect of a matter must in accordance with the procedures determined by the Council—
  - (a) disclose the conflict of interest; and
  - (b) subject to subsection (3), if required by a decision of a majority of the other persons at the meeting, leave the meeting while the matter is being considered.
- (3) Subsection (2)(b) does not apply to a meeting that is a public meeting that is being conducted solely for the purpose of consulting with the community.
- (4) If a Councillor fails to comply with subsection (2), an application may be made under section 191 to a Councillor Conduct Panel alleging serious misconduct.



### **Division 3—Personal interests returns**

#### **171 Definitions**

(1) In this Division—

*biannual personal interests return* means a return lodged by a specified person while they continue to be a specified person;

*initial personal interests return* means the first return lodged by a specified person;

*nominated officer* means a member of Council staff who—

- (a) has a statutory or delegated power, duty or function; and
- (b) is nominated by the Chief Executive Officer because of the nature of that power, duty or function;

*personal interests return* means an initial personal interests return or a biannual personal interests return;

*specified person* means—

- (a) a Councillor; or
  - (b) a member of a delegated committee; who is not a Councillor; or
  - (c) a Chief Executive Officer; or
  - (d) a nominated officer.
- (2) A nomination for the purposes of the definition of *nominated officer* may be made by reference to a specified person or to the holder of a specified position.

## **172 Lodging of an initial personal interests return**

- (1) A specified person must lodge an initial personal interests return with the Chief Executive Officer containing the matters prescribed by the regulations—
  - (a) if the specified person is a Councillor, within 30 days of taking the oath or affirmation of office of a Councillor; or
  - (b) if the specified person is a member of a delegated committee, within 30 days of being appointed a member of the delegated committee; or
  - (c) if the specified person is a Chief Executive Officer, within 30 days of being appointed a Chief Executive Officer; or
  - (d) if the specified person is a nominated officer, within 30 days of being nominated or being appointed to a nominated position.

Penalty: 60 penalty units.

- (2) A specified person must not intentionally, recklessly or negligently lodge an initial personal interests return that contains any false or incomplete information.

Penalty: 60 penalty units.

- (3) If a person is re-elected or reappointed upon completion of their term of office as a Councillor or member of a delegated committee, the Councillor or member of a delegated committee does not have to submit a new initial personal interests return.
- (4) If the specified person is a member of Council staff who is reappointed after the renewal of their current contract of employment, the member of Council staff does not have to submit a new initial personal interests return.

**173 Lodging of a biannual personal interests return**

- (1) A specified person who continues to be a specified person must lodge a biannual personal interests return with the Chief Executive Officer containing the matters prescribed by the regulations twice yearly by the end of each prescribed period.

Penalty: 60 penalty units.

- (2) A specified person must not intentionally, recklessly or negligently lodge a biannual personal interests return that contains any false or incomplete information.

Penalty: 60 penalty units.

**174 Public access to summary of personal interests**

- (1) The Chief Executive Officer must prepare a summary of the personal interests information disclosed in the last personal interests return lodged with the Chief Executive Officer.

- (2) The summary of personal interests must—

- (a) include the town or suburb, but not the street address or number of the land or place of residence as disclosed in the personal interests return; and
- (b) include the matters prescribed by the regulations; and
- (c) exclude the matters required by the regulations to be excluded; and
- (d) be prepared in accordance with the manner prescribed by the regulations.

- (3) The Chief Executive Officer must—

- (a) publish the summary of personal interests on the Council's Internet site; and

- (b) ensure that the summary of personal interests is available for inspection at the Council office.

#### **175 Confidentiality of personal interests returns**

- (1) The Chief Executive Officer must ensure that personal interests returns are kept in accordance with the **Public Records Act 1973**.
- (2) The Chief Executive Officer must ensure that only the following persons have access to, or can inspect, a personal interests return—
  - (a) the Chief Executive Officer or a member of Council staff who is responsible for managing the personal interests returns or preparing the summary of personal interests;
  - (b) the Chief Municipal Inspector or a person authorised by the Chief Municipal Inspector;
  - (c) a Municipal Monitor;
  - (d) a person who has obtained an order of a court to do so.
- (3) A person must not make a record of, divulge or communicate to any person any information in a personal interests return that is gained by or conveyed to them in the course of the discharge of their official duties unless—
  - (a) the information is information published in a summary of personal interests; or
  - (b) the information is required by the person for the performance of their official duties under this Act or any other Act, including in relation to a proceeding before a Councillor Conduct Panel, VCAT or a court.

Penalty: 60 penalty units.

## **Division 4—Gifts**

### **176 Councillor gift policy**

- (1) A Council must adopt a Councillor gift policy within the period of 6 months after this section comes into operation.
- (2) A Councillor gift policy must include the following—
  - (a) provisions in relation to the acceptance of gifts by Councillors;
  - (b) provisions in relation to the disposal of gifts by Councillors;
  - (c) procedures for the maintenance of a gift register;
  - (d) the minimum value of any gift above which a gift to a Councillor must be recorded in the gifts register;
  - (e) procedures to ensure compliance with the public transparency principles.
- (3) A Council may review and update the Councillor gift policy.

### **177 Certain gifts not to be accepted**

- (1) Subject to subsection (2), a Councillor must not accept, directly or indirectly, a gift for the benefit of the Councillor 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 Councillor; or
  - (b) at the time when the gift is made—
    - (i) the Councillor is given the name and address of the person making the gift; and

- (ii) the Councillor reasonably believes that the name and address so given are the true name and address of the person making the gift.

Penalty: 60 penalty units.

- (2) If the name and address of the person making the gift are not known to the Councillor for whose benefit the gift is intended, the Councillor is not in breach of subsection (1) if the Councillor disposes of the gift to the Council within 30 days of the gift being received.
- (3) In addition to the penalty specified in subsection (1), a Councillor who is found guilty of a breach of that subsection must pay to the Council the amount or value of the gift accepted in contravention of that subsection.

## **Division 5—Councillor conduct**

### **178 Councillor conduct principles**

- (1) It is a primary principle of Councillor conduct that, in performing the role of a Councillor, a Councillor must—
  - (a) act with integrity; and
  - (b) impartially exercise their responsibilities in the interests of the municipal community; and
  - (c) not improperly seek to confer an advantage or disadvantage on any person.
- (2) In addition to acting in accordance with the primary principle of Councillor conduct specified in subsection (1), a Councillor must—
  - (a) avoid conflicts between their public duties as a Councillor and their personal interests and obligations; and

- (b) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person; and
- (c) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, members of Council staff and other persons; and
- (d) exercise reasonable care and diligence and submit themselves to the lawful scrutiny that is appropriate to their office; and
- (e) endeavour to ensure that public resources are used prudently and solely in the public interest; and
- (f) act lawfully and in accordance with the trust placed in them as an elected representative; and
- (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.

#### **179 Councillor Code of Conduct**

- (1) A Council must develop a Councillor Code of Conduct.
  - (2) The purpose of the Councillor Code of Conduct is to—
    - (a) set the standards of behaviour expected to be observed by Councillors in the course of performing their duties and functions as Councillors; and
    - (b) provide for an agreed internal resolution process for responding to Councillor behaviour that does not comply with the standards of behaviour set out in the Councillor Code of Conduct.
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- (3) A Councillor Code of Conduct—
- (a) must include the Councillor conduct principles specified in section 178; and
  - (b) must include an internal resolution procedure to be adopted by the Council for dealing with—
    - (i) an alleged contravention of the Councillor Code of Conduct; and
    - (ii) disputes between Councillors; and
  - (c) must include provisions that support compliance with policies, practices and protocols for interaction between Councillors and members of Council staff under section 45(3)(c); and
  - (d) must include any provisions prescribed by the regulations for the purpose of this section; and
  - (e) must include provisions addressing any matters prescribed by the regulations for the purpose of this section; and
  - (f) may include any other matters relating to the conduct of Councillors which the Council considers appropriate.
- (4) A Council must review and adopt the Councillor Code of Conduct within the period of 4 months after a general election.
- (5) A Council must adopt the Councillor Code of Conduct under subsection (4) by a formal resolution of the Council passed at a meeting by at least two-thirds of the total number of Councillors elected to the Council.
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- (6) Until a Council adopts a Councillor Code of Conduct under subsection (4), the Councillors must comply with the existing Councillor Code of Conduct.
- (7) A Councillor Code of Conduct is inoperative to the extent that it is inconsistent with any Act (including the **Charter of Human Rights and Responsibilities Act 2006**) or regulation.

**180 Review or amendment of Councillor Code of Conduct**

- (1) A Council may review or amend the Councillor Code of Conduct at any time.
- (2) A Council can only amend the Councillor Code of Conduct by a formal resolution of the Council passed at a meeting by at least two-thirds of the total number of Councillors elected to the Council.

**181 Internal resolution procedure of Council**

- (1) A Council must develop and maintain an internal resolution procedure for the purposes of—
  - (a) considering alleged contraventions of the Councillor Code of Conduct; and
  - (b) addressing and resolving disputes between Councillors.
- (2) The internal resolution procedure of a Council must be specified in the Councillor Code of Conduct.
- (3) The internal resolution procedure must—
  - (a) incorporate any processes prescribed by the regulations, including any application process; and

- (b) address any matters prescribed by the regulations for the purposes of this section; and
  - (c) include any provisions prescribed by the regulations for the purposes of this section; and
  - (d) provide for the selection of an arbiter who is suitably independent and able to carry out the role of arbiter fairly; and
  - (e) specify the role an arbiter is expected to undertake in the conduct of matters being considered under the internal resolution procedure, including when considering any application alleging a contravention of the Councillor Code of Conduct; and
  - (f) provide processes to ensure that Councillors involved in matters being considered under the internal resolution procedure are given an opportunity to be heard by the arbiter; and
  - (g) specify that the Council and the Councillors involved in matters being considered under the internal resolution procedure are to be given written reasons for any findings made by an arbiter; and
  - (h) specify that the Councillors involved have no right to representation except if the arbiter considers that a party requires representation to ensure that the process is conducted fairly.
- (4) Information provided to an arbiter or produced by an arbiter for the purpose of an internal resolution procedure, other than the findings and the reasons, is confidential information.
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## **182 Sanctions that may be imposed by a Council**

- (1) If an arbiter has made a finding that a Councillor has breached the Councillor Code of Conduct, the Council may, after a resolution of the Council, give any or all the following directions in writing—
  - (a) direct the Councillor to make an apology in a form or manner specified by the Council;
  - (b) direct that the Councillor be removed from any position where the Councillor represents the Council for the period determined by the Council;
  - (c) direct that the Councillor is removed from being the chair of a delegated committee for the period determined by the Council, including where the appointment as chair was made by the Mayor;
  - (d) on the recommendation of the arbiter, direct a Councillor to attend or undergo training or counselling.
- (2) A Council must table the findings of an arbiter at the next Council meeting after the findings have been made.
- (3) A Council may table the reasons with the findings of the arbiter unless the reasons contain confidential information.

## **Division 6—Appointment and functions of Principal Councillor Conduct Registrar and Councillor Conduct Officers**

### **183 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**.

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**184 Functions and powers of the Principal Councillor Conduct Registrar**

- (1) The Principal Councillor Conduct Registrar has the following functions—
- (a) receive applications for the establishment of Councillor Conduct Panels;
  - (b) form Councillor Conduct Panels by appointing members of the panel list to sit on Councillor Conduct Panels;
  - (c) provide general advice and assistance to members of the Councillor Conduct Panel in relation to their functions;
  - (d) subject to section 204, publish any determination made by a Councillor Conduct Panel and any reasons given for that determination;
  - (e) keep copies of all documents requested by, and given to, a Councillor Conduct Panel;
  - (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;
  - (g) set and publish a schedule of fees specifying the fees to be paid to members of a Councillor Conduct Panel;
  - (h) send a 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;
  - (i) publish any guidelines in relation to Councillor Conduct Panel procedures and processes that the Principal Councillor Conduct Registrar has determined to be necessary.
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- (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.
- (3) Without limiting the generality of subsection (2), the Principal Councillor Conduct Registrar may request any information from a Council that the Principal Councillor Conduct Registrar considers is necessary to enable the Principal Councillor Conduct Registrar to make a determination under section 190(1)(c).

#### **185 Appointment of Councillor Conduct Officer**

- (1) The Chief Executive Officer must—
  - (a) appoint a person in writing to be the Councillor Conduct Officer; and
  - (b) notify the Principal Councillor Conduct Registrar of the appointment.
- (2) Subject to subsection (3), a person may be appointed to be a Councillor Conduct Officer if—
  - (a) the person is a member of Council staff; or
  - (b) the Council resolves that the person is suitably qualified to perform the functions of the Councillor Conduct Officer.
- (3) The Chief Executive Officer cannot be appointed as a Councillor Conduct Officer.

#### **186 Functions of a Councillor Conduct Officer**

A Councillor 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 184(1); and
- (c) assist the Principal Councillor Conduct Registrar in relation to any request for information under section 184(3).

**187 Council must pay fees**

A Council must pay the fees specified in a notice under section 184(1)(h) to the Principal Councillor Conduct Registrar.

**Division 7—Councillor Conduct Panels and VCAT**

**188 The panel list**

- (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 191(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.

**189 Application to Councillor Conduct Panel**

- (1) A Councillor Conduct Panel may hear an application that alleges misconduct or serious misconduct by a Councillor.
- (2) An application for a Councillor Conduct Panel to make a finding of misconduct against a Councillor may be made by—
  - (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.
- (3) Subject to subsection (5), an application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor may be made by—
  - (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.

- (4) An application under subsection (2) or (3) by a Council, a Councillor or a group of Councillors must be made within 3 years of the alleged misconduct or alleged serious misconduct occurring.
  - (5) An application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor that alleges that the Councillor has failed to disclose a conflict of interest may only be made by the Chief Municipal Inspector.
  - (6) An application made under this section must be given to the Principal Councillor Conduct Registrar in the manner specified by the Principal Councillor Conduct Registrar in any guidelines published under section 184(1)(i).
  - (7) An application made under this section must—
    - (a) specify the ground or grounds for the application; and
    - (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; and
    - (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
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- (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.
- (8) If an application is made under this section by the Council or a group of Councillors, the application must state the name and address of the Councillor whom the Council has, or the group have, appointed as representative of the Council or the group of Councillors.

**190 Principal Councillor Conduct Registrar must examine application**

- (1) The Principal Councillor Conduct Registrar, after examining an application made under section 189, 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 and the matter remains unresolved; or
    - (ii) has not taken any steps to resolve the matter but the Principal Councillor Conduct Registrar is satisfied as to 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 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 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 189 in respect of the same conduct by a Councillor that was the subject of the rejected or referred application.

**191 Principal Councillor Conduct Registrar to form Councillor Conduct Panel**

- (1) Subject to sections 190 and 192, the Principal Councillor Conduct Registrar must form a Councillor Conduct Panel, after examining an application made under section 189, without undue delay.
- (2) For the purposes of subsection (1), the Principal Councillor Conduct Registrar must select 2 people from the panel list who the Principal Councillor Conduct Registrar considers suitable to form a Councillor Conduct Panel in accordance with this section and any guidelines in relation to panel procedures made by the Principal Councillor Conduct Registrar.

- (3) A Councillor Conduct Panel formed by the Principal Councillor Conduct Registrar must consist of—
  - (a) one member who is an Australian lawyer who has been admitted to the legal profession for at least 5 years; and
  - (b) one member who has other relevant experience.
- (4) The person selected under subsection (3)(a) is the chairperson for the Councillor Conduct Panel.

## **192 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—
  - (a) forward the subsequent application directly to the existing Councillor Conduct Panel; or
  - (b) reject the subsequent application if the Principal Councillor Conduct Registrar considers that the application is frivolous, vexatious, misconceived or lacking in substance.
- (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 Councillor Conduct 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 examine the subsequent application in accordance with section 190.
- (4) If the Principal Councillor Conduct Registrar is satisfied as to the matters specified in section 190(1)(a), (b) and (c), the Principal Councillor Conduct Registrar must form a Councillor Conduct Panel which does not include any of the members of the Councillor Conduct Panel that returned the subsequent application.
- (5) If the Principal Councillor Conduct Registrar is not satisfied as to the matters specified in section 190(1)(a), (b) or (c), the Principal Councillor Conduct Registrar must deal with the application in accordance with section 190(2) or (3).

**193 Charge for certain offences not to proceed if application has been made**

- (1) This section applies if an application for a Councillor Conduct Panel to make a finding of serious misconduct by a Councillor has been made in respect of the following conduct—
  - (a) the release of confidential information;
  - (b) a failure to comply with conflict of interest requirements;
  - (c) seeking to direct a member of Council staff.
- (2) If this section applies, the Councillor must not be charged with an offence in respect of the same conduct unless—
  - (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; 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.

**194 Application not to be made if charge has been made for certain offences**

- (1) This section applies if a Councillor has been charged with an offence in respect of the following conduct—
  - (a) the release of confidential information;
  - (b) a failure to comply with conflict of interest requirements;
  - (c) seeking to direct a member of Council staff.
- (2) If this section applies, 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.

**195 Notice of a Councillor Conduct Panel**

A Councillor Conduct Panel must—

- (a) fix a time and a place for the hearing to be conducted; and
- (b) serve by post a notice of the time and place of the hearing on the applicant, the respondent and the Council.

## **196 Procedures**

- (1) A Councillor Conduct Panel may do any or all of the following—
  - (a) subject to paragraph (c), request a person to attend a hearing and answer questions;
  - (b) subject to paragraph (c), request information from the applicant, the respondent or the Council, including confidential information held by the Council;
  - (c) direct a Councillor to attend a hearing or provide information, including confidential information held by the Councillor.
- (2) Members of a Councillor Conduct Panel that are provided with confidential information must ensure that the information is not released to the public.

## **197 Obligation on Council**

A Council which is served with a notice under section 195 must provide all reasonable assistance to the Councillor Conduct Panel which is necessary to enable the Councillor Conduct Panel to conduct the hearing and make a determination.

## **198 Conduct of a Councillor Conduct Panel**

- (1) A Councillor Conduct Panel must not make a final determination in relation to an application 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 Councillor Conduct 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 a Council or a group of Councillors, the appointed representative must represent the Council or group of Councillors at the hearing;
  - (e) the Councillor Conduct Panel is not bound by rules of evidence but may inform itself in any way it thinks fit;
  - (f) the Councillor Conduct Panel is bound by the rules of natural justice;
  - (g) the procedure of a Councillor Conduct 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.

#### **199 Dissolution of Councillor Conduct Panels**

A Councillor Conduct Panel is dissolved when any of the following occurs—

- (a) the application for the Councillor Conduct Panel to make a finding is withdrawn;
  - (b) after the Councillor Conduct Panel has given a written statement of reasons for the decision of the Councillor Conduct Panel on the application;
  - (c) the Chief Municipal Inspector has stopped the consideration of the matter by the Councillor Conduct Panel;
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- (d) after the conclusion of the hearing by VCAT of an application for review of the decision of the Councillor Conduct Panel.

**200 Notification to Chief Municipal Inspector of apparent offence**

- (1) This section applies if it appears to a Councillor Conduct Panel that a Councillor has committed an offence under this Act.
- (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 Councillor Conduct Panel becomes aware of the apparent offence.

**201 Investigation by Chief Municipal Inspector**

- (1) The Chief Municipal Inspector may at any time (whether or not the Chief Municipal Inspector has received a notice under section 200), by notice, require a Councillor Conduct Panel to suspend or stop the consideration of a matter.
- (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.

**202 Determinations by a Councillor Conduct Panel**

- (1) After a Councillor Conduct Panel has conducted a hearing, the Councillor Conduct Panel may—
  - (a) make a finding of misconduct against a Councillor; or
  - (b) make a finding of serious misconduct against a Councillor; or



- (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
    - (d) dismiss the application.
  - (2) If a Councillor Conduct Panel makes a finding of misconduct against a Councillor, the Councillor Conduct Panel may—
    - (a) reprimand the Councillor; or
    - (b) direct the Councillor to make an apology in a form or manner determined by the Councillor Conduct Panel; or
    - (c) suspend the Councillor from office for a period specified by the Councillor Conduct Panel not exceeding 2 months; or
    - (d) direct that the Councillor is ineligible to be elected to hold the office of Mayor or Deputy Mayor for a period specified by the Councillor Conduct Panel not exceeding the remainder of the Council's term.
  - (3) If a Councillor Conduct Panel makes a finding of serious misconduct against a Councillor, the Councillor becomes ineligible to hold the office of Mayor or Deputy Mayor for the remainder of the Council's term unless the Councillor Conduct Panel directs otherwise.
  - (4) If a Councillor Conduct Panel makes a finding of serious misconduct against a Councillor, the Councillor Conduct Panel may—
    - (a) reprimand the Councillor; or
    - (b) direct the Councillor to make an apology in a form or manner determined by the Councillor Conduct Panel; or
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- (c) suspend that Councillor from office for a period specified by the Councillor Conduct Panel not exceeding 6 months; or
  - (d) direct that the Councillor is ineligible to chair a delegated committee of the Council for a period specified by the Councillor Conduct Panel not exceeding the remainder of the Council's term.
- (5) If a Councillor Conduct Panel makes a finding that remedial action is required, the Councillor Conduct Panel may direct the Councillor who is the subject of the application to attend—
  - (a) mediation; or
  - (b) training; or
  - (c) counselling.
- (6) For the purposes of subsection (5), a Councillor Conduct Panel may set reasonable conditions in respect of how or when remedial action is to be undertaken.
- (7) Any necessary expenses incurred by Councillors in attending mediation, training or counselling must be paid by the Council.
- (8) In addition to any findings made under subsection (1)(a), (b) or (c), a Councillor Conduct Panel may direct that the Council amend its Councillor Code of Conduct in a particular way or to address a particular issue.
- (9) A Council must comply with a direction under subsection (8) within the period of 3 months after the direction is given.

### **203 Notice and tabling of decision**

- (1) After a Councillor Conduct Panel has made a determination, the Councillor Conduct Panel must give a copy of the decision to the following—
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- (a) the Council;
  - (b) the parties to the matter;
  - (c) the Minister;
  - (d) the Principal Councillor Conduct Registrar.
- (2) A copy of the decision given to the Council under subsection (1)(a) must be tabled at the next Council meeting and recorded in the minutes of that meeting.
- (3) A Councillor Conduct Panel must within 28 days of making a determination give a written statement of reasons for the decision to the following—
- (a) the Council;
  - (b) the parties to the matter;
  - (c) the Minister;
  - (d) the Principal Councillor Conduct Registrar.
- (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 Council meeting and recorded in the minutes of that meeting.

#### **204 Councillor Conduct Panel confidential information**

Unless otherwise determined by a Councillor Conduct Panel, the following information is confidential information—

- (a) information that is provided to, or produced by, a Principal Councillor Conduct Registrar, for the purposes of an application for a Councillor Conduct Panel to be formed;
- (b) information, other than a decision or reasons for a decision, that is provided to, or produced by, a Councillor Conduct Panel, for the purposes of conducting the Councillor Conduct Panel;
- (c) any part of a statement of reasons or any other document under the control or possession of the Councillor Conduct Panel that the Councillor Conduct Panel determines contains confidential information.

## **205 Review by VCAT**

- (1) Subject to subsection (2), a person who is affected by the decision made by a Councillor Conduct Panel under this Division may apply to VCAT for review of the decision.
  - (2) 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.
  - (3) An application for review must be made within 28 days of the Councillor Conduct Panel giving a statement of reasons.
  - (4) For the purposes of a review by VCAT—
    - (a) the person who applies for a review is the applicant; and
    - (b) any other party to the original Councillor Conduct Panel proceeding is a respondent; and
    - (c) the members of the original Councillor Conduct Panel are also respondents.
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**206 Application to VCAT on grounds of gross misconduct**

- (1) VCAT may hear an application made by the Chief Municipal Inspector that alleges gross misconduct by a Councillor.
- (2) An application made under subsection (1) may only be made by the Chief Municipal Inspector.
- (3) The applicant and respondent are parties to a proceeding commenced in VCAT under this section.
- (4) If VCAT makes a finding that a Councillor has engaged in conduct that constitutes gross misconduct, VCAT may order that—
  - (a) the Councillor is disqualified from continuing to be a Councillor for a period specified by VCAT not exceeding 8 years; and
  - (b) the office of the Councillor is vacated.

**207 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.
- (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 any applicant was returned to the office of Councillor as a result of the general election.

- (4) An application to VCAT on the grounds of gross misconduct made by the Chief Municipal Inspector 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.

## **208 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.

## **Part 8—Ministerial oversight**

### **Division 1—Governance directions**

#### **209 Minister may give direction**

- (1) The Minister may in writing direct the Council to amend, discontinue or replace its governance processes and policies if—
  - (a) a person or body specified in subsection (2)(b) 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) Without limiting the generality of subsection (1), the Minister may, in relation to any requirement that applies to a Council under this Act, direct the Council to—
  - (a) adopt a good practice guideline issued by the Minister under section 82; or
  - (b) adopt any recommendation made, or take any action recommended, by—
    - (i) a Municipal Monitor; or
    - (ii) the Chief Municipal Inspector; or
    - (iii) a Commission of Inquiry; or
    - (iv) the Ombudsman; or
    - (v) the IBAC.
- (3) If the Minister considers that it is necessary or appropriate in the public interest to do so, the Minister may, by a written direction, direct a Council to prepare and submit to the Minister within the period of 4 weeks after the direction is given to the Council—

- (a) financial statements in respect of any part of the financial year as specified in the direction; and
  - (b) any other information relating to the financial status of the Council as specified in the direction.
- (4) Subject to subsection (5), the Minister may by a written direction, on the recommendation of a Municipal Monitor, the Chief Municipal Inspector or a Commission of Inquiry, direct a Council—
  - (a) not to employ a new Chief Executive Officer; or
  - (b) not to re-employ a Chief Executive Officer.
- (5) The Minister must not give a direction under subsection (4) unless the Minister is satisfied on reasonable grounds that the employment or re-employment of the Chief Executive Officer could result in—
  - (a) a failure by the Council to provide good governance; or
  - (b) the Council acting unlawfully.
- (6) Any contract entered into by a Council or Chief Executive Officer in contravention of a written direction under subsection (4) is void.
- (7) A written direction under this section must be complied with.

#### **210 Failure to comply with written direction**

If the Council fails to comply with a written direction made under section 209, the Minister may take that failure to comply with the direction into account for the purposes of recommending the suspension of a Councillor or all the Councillors of the Council under this Act.



## **Division 2—Compliance exemptions**

### **211 Application for compliance exemption**

- (1) A Council may apply to the Minister for a compliance exemption from a regulatory requirement under this Act or the regulations specified in the application.
- (2) A Council must provide evidence to the satisfaction of the Minister that—
  - (a) the granting of the compliance exemption—
    - (i) will not limit the ability of the Council to provide good governance; and
    - (ii) would be in the public interest; and
  - (b) the Council is otherwise providing good governance and is not subject to any governance orders.

### **212 Actions by Minister**

If in considering an application for a compliance exemption under section 211(1), the Minister is reasonably satisfied as to the matters specified in section 211(2), the Minister may grant the compliance exemption—

- (a) subject to any terms and conditions; and
  - (b) for any period—
- determined by the Minister.

## **Division 3—Municipal Monitors**

### **213 Municipal Monitor**

- (1) The Minister may appoint a person to be a Municipal Monitor to a Council.
  - (2) The Minister must give the Council written notice of any appointment of a Municipal Monitor made to the Council under subsection (1) which
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specifies the amounts the Municipal Monitor is entitled to be paid and the terms of the appointment.

- (3) The Council must pay a Municipal Monitor the amounts specified in the notice under subsection (2).

#### **214 Functions of a 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 make recommendations to the Minister at the request of the Minister in relation to the exercise by the Minister of any power of the Minister under this Act or any other Act relating to governance matters in respect of the Council;
- (e) to monitor and report to the Minister on any other matters determined by the Minister.

#### **215 Powers of Municipal Monitor**

- (1) A Municipal Monitor has the power to do all things necessary or convenient to be done in connection with the performance of the functions of a Municipal Monitor under section 214.
- (2) 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.

#### **Division 4—Chief Municipal Inspector**

##### **216 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.

##### **217 Powers of the Chief Municipal Inspector**

- (1) The Chief Municipal Inspector has all the powers necessary to perform the Chief Municipal Inspector's functions.

- (2) 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.
  - (3) The Chief Municipal Inspector may, by notice in writing, require a person to—
    - (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
    - (c) appear before the Chief Municipal Inspector for examination on oath or affirmation and to answer questions.
  - (4) The Chief Municipal Inspector may administer an oath or affirmation.
  - (5) The Chief Municipal Inspector may take possession of any document produced under subsection (3) for so long as the Chief Municipal Inspector considers necessary.
  - (6) 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.
  - (7) A person appearing before the Chief Municipal Inspector is entitled to be represented by another person.
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- (8) 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.

#### **218 Delegation by Chief Municipal Inspector**

- (1) 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.
- (2) A person delegated any power, duty or function by the Chief Municipal Inspector under subsection (1) is by virtue of that delegation an inspector of municipal administration.

#### **219 Offences relating to investigations**

- (1) A person must not—
- (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
  - (b) give information which the person knows is false or misleading to the Chief Municipal Inspector; or
  - (c) when appearing before the Chief Municipal Inspector—
    - (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.

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## **220 Referral to Supreme Court**

- (1) 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.
- (2) The Supreme Court may inquire into the failure and may—
  - (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
  - (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.

## **Division 5—Commissions of Inquiry**

### **221 Appointment of Commission of Inquiry**

- (1) The Minister may by instrument appoint a Commission of Inquiry to conduct an inquiry into the affairs of a Council or Councils.
  - (2) The instrument of appointment must specify the following—
    - (a) the person or persons appointed to constitute the Commission of Inquiry;
    - (b) if more than one person is appointed, the person who is to chair the Commission of Inquiry;
    - (c) the terms of reference of the Commission of Inquiry;
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- (d) any matter the Minister considers appropriate, including the manner in which the Commission of Inquiry is to be conducted.
- (3) A Commission of Inquiry must provide a written report to the Minister by the date specified by the Minister.

## **222 Appointment of Commissioners**

- (1) The Minister may appoint a person or persons that the Minister considers appropriate to be a Commissioner of a Commission of Inquiry.
- (2) A 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) holds office on such other terms and conditions as are determined by the Minister.
- (3) A Commissioner ceases to hold office if the Commissioner—
  - (a) resigns; or
  - (b) becomes incapacitated; or
  - (c) dies; or
  - (d) becomes bankrupt; or
  - (e) is convicted of an indictable offence; or
  - (f) receives a notice of termination of appointment from the Minister.

## **223 Services to support Commission of Inquiry**

- (1) A Commission of Inquiry, with the approval of the Minister, may make use of the services of any employees in the Public Service.
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- (2) For the purposes of this Division, a person providing services under this section is to be taken to be a member of staff of the Commission of Inquiry.

**224 Certain public sector values do not apply to Commission of Inquiry staff**

If the public sector values referred to in section 7(1)(a)(i) and (c)(iii) of the **Public Administration Act 2004** would, but for this section, apply to a member of staff of a Commission of Inquiry, those public sector values do not apply to the member of staff in respect of their employment or engagement with the Commission of Inquiry.

**Note**

Section 7(1)(a)(i) and (c)(iii) of the **Public Administration Act 2004** deal with providing advice to the Government and implementing Government policies and programs.

**225 Manner of inquiry of Commission of Inquiry**

A Commission of Inquiry may conduct its inquiry in any manner that it considers appropriate, subject to—

- (a) the instrument of appointment; and
- (b) the requirements of procedural fairness; and
- (c) this Act and any regulations under this Act.

**226 Rules of evidence do not apply**

A Commission of Inquiry—

- (a) must thoroughly investigate the matters into which the Commission of Inquiry 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 itself on any matter in any manner which the Commission of Inquiry considers is appropriate.

**227 Power to serve a written notice**

- (1) A Commissioner may serve a written notice to a person to appear before the Commission of Inquiry and give evidence or produce any documents specified in the written notice.
- (2) A person must appear before the Commission of Inquiry after being served with a written notice.

Penalty: 10 penalty units or imprisonment for 3 months.

**228 Power to examine person under oath or on affirmation**

- (1) A Commissioner may—
  - (a) administer an oath or affirmation to; and
  - (b) examine upon oath or affirmation—any person appearing before the Commission of Inquiry.
- (2) A person must not without lawful excuse—
  - (a) refuse to take an oath or affirmation; or
  - (b) fail to give evidence or produce any documents specified in the written notice served on that person.

Penalty: 10 penalty units or imprisonment for 3 months.

**229 Access**

- (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 Commission of Inquiry.

- (2) A Commissioner, except in carrying out the Commission of Inquiry's functions, powers or duties, must not communicate to any person any information which the Commissioner acquired in carrying out the Commission of Inquiry'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.
- (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.

### **230 Witnesses may be represented**

- (1) A Commission of Inquiry may determine whether a witness appearing before the Commission of Inquiry may be represented by another person.
- (2) A person representing a witness may—
  - (a) examine any witnesses; and
  - (b) address the Commission of Inquiry on behalf of the witness being represented.
- (3) A witness is entitled to be paid expenses and allowances in accordance with the scale prescribed by the regulations.

**231 Proceedings of the inquiry may be open or closed**

- (1) A Commission of Inquiry must determine whether the proceedings of the inquiry, or any part of the proceedings of the inquiry, are to be open to the public.
- (2) In making a determination under subsection (1), the Commission of Inquiry must have regard to—
  - (a) the public interest; and
  - (b) the effect on the reputational and privacy interests of any person if the proceedings of the inquiry, or a part of the proceedings of the inquiry, are not closed to the public.

**232 Access to Commission of Inquiry proceedings**

- (1) A Commission of Inquiry may make an order excluding any person from a proceeding of the Commission of Inquiry if—
  - (a) prejudice or hardship might be caused to any person, including harm to their safety or reputation; or
  - (b) the nature and subject matter of the proceeding is sensitive; or
  - (c) there is a possibility of any prejudice to legal proceedings; or
  - (d) the conduct of the proceeding would be more efficient and effective; or
  - (e) the Commission of Inquiry otherwise considers the exclusion appropriate.
- (2) The Commission of Inquiry must cause a copy of the order to be posted—
  - (a) on a door of the place where the proceeding is being conducted; or

- (b) in another conspicuous place where notices are usually posted at the place where the proceeding is being conducted.
- (3) An order made under subsection (1) is not a legislative instrument within the meaning of the **Subordinate Legislation Act 1994**.

**233 Restriction on publication of information relating to inquiries**

- (1) Subject to subsection (2), a Commission of Inquiry may make an order prohibiting or restricting the publication of—
  - (a) any information that may enable the identity of a person who has given, or is to give, information to the Commission of Inquiry for the purposes of an inquiry to be ascertained; or
  - (b) any information given to the Commission of Inquiry for the purposes of an inquiry.
- (2) A Commission of Inquiry may make an order prohibiting or restricting the publication of information or evidence if—
  - (a) prejudice or hardship might be caused to any person, including harm to their safety or reputation; or
  - (b) the nature and subject matter of the information is sensitive; or
  - (c) there is a possibility of any prejudice to legal proceedings; or
  - (d) the conduct of the proceeding would be more efficient and effective; or
  - (e) the member otherwise considers the prohibition or restriction appropriate.

- (3) If the order is made during a proceeding, the Commission of Inquiry must cause a copy of the order to be posted—
  - (a) on a door of the place where the proceeding is being conducted; or
  - (b) in another conspicuous place where notices are usually posted at the place where the proceeding is being conducted.
- (4) If the order is made in relation to information that is given by the Commission of Inquiry to another person, the Commission of Inquiry must cause a copy of the order to be given to that person.
- (5) An order made under this section is not a legislative instrument within the meaning of the **Subordinate Legislation Act 1994**.

**234 Offence to contravene exclusion or restriction orders**

A person must not engage in conduct that constitutes a contravention of an order of a Commission of Inquiry under section 232(1) or 233(1) that is in force if the person—

- (a) knows that the order is in force; or
- (b) is reckless as to whether the order is in force.

Penalty: 120 penalty units or imprisonment for 12 months.

**235 Order as to costs**

- (1) A Commission of Inquiry may make an order for the payment of all or any of the costs of the Commission of Inquiry by a Council.
- (2) An order under subsection (1) is enforceable in the same manner as an order of the Supreme Court is enforceable.

**236 Protection of Commissioners, Australian legal practitioners and witnesses**

- (1) A Commissioner has, in the performance of their functions as a Commissioner, the same protection and immunity as a Judge of the Supreme Court has in the performance of their duties as a Judge of the Supreme Court.
- (2) An Australian legal practitioner representing a person in a proceeding at a Commission of Inquiry has the same protection and immunity as a legal practitioner has in representing a party in a proceeding in the Supreme Court.
- (3) A person who gives information or evidence, or produces a document or other thing, to the Commission of Inquiry has the same protection and immunity as a witness has in a proceeding in the Supreme Court.

**237 Adverse findings**

- (1) If a Commission of Inquiry proposes to make a finding that is adverse to a person, the Commission of Inquiry must be satisfied that the person—
    - (a) is aware of the matters on which the proposed finding is based; and
    - (b) has had an opportunity, at any time during the course of the inquiry, to respond on those matters.
  - (2) A Commission of Inquiry must consider a person's response under subsection (1)(b) (if any) before making a finding that is adverse to the person.
  - (3) If a Commission of Inquiry includes a finding that is adverse to a person in its report, the Commission of Inquiry must fairly set out the
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person's response under subsection (1)(b) (if any) in the report.

**238 Confidentiality for members of staff**

A person who is or was a member of staff of a Commission of Inquiry must not knowingly disclose any information acquired by the person by reason of being a member of staff, or in the course of the performance of functions under this Act, except—

- (a) for the performance of the functions of the member of staff under this Act; or
- (b) for the purpose of any criminal proceedings under section 254 of the **Crimes Act 1958** in relation to the Commission of Inquiry; or
- (c) if the information is in the public domain at the time of the disclosure, otherwise than as a result of a disclosure that the person knows or ought to have known was unlawful; or
- (d) as is otherwise authorised or required under this Act or any other Act.

Penalty: 120 penalty units or imprisonment for 12 months.

**239 Disclosure or provision of information by Commission of Inquiry**

- (1) A Commission of Inquiry or a person authorised by a Commission of Inquiry may at any time provide or disclose any information referred to in section 238, or give any document or other thing, to any person or body if the Commission of Inquiry or authorised person—

- (a) considers that the information, document or other thing is relevant to the performance of the functions of the person or body; and

(b) considers it appropriate to disclose the information or give the document or other thing to the person or body.

- (2) If a document or other thing is given to a person or body under subsection (1), the person or body must, at the request of the Commission of Inquiry, return the document or other thing if it ceases to be reasonably necessary for the person or body to retain the document or other thing for the purposes for which it was given to the person or body.

**240 Offence to make false or misleading statements or produce false or misleading documents or other things**

- (1) A person must not make a statement to a Commission of Inquiry that the person knows to be false or misleading in a material particular.

Penalty: 120 penalty units or imprisonment for 12 months.

- (2) A person must not produce a document or other thing to a Commission of Inquiry that the person knows to be false or misleading in a material particular unless the person indicates to the Commission of Inquiry the respect in which it is false or misleading and, to the extent practicable, provides the correct information.

Penalty: 120 penalty units or imprisonment for 12 months.

**241 Tabling of report of Commission of Inquiry**

The Minister may table a report of a Commission of Inquiry in Parliament.



**242 Publishing report of Commission of Inquiry or proceedings**

- (1) This section applies to a report of a Commission of Inquiry that is not tabled in Parliament under section 241.
- (2) 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 Commission of Inquiry; or
  - (b) a fair and accurate report of proceedings before a Commission of inquiry which were held in public.
- (3) 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.

**Division 6—Suspension of a Councillor or Councillors**

**243 Suspension of a Councillor**

- (1) On the recommendation of the Minister, the Governor in Council may, by Order in Council, suspend a Councillor.
- (2) The Minister may make a recommendation under subsection (1) if the Minister is satisfied on reasonable grounds that—
  - (a) the Councillor has caused or contributed to—
    - (i) the creation of a serious risk to the health and safety of a Councillor or a member of Council staff; or
    - (ii) a failure by the Council to provide good governance; or

- (iii) a failure by the Council to comply with a governance direction; and
  - (b) the Municipal Monitor, Chief Municipal Inspector, Ombudsman, IBAC or a Commission of Inquiry has recommended that the Councillor be suspended; and
  - (c) the Municipal Monitor, Chief Municipal Inspector, Ombudsman, IBAC or a Commission of Inquiry provided the Councillor with detailed reasons for the recommendation that the Councillor be suspended and an opportunity to respond to the recommendation; and
  - (d) if the Councillor is not suspended, there is an unreasonable risk that—
    - (i) the creation of a serious risk to the health and safety of a Councillor or a member of Council staff; or
    - (ii) the failure by the Council to provide good governance; or
    - (iii) the failure by the Council to comply with the governance direction—will continue.
  - (3) The Order in Council takes effect from the date specified in the Order in Council.
  - (4) The Order in Council has full force and effect despite any non-compliance with any of the matters required by subsection (2) as preliminary to the making of 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
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- (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 the suspended Councillor 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 (1) expires—
  - (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 Councillor is not a Councillor of the Council during the period of suspension.
- (9) On the expiry of the Order in Council, the Councillor resumes office.

**244 Power of Minister in relation to matter before Councillor Conduct Panel**

- (1) If the Minister has made a recommendation for the making of an Order in Council under section 243(1) that a Councillor be suspended, the Minister may by notice to a Councillor Conduct Panel request that the consideration of a matter for misconduct or serious misconduct in relation to that Councillor be suspended.

(2) If an Order in Council—

- (a) is not made under section 243(1) or is disallowed under section 243(5), the consideration of the matter for misconduct or serious misconduct must be resumed; or
- (b) is made under section 243(1) and is not disallowed under section 243(5), the consideration of the matter for misconduct or serious misconduct must be stopped.

**245 Suspension of all of the Councillors of a Council**

- (1) On the recommendation of the Minister, the Governor in Council may, by Order in Council, suspend all of the Councillors of a Council.
  - (2) The Minister may make a recommendation under subsection (1) if the Minister is satisfied on reasonable grounds—
    - (a) subject to subsection (3), that there has been a failure to provide good governance; or
    - (b) that the Council has repeatedly and substantially failed to comply with a general Order and any special Order.
  - (3) Before making a recommendation on the grounds specified in subsection (2)(a), the Minister must consider what steps the Council has taken to address and remedy the difficulties underlying the failure.
  - (4) 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;
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- (d) appoint a temporary administrator in the place of the administrator to act in the administrator's absence or incapacity to act.
- (5) The Order in Council takes effect from the date specified in the Order in Council.
- (6) The Order in Council has full force and effect despite any non-compliance with any of the matters required by this section as preliminary to the making of the Order in Council.
- (7) 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.
- (8) 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.
- (9) The Order in Council under subsection (1) expires—
  - (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—
    - (i) a date which is less than 1 year after the date of its publication; or
    - (ii) if the Order in Council has specified reasons why a longer period is required, a date that is the date of the next general election.
  - (10) The suspended Councillors are not Councillors of the Council during the period of suspension.
  - (11) On the expiry of the Order in Council, the Councillors resume office and the administrator goes out of office unless—
    - (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; or
    - (c) if subsection (9)(b)(ii) applies, the next general election is being held.
  - (12) 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.
  - (13) 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.
  - (14) An election under subsection (11)(a) must be held in accordance with the procedures for a general election.
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- (15) If the election is held under subsection (11)(a) or (c), on the public declaration of the election result the administrator goes out of office.
- (16) The Chief Executive Officer must summon a Council meeting within 14 days after the public declaration of the election result.

**246 Provisions relating to appointment of administrators**

- (1) The following provisions apply to the appointment of an administrator of a Council under section 245—
  - (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
  - (v) becomes incapable of performing the duties of the office.
- (2) 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.

### **Division 7—Temporary administration**

#### **247 Temporary administration if multiple extraordinary vacancies created**

- (1) This section applies if the Minister is reasonably satisfied that the number of extraordinary vacancies created in the offices of Councillors of a Council could restrict the ability of the Council to provide good governance.



- (2) 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 ending on a day specified in the Order in Council.
- (3) For the purposes of subsection (2), the day on which the period of administration ends may be specified as the day on which a percentage specified in the Order in Council of the offices of Councillors of the Council are filled.
- (4) Section 246 applies to the appointment of an administrator of a Council under this section.
- (5) If all the vacancies in the offices of Councillors of a Council are filled before the day specified in the Order in Council, the period of administration ends on the day that all the vacancies in the offices of Councillors of a Council are filled.

#### **248 Suspension of remaining Councillors**

- (1) If section 247 applies, the remaining Councillors of the Council are by virtue of this section suspended for the period of administration.
  - (2) Subject to subsection (4), the suspended Councillors are not Councillors of the Council during the period of suspension.
  - (3) Despite subsection (2), the suspended Councillors are entitled to receive Councillor allowances but not mayoral allowances.
  - (4) The administrator of the Council may during the period of administration request a suspended Councillor to do any of the following—
    - (a) provide advice to the administrator;
    - (b) be a member of a delegated committee;
    - (c) represent the Council on another body.
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- (5) If a suspended Councillor agrees to do any of the things specified in subsection (4), the suspended Councillor is to be taken not to be suspended for the purpose only of doing that thing.

## **Division 8—Restructuring Orders**

### **249 Power to make Orders**

Subject to this Division, 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) abolish an existing Council;
- (e) give a name to, or alter the name of, a Council;
- (f) provide for the interim administration of a new or reconstituted Council until an election is held.

### **250 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 Division.
- (2) Without limiting the generality of subsection (1), an Order in Council may provide for the following—

- (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 members 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 reconstituted 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;
  - (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 reconstituted Council until an election is held, those persons by virtue of this Act—
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- (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 the following—
    - (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.
- (4) If an Order in Council provides for the appointment of a chairperson of persons appointed to administer a new or reconstituted Council until an election is held, the chairperson by virtue of this Act—
- (a) is deemed to be the Mayor of the Council as if appointed or elected as Mayor in accordance with this Act; and
  - (b) has and may exercise and discharge the responsibilities, liabilities, rights, powers, authorities, duties and functions conferred or imposed upon the following—
    - (i) Mayors generally or upon the Mayor of a former Council by or under any Act;
    - (ii) the person so appointed by the Order in Council.

## **251 General provisions relating to Orders**

- (1) An Order in Council made under this Division—
- (a) must specify a day or days upon which the Order in Council comes into operation; and
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- (b) may provide that the boundaries of a municipal district specified in the Order in Council are described in a map lodged in the Central Plan Office or with the VEC as specified in the Order in Council; and
  - (c) upon being published in the Government Gazette has the like force and effect as if it were expressly enacted in this Act; and
  - (d) may be amended or revoked by another Order in Council; and
  - (e) 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 in Council.
- (2) An Order in Council made under this Division may—
- (a) apply generally or be limited in its application by reference to specified matters or things; and
  - (b) apply differently according to different factors or subject to specified exceptions; and
  - (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 in Council; and
  - (d) confer powers or impose duties in connection with the Order in Council on a person or body specified in the Order in Council; and
  - (e) apply, adopt or incorporate, with or without modification, the provisions of any Act or of any regulations made under any Act; and
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- (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; and
  - (g) provide that during a transitional period specified in the Order the provisions of this Act specified in the Order apply as varied or modified by the Order; and
  - (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; and
  - (i) 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 which is to apply in respect of any non-compliance.
- (3) Without limiting the generality of subsection (2)(g), an Order in Council may provide for—
- (a) the non-application of any specified sections of this Act during a transitional period specified in the Order; and
  - (b) the fixing or alteration of the close of the roll for the purposes of any election; and
  - (c) the non-application of any specified sections of this Act to persons appointed to administer a new or re-constituted Council; and
  - (d) the fixing or the alteration of the date by or within which any specified act, matter or thing under this Act must be done or any specified requirement under this Act must be complied with.
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## **252 Restrictions on making of Order in Council**

- (1) The Minister must not recommend to the Governor in Council that an Order in Council be made in relation to a matter under section 249(a), (b) or (d) unless the Minister—
  - (a) established a restructuring advisory panel under section 253 to conduct a review of the matter; and
  - (b) has considered the report of the restructuring advisory panel on the matter.
- (2) The Minister may recommend that an Order in Council be made to give effect to minor boundary changes without considering a report from a restructuring advisory panel if the Minister 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) notice of the proposed changes has been given in the municipal district or districts affected by the proposed changes.

## **253 Restructuring advisory panels**

- (1) The Minister may by a public notice published in the Government Gazette constitute a restructuring advisory panel to review a matter under section 249(a), (b) or (d).
  - (2) In conducting a review, a restructuring advisory panel must—
    - (a) consider the views of any Council affected by the matter under consideration; and
    - (b) ensure that a process of community engagement is followed; and
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- (c) comply with any direction specified by the Minister in the notice constituting the restructuring advisory panel; and
  - (d) otherwise conduct the review in a manner that the restructuring advisory panel considers appropriate.
- (3) The restructuring advisory panel must consider the following matters before recommending to the Minister that a new Council should be created—
  - (a) whether each Council affected by the creation of the new Council and the new Council will be viable and sustainable as separate entities;
  - (b) whether the allocation of revenue and expenditure between each Council affected by the creation of the new Council and the new Council will be equitable for the local community of each Council;
  - (c) whether the views of the local communities affected by the creation of the new Council have been taken into consideration;
  - (d) whether the new Council will have sufficient financial capacity to provide the local community with a comprehensive range of municipal services and to undertake necessary investment in infrastructure;
  - (e) any other matter specified in the notice published under subsection (1).
- (4) A restructuring advisory panel must submit a final report to the Minister within the period specified by the Minister in the notice constituting the restructuring advisory panel.



## **Part 9—Electoral provisions**

### **Division 1—Voters**

#### **254 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 once and for one ward in a municipal district.
- (3) A person is not entitled to elect which right of entitlement conferred by section 255(1), 256(1), 257(1) or 258(1) to exercise.
- (4) 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 close of the roll; or
  - (b) the person is entitled as a ratepayer to apply to be enrolled and the application—
    - (i) complies with subsection (5); and
    - (ii) is accepted in accordance with this Division; or
  - (c) the person is appointed to vote on behalf of a corporation under section 259 and the application for appointment—
    - (i) complies with subsection (5); and
    - (ii) is accepted in accordance with this Division.

- (5) An application referred to in subsection (4)(b) or (c) must—
  - (a) be in writing; and
  - (b) contain the details required by the regulations; and
  - (c) be delivered to the Council office before the close of the roll.
- (6) Enrolment under an application referred to in subsection (4)(b) or (c) has effect from the next close of the roll after it is accepted and continues in force until the day before the subsequent close of the roll for a general election.
- (7) The Chief Executive Officer, or the VEC under an agreement with the Chief Executive Officer, must not later than 30 days before the close of the roll, write to all voters who were enrolled on the previous voters' roll under subsection (4)(b) or (c) inviting them to make an application to renew their enrolment.

**255 Residents entitled to be enrolled without application**

- (1) A person who as at the close of the roll would be an elector in respect of an address in a municipal district 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 the ward in which that address is located.
  - (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 as at the close of the roll would be an elector in respect of an address in a ward if a
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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.

**256 Owner ratepayers entitled to be enrolled without  
application**

- (1) Subject to subsections (2), (3) and (4), a person  
who as at the close of the roll—
- (a) is not a person referred to in section 255; 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
  - (d) does not have a principal place of residence  
in the municipal district—

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

- (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 258 in respect of that  
rateable property.
- (4) For the purposes of subsection (1)(d), in the  
absence of any other information as to a person's  
place of residence, the person is to be taken not  
to have a principal place of residence in the  
municipal district if it appears from the rate  
records of the Council that the person's address
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for the service of a rate notice is specified as an address (not being a post office box) that is located outside the municipal district.

- (5) 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.
- (6) Despite subsection (5), if a written request containing the details required by the regulations is delivered to the Council office before the close of the roll 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 (5), the Chief Executive Officer must give effect to the request.
- (7) 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 before the close of the roll, specify the location of the rateable property in respect of which the entitlement under this section is to be exercised.
- (8) 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 (7), 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 as at the close of the roll.

**257 Owner ratepayers may apply for enrolment**

- (1) Subject to subsections (2) and (3), a person who as at the close of the roll—
  - (a) is not a person referred to in section 255 or 256; 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—is entitled as a ratepayer to apply to be enrolled on the voters' roll in respect of the ward in which that rateable property is located.
- (2) For the purposes of section 256(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 258 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 before the close of the roll for the next general election.

**258 Occupier ratepayers may apply to be enrolled**

- (1) A person who as at the close of the roll—
    - (a) is not a person referred to in section 255, 256 or 257; 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—

is entitled as a ratepayer to apply to be enrolled on the voters' roll in respect of the ward in which that rateable property is located.
  - (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
    - (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.
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- (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 256 or 257.
- (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 before the close of the roll for 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 office.
- (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 office before the close of the roll.

## **259 Provisions relating to corporations**

- (1) Subject to subsection (3), if as at the close of the roll 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 and to be enrolled on the voters' roll for the ward where the rateable property is located and vote on its behalf.
  - (2) Subject to subsection (3), if as at the close of the roll a corporation is a joint owner of any rateable property in the municipal district, the corporation
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may apply to appoint a person to represent it at Council elections and to be enrolled on the voters' roll for the ward where the rateable property is located and vote on its behalf.

- (3) If an application is in force under section 258, an enrolment cannot be made in respect of the same rateable property under subsection (1) or (2).
- (4) Section 257(2) applies in respect of an application under subsection (2).
- (5) If as at the close of the roll 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 and to be enrolled on the voters' roll for the ward where the rateable property is located and vote on its behalf.
- (6) Section 258(2), (3), (4), (5), (6), (7) and (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.
- (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).
- (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—
  - (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—
- (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 their 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.
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## **260 Provisions relating to appointments and enrolments**

- (1) On receiving notice of an appointment under section 256(5), 256(6) or 259 or an application for enrolment under section 257 or 258, 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.

## **261 Request that address not be shown**

- (1) A person who is entitled as a ratepayer to be enrolled on the voters' roll under section 256, 257, 258 or 259 may lodge a request in the prescribed form with the Chief Executive Officer 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**

### **262 Chief Executive Officer to prepare voters' list of ratepayers**

The Chief Executive Officer must supply to the VEC as at the times and in the form determined by the VEC—

- (a) a voters' list of the persons who appear to the Chief Executive Officer to be entitled to be enrolled under sections 256, 257, 258 and 259 identifying those persons whose request that their address not be shown has been accepted; and
- (b) any information required by the VEC to enable the VEC to compile or amend the voters' roll.

### **263 VEC to compile voters' rolls**

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

- (a) a roll of electors for the Legislative Assembly compiled from the register of electors in accordance with section 255; and
  - (b) the voters' lists and information provided under section 262.
- (2) A voters' roll must not include the address of any person who has been granted a request to be a silent elector under section 261 of this Act or section 31 of the **Electoral Act 2002**.
- (3) A voters' roll must be prepared—
  - (a) in the case of a Council with an unsubdivided municipal district, for the whole of the municipal district; and
  - (b) in the case of a Council with a municipal district that is divided into wards, for each ward.
- (4) The VEC must, not later than 5 days before nomination day, certify in writing that the voters' roll has been prepared in accordance with this Act.

#### **264 Amendment of certified voters' roll**

- (1) A certified voters' roll may be amended by the VEC only if—
  - (a) there is any error or omission 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) The amendment of the voters' roll under subsection (1) must be certified by the VEC.
- (3) The certification under subsection (2) must—
  - (a) be in writing; and

- (b) detail the amendments made; and
- (c) specify the reasons why the amendments were made.

**265 Inspection of certified voters' roll**

- (1) The VEC must ensure that the voters' roll, as certified under section 263 and incorporating any amendments certified under section 264, is available for inspection by members of the public from the day the voters' roll is certified until the day the next voters' roll is certified.
- (2) The certified voters' roll must be available for inspection—
  - (a) at the locations; and
  - (b) in the format—determined by the VEC.

**266 Provision of voters' rolls to a candidate**

- (1) On the request of any candidate for an election, the VEC must provide a copy of the voters' roll for the ward for which the candidate has nominated to be the candidate.
- (2) The voters' roll must be provided to the candidate—
  - (a) free of charge; and
  - (b) in a form determined by the VEC.
- (3) A candidate must—
  - (a) only use a copy of the voters' roll provided under subsection (1) 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 VEC.

Penalty: 120 penalty units.

**267 Provision of voters' rolls to a person or organisation other than a candidate**

- (1) After receiving a request from any person or organisation, other than a candidate under section 266, for a voters' roll, the VEC must—
  - (a) identify the public interest in providing the requested information; and
  - (b) consult with the Deputy Commissioner Privacy and Data Protection on the public interest in protecting the privacy of personal information; and
  - (c) taking into account the advice of the Deputy Commissioner Privacy and Data Protection, make a finding whether or not the public interest in providing the voters' roll outweighs the public interest in protecting the privacy of personal information in the particular circumstances.
- (2) Subject to subsection (3), if the VEC has made a finding under subsection (1) that the public interest in providing the voters' roll outweighs the public interest in protecting the privacy of personal information, the VEC may—
  - (a) provide the voters' roll to the person or organisation; and
  - (b) charge a fee that covers the cost to the VEC of providing the voters' roll.

- (3) The VEC must obtain from the person or organisation to be provided with a voters' roll under this section an undertaking that the person or organisation will—
- (a) only use the voters' roll for the purpose for which the VEC agreed to provide the voters' roll; and
  - (b) not copy the voters' roll or give it to any other person or organisation; and
  - (c) return the voters' roll to the VEC or destroy the voters' roll after using it for the purpose for which the VEC agreed to provide the voters' roll.
- (4) A person or organisation that is provided with a copy of the voters' roll under subsection (2) must comply with subsection (3).

Penalty: In the case of a natural person,  
120 penalty units;  
In the case of a body corporate,  
600 penalty units.

#### **268 Use of voters' roll by the Chief Executive Officer**

- (1) The Chief Executive Officer may use a copy of the voters' roll on behalf of the Council for the purpose of communicating or consulting with the local community in relation to the performance of the Council's functions.
- (2) The Chief Executive Officer must obtain from any person or organisation to be provided with a voters' roll under this section an undertaking that the person or organisation will—
- (a) not copy the voters' roll or give it to any other person or organisation; and

- (b) return the voters' roll to the Chief Executive Officer or destroy the voters' roll after using it for the purpose of this section.
- (3) A person or organisation that is provided with a copy of the voters' roll under subsection (1) must comply with subsection (2).

Penalty: In the case of a natural person,  
120 penalty units;  
In the case of a body corporate,  
600 penalty units.

## **269 Validity of voters' rolls**

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.

## **Division 3—Candidate for election**

### **270 Candidate for election**

- (1) Subject to this section, a person may nominate as a candidate for an election for any ward of the Council if they are qualified to become a Councillor under this Act.



- (2) A person who is a Councillor of a Council cannot nominate as a candidate for an election as a Mayor, Deputy Mayor or 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.
- (3) A person who has nominated as a candidate for an election as a Mayor, Deputy Mayor or Councillor of a Council cannot nominate as a candidate for any other election as a Mayor, Deputy Mayor or Councillor unless at the time of the nomination the person has withdrawn the previous nomination.
- (4) If a person makes a nomination in contravention of subsection (2) or (3), the nomination is void.
- (5) A person must not nominate as a candidate for more than one election of Councillors to be held on the same day.
- (6) If a person makes nominations in contravention of subsection (5), all the nominations are void.
- (7) A person who is not qualified to be a Councillor under this Act only because they hold a position or office specified in section 32(2)(c) or (e), is not prevented from nominating as a candidate at an election if for the duration of the election period for that election—
  - (a) the person has taken leave from that office or position; and
  - (b) the person does not perform any of the duties of that office or position.

**Note**

A person who holds a position specified in section 32(2)(c) or (e) cannot take the oath or affirmation of office as a Councillor unless they resign from that office or position before taking the oath or affirmation of office.

## **Division 4—Holding of general elections and by-elections**

### **271 General elections**

(1) A general election of Councillors for all Councils must be held—

- (a) on the fourth Saturday in October 2020; and
- (b) thereafter on the fourth Saturday in October in the fourth year after the last general election of Councillors for all Councils was held.

(2) A general election is an election—

- (a) which is to be conducted in each ward of a Council; and
- (b) for all the offices of Councillor.

(3) Despite subsection (1), the Minister may, by notice published in the Government Gazette before the nomination day, change the election day under subsection (1)—

- (a) in respect of all Councils; or
- (b) in respect of one or more Councils specified in the notice—

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.

(4) The Minister may change the election day under subsection (1) if the Minister—

- (a) 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; and

- (b) has requested advice from the VEC in relation to the proposed change to the election day; and
  - (c) has considered the advice provided to the Minister by the VEC.
- (5) Without limiting the generality of subsection (4), an event or circumstance that could adversely affect the conduct of the general election includes any of the following—
- (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**.

## **272 Extraordinary vacancy**

- (1) An extraordinary vacancy occurs if the office of a Councillor becomes vacant under section 31 or 33(1).
  - (2) If the office of a Councillor becomes vacant as a result of the resignation of a Councillor, an extraordinary vacancy occurs on the day that the written resignation is delivered to the Chief Executive Officer.
  - (3) 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—
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- (a) if notice of appeal to the Court of Appeal is not served within the period allowed, on the day after that period;
  - (b) if an appeal to the Court of Appeal is dismissed, on the day the decision is given.
- (4) If an extraordinary vacancy is caused by the declaration of VCAT, the extraordinary vacancy occurs on the day the declaration is made.
- (5) Subsection (4) 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.
- (6) Despite subsection (7), if more than one extraordinary vacancy in a ward is caused by the declaration of VCAT, an election must be held to fill all the extraordinary vacancies at the same time.
- (7) 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.
- (8) The Chief Executive Officer must within 3 working days of—
  - (a) receiving a written resignation from a Councillor; or
  - (b) becoming aware of an extraordinary vacancy—notify the Minister and the VEC that an extraordinary vacancy has occurred.

**273 When is an extraordinary vacancy not to be filled?**

- (1) An extraordinary vacancy is not to be filled if—
  - (a) the extraordinary vacancy occurs within the period of 3 months before a general election; or
  - (b) the VEC determines that there is insufficient time to conduct a by-election or countback to fill the extraordinary vacancy before the period of 3 months before a general election.
- (2) The VEC must advise the Minister and the relevant Council of a determination under subsection (1)(b) as soon as practicable after it is made.

**274 When is a by-election to be held?**

- (1) Subject to section 273, a by-election must be held to fill an extraordinary vacancy if the extraordinary vacancy occurs—
    - (a) in a ward consisting of one Councillor; or
    - (b) in a ward consisting of more than one Councillor but there are no eligible candidates from the last election who are available to be elected by a countback.
  - (2) Subject to subsection (3), a by-election must be held within 100 days—
    - (a) of the date of the extraordinary vacancy occurring; or
    - (b) of the date of the determination by the VEC that the extraordinary vacancy cannot be filled by a countback.
  - (3) If the VEC considers that the process for holding a by-election in accordance with subsection (2) would be adversely affected by a public holiday or a school term holiday period, the VEC may do any or all of the following—
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- (a) fix as the by-election date a Saturday not later than 150 days after the date specified in subsection (2)(a) or (b);
  - (b) fix a different date for the close of the roll;
  - (c) fix a different nomination day.
- (4) The VEC must—
- (a) publish any date fixed in accordance with subsection (2) or (3) in the Government Gazette; and
  - (b) advise the Minister and the relevant Council as to the date fixed in accordance with subsection (2) or (3).

**275 When is a countback to be held?**

Subject to section 273, a countback in accordance with Division 8 must be held to fill an extraordinary vacancy if—

- (a) the extraordinary vacancy occurs in a ward consisting of more than one Councillor; and
- (b) there are one or more eligible candidates from the last election or countback conducted for the ward who are available to be elected.

**Division 5—Conduct of elections**

**276 Voting system**

- (1) The voting system to be used for general elections and by-elections is to be determined by the Minister in accordance with this section.
- (2) Subject to subsection (6), the Minister must determine the voting system to be used for general elections and by-elections to be held after the general election in 2020 at least 12 months before the date of the general election to be held in 2020.

- (3) The Minister must publish a notice of the determination under subsection (2) in the Government Gazette.
- (4) Subject to subsection (6), the Minister may determine to change the voting system to be used for general elections and by-elections to be held after a subsequent election at least 12 months before the date of the subsequent general election.
- (5) The Minister must publish a notice of the determination under subsection (4) in the Government Gazette.
- (6) The voting system must be the same for general elections and by-elections.
- (7) In this section, *voting system* means—
  - (a) postal voting; or
  - (b) attendance voting; or
  - (c) any other form of voting determined by the Minister.

#### **277 Filling of vacancies**

- (1) If the number of candidates exceeds the number of vacancies to be filled at an election in a ward, an election must be held for that ward.
- (2) If—
  - (a) the number of candidates; or
  - (b) the withdrawal, retirement or death of a candidate—

means that the number of candidates is equal to or less than the number of vacancies to be filled at an election in a ward, the election manager must declare the candidate or candidates to be elected and give notice of the declaration.

- (3) If the election manager declares the candidate or candidates to be elected under subsection (2), the declaration must be made—
  - (a) in the case of a general election, as soon as practicable on or after election day; or
  - (b) in the case of a by-election, as soon as practicable after the close of nominations.
- (4) If a by-election is required following the death or retirement of a candidate, the vacancy is deemed to have occurred on election day.
- (5) If there are no candidates for an election the election fails and the election manager must give notice that the election has failed.
- (6) A vacancy caused if—
  - (a) there is no candidate; or
  - (b) the number of candidates is less than the number of vacancies—is to be treated as an extraordinary vacancy occurring on the nomination day.
- (7) A vacancy to which subsection (6) 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.
- (8) The election manager must give notice of—
  - (a) an election under subsection (1); and
  - (b) an extraordinary vacancy under subsection (6).
- (9) A notice under subsection (8) must include the matters prescribed by the regulations.



### **278 One vote per person**

A person who is entitled to vote at an election of a Councillor is only entitled to 1 vote in respect of each municipal district for which the person is enrolled.

### **279 Voting is compulsory**

- (1) Subject to subsection (3), it is compulsory for a person who is enrolled under section 252 as a resident on the voters' roll to vote in any election for the ward in respect of which the person is enrolled.
- (2) Unless subsection (3) applies, it is an offence against this Act to fail to vote as required by subsection (1).

Penalty: 1 penalty unit.

- (3) Subsection (1) does not apply if an exemption prescribed by the regulations applies to the person.

### **280 Infringement offence**

- (1) In this section—

*infringement* means an offence against section 279;

*prescribed penalty* means 0·5 penalty units;

*prosecution officer* means the VEC or a person appointed by the VEC for the purposes of this section.

- (2) 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.

- (3) An offence referred to in subsection (2) 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.
- (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 (2), including—
  - (a) the name of the Council; and
  - (b) the date of the election; and
  - (c) the name of the ward; and
  - (d) if the election was conducted by postal voting, the date voting closed.
- (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.

#### **281 Conduct of election**

- (1) An election must be conducted by the VEC in accordance with this Act and the regulations.
- (2) Without limiting the generality of subsection (1), the VEC may use electronic counting equipment and systems to assist in the counting of votes at an election.

#### **282 VEC's election and enforcement expenses**

- (1) The VEC may send to each Council an account of the reasonable expenses incurred by the VEC—
    - (a) for preparing and providing the voters' roll; and
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- (b) for conducting an election for the Council;  
and
  - (c) 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 VEC 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 VEC under that Act (being an enforcement agency under that Act).
- (4) If a Council considers that the account sent to the Council under subsection (1) does not fairly represent the cost of conducting the election, the Council may make a written request to the ESC to review the account.
- (5) If the ESC recommends that the account needs to be varied to fairly represent the cost of conducting the election, the ESC must provide a report recommending how the account should be varied to the following—
  - (a) The Minister;
  - (b) the Council;
  - (c) the VEC.
- (6) After receiving a report under subsection (5), the Minister may direct the VEC to issue a varied account to the Council.

**283 Marking of ballot-paper at election to express preference**

- (1) A voter must mark the voter's vote on the ballot-paper by placing—
  - (a) the number 1 opposite the name of the candidate for whom the voter votes as first preference; and
  - (b) the numbers 2, 3, 4 (and so on as the case requires) opposite the remaining candidates' names so as to indicate the order of preference by an unbroken numerical sequence.
- (2) In the case of 2 candidates, the requirements of subsection (1) are sufficiently complied with if the ballot-paper is marked with the number 1 opposite the name of one candidate to indicate the voter's first preference.
- (3) In the case of an election where there are more than 2 candidates, the requirements of subsection (1) are sufficiently complied with if the ballot-paper is marked with a number 1, 2, 3 or 4 (and so on as the case requires) opposite the names of all the candidates on the ballot-paper except one.

**284 Validity of election**

- (1) The validity of an election is not affected by any defect in the appointment of any person for the purpose of holding the election.
  - (2) The validity of an election is not affected by—
    - (a) any irregularity in any of the proceedings preliminary to voting; or
    - (b) any failure to hold the election at any place appointed; or
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(c) any failure to comply with any directions as to the holding of the election or the counting of the votes; or

(d) any mistake in the use of any forms—

if the election was conducted in accordance with the principles in this Act and the irregularity, failure or mistake did not affect the result of the election.

## **Division 6—Counting of votes—single vacancy**

### **285 Application of Division**

This Division applies to the following—

- (a) an election of a Councillor for a single member ward of a Council with a subdivided municipal district;
- (b) any by-election where only one vacancy in the office of Councillor of a Council is to be filled at the by-election.

### **286 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 election manager;
- (b) if the 2 candidates have received an equal number of votes the result is to be determined by lot by the election manager.

### **287 More than 2 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 election manager;
  - (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 election manager 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 election manager;
  - (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 election manager;
  - (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 election manager;
  - (g) if on the final count 2 candidates have an equal number of votes, the result is to be determined by lot by the election manager.
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**Division 7—Counting of votes—any election  
to which Division 6 does not apply**

**288 Application of Division**

This Division applies to any election to which  
Division 6 does not apply.

**289 2 or more Councillors to be elected**

- (1) The result of the election is to be determined as  
set out in this section.

- (2) In this section—

*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 election manager 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 election manager.
- (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 subsection (7) is to be declared duly elected by the election manager.
  - (9) Unless all the vacancies have been filled, the surplus votes, if any, of any candidate elected under subsection (8) or elected subsequently under this subsection are to be transferred to the continuing candidates in accordance with subsection (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 election manager.
  - (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 subsection (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 subsection (7) in relation to a transfer of the surplus votes of an elected candidate under subsection (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
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- (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;
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- (ii) the number so obtained (disregarding any fraction) is to be added to the number of votes of the continuing candidate;
    - (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 subsection (12) or (16) is to be declared duly elected by the election manager.
  - (14) Subject to subsection (15), unless all the vacancies have been filled, the surplus votes, if any, of a candidate elected under subsection (13) are to be transferred in accordance with subsection (7).
  - (15) If a candidate elected under subsection (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 subsection (12) to continuing candidates.
  - (16) Subject to subsection (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 subsection (12).
  - (17) If a candidate is elected as a result of a transfer of ballot papers under subsections (12) and (16), no other ballot papers of an excluded candidate are to be transferred to the candidate so elected.
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- (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 section, 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 election manager.
- (20) Subject to subsections (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 subsection (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 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 subsection (21), if there has been no count or transfer the election manager 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 election manager.
- (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 election manager.
- (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 section each of the following constitutes a separate transfer—
- (a) a transfer under subsection (7), (9) or (14) of all the surplus votes of an elected candidate;
  - (b) a transfer in accordance with subsection (12)(a) of all first preference votes of an excluded candidate;
  - (c) a transfer in accordance with subsection (12)(b) of all the votes of an excluded candidate or candidates, as the case may be, at a particular transfer value.
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## **Division 8—Countback process and counting of votes**

### **290 Definitions**

In this Division—

*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).

### **291 Exclusion of candidate**

- (1) The election manager must exclude from participation in a countback any candidate which the election manager knows has died or has otherwise ceased to be eligible to be elected as a Councillor.
- (2) An exclusion under subsection (1) cannot be made once the countback procedure has been commenced.

### **292 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 election manager, 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 their office before the other vacating Councillor or Councillors.
- (3) If it is still not possible to determine which vacancy occurred first despite subsection (2), the election manager must determine by lot which extraordinary vacancy is to be filled first.
- (4) The election manager may comply with section 295 in respect of an extraordinary vacancy even while the election manager or another election manager is complying with that section in respect of another extraordinary vacancy.

**293 Procedure if there are no eligible candidates**

If there are no eligible candidates, the countback fails and section 297 applies.

**294 Procedure if there is only one eligible candidate**

- (1) This section applies if there is only one eligible candidate.
  - (2) The election manager 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 subsection (2) must be given to the election manager within 14 days of the date of the written invitation.
  - (4) If the candidate complies with this section, the election manager must declare the candidate elected in accordance with section 298.
  - (5) If the candidate does not comply with this section, the countback fails and section 297 applies.
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**295 Procedure if there is more than one eligible candidate**

- (1) This section applies if there is more than one eligible candidate.
- (2) Within 14 days of the extraordinary vacancy occurring, the election manager must—
  - (a) publish a notice on the VEC's Internet site in accordance with subsection (3); and
  - (b) give written notice in accordance with subsection (3) to each eligible candidate at their last known address.
- (3) The notice on the VEC's Internet site and the written notice must specify the following—
  - (a) the date, time and place for the conduct of the countback; and
  - (b) that an eligible candidate is entitled to appoint scrutineers for the countback; and
  - (c) the contact details of the election manager.
- (4) The date for the conduct of the countback must be the date which is at least 14 days after the date of the notice which in the opinion of the election manager is the earliest practicable date to conduct the countback.
- (5) The countback must be conducted in accordance with section 299.

**296 Conduct of countback**

- (1) The election manager must make reasonable efforts to—
  - (a) notify the candidate who would be declared elected as a result of the countback; and

- (b) 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 subsection (1), section 298 applies.
- (3) If the candidate does not complete the written declaration under subsection (1), a further count is to be conducted as soon as is practicable after the period in subsection (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 subsection (3), each time the process is repeated, a preference indicated for a candidate who failed to complete a written declaration is to be disregarded.
- (5) If subsection (3)(a) or (b) applies, section 298 applies.
- (6) If subsection (3)(c) applies, the countback has failed and section 297 applies.

**297 Procedure if the countback fails**

- (1) If the countback fails or the election manager is otherwise unable to fill the extraordinary vacancy by a countback—
  - (a) the election manager must notify the Chief Executive Officer; and
  - (b) a by-election must be held to fill the extraordinary vacancy.
- (2) By-elections to fill 2 or more vacancies may be held at the same time.

**298 Declaration of result**

- (1) As soon as possible after a candidate completes a candidate declaration after being requested by the election manager to do so, the election manager must publicly declare that candidate to be elected.
- (2) The election manager must as soon as is practicable after publicly declaring the candidate to be elected—
  - (a) give public notice of the name of the person elected; and
  - (b) advise the Minister of the result.

**299 Process for counting of votes at a countback**

- (1) This section sets out the process for the counting of votes at a countback.
  - (2) All the votes counted in the original election are to be counted in accordance with the process specified in Division 7.
  - (3) The quota for election in the countback is the same quota as that which applied to the count of votes in the original election.
  - (4) The following preferences indicated on ballot-papers are to be disregarded during the countback—
-

- (a) preferences indicated for the vacating Councillor;
  - (b) preferences indicated for a candidate excluded under section 291.
- (5) A countback under this section does not affect the election of a previously elected candidate.
  - (6) The election or exclusion of a previously elected candidate during the countback has effect only for the purpose of the continuation of the count.
  - (7) The countback stops as soon as a candidate who was not previously elected obtains a quota.
  - (8) If a candidate who was not previously elected obtains a quota, the election manager must invite the candidate to complete a written declaration that the candidate is still eligible to be a Councillor within 48 hours of being invited to do so.

## **Division 9—Electoral offences**

### **300 Nomination offence**

A person who nominates as a candidate for an election who—

- (a) is not qualified to become a Councillor under section 32; or
- (b) is not entitled to nominate under section 270—

is guilty of an offence.

Penalty: 240 penalty units or imprisonment for 2 years.

**301 Printing and publication of printed electoral material**

- (1) A person must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, printed electoral material unless the name and address of the person who authorised the printed electoral material is clearly displayed on its face.

Penalty: In the case of a natural person,  
10 penalty units;  
In the case of a body corporate,  
50 penalty units.

- (2) It is sufficient compliance with subsection (1) if the printed electoral material is a letter or card which—
- (a) bears the name and address of the person who distributed it; and
  - (b) does not contain a representation or purported representation of a ballot-paper intended to be used in the election.
- (3) Subsection (1) does not apply in relation to—
- (a) a car sticker, an item of clothing, a lapel a button, a lapel badge, a fridge magnet, a pen, a pencil or a balloon; or
  - (b) an article included in a prescribed class of articles.
- (4) Nothing in subsection (3)(a) is to be taken, by implication, to limit the generality of regulations that may be made by virtue of subsection (3)(b).

**302 Misleading or deceptive matter**

- (1) A person must not—
- (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—

- (a) print, publish or distribute; or

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

printed electoral material 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.

### **303 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.

### **304 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 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 other 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—
  - (a) the author's name; and
  - (b) the suburb or locality in which the author's address is located.

### **305 Distribution of printed electoral material**

- (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 or 6 months imprisonment.
- (2) 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); or
- (d) 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.

(3) A person must not—

- (a) print, publish or distribute; or
- (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 or 6 months imprisonment.

(4) In a prosecution of a person for an alleged offence against subsection (1) or (3), 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.

**306 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 305—
  - (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.
- (3) If a person refuses to comply with a request under subsection (1), a police officer or an election manager may seize any card in the person's possession which is not endorsed in the prescribed manner.

**307 False or misleading information or particulars**

- (1) A person must not make a statement knowing that it is false or misleading in a material particular in any information provided orally or in writing in relation to voter enrolment or in any declaration or application in relation to an election under this Act or the regulations.
- (2) A person who contravenes subsection (1) is guilty of an indictable offence.  
Penalty: 600 penalty units or imprisonment for 5 years.

### **308 Voting offences**

- (1) A person must not—
  - (a) forge any ballot-paper, prescribed form or other form or document submitted or lodged in connection with an election; or
  - (b) utter any forged ballot-paper, prescribed form or other form or document submitted or lodged in connection with an election; or
  - (c) forge the signature of any person on any ballot-paper, prescribed form or other form or document submitted or lodged in connection with an election.

- (2) A person who contravenes subsection (1) is guilty of an indictable offence.

Penalty: 600 penalty units or imprisonment for 5 years.

- (3) A person must not in respect of an election—
  - (a) vote in the name of another person, including a dead or fictitious person; or
  - (b) vote more than once; or
  - (c) apply for a ballot-paper in the name of another person.

- (4) A person who contravenes subsection (3) is guilty of an indictable offence.

Penalty: 600 penalty units or imprisonment for 5 years.

### **309 Offences at voting centre**

- (1) A person must not during the hours of voting in respect of a voting centre—
  - (a) canvass for votes; or
  - (b) solicit the vote of any voter; or

- (c) induce or attempt to induce any voter not to vote for a particular candidate; or
- (d) induce or attempt to induce any voter not to vote at the election; or
- (e) exhibit any notice or sign relating to the election which is not an official notice; or
- (f) wear or display any badge, emblem or political slogan of any candidate or political party of any candidate if the person is employed as an election official or is a scrutineer in the performance of duties or the exercise of powers under this Act or the regulations—

within 3 metres of any entrance to or within the premises used as the voting centre.

Penalty: 5 penalty units.

- (2) The 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).

### **310 Tampering**

- (1) Except as authorised by this Act or the regulations, a person must not—
    - (a) open any sealed envelope containing a ballot-paper; or
    - (b) break the seal or open any ballot-box or parcel sealed under this Act or the regulations; or
    - (c) deal with any ballot-papers, voters' rolls or other material used at an election under this Act or the regulations.
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- (2) A person who contravenes subsection (1) is guilty of an indictable offence.

Penalty: 600 penalty units or imprisonment for 5 years.

### **311 Secrecy of vote**

Except as authorised by this Act or the regulations, a person who is present when a voter votes must not—

- (a) ascertain or disclose by word, act or other means, the vote of the voter; or
- (b) directly or indirectly require, induce or attempt to induce the voter to show how the voter intends to vote; or
- (c) communicate with or assist the voter while voting or look at the voter's vote or ballot-paper.

Penalty: 120 penalty units or imprisonment for 1 year.

### **312 Agreement to post ballot-paper**

- (1) 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 20 penalty units.
- (2) It is a defence to a charge under subsection (1) if the ballot-paper was received by the election manager in time for the ballot-paper to be counted in the election.

### **313 Offence to interfere with postal ballot materials**

- (1) A person must not interfere with any material being, or to be, sent or delivered to a voter by the VEC at an election.

- (2) A person who contravenes subsection (1) is guilty of an indictable offence.

Penalty: 600 penalty units or imprisonment for 5 years.

- (3) Subsection (1) does not apply to a person who is acting with the authority of the VEC.

### **314 Bribery, treating and undue influence**

- (1) For the purposes of this section, *person's election conduct* means—

- (a) the way in which the person votes at an election; or
- (b) the person's nomination as a candidate for an election; or
- (c) the person's support of, or opposition to, a candidate at an election; or
- (d) the doing of any act or thing by the 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.

- (2) A person must not—

- (a) ask for, receive or obtain; or
- (b) offer to ask for, or receive or obtain; or
- (c) agree to ask for, or receive or obtain—

any property or benefit of any kind for themselves or any other person, on an understanding that the person's election conduct will in any manner be influenced or affected.

#### **Note**

Section 336 applies to an offence against subsection (2).

- (3) A person who contravenes subsection (2) is guilty of an indictable offence.

Penalty: 600 penalty units or imprisonment for 5 years.

- (4) A person must not, in order to influence or affect a person's election conduct—

- (a) give or confer; or
- (b) promise to give or confer; or
- (c) offer to give or confer—

any property or benefit of any kind to that other person or to a third person.

**Note**

Section 336 applies to an offence against subsection (4).

- (5) A person who contravenes subsection (4) is guilty of an indictable offence.

Penalty: 600 penalty units or imprisonment for 5 years.

- (6) This section does not apply in relation to a declaration of public policy or a promise of public action.

**315 Interference with political liberty**

- (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 under this Act.

- (2) A person who contravenes subsection (1) is guilty of an indictable offence.

Penalty: 600 penalty units or imprisonment for 5 years.

- (3) A person must not, by violence or intimidation, influence the vote of a person at an election.

- (4) A person who contravenes subsection (3) is guilty of an indictable offence.

Penalty: 600 penalty units or imprisonment for 5 years.

- (5) 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) 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.

- (6) Subsections (1) and (5) do not apply to any official statement or announcement made or exhibited under the authority of this Act.

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

Penalty: 120 penalty units or imprisonment for 1 year.

### **316 Powers of election manager or election official**

- (1) Any election manager or election official has the power and authority—

- (a) to maintain order and keep the peace at any venue used for an election or voting at a voting centre; and
- (b) to cause to be removed any person who—
  - (i) obstructs the approaches to a voting centre; or



- (ii) wilfully or unnecessarily obstructs or delays the proceedings at a voting centre; or
  - (iii) behaves in a disorderly manner; or
  - (iv) remains in a voting centre for a longer time than is reasonably necessary for the purpose of voting; or
  - (v) causes a disturbance at any election.
- (2) Police officers must aid and assist an election manager or election official in the exercise of the powers conferred by this section.

**317 Offences relating to members of Council staff, election managers and election officials**

- (1) A member of Council staff, an election manager or an election official who—
- (a) falsifies any enrolment record; or
  - (b) alters a voters' roll after it has been signed and certified by the VEC without authority to do so—

is guilty of an offence.

Penalty: 20 penalty units.

- (2) A person must not impersonate a person appointed as an election manager or election official in the performance of duties or the exercise of powers under this Act.

Penalty: 10 penalty units.

- (3) A person appointed as an election manager or election official must not contravene a provision of this Act or the regulations which applies to the person and for which no other penalty is specified.
- (4) A person appointed as an election manager or election official must comply with any direction given to the person by the VEC.
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- (5) A person who wilfully contravenes subsection (3) or (4) is guilty of an offence.

Penalty: 60 penalty units or 6 months imprisonment.

- (6) A person who negligently contravenes subsection (3) or (4) is guilty of an offence.

Penalty: 10 penalty units.

**318 Prohibition on Councillor or member of Council staff**

- (1) A Councillor or member of Council staff must not use Council resources in a way that is intended to, or is likely to, affect the result of an election under this Act.

Penalty: 60 penalty units.

- (2) A Councillor or member of Council staff must not use council resources to intentionally or recklessly print, publish or distribute or cause, permit or authorise to be printed, published or distributed any electoral matter during the election period on behalf of, or purporting to be on behalf of, the Council unless the electoral matter only contains information about the election process or is otherwise required in accordance with, or under, any Act or regulation.

Penalty: 60 penalty units.

**319 Injunction**

- (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 301 or 302, the Supreme Court may on the application of a candidate in an election grant an injunction—

- (a) restraining that person from engaging in the conduct; and

- (b) if in the opinion of the Supreme Court it is desirable to do so, requiring that person to do any act or thing.
  - (2) The Supreme Court may, if in the opinion of the Supreme Court it is desirable to do so, before considering an application under subsection (1), grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) 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—
    - (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—
      - (i) whether or not the person has previously engaged in conduct of that kind; and
      - (ii) 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.
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- (5) If the application is for the grant of an injunction requiring a person to do a particular act or thing, the power of the Supreme Court to grant the injunction may be exercised—
- (a) if the Supreme Court is satisfied that the person has refused or failed to do that act or thing, whether or not it appears to the Supreme Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; 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 refuse or fail to do that act or thing—
    - (i) whether or not the person has previously refused or failed to do that act or thing; and
    - (ii) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.
- (6) 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.

## **Division 10—Election campaign donations**

### **320 Candidate must lodge election campaign donation return**

- (1) A person who is a candidate in an election must lodge an election campaign donation return with the Chief Municipal Inspector in respect of every election campaign donation received by the candidate during the donation period.

- (2) An election campaign donation return must be lodged—
    - (a) no later than 21 days after the candidate receives the election campaign donation; or
    - (b) if the election campaign donation is received before nomination day no later than 7 days after nomination day—whichever is later.
  - (3) An election campaign donation return must—
    - (a) be in the prescribed form; and
    - (b) contain the details prescribed by the regulations.
  - (4) If no details are required to be included in a return under this section in respect of a candidate, the return—
    - (a) must be lodged; and
    - (b) must include a statement to the effect that no gifts of a kind required to be disclosed were received.
  - (5) For the purposes of this section, an ***election campaign donation*** means any gift 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—
    - (a) if the amount or value of the gift is equal to or exceeds the gift disclosure threshold; or
    - (b) if the gift consists of goods or services the amount or value of which is equal to or exceeds the gift disclosure threshold.
  - (6) Subsection (5) applies to a gift from a person or an incorporated body or from a person on behalf of an unincorporated association.
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- (7) Despite subsection (5), a candidate is not required to specify the relevant details of an amount in a return if—
  - (a) the amount was a gift made in a private capacity to the candidate for the candidate's personal use; and
  - (b) the candidate has not used, and will not use, the gift solely or substantially for a purpose related to the election.
- (8) For the purposes of subsection (5), 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.

**321 Offences relating to election campaign donation returns**

- (1) A person who—
  - (a) fails to lodge an election campaign donation return that the person is required to lodge under section 320; or
  - (b) intentionally or recklessly lodges an election campaign donation return that is incomplete or that contains particulars that are false or misleading in a material particular; or
  - (c) intentionally or recklessly provides information that is false or misleading in a material particular to a person required to lodge an election campaign donation return under section 320—

is guilty of an offence.

Penalty: 60 penalty units.

- (2) If a person is found guilty or convicted of an offence under subsection (1), a court may make an order that the offender—
  - (a) lodge a completed election campaign donation return under section 320; or

- (b) lodge an election campaign donation return under section 320 that is not false or misleading in a material particular.

### **322 Certain gifts not to be accepted**

- (1) 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.
- (2) The reference in subsection (1) to a gift made by a person includes a reference to a gift made on behalf of the members of an unincorporated association.
- (3) A reference in subsection (1) 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
- (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.
- (4) For the purposes of subsection (1), 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.
- (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 gift.
- (6) If a person receives a gift that, by virtue of this section, it is unlawful for the person to receive, an amount equal to the amount or value of the gift is forfeited to the Council.
- (7) An amount forfeited under subsection (6) may be recovered against the candidate.

### **323 Responsibilities of Chief Municipal Inspector**

- (1) The Chief Municipal Inspector must publish a summary of the gifts recorded in an election campaign donation return lodged under section 320 on the Internet site of the Chief Municipal Inspector within 2 working days of the election campaign donation return being lodged.



- (2) The summary of an election campaign donation return must include the following information—
- (a) the name of the candidate;
  - (b) the name of the donor;
  - (c) the value and nature of each gift disclosed.

## **Division 11—Disputing the validity of an election**

### **324 Application to VCAT for review**

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) the VEC—

may apply to VCAT for a review of the declaration of the result of the election.

### **325 Powers of VCAT**

- (1) VCAT has the following powers in conducting a review under section 324—
- (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;
  - (i) to make any declaration in relation to its powers under this section as VCAT considers appropriate in the circumstances.
- (2) VCAT may impose a financial penalty not exceeding the amount prescribed for the purposes of this section.
- (3) VCAT cannot order a recount of the whole or any part of the ballot-papers unless VCAT—
  - (a) is satisfied that a recount is justified; and
  - (b) has advised the VEC of its intention.
- (4) If VCAT 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 VCAT on the day which the declaration is made.

## **Part 10—General provisions**

### **326 Authorised officers**

- (1) The Chief Executive Officer may appoint any person other than a Councillor to be an authorised officer of the Council for the purposes of the administration and enforcement of this Act, any regulations under this Act or local laws.
- (2) A Council must maintain a register that shows the names of all people appointed to be authorised officers.
- (3) The Council must issue an identity card to each authorised officer.
- (4) 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.
- (5) If a Chief Executive Officer 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 subsection (3) and is deemed to comply with subsection (4).
- (6) An authorised officer must produce their identity card upon being requested to do so.
- (7) An action taken or thing done by an authorised person is not invalidated by the failure of an authorised officer to produce their identity card.

- (8) 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 about to commit, an offence against this Act or any regulation or local law in respect of which the authorised officer is appointed.
- (9) 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.

- (10) An authorised officer may enter any land or building in the municipal district at any reasonable time to carry out and enforce this Act or any regulation or local law.
- (11) A person is guilty of an offence and liable to a fine not exceeding 60 penalty units if the person—
  - (a) refuses to give their name and address upon demand by an authorised officer; or
  - (b) obstructs or hinders an authorised officer while performing their duty; or
  - (c) falsely represents themselves to be an authorised officer.

**327 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.
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- (3) If the Council publishes such a notice, any police officer may enforce the provision as if the police officer was appointed to be an authorised officer under section 326 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 326(3) and is deemed to comply with section 326(4).

### **328 Proceedings**

- (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 municipal rates, service charges, special purpose 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.
  - (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.
  - (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.
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**329 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.

**330 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 the person's 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 the person's 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 their 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.
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- (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.

### **331 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.

### **332 Power of delegation**

- (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.

### **333 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.

### **334 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.

**335 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 314(2);
  - (b) section 314(4).
- (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.

### **336 Imposition of a surcharge**

- (1) This section applies if section 42 does 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
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- (c) any money which should have been brought into account has not been brought into account.
- (2) The Secretary may by notice in writing require the Councillor 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.
- (4) If the Councillor does not show cause to the satisfaction of the Secretary, the Secretary may by notice in writing impose the surcharge.
- (5) A Councillor 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; or
  - (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.

### **337 Payment of the surcharge**

- (1) A surcharge is a debt due and payable to the Council by the Councillor 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 Councillor on whom the surcharge is imposed.
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- (3) If a Councillor on whom a surcharge is imposed does not pay the surcharge within 3 months of it being imposed or confirmed on a review, the Councillor becomes incapable of continuing to be or becoming a Councillor until the surcharge is paid.

**338 Evidence of ownership**

Evidence that a person proceeded against is liable to be rated in respect of the land is evidence that the 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.

**339 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;
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- (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 election manager 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.

### **340 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.
- (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
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- (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
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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
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- (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) 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.
- (9) Regulations made under this Act may be disallowed in whole or in part by resolution of either House of 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.

### **341 Regulations relating to electoral matters**

Without limiting the generality of section 340, the regulations may prescribe any matter relating to or in respect of the following—

- (a) voter entitlement and the compilation of voters' rolls;
  - (b) specifying public notification requirements by the VEC in relation to the amendment of the voters' roll;
  - (c) the process for nomination of candidates for an election;
  - (d) the nomination day;
  - (e) the appointment of election officials and the making of declarations by election officials;
  - (f) candidate information to be provided to voters by the VEC;
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- (g) the approval and registration of how-to-vote cards at attendance elections;
- (h) providing for a right of review by VCAT in relation to specified decisions relating to the approval and registration of how-to-vote cards;
- (i) the content of ballot-papers, including the determination of the order of candidates' names on the ballot-paper;
- (j) the appointment and role of scrutineers;
- (k) the conduct of attendance elections, including early voting at voting centres and mobile voting centres;
- (l) the conduct of postal voting;
- (m) provision for unenrolled voters to lodge a vote at an election;
- (n) the close of voting and the receipt of postal votes after election day;
- (o) the counting of votes, including the use of electronic counting equipment and systems;
- (p) the declaration of candidates elected at an election;
- (q) the enforcement of compulsory voting and exemptions from compulsory voting.

#### **342 Transitional regulations**

- (1) The Governor in Council may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) A provision mentioned in subsection (1) may be retrospective in operation to 1 July 2018.

- (3) Regulations made under this section have effect despite anything to the contrary in any Act (other than this Act or the **Charter of Human Rights and Responsibilities Act 2006**) or in any subordinate instrument.
- (4) Sections 6 and 7 of the **Subordinate Legislation Act 1994** do not apply to any regulations made under this section.
- (5) This section expires on 1 July 2021.

*Draft Note: Further savings and transitional provisions to be drafted.*

## **Part 11—Consequential amendments and repeals**

### **Division 1—Repeal of City of Greater Geelong Act 1993**

#### **343 Repeal of City of Greater Geelong Act 1993**

The **City of Greater Geelong Act 1993** is repealed.

### **Division 2—Amendment of City of Melbourne Act 2001**

#### **344 Amendment of section 3—Definitions**

In section 3 of the **City of Melbourne Act 2001**—

- (a) the definition of *entitlement date* is repealed;
- (b) in the definition of *rateable property*, after "which is" insert "capable of being".

#### **345 Amendment of section 4—Construction of Act**

In section 4(1) and (2) of the **City of Melbourne Act 2001**, for "1989" substitute "2018".

#### **346 Substitution of section 5—Application of certain provisions of the Local Government Act 2018**

For section 5 of the **City of Melbourne Act 2001** substitute—

##### **"5 Application of certain provisions of the Local Government Act 2018**

Sections 12(1), 204(2)(d) and (e) and 256 to 270 of the **Local Government Act 2018** do not apply to the Council or the City of Melbourne."

**347 Amendment of section 6—Constitution of the Council**

For section 6(1)(c) of the **City of Melbourne Act 2001** substitute—

"(c) 9 Councillors."

**348 Amendment of section 6A—Constitution of Council may be altered**

(1) In section 6A(1) of the **City of Melbourne Act 2001**, for "section 220Q of the **Local Government Act 1989**" substitute "section 14 of the **Local Government Act 2018**".

(2) In section 6A(2) ) of the **City of Melbourne Act 2001**, after "provision of this Act" insert "and the **Local Government Act 2018**".

(3) After section 6A(3) of the **City of Melbourne Act 2001** insert—

"(4) An Order in Council referred to in subsection (1) applies to all the Councillors of the Council other than the Lord Mayor and the Deputy Lord Mayor."

**349 Amendment of section 7—Additional objectives**

In section 7(2) of the **City of Melbourne Act 2001**, for "the local government charter under the **Local Government Act 1989**" substitute "sections 7 and 8 of the **Local Government Act 2018**".

**350 References to entitlement date**

(1) In section 9(2)(c) of the **City of Melbourne Act 2001**, for "by 4 p.m. on the entitlement date" substitute "before the close of the roll".

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- (2) In section 9(3) of the **City of Melbourne Act 2001**, for "entitlement date" (where first occurring) **substitute** "close of the roll".
  - (3) In section 9A(1), (2)(b), (3) and (5) of the **City of Melbourne Act 2001**, for "on the entitlement date" **substitute** "as at the close of the roll".
  - (4) In section 9B(1) of the **City of Melbourne Act 2001**, for "on the entitlement date" **substitute** "as at the close of the roll".
  - (5) In section 9C(1) of the **City of Melbourne Act 2001**, for "on the entitlement date" **substitute** "as at the close of the roll".
  - (6) In section 9D(1) of the **City of Melbourne Act 2001**, for "by 4 p.m. on the entitlement date" **substitute** "as at the close of the roll".
  - (7) In section 9F(2) of the **City of Melbourne Act 2001**, for "by 4 p.m. on the entitlement date" **substitute** "as at the close of the roll".
  - (8) In section 11(1) of the **City of Melbourne Act 2001**, for "entitlement date" **substitute** "close of the roll".
  - (9) In section 11A(2) of the **City of Melbourne Act 2001**, for "entitlement date" **substitute** "close of the roll".
  - (10) In section 11C(1) of the **City of Melbourne Act 2001**, for "entitlement date" **substitute** "close of the roll".
  - (11) In section 11C(4) of the **City of Melbourne Act 2001**, for "entitlement date" **substitute** "date of the close of the roll".
  - (12) Section 11D(1) of the **City of Melbourne Act 2001** is **repealed**.
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**351 Amendment of section 9D—Procedure in relation to representatives of corporations**

(1) For sections 9D(2) and (3) of the **City of Melbourne Act 2001** substitute—

"(2) If the corporation has validly appointed 1 representative, the Chief Executive Officer must enrol as a representative of the corporation the next available person determined in accordance with subsection (3).

(3) If the corporation has not validly appointed any representatives, the Chief Executive Officer must enrol as representatives of the corporation the first 2 of the following—

- (a) company secretaries whose postal addresses are in Victoria (in alphabetical order);
- (b) company secretaries whose postal addresses are elsewhere in Australia (in alphabetical order);
- (c) directors whose postal addresses are in Victoria (in alphabetical order);
- (d) directors whose postal addresses are elsewhere in Australia (in alphabetical order);
- (e) company secretaries whose postal addresses are outside Australia (in alphabetical order);
- (f) directors whose postal addresses are outside Australia (in alphabetical order)."

(2) In section 9D(5) of the **City of Melbourne Act 2001**—

- (a) **omit** "that is available after the exhibition roll date";
- (b) after "Commission" **insert** "or other appropriate public body".

**352 Amendment of section 11D—Preparation of voters' rolls**

(1) For section 11D(5) of the **City of Melbourne Act 2001** **substitute**—

"(5) The Registrar must, in the case of a general election or a by-election, not later than 5 days before nomination day, certify in writing that the voters' roll has been prepared in accordance with this Act."

(2) In section 11D(6) of the **City of Melbourne Act 2001**, for "Chief Executive Officer" **substitute** "Registrar".

**353 Amendment of section 11E—Amendment of voters' roll**

- (1) In section 11E(1), (2) and (3) of the **City of Melbourne Act 2001**, for "Chief Executive Officer" **substitute** "Registrar".
- (2) In section 11E(1)(a) of the **City of Melbourne Act 2001**, after "error" **insert** "or omission".
- (3) In section 11E(3) of the **City of Melbourne Act 2001**, for "returning officer" **substitute** "election manager".

**354 Section 11F substituted—Inspection of certified voters' roll**

For section 11F of the **City of Melbourne Act 2001** substitute—

**"11F Inspection of certified voters' roll**

- (1) The Registrar must ensure that the voters' roll as certified under section 11D and incorporating any amendments certified under section 11E is available for inspection by members of the public from the day the voters' roll is certified until the day the next voters' roll is certified.
- (2) The certified voters' roll must be available for inspection—
  - (a) at the locations; and
  - (b) in the format—  
determined by the Registrar."

**355 Amendment of section 11G—Provision of voters' rolls**

- (1) For section 11G(1) and (2) of the **City of Melbourne Act 2001** substitute—

- "(1) On the request of any candidate for an election, the Registrar must provide a copy of the voters' roll for the ward for which the candidate has nominated to be the candidate.
  - (2) The voters' roll must be provided to the candidate—
    - (a) free of charge; and
    - (b) in a form determined by the Registrar."
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(2) For section 11G(4) to (12) of the **City of Melbourne Act 2001** substitute—

- "(4) After receiving a request from any person or organisation, other than a candidate under subsection (1), for a voters' roll, the Registrar must—
- (a) identify the public interest in providing the requested information; and
  - (b) consult with the Deputy Commissioner Privacy and Data Protection appointed under the **Privacy and Data Protection Act 2014** on the public interest in protecting the privacy of personal information; and
  - (c) taking into account the advice of the Deputy Commissioner Privacy and Data Protection, make a finding whether or not the public interest in providing the voters' roll outweighs the public interest in protecting the privacy of personal information in the particular circumstances.
- (5) Subject to subsection (6), if the Registrar has made a finding under subsection (4) that the public interest in providing the voters' roll outweighs the public interest in protecting the privacy of personal information, the Registrar may—
- (a) provide the voters' roll to the person or organisation ; and
  - (b) charge a fee that covers the cost to the Registrar of providing the voters' roll.
- (6) The Registrar must obtain from the person or organisation to be provided with a voters' roll under this section an undertaking that the person or organisation will—
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- (a) only use the voters' roll for the purpose for which the Registrar agreed to provide the voters' roll; and
  - (b) not copy the voters' roll or give it to any other person or organisation; and
  - (c) return the voters' roll to the Registrar or destroy the voters' roll after using it for the purpose for which the Registrar agreed to provide the voters' roll.
- (7) A person or organisation that is provided with a copy of the voters' roll under subsection (5) must comply with subsection (6).

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

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

**356 Amendment of section 12—General elections**

In section 12 of the **City of Melbourne Act 2001**, for "Division 4 of Part 3 of the **Local Government Act 1989**" substitute "section 271 of the **Local Government Act 2018**".

**357 Repeals**

Sections 14A, 20, 20A, 22, 25A, 26, 26A, 27 and 27AA, Part 5A, section 32 and Part 8 of the **City of Melbourne Act 2001** are repealed.

**358 Amendment of section 15—Joint nominations for Lord Mayor and Deputy Lord Mayor**

In section 15(4) and (5) of the **City of Melbourne Act 2001**, for "returning officer" (wherever occurring) substitute "election manager".

**359 Section 18 substituted—How votes to be counted**

For section 18 of the **City of Melbourne Act 2001** substitute—

**'18 How votes to be counted**

- (1) Division 6 of Part 9 of the **Local Government Act 2018** applies to the election of the Lord Mayor and the Deputy Lord Mayor—
  - (a) as if each pair of candidates standing jointly for the positions was a single candidate; and
  - (b) as if there were no reference to "only 1 Councillor".
- (2) If the election of Councillors was conducted in accordance with Schedule 1 to this Act and the application of Division 7 of Part 9 of the **Local Government Act 2018** does not result in the filling of all the vacancies in the offices of Councillors (other than the Lord Mayor or Deputy Lord Mayor)—
  - (a) in the case of a single vacancy to be filled, Division 6 of Part 9 of the **Local Government Act 2018** applies to the by-election to fill the vacancy and Schedule 1 does not apply; or
  - (b) if there is more than one vacancy to be filled, Schedule 1 also applies to the by-election to fill the vacancies.'.

**360 Section 19 amended—Compulsory voting**

- (1) In section 19(1) of the **City of Melbourne Act 2001**, for "Except as is provided in the regulations under the **Local Government Act 1989**" substitute "Subject to subsection (1A)".

- (2) After section 19(1) of the **City of Melbourne Act 2001** insert—

"(1A) Subsection (1) does not apply if an exemption prescribed by regulations made under this Act or the **Local Government Act 2018** applies to the person."

- (3) In section 19(6) of the **City of Melbourne Act 2001**, for the definition of *prescribed penalty substitute*—

*"prescribed penalty* means 0.5 penalty units;"

- (4) For section 19(9)(c) of the **City of Melbourne Act 2001** substitute—

"(c) the name of the ward; and

(d) if the election was conducted by postal voting, the date voting closed."

- (5) After section 19(9) of the **City of Melbourne Act 2001** insert—

"(10) 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."

**361 Section 21 substituted—References to Mayor and Deputy Mayor**

For section 21 of the **City of Melbourne Act 2001** substitute—

**"21 Reference to Mayor or Deputy Mayor**

For the purposes of this Act, a reference in the **Local Government Act 2018** to—

- (a) a Mayor is to be construed as including a reference to the Lord Mayor; and
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- (b) a Deputy Mayor is to be construed as including a reference to the Deputy Lord Mayor."

**362 Amendment of section 23—Term of office of Lord Mayor and Deputy Lord Mayor**

- (1) In section 23(1) and (2) of the **City of Melbourne Act 2001**, for "returning officer" substitute "election manager".
- (2) Section 23(3), (4) and (5) of the **City of Melbourne Act 2001** are repealed.

**363 Section 24 amended—Filling of vacancies**

- (1) In section 24(1) of the **City of Melbourne Act 2001**, for "on a Saturday to be appointed by the Minister under section 38 of the **Local Government Act 1989**" substitute "section 279 of the **Local Government Act 2018** and section 278 of the **Local Government Act 2018** does not apply".
- (2) For section 24(3)(c) of the **City of Melbourne Act 2001** substitute—
- "(c) if the Council does so, an extraordinary vacancy occurs in the office of the Councillor on the date of the appointment and section 278 of the **Local Government Act 2018** does apply."

**364 Section 25—Appointment of acting Deputy Lord Mayor**

In section 25(1) of the **City of Melbourne Act 2001**, for "section 22(1)" substitute "section 21 of the **Local Government Act 2018**".

**365 Amendment of section 28—Differential Rates**

In section 28(1) of the **City of Melbourne Act 2001**, for "section 161(1)(a) of the **Local Government Act 1989**" substitute "the **Local Government Act 2018**".

**366 Amendment of section 29—Regulations**

- (1) In section 29(2)(b) of the **City of Melbourne Act 2001**, for "Schedule 2 or 3 of the **Local Government Act 1989**" substitute "Part 9 of the **Local Government Act 2018**".
- (2) In section 29(3) of the **City of Melbourne Act 2001**, for "Section 243 of the **Local Government Act 1989** applies" substitute "Sections 341 and 342 of the **Local Government Act 2018** apply".

**367 Amendment of Schedule 1**

In Schedule 1 to the **City of Melbourne Act 2001**—

- (a) clause 1(2) is **repealed**;
- (b) in clause 2(1), the definition of **Part 4A** is **repealed**;
- (c) in clauses 3(2)(c), 4(2), 4(3), 4(4), 4(5), 4(7), 4(8), 5(2), 5(3), 6(2)(b), 7(1), 8(6), 14(2)(b), 16(2) and 17, for "returning officer" (wherever occurring) substitute "election manager";
- (d) in clause 8(9), for "clause 14 of Schedule 2 of the **Local Government Act 1989**" substitute "regulations made under the **Local Government Act 2018**";
- (e) in clauses 11(2) and (3), 13 and 14(2), for "Part 4A" substitute "Division 7 of Part 9 of the **Local Government Act 2018**";

(f) in clause 15(b), for "**1989**" substitute "**2018**";

(g) in clause 16(2), for "clause 9 of Schedule 2 of the **Local Government Act 1989**" substitute "regulations made under the **Local Government Act 2018**".

### **Division 3—Amendment of Local Government Act 1989**

*Draft Note: To be drafted*

### **Division 4—Consequential amendments of other Acts**

#### **368 Consequential amendments to specified Acts**

An Act specified in the heading to an item in Schedule 1 is amended as set out in that item or provision.

### **Division 5—Repeal of this Part and Schedule 1**

#### **369 Repeal**

This Part and Schedule 1 are **repealed** on 1 July 2020.

#### **Note**

The repeal of this Part and Schedule 1 does not affect the continuing operation of the repeals and amendments made by this Part and Schedule 1 (see section 15(1) of the **Interpretation of Legislation Act 1984**).

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Schedule 1—Consequential amendments to other Acts

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**Schedule 1—Consequential amendments  
to other Acts**

*Draft Note: to be drafted.*

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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.