

House of Assembly—No 67

As laid on the table and read a first time, 17 June 2020

South Australia

**Statutes Amendment (Local Government Review)
Bill 2020**

A BILL FOR

An Act to amend the *Local Government Act 1999*, the *Local Government (Elections) Act 1999*, the *City of Adelaide Act 1998* and to amend various other Acts related to the review of the system of local government in South Australia.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Local Government Review) Act 2020*.

2—Commencement

- (1) This Act comes into operation on a day to be fixed by proclamation.
- (2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act.

3—Amendment provisions

- 5 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Local Government Act 1999*

4—Amendment of section 3—Objects

Section 3(f)—after "communities" insert:

- 10 and to provide for appropriate financial contributions by ratepayers to those services and facilities

5—Amendment of section 4—Interpretation

- (1) Section 4(1)—after the definition of *authorised person* insert:

behavioural management policy—see section 262B(1);

- 15 *behavioural standards* means the standards of behaviour to be observed by members of councils published under Chapter 5 Part 4 Division 2;

Behavioural Standards Panel or *Panel* means the Behavioural Standards Panel established under Chapter 13 Part A1 Division 2;

behavioural support policy—see section 75F(1);

- 20 (2) Section 4(1), definition of *Commission*—delete the definition and substitute:

Commission or *South Australian Local Government Boundaries Commission* means the South Australian Local Government Grants Commission established under the *South Australian Local Government Grants Commission Act 1992*;

- 25 (3) Section 4(1)—after the definition of *Commission* insert:

community engagement charter—see Chapter 4 Part 5;

community engagement policy—see Chapter 4 Part 5;

- (4) Section 4(1)—after the definition of *day therapy centre* insert:

designated authority—see section 123;

- 30 (5) Section 4(1)—after the definition of *independent living units* insert:

integrity provision means—

- (a) in relation to members of councils—a provision of Chapter 5 Part 4 Division 1; or

- (b) in relation to employees of councils—a provision of Chapter 7 Part 4 Division 1;

- 35 (6) Section 4(1), definition of *public consultation policies*—delete the definition

(7) Section 4(1), definition of *relative*—delete the definition and substitute:

relative of a person means—

- (a) the spouse or domestic partner; or
- (b) a parent, step parent or remoter lineal ancestor; or
- (c) a child, step child or remoter descendant; or
- (d) a sibling or step sibling; or
- (e) any member of the person's family who resides in the person's household;

(8) Section 4(1)—after the definition of *relative* insert:

relevant audit and risk committee means—

- (a) in relation to a council that has, with 1 or more other councils, established a regional audit and risk committee—the regional audit and risk committee; or
- (b) in relation to any other council—the council audit and risk committee;

(9) Section 4(1), definition of *site value*—delete the definition

(10) Section 4—before subsection (1aa) insert:

(1aaa) For the purposes of this Act, *public consultation* is undertaken if consultation is conducted in accordance with the relevant provisions of the community engagement charter and community engagement policy (if applicable).

(11) Section 4(1aa)(a)(ii)(B)—delete "; and" and substitute:

; or

(12) Section 4(1aa)(b)—delete paragraph (b) and substitute:

- (b) if the community engagement charter provides for the giving of public notice under this Act—notice is published in accordance with the community engagement charter.

6—Amendment of section 6—Principal role of council

Section 6(b)—delete paragraph (b) and substitute:

- (b) to make decisions about the provision of various public services and facilities that will benefit the community in the context of the capacity and willingness of ratepayers to pay for those services and facilities; and

7—Amendment of section 7—Functions of council

(1) Section 7(b)—delete "(including general public services or facilities (including electricity, gas and water services, and waste collection, control or disposal services or facilities), health, welfare or community services or facilities, and cultural or recreational services or facilities)"

(2) Section 7—after paragraph (b) insert:

- (ba) to determine the appropriate financial contribution to be made by ratepayers to the resources of the council;

8—Amendment of section 8—Principles to be observed by council

5 (1) Section 8(ea)—delete "and form partnerships" and substitute:

, form partnerships and share resources

(2) Section 8(h)—after "efficiently" insert:

and council services, facilities and programs are provided effectively and efficiently

10 (3) Section 8—after paragraph (i) insert:

- (ia) seek to balance the provision of services, facilities and programs with the financial impact of the provision of those services, facilities and programs on ratepayers;

9—Insertion of section 11A

15 Before section 12 insert:

11A—Number of members

(1) Despite any other provision of this Chapter, a council must not be comprised of more than 12 members.

(2) Subsection (1) applies to a council from—

20 (a) in the case of a council that commences a representation review in accordance with section 12 after the commencement of subsection (1) and completes the review before 1 January 2022—polling day for the periodic election next due to be held after the commencement of

25 subsection (1); or

(b) in any other case—polling day for the second periodic election due to be held after the commencement of subsection (1).

30 (3) A reference to completing a review under subsection (2)(a) includes (if relevant) publishing any notice or notices in the Gazette under section 12(15)(b) in relation to the review.

10—Amendment of section 12—Composition and wards

(1) Section 12(5) to (10)—delete subsections (5) to (10) (inclusive) and substitute:

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

- (6) The representation report must—
- (a) examine the advantages and disadvantages of various options that are available to the council under subsection (1) (insofar as the various features of the composition and structure of the council are under review) and, in particular (to the extent that may be relevant)—
 - (i) examine the question of whether the number of members should be reduced; and
 - (ii) if the area of the council is divided into wards, examine the question of whether the division of the area into wards should be abolished; and
 - (b) set out any proposal that the council considers should be carried into effect under this section; and
 - (c) in respect of any such proposal—include an analysis of how the proposal relates to the principles under section 26(1)(c) and the matters referred to in section 33 (to the extent that may be relevant); and
 - (d) examine such other relevant issues as the council or the person preparing the report thinks fit.

(7) The council must undertake public consultation on the representation report.

(2) Section 12(11a) to (11d)—delete subsections (11a) to (11d) (inclusive)

(3) Section 12(12)—delete ", taking into account the operation of the preceding subsection,"

(4) Section 12(12a)—delete subsection (12a) and substitute:

(12a) The report must, if written submissions are received as part of public consultation undertaken under subsection (7), include copies of any written submissions that relate to the subject-matter of the proposal.

(5) Section 12(17)—delete "subsections (9) and (10)" and substitute:

subsection (7)

(6) Section 12(18a)—delete subsection (18a)

11—Amendment of section 13—Status of council or change of various names

Section 13(2)(ba)—delete paragraph (ba)

12—Amendment of section 26—Principles

Section 26(1)—before "Commission" insert:

South Australian Local Government Boundaries

13—Amendment of section 44—Delegations

(1) Section 44(2)—after paragraph (b) insert:

(ba) to a joint planning board established under a planning agreement to which the council is a party; or

(2) Section 44(7) and (8)—delete subsections (7) and (8)

14—Amendment of section 45—Principal office

Section 45(3)—delete "consult with its local community in accordance with its public consultation policy" and substitute:

undertake public consultation

15—Amendment of section 48—Prudential requirements for certain activities

(1) Section 48(5)—delete subsection (5)

(2) Section 48(6)—delete "However, a council may take steps to prevent the disclosure of specific information" and substitute:

A council may take steps to prevent the disclosure of specific information in a report under subsection (1)

16—Amendment of section 49—Contracts and tenders policies

Section 49(4) and (5)—delete subsections (4) and (5)

17—Substitution of Chapter 4 Part 5

Chapter 4 Part 5—delete the Part and substitute:

Part 5—Community engagement

50—Community engagement charter

(1) The Minister may, by notice published in the Gazette and on a website determined by the Minister, establish a community engagement charter for the purposes of this Act.

(2) The following principles must be taken into account in relation to the charter:

(a) members of the community should have reasonable, timely, meaningful and ongoing opportunities to gain access to information about proposed decisions, activities and processes of councils and to participate in relevant processes;

(b) information about issues should be in plain language, readily accessible and in a form that facilitates community participation;

(c) participation methods should seek to foster and encourage constructive dialogue, discussion and debate in relation to proposed decisions, activities and processes of councils;

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- (d) participation methods should be appropriate having regard to the significance and likely impact of proposed decisions, activities and processes;
 - (e) insofar as is reasonable, communities should be provided with information about how community views have been taken into account and reasons for decisions or actions of councils.
- (3) The charter—
- (a) will relate to—
 - 10 (i) community consultation and participation with respect to any decision, activity or process where compliance with the charter is contemplated by this Act; and
 - 15 (ii) any other circumstance where compliance with the charter is contemplated by this Act; and
 - (b) may relate to any other circumstances, or provide for any other matter, determined by the Minister.
- (4) The charter may—
- 20 (a) establish categories of statutory processes to which various parts of the charter will apply; and
 - (b) in relation to each category established under paragraph (a)—
 - 25 (i) specify mandatory requirements; and
 - (ii) set out principles and performance outcomes that are to apply to the extent that mandatory requirements are not imposed; and
 - (c) in relation to performance outcomes under paragraph (b)(ii)—
 - 30 (i) provide guidance on specific measures or techniques by which the outcomes may be achieved; and
 - (ii) set out measures to help evaluate whether, and to what degree, the outcomes have been achieved.
- (5) The charter may—
- 35 (a) be of general or limited application; and
 - (b) vary in operation according to factors stated in the charter; and
 - (c) provide for, or for the granting by the Minister of, exemptions (conditional or unconditional) from specified provisions of the charter.
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- (6) The Minister may, by further notice published in the Gazette and on the website referred to in subsection (1), vary or substitute the charter.
- (7) The Minister must, before establishing, varying or substituting the charter—
- (a) consult with the LGA; and
- (b) undertake such other consultation as the Minister thinks fit, on the charter, variation or substitute charter (as the case may be).
- (8) An entity to which the charter applies must—
- 10 (a) comply with any mandatory requirement that applies in a relevant case; and
- (b) to the extent that paragraph (a) does not apply, have regard to, and seek to achieve, any principles or performance outcomes that apply in a relevant case.
- 15 (9) A notice published under subsection (1) or (6) may come into operation on the day on which it is published or on a later day or days specified in the notice.
- (10) Sections 10 (other than subsection (1)) and 10A of the *Subordinate Legislation Act 1978* apply to a notice published under subsection (1) or (6) (and a reference in those provisions to a regulation will be taken to be a reference to a notice published under subsection (1) or (6) (as the case requires)).
- 20

50A—Council community engagement policy

- 25 (1) A council must prepare and adopt a policy relating to community engagement for the purposes of this Act (a ***community engagement policy***).
- (2) The policy may—
- 30 (a) in relation to any decision, activity or process in respect of which the community engagement charter prescribes requirements, principles or performance outcomes applying to community consultation and participation (relating to the decision, activity or process), make additional provision (not inconsistent with the charter) specifying how the council will—
- 35 (i) comply with the requirements in a relevant case; or
- (ii) seek to achieve the principles or performance outcomes in a relevant case; and
- (b) in relation to any other decision, activity or process of the council, provide for community consultation and participation in relation to the decision, activity or process.
- 40 (3) The policy must be consistent with, and comply with any requirements specified by, the community engagement charter.

- (4) The policy may—
- (a) be of general or limited application; and
 - (b) vary in operation according to factors stated in the policy; and
 - (c) provide for, or for the granting by the council of, exemptions (conditional or unconditional) from specified provisions of the policy.
- (5) A council may from time to time alter a community engagement policy, or substitute a new policy.
- (6) Before a council—
- (a) adopts a community engagement policy; or
 - (b) alters, or substitutes, a community engagement policy,
- the council must undertake public consultation on the community engagement policy, alteration or substituted policy (as the case may be).

18—Amendment of section 51—Principal member of council

- (1) Section 51(1) and (2)—delete subsections (1) and (2) and substitute:
- (1) A council must be constituted on the basis that the principal member is to be appointed¹ or elected as a representative of the area as a whole (in which case the principal member is to be called a mayor).
- (2) Section 51(3)—delete subsection (3) and substitute:
- (3) If the council so resolves, there may also be a deputy mayor.
- (3) Section 51(4)—delete "or deputy chairperson"
- (4) Section 51(5)—delete "chairperson, deputy mayor or deputy chairperson" and substitute:
- deputy mayor
- (5) Section 51(6) and (7)—delete subsections (6) and (7) and substitute:
- (6) In the absence of the mayor, a deputy mayor may act in the office of mayor.
 - (7) If the mayor is absent from official duties and there is no deputy mayor, or the deputy mayor is not available to act in the office of mayor, a member chosen by the council may act in the office of mayor during the relevant period.

19—Amendment of section 54—Casual vacancies

- (1) Section 54(1)(g)—delete paragraph (g)
- (2) Section 54(1)(k)—delete "a court order" and substitute:
- an order of a court or SACAT

(3) Section 54(2a)(b)(ii)—delete subparagraph (ii) and substitute:

(ii) the conclusion of the election falls within 12 months before polling day for—

(A) a periodic election; or

(B) a general election (other than a periodic election) if the date of that polling day is known at the time of the occurrence of the vacancy.

(4) Section 54(4)—delete "Division 2 of Part 4 of this Chapter or"

20—Amendment of section 55—Specific requirements if member disqualified

(1) Section 55(a)—delete "62 or"

(2) Section 55(b)—delete "62" and substitute:

68, 80A, 80B

(3) Section 55, penalty provision—delete "\$5 000" and substitute:

\$15 000

21—Insertion of section 55A

After section 55 insert:

55A—Leave of absence—council member contesting election

(1) If a person holding office as a member of a council stands as a candidate for election as a member of the Parliament of the State, the member will be taken to have been granted leave of absence from the office of member of the council from the date on which nominations for the election close until the result of the election is publicly declared.

(2) Leave of absence under subsection (1) extends to all other offices held in the person's capacity as a member of the council or by virtue of being a member of the council.

(3) Subsection (1) does not apply if the nomination of a member of a council as a candidate for election is revoked (as a result of the member's withdrawal of their consent to stand as a candidate).

(4) Despite any other Act or law, or any determination of the Remuneration Tribunal, a member of a council who is taken to have been granted leave of absence in accordance with this section is not entitled to receive any allowance in respect of the member's office for the period of leave.

(5) A person who is taken to have been granted leave of absence from the office of member of a council under this section must not, during the period of leave—

- (a) use a facility or service provided by the council (not being a facility or service generally provided to members of the public by the council) for any purpose related to the election or to the member's functions or duties as a member of the council; or
- (b) carry out any function or duty of the office of member of the council.

Maximum penalty: \$15 000.

(6) The following provisions apply during the period of the leave of absence of a member of a council to whom this clause applies:

- (a) the member is not required—
 - (i) to submit a return for the purposes of the Register of Interests in accordance with Chapter 5 Part 4 Division 1 Subdivision 2; or
 - (ii) if relevant, to notify the chief executive officer of a change or variation of a kind referred to in section 67(1),

provided that, on the cessation of the suspension, the member—

- (iii) submits any return for the purposes of the Register of Interests that the member would, but for the suspension, have been required to submit in accordance with Chapter 5 Part 4 Division 1 Subdivision 2 during the period of suspension; and
- (iv) notifies the chief executive officer of a change or variation of a kind referred to in section 67(1) of which the member would, but for the suspension, have been required to notify the chief executive officer under section 67(1) during the period of suspension;

- (b) to avoid doubt, section 54(1)(d) does not apply to the member.

22—Amendment of section 58—Specific roles of principal member

(1) Section 58(1)—delete subsection (1) and substitute:

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

- (a) to provide leadership and guidance to the council; and
- (b) to lead the promotion of positive and constructive working relationships among members of the council; and

- (c) to provide guidance to council members on the performance of their role, including on the exercise and performance of their official functions and duties; and
- (d) to support council members' understanding of the separation of responsibilities between elected representatives and employees of the council; and
- (e) to preside at meetings of the council; and
- (f) if requested, to provide advice to the chief executive officer between council meetings on the implementation of a decision of the council; and
- (g) to act as the principal spokesperson of the council; and
- (h) to exercise other functions of the council as the council determines; and
- (i) to carry out the civic and ceremonial duties of the office of principal member.

(2) Section 58(2)—delete "Subsection (1)(c)" and substitute:

Subsection (1)(g)

23—Amendment of section 59—Roles of members of councils

(1) Section 59(1)(a)—delete paragraph (a) and substitute:

- (a) as a member of the governing body of the council—
 - (i) to act with integrity; and
 - (ii) to ensure positive and constructive working relationships within the council; and
 - (iii) to recognise and support the role of the principal member under the Act; and
 - (iv) to develop skills relevant to the role of a member of the council and the functions of the council as a body; and
 - (v) to participate in the deliberations and activities of the council; and
 - (vi) to keep the council's objectives and policies under review to ensure that they are appropriate and effective; and
 - (vii) to keep the council's resource allocation, expenditure and activities, and the efficiency and effectiveness of its service delivery, under review; and
 - (viii) to ensure, as far as is practicable, that the principles set out in section 8 are observed; and
 - (ix) to participate in setting and assessing performance standards to be met under the council's contract with the chief executive officer; and
 - (x) to serve the overall public interest of the council; and

- (2) Section 59(1)(b)—after "ratepayers" insert:
of the council

24—Substitution of heading to Chapter 5 Part 4

Heading to Chapter 5 Part 4—delete the heading and substitute:

Part 4—Member integrity and behaviour

25—Substitution of heading to Chapter 5 Part 4 Division 1

Heading to Chapter 5 Part 4 Division 1—delete the heading and substitute:

Division 1—Member integrity

26—Insertion of Subdivision heading

Before section 62 insert:

Subdivision 1—General

27—Amendment of section 62—General duties

- (1) Section 62(3), penalty provision—delete the penalty provision
- (2) Section 62(4), penalty provision—delete the penalty provision
- (3) Section 62(4a)—delete subsection (4a) and substitute:
- (4a) A member or former member of a council must not disclose information or a document—
- (a) in relation to which there is an order of a council or council committee in effect under section 90 requiring the information or document to be treated confidentially; or
- (b) that the member or former member knows, or ought reasonably to know, is information or a document that is otherwise required to be treated confidentially.
- (4) Section 62—after subsection (4b) insert:
- (4c) A member of a council must not direct or seek to influence an employee of the council in the exercise or performance of a power or function delegated to the employee.
- (4d) Without limiting subsection (4c), a member of a council must not request an employee of a council—
- (a) to provide information or a document; or
- (b) to take action or perform work,
- except in accordance with the requirements of the chief executive officer of the council.
- (4e) A member of a council must comply with any requirements prescribed by the regulations relating to the conduct of members that are expressed to be integrity provisions.
- (5) Section 62(5) and (6)—delete subsections (5) and (6)

- (6) Section 62(7)—delete "The" and substitute:

Subject to the regulations, the

28—Repeal of section 63

Section 63—delete the section

29—Substitution of heading to Chapter 5 Part 4 Division 2

Heading to Chapter 5 Part 4 Division 2—delete the heading and substitute:

Subdivision 2—Register of Interests

30—Amendment of Chapter 5 Part 4 Division 2

Chapter 5 Part 4 Division 2—delete "this Division" wherever occurring and substitute in each case:

this Subdivision

31—Amendment of section 64—Interpretation

Section 64, definition of *return period*—delete the definition

32—Amendment of section 67—Form and content of returns

- (1) Section 67(1)—delete "person related to the member" and substitute:

designated person or entity in relation to the member

- (2) Section 67(1), penalty provision—delete the penalty provision

- (3) Section 67(2)—delete "a defence to a prosecution for an offence against subsection (1) to prove" and substitute:

not a breach of subsection (1) if a member proves

33—Amendment of section 68—Register of Interests

- (1) Section 68—after subsection (1) insert:

(1a) If a member of a council fails to submit a return to the chief executive officer before the expiration of 1 month from the end of the period allowed under this Subdivision for the submission of the return, the member is suspended from the office of member of the council.

(1b) Despite any other Act or law, or any determination of the Remuneration Tribunal, a member of a council suspended under subsection (1a) is not entitled to an allowance under section 76 during the period of suspension.

- (2) Section 68(2)—delete "Division 1 of Part 2 of this Chapter" and substitute:

subsection (1a)

(3) Section 68—after subsection (3) insert:

5 (3a) If a member of a council suspended under subsection (1a) for a failure to submit a return submits (after the commencement of the suspension) to the chief executive officer of the council the return that was required to be submitted and the chief executive officer is satisfied that the return complies with the requirements of this Subdivision (other than the requirement as to the period allowed for the submission of the return)—

10 (a) the chief executive officer must immediately publish a notice on a website determined by the chief executive officer specifying the date on which the member submitted the return; and

(b) the suspension is taken to be revoked on the date of publication of the notice.

15 (3b) If a member of a council is suspended under subsection (1a) for a continuous period of more than the prescribed period, the chief executive officer may apply to SACAT for an order disqualifying the member of the council from the office of member under this Act.

20 (3c) If a member is disqualified under subsection (3b), the disqualification extends to all other offices held in the member's capacity as a member of the council or by virtue of being a member of the council.

34—Amendment of section 69—Provision of false information

Section 69, penalty provision—delete the penalty provision

35—Amendment of section 70—Publication of Register

(1) Section 70(a1)—delete subsection (a1) and substitute:

(a1) The chief executive officer must publish the Register on a website determined by the chief executive officer.

(a2) However, the chief executive officer must ensure that the following details are not published under subsection (a1):

(a) a person's residential address;

(b) any other address suppressed from the Register under section 68(4)(a).

(2) Section 70(1) and (2)—delete subsections (1) and (2)

36—Amendment of section 71—Restrictions on publication

Section 71(2), penalty provision—delete "\$10 000" and substitute:

\$15 000

37—Insertion of Chapter 5 Part 4 Division 1 Subdivision 3

Chapter 5 Part 4—after section 72 insert:

Subdivision 3—Gifts and benefits

72A—Register of gifts and benefits

- 5 (1) A member of a council must not seek out or receive a gift or benefit that is, or could reasonably be taken to be, intended or likely to create a sense of obligation to a person on the part of the member or influence the member in the performance or discharge of their functions or duties.
- 10 (2) If a member of a council receives a gift or benefit of an amount greater than the amount determined by the Minister (from time to time), by notice in the Gazette, the member must provide details of the gift or benefit to the chief executive officer of the council in accordance with any requirements of the chief executive officer.
- 15 (3) The Minister must consult with the LGA before publishing a notice under subsection (2).
- (4) The chief executive officer of a council must maintain a register of gifts and benefits received by members of the council and must ensure that the details of each gift and benefit provided under this
- 20 section are included in the register.
- (5) For the purposes of this section, a gift or benefit received by a designated person or entity in relation to a member of a council will be treated as a gift or benefit (as the case requires) received by the member.
- 25 (6) For the purposes of this section—
- (a) 2 or more separate gifts or benefits received by a member or a designated person or entity in relation to the member from the same person during a financial year are to be treated as
- 30 1 gift or benefit (as the case requires) received by the member; and
- (b) 2 or more separate transactions to which a member or a designated person or entity in relation to the member is a party with the same person during a financial year under which the member or the designated person has had the use
- 35 of property of the other person (whether or not being the same property) during a financial year are to be treated as 1 transaction under which the member has had the use of property of the other person during the financial year.
- 40 (7) Unless the contrary intention appears, terms and expressions used in this section and in Schedule 3 have the same respective meanings in this section as they have in that Schedule.

38—Substitution of Chapter 5 Part 4 Division 3

Chapter 5 Part 4 Division 3—delete Division 3 and substitute:

Subdivision 4—Conflicts of interest

73—Preliminary

In this Subdivision—

agency or instrumentality of the Crown includes—

- (a) an administrative unit of the Public Service; and
- (b) a body corporate comprised of or including, or having a governing body comprised of or including, a Minister or Ministers of the Crown or a person or persons appointed by the Governor or a Minister or other agency or instrumentality of the Crown;

conflict of interest means—

- (a) a general conflict of interest; or
- (b) a material conflict of interest;

general conflict of interest—see section 74;

material conflict of interest—see section 75.

74—General conflicts of interest

- (1) Subject to section 75A, for the purposes of this Subdivision, a member of a council has a *general conflict of interest* in a matter to be discussed at a meeting of the council if an impartial, fair-minded person would consider that the member's private interests could result in the member acting in a manner that is contrary to their public duty.

- (2) For the purposes of subsection (1)—

private interests means any direct or indirect interest of a member 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 member has to members of the public in their role as a member.

75—Material conflicts of interest

Subject to section 75A, for the purposes of this Subdivision, a member of a council has a *material conflict of interest* in a matter to be discussed at a meeting of the council if any of the following persons would gain a benefit, or suffer a loss, (whether directly or indirectly and whether of a personal or pecuniary nature) depending on the outcome of the consideration of the matter at the meeting:

- (a) the member;
- (b) a relative of the member;

- (c) a body corporate of which the member is a director or a member of the governing body;
- (d) a proprietary company in which the member is a shareholder;
- 5 (e) a family company of the member (within the meaning of Schedule 3);
- (f) a family trust of the member (within the meaning of Schedule 3);
- 10 (g) a beneficiary under a trust or an object of a discretionary trust of which the member is a trustee;
- (h) a partner of the member;
- (i) the employer or an employee of the member;
- (j) a person with whom the member has entered into, is seeking to enter into, or is otherwise involved in a negotiation or tendering process in connection with entering into, an agreement for the provision of professional or other services for which the member would be entitled to receive a fee, commission or other reward;
- 15 (k) a person or body from whom the member has received a gift of a kind required to be disclosed in a return under Part 14 of the *Local Government (Elections) Act 1999* relating to the last election at which the member was elected;
- 20 (l) a person of a prescribed class.

75A—Exemptions and other matters

- 25 (1) A member of a council will not be regarded as having a conflict of interest in a matter to be discussed at a meeting of the council—
 - 30 (a) if the interest is held in common with a substantial proportion of the ratepayers, electors or residents of the council area and does not exceed the interest held by the other ratepayers, electors or residents; or
 - (b) if the interest in the matter is that of an employer or employee of the member, and the member does not know, and could not reasonably be expected to know, of that interest; or
 - 35 (c) if the interest in the matter is that of a relative of the member, other than the member's spouse or domestic partner, and the member does not know, and could not reasonably be expected to know, of that interest; or
 - (d) if—
 - 40 (i) the interest arises in relation to a prescribed matter or in prescribed circumstances; and

(ii) the member complies with the requirements of the regulations (if any) relating to dealing with the matter.

5 (2) Without limiting subsection (1), a member of a council will not be regarded as having a general conflict of interest in a matter to be discussed at a meeting of the council by reason only of—

(a) an engagement with a community group, sporting club or similar organisation undertaken by the member in their capacity as a member; or

10 (b) membership of a political party; or

(c) membership of a community group, sporting club or similar organisation (if the member is not an office holder for the group, club or organisation); or

15 (d) the member having been a student of a particular school or their involvement with a school as parent of a student at the school; or

(e) a nomination or appointment as a member of a board of a corporation or other association, if the member was nominated for appointment by a council.

20 (3) A member of a council who is a member, officer or employee of an agency or instrumentality of the Crown, will be regarded as having a conflict of interest in a matter before the council if the matter directly concerns that agency or instrumentality but otherwise will not be regarded as having an interest in a matter by virtue of being a
25 member, officer or employee of the agency or instrumentality.

(4) Regulations under subsection (1)(d)—

(a) may be limited to material conflicts of interest or general conflicts of interest, or may relate to conflicts of interest generally; and

30 (b) may make different provision according to the matter or circumstances to which they are expressed to apply.

75B—Dealing with general conflicts of interest

35 (1) If a member of a council has a general conflict of interest in relation to a matter to be discussed at a meeting of the council, the member must deal with the interest in a transparent and accountable way and, in particular, must inform the meeting of—

(a) the member's interest in the matter; and

(b) whether or not the member proposes to participate in the meeting in relation to the matter; and

40 (c) if the member proposes to participate in the meeting in relation to the matter—

- (i) how the member intends to deal with the general conflict of interest, including whether the member intends to abstain from voting on the matter; and
- (ii) the member's reasons for participating (and, if relevant, voting) in relation to the matter.

- 5
- (2) If a quorum at a meeting cannot be formed because a member of a council proposes to exclude themselves from the meeting in order to comply with subsection (1), the member will not be taken to have contravened subsection (1) by participating (including by voting, for example) in the meeting in relation to the matter if the attendance of the member, together with any other required number of members, forms a quorum for the meeting.
- 10
- (3) If a member of a council discloses a general conflict of interest in a matter to be discussed at a meeting of the council, the following details must be recorded in the minutes of the meeting:
- 15
- (a) the member's name;
 - (b) the nature of the interest, as described by the member;
 - (c) the manner in which the member dealt with the general conflict of interest;
 - (d) if the member voted on the matter, the manner in which the member voted;
 - (e) the manner in which the majority of persons who were entitled to vote at the meeting voted on the matter.
- 20
- (4) To avoid doubt, it is declared that non-participation in a meeting of a council is not the only way in which a member of the council may appropriately deal in a transparent and accountable way with a general conflict of interest of the member in a matter to be discussed at the meeting.
- 25

75C—Dealing with material conflicts of interest

- 30
- (1) If a member of a council has a material conflict of interest in a matter to be discussed at a meeting of the council, the member must—
- (a) inform the meeting of the member's material conflict of interest in the matter; and
 - (b) leave the meeting room (including any area set aside for the public) such that the member cannot view or hear any discussion or voting at the meeting, and stay out of the meeting room while the matter is being discussed and voted on.
- 35
- (2) However, a member of the council does not contravene subsection (1) by taking part in the meeting if the member—
- 40
- (a) has been granted an approval under subsection (3); and
 - (b) complies with the conditions of the approval.

- 5
- (3) The Minister may grant an approval in writing to a member of the council to take part in the meeting if—
- (a) because of the number of members subject to the obligation under this section, conduct of the meeting would be obstructed if the approval were not given; and
 - (b) it appears to the Minister to be in the interests of the council's community and area.
- (4) The Minister may grant an approval under subsection (3) subject to any conditions determined by the Minister.
- 10
- (5) If a member of a council discloses a material conflict of interest in a matter to be discussed at a meeting of the council, the following details must be recorded in the minutes of the meeting:
- (a) the member's name;
 - (b) the nature of the interest, as described by the member;
 - (c) if the member took part in the meeting under an approval under subsection (3), the fact that the member took part in the meeting.
- 15

75D—Application of Subdivision to members and meetings of committees and subsidiaries

- 20
- (1) The provisions of this Subdivision extend to committees and to members of committees established by councils as if—
- (a) a committee were a council; and
 - (b) a member of a committee were a member of a council.
- 25
- (2) The provisions of this Subdivision extend to subsidiaries and to board members of subsidiaries as if—
- (a) a subsidiary were a council; and
 - (b) a board member of a subsidiary were a member of a council.
- (3) However—
- (a) a member of a council committee, or a board member of a council subsidiary, who is also a member or employee of the council will not be regarded as having a conflict of interest in a matter to be discussed at a meeting of the committee or subsidiary (as the case requires) by reason only of the fact that the member is a member or employee of the council or constituent council; or
 - (b) a board member of a regional subsidiary who is also a member or employee of a constituent council will not be regarded as having a conflict of interest in a matter to be discussed at a meeting of the regional subsidiary if the relevant benefit or loss would be enjoyed or suffered in common with all or a substantial proportion of the constituent councils.
- 30
- 35
- 40

39—Insertion of Chapter 5 Part 4 Division 2

Chapter 5—before Part 5 insert:

Division 2—Member behaviour

75E—Behavioural standards

- 5 (1) The Minister may, by notice published in the Gazette and on a website determined by the Minister, establish standards (the *behavioural standards*) that—
- (a) specify standards of behaviour to be observed by members of councils; and
- 10 (b) provide for any other matter relating to behaviour of members of councils.
- (2) The behavioural standards may also specify requirements applying to behavioural support policies and behavioural management policies of councils.
- 15 (3) A member of a council must comply with the behavioural standards.
- (4) The Minister may, by further notice published in the Gazette and on the website referred to in subsection (1), vary or substitute the behavioural standards.
- 20 (5) The Minister must, before establishing, varying or substituting the behavioural standards—
- (a) consult with the LGA; and
- (b) undertake such other consultation as the Minister thinks fit, on the behavioural standards, variation or substitute behavioural standards (as the case may be).
- 25 (6) A notice published under subsection (1) or (4) may come into operation on the day on which it is published in the Gazette or on a later day or days specified in the notice.
- 30 (7) Sections 10 (other than subsection (1)) and 10A of the *Subordinate Legislation Act 1978* apply to a notice published under subsection (1) or (4) (and a reference in those provisions to a regulation will be taken to be a reference to a notice published under subsection (1) or (4) (as the case requires)).

75F—Council behavioural support policies

- 35 (1) A council may prepare and adopt policies designed to support appropriate behaviour by members of the council (*behavioural support policies*).
- (2) A behavioural support policy may—
- (a) specify directions relating to behaviour that must be observed by members of the council; and

- 5
- (b) set out guidelines relating to compliance by members with the behavioural standards and directions under paragraph (a); and
 - (c) include any other matter relating to behaviour of members considered appropriate by the council.
- (3) A behavioural support policy—
- (a) must not be inconsistent with the behavioural standards; and
 - (b) must comply with any requirement specified by the behavioural standards.
- 10
- (4) A member of a council must comply with the council's behavioural support policies.
- (5) A council may from time to time alter a behavioural support policy, or substitute a new policy.
- (6) Before a council—
- 15
- (a) adopts a behavioural support policy; or
 - (b) alters, or substitutes, a behavioural support policy,
- the council must undertake public consultation on the behavioural support policy, alteration or substituted policy (as the case may be).
- (7) A council must, within 6 months after the conclusion of each
- 20
- periodic election—
- (a) in the case of a council that has 1 or more behavioural support policies in effect under this section—review the operation of the behavioural support policies and consider whether it should adopt additional behavioural support policies; or
 - 25
 - (b) in any other case—consider whether it should adopt behavioural support policies.

Division 3—Health and safety duties

75G—Health and safety duties

- 30
- (1) A member of a council must—
- (a) take reasonable care that the member's acts or omissions do not adversely affect the health and safety of other members of council or employees of the council; and
 - 35
 - (b) comply, so far as the member is reasonably able, with any reasonable direction that is given by a responsible person for the purposes of ensuring that the member's acts or omissions do not adversely affect the health and safety of other members of the council or employees of the council.

- (2) For the purposes of subsection (1)(b), the *responsible person* is—
- (a) if the person whose health and safety may be adversely affected is an employee of the council—the chief executive officer of the council; or
 - (b) if the person whose health and safety may be adversely affected is the principal member of the council—the deputy or another member chosen by the council; or
 - (c) if the person whose health and safety may be adversely affected is another member or the chief executive officer of the council—
 - (i) unless subparagraph (ii) applies, the principal member of the council; or
 - (ii) if the relevant acts or omissions are those of the principal member of the council—the deputy or another member chosen by the council.
- (3) Without limiting subsection (1)(b), a reasonable direction may include a direction that a member of a council not attend a meeting of the council or a council committee (and a member the subject of such a direction will be taken to have been granted leave of absence from attending council meetings for the duration of the direction).
- (4) This section is in addition to and does not limit the operation of the *Work Health and Safety Act 2012*.
- (5) In this section—
health has the same meaning as in the *Work Health and Safety Act 2012*.

40—Amendment of section 76—Allowances

- (1) Section 76(1)—delete "section" first occurring and substitute:
Act
- (2) Section 76(9)—delete "under a scheme prescribed by the regulations"
- (3) Section 76(13)—delete "under an arrangement established by the Minister from time to time after consultation with the President of the LGA and the President of the Tribunal"

41—Amendment of section 77—Reimbursement of expenses

Section 77(3) and (4)—delete subsections (3) and (4)

42—Amendment of section 79—Register of allowances and benefits

Section 79(3) and (4)—delete subsections (3) and (4)

43—Amendment of section 80A—Training and development

(1) Section 80A—delete subsection (2) and substitute:

(2) The policy—

- 5
- (a) must be aimed at assisting members in the performance and discharge of their functions and duties; and
 - (b) must incorporate the prescribed mandatory requirements and comply with any other requirements prescribed by the regulations; and
 - (c) may specify other requirements relating to the conduct and completion of training and development by members.
- 10

(2a) A training and development policy of a council may make different provision according to different members of the council.

15

(2b) If a member of a council fails to comply with the prescribed mandatory requirements, the chief executive officer of the council must suspend the member from the office of member of the council, unless the member satisfies the chief executive officer that there were good reasons for the failure to comply.

20

(2c) If a chief executive officer of a council suspends a member of the council under subsection (2b), the chief executive officer must give public notice of the suspension as soon as practicable after determining to suspend the member.

25

(2d) Despite any other Act or law, or any determination of the Remuneration Tribunal, a member of a council suspended under subsection (2b) is not entitled to an allowance under section 76 during the period of suspension.

30

(2e) If a member of a council who is suspended under subsection (2b) as a result of failing to comply with the prescribed mandatory requirements satisfies the chief executive officer that the member has complied with the prescribed mandatory requirements, the chief executive officer must revoke the suspension and give public notice of the revocation.

35

(2f) If a member of a council is suspended under subsection (2b) for a continuous period of more than the prescribed period, the chief executive officer of the council may apply to SACAT for an order disqualifying the member from the office of member of the council under this Act.

(2g) If a member is disqualified under subsection (2f), the disqualification extends to all other offices held in the member's capacity as a member of the council or by virtue of being a member of the council.

40

(2h) The chief executive officer must maintain a register relating to training and development in accordance with the regulations.

(2i) A member of a council must, at the request of the chief executive officer, provide to the chief executive officer, within a period specified in the request, specified information, or information of a specified kind, relating to training and development by the member.

(2j) A member of a council must not contravene, or fail to comply with, a request under subsection (2i).

(2k) In this section—

prescribed mandatory requirements means the requirements prescribed by the regulations relating to training and development that must be completed by members of councils, which may include timeframes for the completion of such training and development.

(2) Section 80A(4) and (5)—delete subsections (4) and (5)

44—Insertion of Chapter 5 Part 7

After Chapter 5 Part 6 insert:

Part 7—Other matters

80B—Suspension—member of council subject to intervention order

(1) If a member of a council is subject to a relevant interim intervention order, the chief executive officer of the council may, if the chief executive officer considers it appropriate to do so, suspend the member from the office of member of the council.

(2) A member of a council suspended under subsection (1) is entitled to an allowance under section 76 during the period of suspension.

(3) The chief executive officer of a council—

(a) must revoke a suspension under subsection (1) if the relevant interim intervention order is revoked; and

(b) may revoke a suspension under subsection (1) if the chief executive officer considers it appropriate to do so.

(4) If a member of a council is subject to a relevant final intervention order, the member is suspended from the office of member of the council.

(5) Despite any other Act or law, or any determination of the Remuneration Tribunal, a member of a council suspended under subsection (4) is not entitled to an allowance under section 76 during the period of suspension.

(6) The chief executive officer of a council must, as soon as is reasonably practicable after becoming aware that a member of the council is subject to a relevant final intervention order, notify the member of the suspension under subsection (4).

(7) If a relevant final intervention order is revoked, the suspension under subsection (4) relating to the relevant final intervention order is revoked.

5 (8) If a member of a council is suspended under subsection (4) for a continuous period of more than the prescribed period, the chief executive officer of the council may apply to SACAT for an order disqualifying the member from the office of member of the council under this Act.

(9) If a member is disqualified under subsection (8), the disqualification extends to all other offices held in the member's capacity as a member of the council or by virtue of being a member of the council.

10 (10) In this section—

final intervention order means a final intervention order (within the meaning of section 3(1) of the *Intervention Orders (Prevention of Abuse) Act 2009*) or a domestic violence order (other than an interim DVO) that is a recognised DVO under Part 3A of that Act;

15 *interim intervention order* means an interim intervention order (within the meaning of section 3(1) of the *Intervention Orders (Prevention of Abuse) Act 2009*) or an interim DVO that is a recognised DVO under Part 3A of that Act;

20 *relevant final intervention order*—a final intervention order to which a member of a council is subject is a *relevant final intervention order* if a person protected by the order is another member, or an employee, of the council;

25 *relevant interim intervention order*—an interim intervention order to which a member of a council is subject is a *relevant interim intervention order* if a person protected by the order is another member, or an employee, of the council.

45—Amendment of section 83—Notice of ordinary or special meetings

(1) Section 83(6)(d)—delete "(eg facsimile transmission)"

(2) Section 83(8)—delete subsection (8)

46—Amendment of section 84—Public notice of council meetings

30 (1) Section 84(1a)—delete subsection (1a) and substitute:

(1a) The chief executive officer must publicly display the notice required under subsection (1) at the principal office of the council and publish the notice and agenda for the meeting in accordance with section 132(1)(a).

35 (2) Section 84(3) and (4)—delete subsections (3) and (4) and substitute:

(3) The notice required under subsection (1) must be kept on public display and continue to be published in accordance with section 132(1)(a) until the completion of the relevant meeting.

(3) Section 84(5)(a)—delete "at the principal office of the council" and substitute:

40 on a website determined by the chief executive officer

47—Amendment of section 85—Quorum

Section 85—after subsection (1) insert:

- (2) For the purposes of the definition of *prescribed number*—
- (a) a member of a council who is suspended from the office of member of the council; and
 - (b) a member of a council who is taken to have been granted leave of absence from the office of member of the council under section 55A,

is not to be counted in the total number of members of the council.

48—Amendment of section 86—Procedure at meetings

(1) Section 86—after subsection (6) insert:

- (6a) A member of a council must not, while at a meeting—
- (a) behave in an improper or disorderly manner; or
 - (b) cause an interruption or interrupt another member who is speaking.
- (6b) If a member contravenes or fails to comply with subsection (6a), the presiding member may, in accordance with the regulations, direct that the member be excluded from the meeting room (including any area set aside for the public) such that the member cannot view or hear any discussion at the meeting, and remain out of the meeting room for a period (not exceeding 15 minutes) determined by the presiding member.
- (6c) A member excluded from a meeting under subsection (6b) must comply with the direction and any requirements of the regulations in relation to the exclusion.
- (6d) A matter must not be put to a vote at a meeting of a council while a member is excluded under subsection (6b).
- (6e) Nothing in subsections (6a) to (6d) prevents the regulations from prescribing procedures authorising a council to resolve to censure a member of the council or exclude or suspend a member from a meeting in accordance with the regulations.

(2) Section 86(7)—delete subsection (7)

49—Amendment of section 87—Calling and timing of committee meetings

Section 87(11)(d)—delete "(eg facsimile transmission)"

50—Amendment of section 88—Public notice of committee meetings

(1) Section 88(1a)—delete subsection (1a) and substitute:

- (1a) The chief executive officer must publicly display the notice required under subsection (1) at the principal office of the council and publish the notice and agenda for the meeting in accordance with section 132(1)(a).

(2) Section 88(3) and (4)—delete subsections (3) and (4) and substitute:

(3) The notice required under subsection (1) must be kept on public display and continue to be published in accordance with section 132(1)(a) until the completion of the relevant meeting.

5 (3) Section 88(5)—delete "at the principal office of the council" and substitute:
on a website determined by the chief executive officer

51—Amendment of section 90—Meetings to be held in public except in special circumstances

(1) Section 90(1)—after "section" insert:

10 and section 90A

(2) Section 90(3)—after paragraph (n) insert:

(o) information relating to a proposed award recipient before the presentation of the award.

(3) Section 90(8) to (8e)—delete subsections (8) to (8e) (inclusive)

15 52—Insertion of section 90A—Information or briefing sessions

After section 90 insert:

90A—Information or briefing sessions

(1) A council, or the chief executive officer of a council, may hold or arrange for the holding of a session (not being a formal meeting of a council or council committee required to be held under this Chapter) to which 1 or more members of the council or a council committee are invited to attend or be involved in for the purposes of providing information or a briefing to attendees (an *information or briefing session*).

25 (2) A matter must not be dealt with at a council information or briefing session in such a way as to obtain, or effectively obtain, a decision on the matter outside a formal meeting of the council or a council committee.

30 (3) A council information or briefing session must be conducted in a place open to the public during any period in which a matter that is, or is intended to be, on the agenda for a formal meeting of the council or a council committee is discussed at the session.

35 (4) However, the council or chief executive officer may order that an information or briefing session be closed to the public to the extent (and only to the extent) that the council or chief executive officer (as the case requires) considers it to be necessary and appropriate for a matter of a kind referred to in subsection (3) to be discussed in a session closed to the public in order to receive, discuss or consider in confidence any information or matter listed in section 90(3) (after taking into account any relevant consideration under that subsection).

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- (5) If an order is made under subsection (4), the council or chief executive officer (as the case requires) must, as soon as reasonably practicable after the making of the order, make a record of—
- (a) the grounds on which the order was made; and
 - (b) the basis on which the information or matter to which the order relates falls within the ambit of each ground on which the order was made; and
 - (c) if relevant, the reasons that receipt, consideration or discussion of the information or matter publicly at the information or briefing session would be contrary to the public interest.
- (6) If an information or briefing session is organised or held by a council or chief executive officer of a council, the following provisions apply:
- (a) sections 90(5), (6) and (7a) apply to the information or briefing session as if it were a meeting of the council or council committee;
 - (b) a prescribed matter cannot be dealt with at an information or briefing session;
 - (c) a reference to a meeting or meetings in sections 94 and 95 includes a reference to an information or briefing session or sessions.
- (7) A council or the chief executive officer of a council must comply with any requirements of the regulations relating to the following:
- (a) the publication of prescribed information as soon as practicable after resolving or determining to hold an information or briefing session;
 - (b) the publication of prescribed information as soon as practicable after the holding of an information or briefing session.

53—Amendment of section 91—Minutes and release of documents

- (1) Section 91(4) to (6)—delete subsections (4) to (6) (inclusive)
- (2) Section 91(7)—delete "However, subsections (4), (5) and (6) do" and substitute:
Section 132(1) does

54—Amendment of section 92—Access to meetings and documents—code of practice

Section 92(5) to (7)—delete subsections (5) to (7) (inclusive) and substitute:

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- (5) Before a council adopts, alters or substitutes a code of practice under this section it must undertake public consultation on the proposed code, alterations or substitute code (as the case may be).

55—Amendment of section 93—Meetings of electors

- (1) Section 93(2)—delete ", by advertisement in a newspaper circulating in the area, give notice" and substitute:

give public notice

- 5 (2) Section 93(6)(a)—delete "or deputy chairperson"

56—Repeal of section 94A

Section 94A—delete the section

57—Amendment of section 97—Vacancy in office

- (1) Section 97—after subsection (3) insert:

- 10 (3a) Before terminating the appointment of a chief executive officer on a ground referred to in subsection (1)(a)(iv) or (v) or (1)(b), a council must have regard to advice from a qualified independent person.

- (2) Section 97—after subsection (5) insert:

- (6) In this section—

15 *qualified independent person* means a person—

- (a) who is not a member or employee of the council; and

- (b) who is—

(i) a legal practitioner; or

20 (ii) determined by the council to have appropriate qualifications or experience in human resource management.

58—Amendment of section 98—Appointment procedures

- (1) Section 98(3)—delete "in a newspaper circulating throughout the State" and substitute:

25 on a website determined by the council

- (2) Section 98—after subsection (4) insert:

- (4a) The council must ensure that either or both of the following applies to the process for appointing a chief executive officer under this section:

30 (a) the council appoints at least 1 person who is not a member or employee of the council to the selection panel;

35 (b) before making the appointment to the office of chief executive officer, the council obtains and considers independent advice on the assessment of applications and recommendations on the appointment under subsection (4) (and that advice may include recommendations to the council on the appointment).

59—Amendment of section 99—Role of chief executive officer

Section 99(1)—after paragraph (i) insert:

- (ia) to ensure that effective policies, systems and procedures are established and maintained for the identification, assessment, monitoring, management and annual review of strategic, financial and operational risks;
- (ib) to report annually to the relevant audit and risk committee on the council's internal audit processes;

60—Insertion of section 99A

After section 99 insert:

99A—Remuneration of chief executive officer

- (1) Subject to this section, the remuneration of the chief executive officer of a council will be determined by the council.
- (2) The Remuneration Tribunal will determine (from time to time) the minimum and maximum remuneration that may be paid or provided to chief executive officers of councils.
- (3) In making a determination under subsection (2), the Remuneration Tribunal must have regard to any matter prescribed by the regulations.
- (4) A determination under subsection (2)—
 - (a) may differ based on any factor including, for example, the geographical location of a council or group of councils (such that different minimum and maximum remuneration may be paid or provided to chief executive officers from different councils); and
 - (b) may provide for minimum and maximum remuneration that may be paid or provided to chief executive officers to be indexed in accordance with the determination.
- (5) The regulations—
 - (a) may make further provision in relation to a determination of the Remuneration Tribunal for the purposes of this section; and
 - (b) may modify the application of section 10 of the *Remuneration Act 1990* in relation to a determination under this section.
- (6) Sections 17 and 19 of the *Remuneration Act 1990* do not apply in relation to a determination under this section.
- (7) A reference in the *Remuneration Act 1990* to determining remuneration payable in respect of an office will, for the purposes of this section, be taken to include a reference to determining the minimum and maximum remuneration payable in respect of the office.

(8) Despite any other Act or law, the reasonable costs of the Remuneration Tribunal in making a determination under this section are to be paid by the LGA under an arrangement determined by the Minister from time to time after consultation with the President of the LGA and the President of the Tribunal.

(9) A council must ensure that the remuneration of its chief executive officer is within the relevant minimum and maximum remuneration determined by the Remuneration Tribunal for the purposes of this section.

61—Insertion of section 102A

After section 102 insert:

102A—Chief executive officer—performance review

(1) A council must review the performance of its chief executive officer—

- (a) at least once in each year that the chief executive officer holds office as chief executive officer; and
- (b) if relevant, before reappointment of the chief executive officer.

(2) The council must obtain and consider the advice of a qualified independent person on a review under subsection (1).

(3) In this section—

qualified independent person means a person who is—

- (a) not a member or employee of the council; and
- (b) determined by the council to have appropriate qualifications or experience in human resource management.

62—Amendment of section 105—Register of remuneration, salaries and benefits

Section 105(3) and (4)—delete subsections (3) and (4)

63—Substitution of heading to Chapter 7 Part 4

Heading to Chapter 7 Part 4—delete the heading and substitute:

Part 4—Employee integrity and behaviour

64—Substitution of heading to Chapter 7 Part 4 Division 1

Heading to Chapter 7 Part 4 Division 1—delete the heading and substitute:

Division 1—Employee integrity

65—Insertion of Subdivision heading

Before section 108 insert:

Subdivision 1—General

66—Amendment of section 108—Interpretation

Section 108—delete "Division" and substitute:

Subdivision

67—Amendment of section 109—General duty and compliance

5 Section 109—after subsection (2) insert:

- (3) An employee of a council must comply with the integrity provisions relating to employees.
- (4) Contravention of, or failure to comply with, an integrity provision by an employee of a council constitutes a ground for suspending, 10 dismissing or taking other disciplinary action against the employee.

68—Repeal of section 110

Section 110—delete the section

69—Amendment of section 110A—Duty to protect confidential information

Section 110A(1)—delete subsection (1) and substitute:

- 15 (1) An employee or former employee of a council must not disclose information or a document—
 - (a) in relation to which there is an order of a council or council committee in effect under section 90 requiring the information or document to be treated confidentially; or
 - 20 (b) that the employee or former employee knows, or ought reasonably to know, is information or a document that is otherwise required to be treated confidentially.

Maximum penalty: \$15 000 or 2 years imprisonment.

70—Substitution of heading to Chapter 7 Part 4 Division 2

25 Heading to Chapter 7 Part 4 Division 2—delete the heading and substitute:

Subdivision 2—Register of Interests

71—Amendment of Chapter 7 Part 4 Division 2

Chapter 7 Part 4 Division 2—delete "Division" wherever occurring and substitute in each case:

30 Subdivision

72—Amendment of section 117—Provision of false information

Section 117, penalty provision—delete "\$10 000" and substitute:

\$15 000

73—Amendment of section 119—Restrictions on disclosure

35 Section 119(1), penalty provision—delete "\$10 000" and substitute:

\$15 000

74—Insertion of Chapter 7 Part 4 Division 1 Subdivision 2A

Chapter 5 Part 4—after section 119 insert:

Subdivision 2A—Gifts and benefits

119A—Register of gifts and benefits

- 5 (1) An employee of a council must not seek out or receive a gift or benefit that is, or could reasonably be taken to be, intended or likely to create a sense of obligation to a person on the part of the employee or influence the employee in the performance or discharge of the employee's functions or duties.
- 10 (2) If an employee of a council receives a gift or benefit of an amount greater than the amount determined by the Minister (from time to time), by notice in the Gazette, the employee must provide details of the gift or benefit to the chief executive officer of the council in accordance with any requirements of the chief executive officer.
- 15 (3) The Minister must consult with the LGA before publishing a notice under subsection (2).
- (4) The chief executive officer of a council must maintain a register of gifts and benefits received by employees of the council and must ensure that the details of each gift and benefit provided under this section are included in the register.
- 20 (5) A register maintained under this section—
- (a) need not include information available in another register published by, or available for inspection at, the council or otherwise available under the Act; and
- 25 (b) may include information by reference to another register or document, provided the register or document is published by, or available for inspection at, the council and the register maintained under this clause identifies that other register or document.
- 30 (6) For the purposes of this section, a gift or benefit received by a designated person or entity in relation to an employee of a council will be treated as a gift or benefit (as the case requires) received by the employee.
- (7) For the purposes of this section—
- 35 (a) 2 or more separate gifts or benefits received by an employee or a designated person or entity in relation to the employee from the same person during a financial year are to be treated as 1 gift or benefit (as the case requires) received by the employee; and

(b) 2 or more separate transactions to which an employee or a designated person or entity in relation to the employee is a party with the same person during a financial year under which the employee or the designated person has had the use of property of the other person (whether or not being the same property) during a financial year are to be treated as 1 transaction under which the employee has had the use of property of the other person during the financial year.

(8) Unless the contrary intention appears, terms and expressions used in this section and in Schedule 3 have the same respective meanings in this section as they have in that Schedule, provided that a reference in Schedule 3 to a member will be taken, for the purposes of this clause, to be a reference to an employee.

75—Substitution of heading to Chapter 7 Part 4 Division 3

Heading to Chapter 7 Part 4 Division 3—delete the heading and substitute:

Subdivision 3—Conflict of interest

76—Amendment of section 120—Conflict of interest

(1) Section 120(1), penalty provision—delete "\$5 000" and substitute:

\$15 000

(2) Section 120(2), penalty provision—delete "\$5 000" and substitute:

\$15 000

(3) Section 120(4), penalty provision—delete "\$5 000" and substitute:

\$15 000

(4) Section 120(6)—after paragraph (b) insert:

(ba) a family company of the employee (within the meaning of Schedule 3); or

(bb) a family trust of the employee (within the meaning of Schedule 3); or

(5) Section 120(6)(f)—delete paragraph (f) and substitute:

(f) if that person is a person with whom the employee has entered into, is seeking to enter into, or is otherwise involved in a negotiation or tendering process in connection with entering into, an agreement for the provision of professional or other services for which the employee would be entitled to receive a fee, commission or other reward; or

77—Insertion of Chapter 7 Part 4 Division 2

Chapter 7 Part 4—after section 120 insert:

Division 2—Employee behaviour

120A—Behavioural standards

- 5 (1) A council may prepare and adopt standards (the *employee behavioural standards*) that—
- (a) specify standards of behaviour to be observed by employees of councils; and
- 10 (b) provide for any other matter relating to behaviour of employees of councils.
- (2) An employee of a council must comply with the council's employee behavioural standards.
- (3) Contravention of, or failure to comply with, the council's employee behavioural standards constitutes a ground for suspending, dismissing or taking other disciplinary action against the employee.
- 15 (4) A council may from time to time alter its employee behavioural standards, or substitute new employee behavioural standards.
- (5) Before a council—
- (a) adopts employee behavioural standards; or
- 20 (b) alters, or substitutes, its employee behavioural standards, the council must consult with any registered industrial association that represents the interests of employees of councils on the employee behavioural standards, alteration or substituted standards (as the case may be).
- 25 (6) A council must, within 6 months after the conclusion of each periodic election—
- (a) in the case of a council that has employee behavioural standards in effect under this section—review the operation of the employee behavioural standards; or
- 30 (b) in any other case—consider whether it should adopt employee behavioural standards.

78—Amendment of section 122—Strategic management plans

- (1) Section 122(1a)(a)—delete "for a period of at least 10 years; and" and substitute:
- 35 that relates to a period of at least 10 years and includes a funding plan that—
- (i) outlines the council's approach to funding services and infrastructure of the council; and
- (ii) sets out the council's projected total revenue for the period to which the long-term financial plan relates; and

(iii) outlines the intended sources of that total revenue (such as revenue from rates, grants and other fees and charges); and

(2) Section 122—after subsection (3) insert:

(3a) The regulations may prescribe additional requirements with respect to strategic management plans.

(3) Section 122(4)(a)—delete "as soon as practicable after adopting the council's annual business plan for a particular financial year" and substitute:

on an annual basis

(4) Section 122—after subsection (4a) insert:

(4b) A report from a chief executive officer under subsection (4a) must—

(a) address any matters required by the Minister; and

(b) be published in a manner and form, and in accordance with any other requirements, determined by the Minister.

(5) Section 122(6)—delete "adopt a process or processes to ensure that members of the public are given a reasonable opportunity to be involved in" and substitute:

undertake public consultation in relation to

(6) Section 122(7)—delete subsection (7)

79—Amendment of section 123—Annual business plans and budgets

(1) Section 123(2)—after paragraph (e) insert:

(ea) include—

(i) a statement on the change in total revenue from general rates for the financial year compared to the previous financial year and, if an annual business plan sets out a growth component in relation to general rates, it may only relate to growth in the number of rateable properties (and must not relate to growth in the value of rateable properties); and

(ii) an explanation of how the change is consistent with the council's long-term financial plan; and

(iii) a summary of any other reasons for the change; and

(iv) details of the impact of the change on average rates for each land use category (if relevant); and

(v) the advice received from the designated authority under subsection (3a); and

(vi) the council's response to the advice, which must set out whether the change in total revenue from general rates is consistent with the advice and, if not, the reasons for the inconsistency; and

(2) Section 123(3)(b)—delete paragraph (b) and substitute:

(b) undertake public consultation.

(3) Section 123—after subsection (3) insert:

- 5 (3a) In preparing a draft annual business plan (and before finalising the draft plan and undertaking public consultation on it), the council must provide the following information to the designated authority (in the manner and form determined by the designated authority) by no later than 31 December in the financial year preceding the financial year to which the draft annual business plan relates (the *preceding financial year*):
- 10 (a) the proposed change in total revenue from general rates for the financial year compared to the previous financial year and the reasons for the proposed change;
- (b) the council's view of the impact of the proposed change on ratepayers;
- 15 (c) information as to whether consideration has been given to alternatives to the proposed change in total revenue from general rates, such as alternative expenditure measures or funding proposals;
- (d) information as to how the proposal is consistent with the council's long-term financial plan and infrastructure and asset management plan;
- 20 (e) any other matter—
- (i) prescribed by the regulations; or
- (ii) requested by the designated authority.
- 25 (3b) The designated authority must provide advice to the council on the appropriateness of the proposed change in total revenue from general rates for the financial year compared to the previous financial year by no later than 31 March in the preceding financial year.
- (3c) In providing advice under subsection (3b), the designated authority must have regard to—
- 30 (a) the information provided by the council under subsection (3a); and
- (b) any matter the Minister directs the designated authority to have regard to; and
- 35 (c) any other matter considered relevant by the designated authority.
- (3d) The designated authority must publish a copy of a direction of the Minister under subsection (3c)(b) as soon as is reasonably practicable after it is given to the designated authority.
- 40 (3e) If the designated authority considers that a council has failed to respond appropriately to advice from the designated authority under this section, the designated authority may provide a report to the Minister on the matter.

(4) Section 123(4) to (5a)—delete subsections (4) to (5a) (inclusive)

(5) Section 123—after subsection (6) insert:

(6a) However, if a council proposes to adopt an annual business plan with amendments, the council must include in the adopted business plan a statement—

(a) setting out any significant amendments from the draft annual business plan; and

(b) providing reasons for those amendments.

(6) Section 123—after subsection (7) insert:

(7a) A budget of a council may authorise the entry into borrowings and other forms of financial accommodation for a financial year of up to an amount specified in the budget.

(7) Section 123(8)—delete "31 August" and substitute:

15 August

(8) Section 123(9)(b) and (c)—delete paragraphs (b) and (c)

(9) Section 123—after subsection (10) insert:

(10a) Without limiting subsection (10), regulations under that subsection relating to an annual business plan may—

(a) relate to the manner in which matters included in the plan are to be presented (such as, for example, by prescribing the location, style and level of emphasis that must be given to specified matters); and

(b) prescribe requirements relating to the description or explanation of matters included in the plan.

(10) Section 123—after subsection (14) insert:

(15) The designated authority may, by written notice, require a council to give the designated authority, within a time and in a manner stated in the notice (which must be reasonable), information in the council's possession that the designated authority reasonably requires for the performance of the designated authority's functions under this Act.

(16) The designated authority may recover from a council (as a debt due from the council) the costs reasonably incurred by the designated authority in performing its functions under this section in relation to the council.

(17) In this section—

designated authority means a person or body prescribed by the regulations for the purposes of this definition.

(18) The Minister must consult with the LGA before regulations are made prescribing a person or body as the designated authority.

80—Amendment of heading to Chapter 8 Part 3 Division 2

Heading to Chapter 8 Part 3 Division 2—delete "and audit committee" and substitute:
, audit and risk committee etc

81—Amendment of section 125—Internal control policies

5 Section 125—after its present contents (now to be designated as subsection (1)) insert:

(2) A council must ensure that the policies, practices and procedures of internal control under subsection (1) comply with any standards or other document relating to internal control prescribed by the regulations.

10 (3) A council must ensure that appropriate policies, systems and procedures relating to risk management are implemented and maintained in order to assist the council to carry out its activities in an efficient and orderly manner to achieve its objectives, inform appropriate decision making, facilitate appropriate prioritisation of
15 finite resources and promote appropriate mitigation of strategic, financial and operational risks relevant to the council.

82—Insertion of section 125A

After section 125 insert:

125A—Internal audit functions

20 (1) The chief executive officer of a council that has an internal audit function must, before appointing a person to be primarily responsible for the internal audit function, or assigning such responsibility to an employee of the council, consult with the relevant audit and risk committee on the appointment or assignment of responsibility.

25 (2) Despite any other law or instrument to the contrary, the person primarily responsible for the internal audit function—

(a) must ensure that any reports they prepare relating to the internal audit function are provided directly to the audit and risk committee; and

30 (b) may report any matters relating to the internal audit function directly to the audit and risk committee.

83—Amendment of section 126—Audit and risk committee

(1) Section 126—before subsection (1) insert:

35 (a1) This section applies to a council that has not established a regional audit and risk committee under section 126A.

(2) Section 126(1)—after "council" insert:
to which this section applies

(3) Section 126(1)—after "audit" insert:
and risk

(4) Section 126—after subsection (1) insert:

(1a) The purpose of an audit and risk committee established by a council is to provide independent assurance and advice to the council on accounting, financial management, internal controls, risk management and governance matters.

(5) Section 126(2)—delete subsection (2) and substitute:

(2) The following provisions apply to the membership of a council audit and risk committee:

- (a) the majority of the members of the committee must be persons who are not members of any council;
- (b) the members of the committee (when considered as a whole) must have skills, knowledge and experience relevant to the functions of the committee, including in financial management, risk management, governance and any other prescribed matter;
- (c) the membership of the committee—
 - (i) may not include an employee of the council (although an employee may attend a meeting of the committee if appropriate); and
 - (ii) may include, or be comprised of, members of another council audit and risk committee or a regional audit and risk committee; and
 - (iii) must otherwise be determined in accordance with the requirements of the regulations.

(6) Section 126(4)—delete subsection (4) and substitute:

- (4) The functions of a council audit and risk committee include—
- (a) reviewing annual financial statements to ensure that they present fairly the state of affairs of the council; and
 - (b) proposing, and providing information relevant to, a review of the council's strategic management plans or annual business plan; and
 - (c) monitoring the responsiveness of the council to recommendations for improvement based on previous audits and risk assessments, including those raised by a council's auditor; and
 - (d) proposing, and reviewing, the exercise of powers under section 130A; and
 - (e) liaising with the council's auditor in accordance with any requirements prescribed by the regulations; and
 - (f) reviewing the adequacy of the accounting, internal control, reporting and other financial management systems and practices of the council on a regular basis; and

- (g) —
- (i) if the council has an internal audit function—
 - (A) providing oversight of planning and scoping of the internal audit work plan; and
 - (B) reviewing and commenting on reports provided by the person primarily responsible for the internal audit function at least on a quarterly basis; or
 - (ii) if the council does not have an internal audit function, reviewing and commenting on an annual report provided by the chief executive officer in relation to the policies and processes adopted by the council to evaluate and improve the effectiveness of its internal control practices and procedures; and
 - (h) reviewing and evaluating the effectiveness of policies, systems and procedures established and maintained for the identification, assessment, monitoring, management and review of strategic, financial and operational risks on a regular basis; and
 - (i) reviewing any report obtained by the council under section 48(1); and
 - (j) performing any other function determined by the council or prescribed by the regulations.
- (5) There must be at least 1 meeting of a council audit and risk committee in each quarter.
- (6) Subject to this Act, the procedure to be observed at a meeting of a council audit and risk committee will be—
- (a) as prescribed by regulation; or
 - (b) insofar as the procedure is not prescribed by regulation—as determined by the committee.
- (7) Without limiting subsection (6)(a), regulations under that subsection may provide for circumstances in which the public may be excluded from attendance at a meeting of a council audit and risk committee.
- (8) A council audit and risk committee must—
- (a) provide a report to the council after each meeting summarising the work of the committee during the period preceding the meeting and the outcomes of the meeting; and
 - (b) provide an annual report to the council on the work of the committee during the period to which the report relates.
- (9) A council must ensure that the annual report of its audit and risk committee is included in its annual report.

84—Insertion of section 126A

After section 126 insert:

126A—Regional audit and risk committee

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- (1) Two or more councils may establish a regional audit and risk committee.
- (2) The purpose of a regional audit and risk committee established by 2 or more councils is to provide independent assurance and advice to those councils on accounting, financial management, internal controls, risk management and governance matters.
- (3) The following provisions apply to the membership of a regional audit and risk committee:
 - (a) the majority of the members of the committee must be persons who are not members of any council;
 - (b) the members of the committee (when considered as a whole) must have skills, knowledge and experience relevant to the functions of the committee, including in financial management, risk management, governance and any other prescribed matter;
 - (c) the membership of the committee—
 - (i) may not include an employee of the constituent councils (although an employee may attend a meeting of the committee if appropriate); and
 - (ii) may include, or be comprised of, members of a council audit and risk committee or another regional audit and risk committee; and
 - (iii) must otherwise be determined in accordance with the requirements of the regulations.
- (4) The functions of regional audit and risk committee include—
 - (a) reviewing annual financial statements to ensure that they present fairly the state of affairs of the constituent councils; and
 - (b) proposing, and providing information relevant to, a review of the constituent councils' strategic management plans or annual business plans; and
 - (c) monitoring the responsiveness of the constituent councils to recommendations for improvement based on previous audits and risk assessments, including those raised by a constituent council's auditor; and
 - (d) proposing, and reviewing, the exercise of powers under section 130A; and
 - (e) liaising with the constituent councils' auditors in accordance with any requirements prescribed by the regulations; and

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- (f) reviewing the adequacy of the accounting, internal control, reporting and other financial management systems and practices of the constituent councils on a regular basis; and
- (g) —
- 5 (i) in relation to a constituent council that has an internal audit function—
- (A) providing oversight of planning and scoping of the internal audit work plan; and
- 10 (B) reviewing and commenting on reports provided by the person primarily responsible for the internal audit function at least on a quarterly basis; or
- 15 (ii) in relation to a constituent council that does not have an internal audit function, reviewing and commenting on an annual report provided by the chief executive officer in relation to the policies and processes adopted by the council to evaluate and improve the effectiveness of its internal control practices and procedures; and
- 20 (h) reviewing and evaluating the effectiveness of policies, systems and procedures established and maintained for the identification, assessment, monitoring, management and review of strategic, financial and operational risks on a regular basis; and
- 25 (i) reviewing any report obtained by a constituent council under section 48(1); and
- (j) performing any other function determined by the constituent councils or prescribed by the regulations.
- 30 (5) There must be at least 1 meeting of a regional audit and risk committee in each quarter.
- (6) Subject to this Act, the procedure to be observed at a meeting of a regional audit and risk committee will be—
- (a) as prescribed by regulation; or
- 35 (b) insofar as the procedure is not prescribed by regulation—as determined by the committee.
- (7) Without limiting subsection (6)(a), regulations under that subsection may provide for circumstances in which the public may be excluded from attendance at a meeting of a regional audit and risk committee.
- (8) A regional audit and risk committee must—
- 40 (a) provide a report to the constituent councils after each meeting summarising the work of the committee during the period preceding the meeting and the outcomes of the meeting; and

(b) provide an annual report to the constituent councils on the work of the committee during the period to which the report relates.

(9) Each constituent council of a regional audit and risk committee must ensure that the annual report of the committee is included in its annual report.

85—Amendment of section 127—Financial statements

Section 127(5) and (6)—delete subsections (5) and (6)

86—Amendment of section 128—Auditor

(1) Section 128(2)—delete "council's audit committee" and substitute:

relevant audit and risk committee

(2) Section 128(2a)—delete "audit committee" and substitute:

relevant audit and risk committee

(3) Section 128(6)—delete subsection (6) and substitute:

(6) If a firm comprising at least 1 registered company auditor has held office as auditor of a council for 5 successive financial years (the *first firm*), the council—

(a) must ensure another auditor is appointed as auditor of the council (being a registered company auditor (who is not part of a firm) or another firm comprising at least 1 registered company auditor); and

(b) must not appoint the first firm as its auditor until at least 5 years have passed since the first firm last held the office.

87—Amendment of section 129—Conduct of audit

(1) Section 129(1)—delete "The" and substitute:

Subject to subsection (1a), the

(2) Section 129—after subsection (1) insert:

(1a) If the Auditor-General undertakes an audit under the *Public Finance and Audit Act 1987* of financial statements or controls (or both) of a council referred to in subsection (1) for a financial year—

(a) the auditor of the council is not required to undertake an audit of, provide an opinion or advice on, or report to the Minister on, those statements or controls (or both) (as the case requires) under this section; and

(b) the Auditor-General may recover reasonable costs incurred in relation to undertaking the audit as a debt due from the council.

(3) Section 129(5a)(b)—delete "council's audit committee" and substitute:

relevant audit and risk committee

88—Amendment of section 130A—Other investigations

Section 130A(5)(b)—delete "council's audit committee" and substitute:
relevant audit and risk committee

89—Amendment of section 131—Annual report to be prepared and adopted

5 Section 131(8)—delete subsection (8)

90—Insertion of section 131A

After section 131 insert:

131A—Provision of information to Minister

- 10 (1) A council must provide to the Minister, at the time or times, and in the manner and form, determined by the Minister—
- (a) the material (including the specific reports on the matters) specified in Schedule 4 (as amended from time to time by regulation); and
 - 15 (b) any other information, or class of information, specified by the Minister.
- (2) The Minister may publish information provided by a council under this section.

91—Amendment of section 132—Access to documents

- 20 (1) Section 132(1) to (3)—delete subsections (1) to (3) (inclusive) and substitute:
- (1) Subject to the regulations, a council must—
 - (a) publish a document referred to in Schedule 5 on a website determined by the chief executive officer; and
 - (b) on request, provide a person with a printed copy of a document referred to in Schedule 5 (on payment of a fee (if 25 any) fixed by the council).
 - (2) Section 132(3a)—delete "make the document or part of the document (as the case requires) available for inspection on the website referred to in subsection (3) within a reasonable time after it is available for inspection under section 91(5) at the principal office of the council" and substitute:

30 ensure that the document or part of the document (as the case requires) is published on the website determined by the chief executive officer (in accordance with subsection (1)(a))

- (3) Section 132(4a)—delete subsection (4a)

92—Amendment of section 147—Rateability of land

35 Section 147(7)—delete subsection (7)

93—Amendment of section 151—Basis of rating

- (1) Section 151(3)—delete "or site value"

(2) Section 151(5)(e)—delete paragraph (e) and substitute:

(e) undertake public consultation.

(3) Section 151(7) and (8)—delete subsections (7) and (8)

(4) Section 151(8a)(b)—delete paragraph (b)

5 **94—Amendment of section 153—Declaration of general rate (including differential general rates)**

Section 153(5)(b)—delete "31 August" and substitute:

15 August

95—Amendment of section 156—Basis of differential rates

10 (1) Section 156(14a)(b)—delete paragraph (b) and substitute:

(b) undertake public consultation.

(2) Section 156(14d) and (14e)—delete subsections (14d) and (14e)

(3) Section 156(14ea)(b)—delete paragraph (b)

96—Substitution of section 170

15 Section 170—delete the section and substitute:

170—Notice of declaration of rates

A council must give public notice of the declaration of a rate or service charge within 21 days after the date of the declaration.

97—Amendment of section 181—Payment of rates—general principles

20 Section 181(3)—delete "31 August" and substitute:

15 August

98—Amendment of section 184—Sale of land for non-payment of rates

Section 184(4)(c)—delete paragraph (c) and substitute:

(c) giving public notice of the notice; and

25 **99—Amendment of section 188—Fees and charges**

(1) Section 188(6)—delete subsection (6)

(2) Section 188(7)—delete "up-date the list referred to in subsection (6) and"

100—Amendment of section 193—Classification

30 (1) Section 193(2)—delete "follow the relevant steps set out in its public consultation policy" and substitute:

undertake public consultation

(2) Section 193(6)—delete "notice in the Gazette" and substitute:

public notice

101—Amendment of section 194—Revocation of classification of land as community land etc

(1) Section 194(1) to (3)—delete subsections (1) to (3) (inclusive) and substitute:

- 5 (1) Subject to subsection (2), a council may revoke the classification of land as community land in accordance with this section.
- (2) The classification of—
- 10 (a) the Adelaide Park Lands as community land cannot be revoked unless the revocation is by force of a provision of another Act; and
- (b) land as community land cannot be revoked if the land is required to be held for the benefit of the community under Schedule 8, under a special Act of Parliament relating to the land, or under an instrument of trust; and
- 15 (c) land as community land cannot be revoked if the power to revoke the classification of that land is excluded by regulation; and
- (d) other land as community land cannot be revoked unless—
- (i) —
- 20 (A) if section 194A applies to the proposal to revoke the classification—the council complies with section 194A; or
- (B) in any other case—the council complies with section 194B; and
- 25 (ii) if the land is under the care, control and management of the council but is not owned by the council—
- (A) in a case where the council cannot, after making reasonable inquiries, ascertain the name and address of the owner of the land—the council has given notice of the proposed revocation in accordance with the community engagement charter; or
- 30 (B) in any other case—the owner of the land approves revocation of the classification.
- 35 (3) The Governor may amend Schedule 8 from time to time by regulation.
- (3a) The Governor cannot make a regulation under subsection (3) revoking the classification of land referred to in Schedule 8 as community land.
- 40 (3b) The Governor must not make a regulation under subsection (3) except on the recommendation of the Minister.

(3c) The Minister may only make a recommendation under subsection (3b) if the Minister is satisfied that the regulation does not amend Schedule 8 so as to effect a change to—

- (a) the primary use of the land; or
- (b) the primary purpose for which the land is to be maintained for the benefit of the community.

(2) Section 194(4)—delete "subsection (1)" and substitute:

subsection (2)(c)

(3) Section 194(5)—delete "subsection (1)(a)" and substitute:

subsection (2)(a)

102—Insertion of sections 194A and 194B

After section 194 insert:

194A—Revocation of community land classification requiring Ministerial approval—process

- (1) The following provisions apply to a proposal to revoke the classification of land as community land to which this section applies:
 - (a) the classification cannot be revoked unless the Minister approves revocation;
 - (b) before revoking the classification, the council must prepare and make publicly available a report on the proposal containing—
 - (i) a summary of the reasons for the proposal; and
 - (ii) a statement of any dedication, reservation or trust to which the land is subject; and
 - (iii) a statement of whether revocation of the classification is proposed with a view to sale or disposal of the land and, if so, details of any Government assistance given to acquire the land and a statement of how the council proposes to use the proceeds; and
 - (iv) an assessment of how implementation of the proposal would affect the area and the local community; and
 - (v) if the council is not the owner of the land—a statement of any requirements made by the owner of the land as a condition of approving the proposed revocation of the classification;
 - (c) the council must undertake public consultation on the proposal;

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- (d) if the revocation of the classification is proposed with a view to the sale or disposal of the land (whether or not the land is of a kind referred to in subsection (6)(d)), the council must also comply with the prescribed requirements;
 - (e) the council must then submit to the Minister the proposal with a report on all submissions made on it as part of the public consultation process and, if paragraph (d) applies, evidence of its compliance with the prescribed requirements;
 - (f) if the Minister approves the proposal—the council may make a resolution revoking the classification of the land as community land.
- (2) If the Minister grants an approval under subsection (1)—
- (a) the Minister must give written notice of the approval to the council; and
 - (b) the Minister may impose conditions on the approval.
- (3) The Minister may vary or revoke an approval or a condition of an approval by further written notice to the council.
- (4) The Minister may recover from a council (as a debt due from the council) the costs reasonably incurred by the Minister in considering a proposal submitted by the council under this section.
- (5) A council must not breach, or fail to comply with, a condition of an approval under this section.
- (6) This section applies to a proposal to revoke the classification of land as community land if—
- (a) the land is owned by the Crown or an agency or instrumentality of the Crown; or
 - (b) the land adjoins land referred to in paragraph (a) or is related to such land in circumstances prescribed by the regulations; or
 - (c) the council knows, or ought reasonably to know, that State government financial assistance was given to the council to acquire, or for the purposes of, the land or improvements on the land; or
 - (d) the land is used—
 - (i) for a public purpose (including an educational, sporting or recreational purpose); or
 - (ii) as community open space,and the revocation of the classification is proposed with a view to sale or disposal of the land; or
 - (e) the proposal is declared by the regulations to be a proposal to which this section applies.

194B—Revocation of community land classification of other land—process

The following provisions apply to a proposal to revoke the classification of land as community land (other than a proposal to which section 194A applies):

- (a) before revoking the classification, the council must prepare and make publicly available a report on the proposal containing—
 - (i) a summary of the reasons for the proposal; and
 - (ii) a statement of any dedication, reservation or trust to which the land is subject; and
 - (iii) a statement of whether revocation of the classification is proposed with a view to sale or disposal of the land and, if so, details of any Government assistance given to acquire the land and a statement of how the council proposes to use the proceeds; and
 - (iv) an assessment of how implementation of the proposal would affect the area and the local community; and
 - (v) if the council is not the owner of the land—a statement of any requirements made by the owner of the land as a condition of approving the proposed revocation of the classification;
- (b) the council must undertake public consultation on the proposal;
- (c) after considering submissions made as part of public consultation on the proposal, the council may make a resolution revoking the classification of the land as community land.

103—Amendment of section 196—Management plans

Section 196(1)(a)—delete "section 194(1)(b) or (c)" and substitute:

section 194(2)(b) or (c)

104—Amendment of section 197—Public consultation on proposed management plan

- (1) Section 197(1)—delete subsection (1) and substitute:
 - (1) Before a council adopts a management plan for community land it must undertake public consultation.
- (2) Section 197(2)—delete subsection (2)

105—Amendment of section 202—Alienation of community land by lease or licence

- (1) Section 202(2)—delete "follow the relevant steps set out in its public consultation policy" and substitute:

5 undertake public consultation

- (2) Section 202(3)(b)—delete "compliance with a public consultation policy" and substitute:

 undertaking public consultation

106—Amendment of section 207—Register

10 Section 207(3) and (4)—delete subsections (3) and (4)

107—Amendment of section 219—Power to assign name, or change name, of road or public place

 Section 219(7)—delete subsection (7) and substitute:

- 15 (7) A council must give public notice of the adopting or altering of a policy under this section.

108—Amendment of section 221—Alteration of road

- (1) Section 221(7)(a)—delete paragraph (a)

- (2) Section 221(7)(b)—after "with" insert:

 the chief executive officer of

- 20 (3) Section 221—after subsection (7) insert:

(7a) The chief executive officer of a council consulted under subsection (7)(b) may provide comments on the matter to the relevant authority within the period prescribed by the regulations and, if comments are not provided within that time, it will be conclusively presumed that the council does not intend to comment on the matter.

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(7b) However, comments provided by the chief executive officer may only relate to the proposed alteration to the public road (including works within the public road) and must not relate to any building of a dwelling on land adjoining the public road.

- 30 (4) Section 221(8)—delete "does not extend to an assessment panel appointed by the council." and substitute:

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(a) does not extend to an assessment panel appointed by the council; and

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(b) does not apply to an alteration that complies with any relevant design standard under the *Planning, Development and Infrastructure Act 2016*.

109—Amendment of section 222—Permits for business purposes

- (1) Section 222(1a)—delete subsection (1a)

- (2) Section 222(6a) to (6c)—delete subsections (6a) to (6c) (inclusive)

110—Amendment of section 223—Public consultation

Section 223(1)—delete "follow the relevant steps set out in its public consultation policy" and substitute:

5 undertake public consultation

111—Amendment of section 224—Conditions of authorisation or permit

- (1) Section 224(1)—delete "A" and substitute:

Subject to subsection (2), a

- (2) Section 224(2) to (4)—delete subsections (2) to (4) (inclusive) and substitute:

10 (2) A condition under subsection (1) must comply with any requirements prescribed by the regulations.

112—Repeal of section 224A

Section 224A—delete the section

113—Amendment of section 225—Cancellation of authorisation or permit

- 15 (1) Section 225(1)—delete subsection (1) and substitute:

(1) A council may, by notice in writing to the holder of an authorisation or permit, cancel the authorisation or permit for breach of a condition.

- (2) Section 225(4)—delete subsection (4)

114—Repeal of section 225A

Section 225A—delete the section

115—Amendment of section 225B—Review of granting of authorisations and permits

- (1) Section 225B(1)—delete subsection (1) and substitute:

25 (1) If a business in a council area is unreasonably affected by—
(a) activities conducted under 1 or more authorisations or permits granted by the council under this Division; or
(b) the refusal of the council to grant an authorisation or permit under this Division,
30 the operator of the business may apply to the Small Business Commissioner for a review of the matter by the Small Business Commissioner (who is conferred with the function of conducting such a review), unless the operator is entitled to apply to the Environment, Resources and Development Court for a review of the
35 matter under section 234AA(2).

- (2) Section 225B(5)—delete "recommend to the relevant council that the council amend its location rules" and substitute:

provide a report to the Minister on the matter

(3) Section 225B—after subsection (5) insert:

(5a) A report under subsection (5) may include recommendations to the relevant council in relation to—

- (a) the granting or refusal of authorisations or permits by the council (including in relation to any authorisations or permits that the Small Business Commissioner considers have been unreasonably granted or refused); and
- (b) policies, practices or procedures of the council relating to authorisations or permits under this Division.

(4) Section 225B(6)—delete subsection (6)

116—Amendment of section 231—Register

Section 231(3) and (4)—delete subsections (3) and (4)

117—Amendment of section 232—Trees

Section 232(b)—delete "follow the relevant steps set out in its public consultation policy" and substitute:

undertake public consultation

118—Amendment of section 234AA—Interaction with processes associated with development authorisations

Section 234AA(2)—delete "or 222(6a)"

119—Amendment of section 234A—Prohibition of traffic or closure of streets or roads

Section 234A(6)—delete subsection (6) and substitute:

- (6) A resolution passed under this section cannot take effect before the council has given public notice of the resolution.

120—Amendment of section 237—Removal of vehicles

Section 237(4)(b)—delete "published in a newspaper circulating generally in the State" and substitute:

given

121—Amendment of section 246—Power to make by-laws

(1) Section 246(3)(g)—delete "\$750" and substitute:

\$1 250

(2) Section 246(4)—delete "notice of that alteration is published by the council in the Gazette and in a newspaper circulating in the area of the council" and substitute:

the council gives public notice of that alteration

(3) Section 246(4a)—delete "ensure that notice of the determination is published in the Gazette and in a newspaper circulating in the area of the council" and substitute:

give public notice of the determination

122—Amendment of section 249—Passing by-laws

(1) Section 249(1)—delete subsection (1) and substitute:

- (1) If it is proposed that a council make a by-law, the council must, at least 21 days before resolving to make the by-law, ensure that copies of the proposed by-law (and any code, standard or other document proposed to be applied or incorporated by the by-law) are made available to the public in accordance with section 132(1).

(2) Section 249(7)—delete subsection (7) and substitute:

- (7) A council must give public notice of the making of a by-law under this section.

123—Amendment of section 250—Model by-laws

Section 250(7)—delete subsection (7) and substitute:

- (7) A council must give public notice of the adoption of a model by-law or alteration under this section.

124—Amendment of section 252—Register of by-laws and certified copies

Section 252(3) and (4)—delete subsections (3) and (4)

125—Amendment of section 259—Councils to develop policies

(1) Section 259(2)(b)—delete paragraph (b) and substitute:

- (b) undertake public consultation.

(2) Section 259(3)—delete "in response to an invitation" and substitute:

during the public consultation

(3) Section 259(6) and (7)—delete subsections (6) and (7)

126—Insertion of Chapter 13 Part A1

Chapter 13—before Part 1 insert:

Part A1—Member behaviour

Division 1—Council to deal with member behaviour

262A—Complaints

- (1) A person may make a complaint under this Division alleging that a member of a council has contravened or failed to comply with Chapter 5 Part 4 Division 2.
- (2) A complaint to a council under this Division must be made in accordance with, and contain any information required by, the council's behavioural management policy.

- 5 (3) Subject to this Division, a council must deal with a complaint under this Division in accordance with the council's behavioural management policy (and a reference to dealing with a complaint includes a reference to refusing to deal with a complaint or determining to take no further action on a complaint).

262B—Behavioural management policy

- 10 (1) A council must prepare and adopt a policy relating to the management of behaviour of members of the council (a *behavioural management policy*).

- 10 (2) Subject to this Division, a behavioural management policy must include the following provisions relating to complaints under this Division:

- 15 (a) provisions requiring that, on receipt, a complaint will be provided to the presiding member, chief executive officer or a delegate of the presiding member or chief executive officer authorised to receive complaints (as appropriate);
- (b) provisions authorising the council to deal with complaints as the council considers appropriate, including by—
- 20 (i) refusing to deal with a complaint; or
- (ii) determining to take no further action on a complaint (having commenced dealing with a complaint); or
- (iii) arranging for mediation, conciliation, arbitration or other dispute or conflict resolution in relation to a complaint;

25 **Note—**

Provisions of a behavioural management policy setting out the grounds authorising a council to refuse to deal with a complaint or determine to take no further action on a complaint may include grounds such as—

- 30 (a) the ground that the subject matter of the complaint is trivial; or
- (b) the ground that the complaint is frivolous or vexatious or is not made in good faith; or
- 35 (c) the ground that the complainant or the person on whose behalf the complaint was made does not have a sufficient personal interest in the matter raised in the complaint; or
- 40 (d) the ground that, having regard to all the circumstances of the case, it is unnecessary or unjustifiable for the council to deal with or continue to deal with the complaint; or
- 45 (e) the ground that the subject matter of the complaint has been or is already being investigated, whether by the council or another person or body; or

(f) the ground that the council has dealt with the complaint adequately.

(c) provisions authorising the council to inquire into a complaint in such manner as the council considers appropriate (subject to the principles of procedural fairness);

Note—

Provisions of a behavioural management policy relating to inquiring into a complaint appropriately may include procedures such as 1 or more of the following:

- (a) provisions relating to parties to the process providing submissions (oral or written);
- (b) provisions relating to the conduct of interviews;
- (c) provisions relating to the undertaking of investigations (formal or informal).

(d) provisions authorising the council to conduct an inquiry itself or delegate the conduct of an inquiry to any person or body (with the agreement of the person or body) the council considers appropriate in the circumstances;

Note—

Examples of the kind of person to whom a council may delegate the conduct of an inquiry include—

- (a) the principal member of the council; or
- (b) the chief executive officer of the council; or
- (c) a delegate of the principal member or the chief executive officer; or
- (d) a committee of the council (such as a committee established in relation to governance matters); or
- (e) a person who is not a member or employee of the council.

(e) provisions authorising the council to take action to resolve a complaint in such manner as the council considers appropriate, including by—

- (i) requiring the member to undertake training, instruction, counselling, mentoring or coaching; or
- (ii) taking action under this Division.

(3) Without limiting subsection (2), a behavioural management policy may contain other provisions relating to the processes and procedures for receiving and dealing with complaints under this Division and may—

- (a) specify directions relating to behaviour that must be observed by members of the council; and
- (b) set out guidelines relating to compliance by members with Chapter 5 Part 4 Division 2 and directions under paragraph (a); and

(c) include any other matter relating to behaviour of members considered appropriate by the council.

(4) A behavioural management policy—

(a) must not be inconsistent with the behavioural standards; and

(b) must comply with any requirement specified by the behavioural standards.

(5) A member of a council must comply with the council's behavioural management policy.

(6) A council may from time to time alter a behavioural management policy, or substitute a new policy.

(7) A council must, within 12 months after the conclusion of each periodic election, review the operation of its behavioural management policy.

262C—Action

(1) A council may, after inquiring into a complaint under this Division, do 1 or more of the following:

(a) pass a censure motion in respect of the member;

(b) require the member to issue a public apology (in a manner determined by the council);

(c) require the member to undertake a specified course of training or instruction;

(d) remove or suspend the member from 1 or more offices held in the member's capacity as a member of the council or by virtue of being a member of the council (other than the office of member of the council).

(2) If action is taken in respect of a member of a council under this section, a report on the matter must be considered in public at an ordinary meeting of the council.

(3) In the exercise or performance of a power or function under this Division, a council (including any person acting on behalf of, or as a delegate of, the council)—

(a) must proceed with as little formality and technicality and with as much expedition as the requirements of this or any other Act and a proper consideration of the matter permit; and

(b) is not bound by rules of evidence but may inform itself of any matter in any manner that the council considers appropriate.

262D—Reasons

If a council—

(a) refuses to deal with a complaint under this Division; or

- (b) determines to take no further action in relation to a complaint under this Division (whether or not an inquiry has been commenced or completed on the complaint),

the council must provide the complainant with written reasons for the refusal or determination.

Division 2—Behavioural standards panel

Subdivision 1—Preliminary

262E—Preliminary

In this Division—

misbehaviour means—

- (a) a failure by a member of a council to comply with a requirement of the council under section 262C(1); or
- (b) a failure by a member of a council to comply with a provision of, or a requirement under, the council's behavioural management policy; or
- (c) a failure by a member of a council to comply with an agreement reached following mediation, conciliation, arbitration or other dispute or conflict resolution conducted in relation to a complaint under Division 1;

presiding member means the member of the Panel appointed to be the presiding member of the Panel under section 262F, or a person from time to time acting as the presiding member;

repeated misbehaviour means a second or subsequent failure by a member of a council to comply with Chapter 5 Part 4 Division 2;

serious misbehaviour means a failure by a member of a council to comply with section 75G.

Subdivision 2—Behavioural standards panel

262F—Establishment and constitution

- (1) The Behavioural Standards Panel is established.
- (2) The Panel—
 - (a) is a body corporate; and
 - (b) has perpetual succession and a common seal; and
 - (c) is capable of suing and being sued in its corporate name; and
 - (d) has all the powers of a natural person that are capable of being exercised by a body corporate and, in particular, has all the powers necessary or expedient for, or incidental to, the performance of its functions.

- (3) The Panel consists of the following members appointed by the Governor—
- (a) a member nominated jointly by the Minister and the LGA to be the presiding member of the Panel; and
 - (b) a member nominated by the Minister; and
 - (c) a member nominated by the LGA.
- (4) A member or employee of a council cannot be appointed as a member of the Panel.
- (5) The Minister and the LGA must, when nominating persons for appointment as members of the Panel, seek to ensure that, as far as is practicable, the members of the Panel collectively have qualifications, knowledge, expertise and experience in the following areas:
- (a) local government or public administration;
 - (b) law;
 - (c) administrative or disciplinary investigation;
 - (d) dispute resolution, conflict management, human resource management or organisational psychology.

262G—Conditions of membership

- (1) A member of the Panel will be appointed on such conditions and for such term, not exceeding 5 years, as the Governor may determine and on the expiration of a term of office will be eligible for reappointment.
- (2) The Governor may remove a member of the Panel from office—
- (a) for breach of, or failure to comply with, a condition of appointment; or
 - (b) for failure or incapacity to carry out official duties satisfactorily; or
 - (c) for misconduct; or
 - (d) on the recommendation of the Minister.
- (3) The Minister cannot make a recommendation under subsection (2)(d) unless the LGA consents to the making of the recommendation.
- (4) The office of a member of the Panel becomes vacant if the member—
- (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice addressed to the Minister; or
 - (d) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
 - (e) becomes a member of an Australian Parliament; or

- (f) becomes a member or employee of a council; or
- (g) is removed from office by the Governor under subsection (2).

(5) On the office of a member of the Panel becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

262H—Acting member

(1) If—

(a) a member is unable to perform official functions or duties;
or

(b) the office of a member is vacant,

the Governor may appoint a person to act in the office of the member for a period of up to 6 months on conditions determined by the Governor.

- (2) If a member is unable to act in relation to a particular matter, the Minister may appoint a person to act in the office of the member in relation to that matter on conditions determined by the Minister.
- (3) Section 262G(2) to (5) (inclusive) apply to an acting member as if they were appointed under section 262F.

262I—Meetings of Panel

(1) Subject to this Part—

(a) a meeting of the Panel will be presided over by the presiding member and, in the absence of that member, a member chosen by those present will preside; and

(b) 2 members constitute a quorum of the Panel and no business may be transacted at a meeting of the Panel unless a quorum is present; and

(c) each member present at a meeting of the Panel is entitled to 1 vote on a matter arising for decision at the meeting and the person presiding at the meeting has, in the event of an equality of votes, a second or casting vote; and

(d) a decision carried by a majority of the votes cast by the members present at a meeting of the Panel is a decision of the Panel; and

(e) the Panel may otherwise determine its own procedures.

(2) A conference by telephone or other electronic means between the member of the Panel will, for the purposes of this section, be taken to be a meeting of the Panel at which the participating members are present if—

(a) notice of the conference is given to all members in the manner determined by the Panel for the purpose; and

(b) each participating member is capable of communicating with every other participating member during the conference.

5 (3) A proposed resolution of the Panel becomes a valid decision of the Panel despite the fact that it is not voted on at a meeting of the Panel if—

(a) notice of the proposed resolution is given to all members in accordance with procedures determined by the Panel; and

10 (b) a majority of the members express concurrence in the proposed resolution by email or other written communication setting out the terms of the resolution.

(4) The Panel must cause minutes to be kept of its meetings.

262J—Remuneration and expenses

15 The members of the Panel are entitled to such fees, allowances and expenses as the Governor may approve.

262K—Staff

(1) The Panel will have such staff (comprised of persons employed in the Public Service of the State) as is necessary for the purposes of the performance of the Panel's functions under this and any other Act.

20 (2) The Panel may, by arrangement with the appropriate authority, make use of the services, facilities or employees of a government department, agency or instrumentality.

262L—Validity of acts of Panel

25 An act or proceeding of the Panel is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

262M—Costs

30 (1) The costs of establishing the Panel, and the ongoing administrative and operational costs of the Panel, are to be paid by the LGA under an arrangement established by the Minister from time to time after consultation with the President of the LGA.

(2) The Panel may recover reasonable costs incurred in relation to a complaint against a member of a council referred to the Panel under Subdivision 3 as a debt due from the relevant council.

262N—Functions

35 (1) The primary function of the Panel is to assess and deal with complaints referred to the Panel under Subdivision 3.

- (2) In addition, the Panel may—
- (a) publish guidelines for councils, members of councils and the community relating to the behavioural standards, behavioural management policies, behavioural support policies and other matters relating to behaviour of members; and
 - (b) publish model behavioural management policies and behavioural support policies; and
 - (c) publish practice directions relating to practices and procedures in respect of matters before the Panel; and
 - (d) perform other functions conferred on the Panel by or under this or any other Act.

262O—Delegation

- (1) Subject to subsection (2), the Panel may delegate a function or power conferred on the Panel, other than a function or power under Subdivision 3 or a prescribed function or power—
- (a) to a specified person or body; or
 - (b) to a person occupying or acting in a specified office or position.
- (2) A delegation—
- (a) may be made subject to conditions or limitations specified in the instrument of delegation; and
 - (b) may, if the instrument of delegation so provides, be further delegated; and
 - (c) is revocable at will and does not prevent the Panel from acting in a matter.

262P—Annual report

- (1) The Panel must, on or before 30 September in each year, submit a report to the Minister on the activities of the Panel during the previous financial year.
- (2) The Minister must, within 12 sitting days after receipt of a report under subsection (1), cause copies of that report to be laid before each House of Parliament.

Subdivision 3—Inquiries and action on complaints referred to Panel

262Q—Referral

- (1) A complaint alleging misbehaviour, repeated misbehaviour or serious misbehaviour by a member of a council may be referred to the Panel by—
- (a) resolution of the council; or

- (b) the principal member of the council; or
- (c) at least 3 members of the council; or
- (d) the Minister.

5 (2) A person who is dissatisfied with a council's decision in relation to a complaint made by the person under Division 1 (including a decision of the council to refuse to deal with, or to take no further action in relation to, the complaint) may refer the subject matter of the complaint to the Panel.

262R—Proceedings of Panel

- 10 (1) One or more functions or powers of the Panel under section 262S, 262T, 262U or 262V may be exercised by the presiding member on behalf of the Panel.
- 15 (2) The Panel (or the presiding member acting on its behalf) may appoint an investigator to conduct an inquiry under section 262T into a complaint referred to the Panel under this Subdivision.
- 20 (3) Any questions of law or procedure arising before the Panel will be determined by the presiding member and any other questions arising before the Panel sitting as a whole will be determined by unanimous or majority decision of the members (unless there is an equal division of opinion, in which case, the decision of the presiding member will be the decision of the Panel).
- 25 (4) If a member of the Panel as constituted under this section (other than the presiding member) dies, or is for any other reason unable to continue with the proceedings before the Panel, the Panel constituted of the remaining members may, if the presiding member so determines, continue and complete the proceedings.

262S—Assessment

- 30 (1) The Panel may refuse to deal with a complaint referred to the Panel under this Subdivision or, having commenced dealing with a complaint, determine to take no further action on it if the Panel is satisfied—
- 35 (a) that the subject matter of the complaint is trivial; or
 - (b) that the complaint is frivolous or vexatious or is not made in good faith; or
 - (c) that the complainant or the person on whose behalf the complaint was made does not have a sufficient personal interest in the matter raised in the complaint; or
 - 40 (d) that, having regard to all the circumstances of the case, it is unnecessary or unjustifiable for the Panel to deal with or continue to deal with the complaint; or

- 5
- (e) that the subject matter of the complaint has been or is already being assessed or investigated, whether by the Panel or another person or body (but disregarding any dealing with the complaint by the relevant council following which the matter was referred to the Panel); or
 - (f) that the council has dealt with the complaint adequately; or
 - (g) that it is otherwise in the public interest to refuse to deal with, or determine to take no further action on, the complaint.

10 (2) If a complaint is made and the Panel refuses to deal with, or determines to take no further action on, the complaint, the Panel must inform the person or body that referred the complaint to the Panel under this Subdivision of that decision and of the reasons for it.

15 (3) The Panel may refer a complaint referred to it under this Subdivision to the relevant council if the Panel considers that the complaint does not allege misbehaviour, repeated misbehaviour or serious misbehaviour by a member of a council.

262T—Inquiries

- 20 (1) The Panel may inquire into a complaint referred to the Panel under this Subdivision in such manner as the Panel considers appropriate.
- (2) However, an inquiry must be conducted in accordance with the principles of procedural fairness.

262U—Powers relating to inquiries

- 25 (1) The Panel or an investigator conducting an inquiry under this Division may, in connection with the inquiry—
- (a) by summons signed by the Panel or investigator (as the case requires), require a person's attendance; and
 - (b) require a person to answer, orally or in writing, questions to the best of their knowledge, information and belief; and
 - (c) require a person to verify an answer under paragraph (b) by declaration; and
 - (d) require a council or person to produce any relevant documents or other records; and
 - (e) retain documents or other records produced under paragraph (d) for reasonable periods and make copies of them or their contents; and
 - (f) call for or receive submissions or representations.
- 30
- 35
- 40 (2) Subject to subsection (3), a person or council must not refuse or fail to comply with a requirement under subsection (1).

Maximum penalty: \$10 000.

5 (3) A person is not obliged to comply with a requirement under subsection (1) if to do so might incriminate the person of an offence, and a person or a council is not required to provide information under subsection (1) that is privileged on the ground of legal professional privilege.

(4) In the exercise or performance of a power or function under this Subdivision, the Panel—

10 (a) must proceed with as little formality and technicality and with as much expedition as the requirements of this or any other Act and a proper consideration of the matter permit; and

(b) is not bound by rules of evidence but may inform itself of any matter in any manner that the Panel considers appropriate.

15 **262V—Dispute resolution**

(1) The Panel may, at any time, arrange for mediation, conciliation, arbitration or other dispute or conflict resolution (*alternative dispute resolution*) to be conducted in relation to the subject matter of a complaint referred under this Subdivision.

20 (2) If agreement is reached through alternative dispute resolution—

(a) the agreement must be recorded in writing and signed by the parties to the agreement and by a member of the Panel on behalf of the Panel; and

(b) a copy of the agreement must be given to each of the parties.

25 (3) The Panel may, if satisfied that the subject matter of a complaint has been properly resolved by alternative dispute resolution, determine to take no further action on the complaint.

262W—Action

30 (1) The Panel may, after inquiring into a complaint referred to the Panel under this Subdivision, by order do 1 or more of the following:

(a) reprimand the member (including by means of a public statement);

(b) direct the council to pass a censure motion in respect of the member;

35 (c) require the member to issue a public apology (in a manner determined by the Panel);

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

40 (e) require the member to reimburse the council a specified amount (which may include the reimbursement of the council's costs relating to investigation of the complaint and giving effect to an order under this section);

(f) remove or suspend the member from 1 or more offices held in the member's capacity as a member of the council or by virtue of being a member of the council (other than the office of member of the council);

5 (g) suspend the member from the office of member of the council for a period not exceeding 3 months, with or without an allowance (as determined by the Panel);

(h) direct the council to lodge a complaint against the member with SACAT.

10 (2) If action is taken in respect of a member of a council under this section, the Panel—

(a) must provide a report on the matter to the council; and

(b) may require—

15 (i) the report to be considered in public at an ordinary meeting of the council; and

(ii) the council to provide a report to the Panel, within a period and in such manner as is specified by the Panel, detailing—

20 (A) if the Panel made an order requiring the member to take action under subsection (1)—the member's compliance with the requirement; or

25 (B) if the Panel made an order directing the council to take action under subsection (1)—the council's compliance with the direction.

(3) If a member of a council fails to comply with an order of the Panel requiring the member to take action under subsection (1), the member will be taken for the purposes of this Act to have failed to comply with an integrity provision and the council is to ensure that a complaint is lodged against the member with SACAT.

(4) If the Panel considers that a council has failed to comply with a direction or requirement of the Panel under this section, the Panel may provide a report to the Minister on the matter.

35 **262X—Reports on inquiries**

(1) The Panel may publish, in such manner as the Panel thinks fit, a report on—

(a) an inquiry under this Subdivision; or

40 (b) a complaint that the Panel refused to deal with, or determined to take no further action on.

- (2) The Panel may—
- (a) provide a report under subsection (1) relating to a member of a council to the council; and
 - (b) require the report to be considered in public at an ordinary meeting of the council.
- (3) Nothing in this section limits section 262W.

Division 3—Miscellaneous

262Y—Referral of complaint to OPI

- (1) If a council or the Panel reasonably suspects that a complaint before the council or Panel (as the case may be) under this Part relates to conduct that involves corruption in public administration within the meaning of the *Independent Commissioner Against Corruption Act 2012*—
- (a) the council or Panel (as the case requires) must refer the complaint to the Office for Public Integrity to be dealt with under that Act; and
 - (b) consideration of the complaint under this Act is postponed until the Independent Commissioner Against Corruption notifies the council or Panel (as the case requires) that the Commissioner considers it appropriate that consideration of the complaint under this Act continue.
- (2) The Independent Commissioner Against Corruption must give the council or Panel the notification referred to in subsection (1)(b) as soon as practicable after conducting the assessment required under section 23 of the *Independent Commissioner Against Corruption Act 2012* unless the matter is assessed as raising a potential issue of corruption in public administration that could be the subject of a prosecution.

127—Amendment of heading to Chapter 13 Part 1

Heading to Chapter 13 Part 1—delete the heading and substitute:

Part 1—Member integrity—complaints, investigations and proceedings

128—Repeal of section 263

Section 263—delete the section

129—Amendment of section 263A—Investigations by Ombudsman

- (1) Section 263A(1) to (3)—delete "constitute grounds for complaint under this Act against" wherever occurring and substitute in each case:
- involve a contravention of, or failure to comply with, an integrity provision by

(2) Section 263A—after subsection (3) insert:

(3a) Subject to Part A1 Division 3, if a council or the Panel considers that the whole or part of the subject matter of a complaint before the council or Panel (as the case may be) under Part A1 relates to conduct that involves a contravention of, or failure to comply with, an integrity provision by a member of a council—

(a) the council or Panel (as the case requires) must refer the subject matter (or relevant part of the subject matter) of the complaint to the Ombudsman for investigation and report under the *Ombudsman Act 1972*; and

(b) consideration of the subject matter (or relevant part of the subject matter) of the complaint under Part A1 is postponed until the Ombudsman notifies the council or Panel (as the case requires) that the Ombudsman considers it appropriate that consideration of it under Part A1 continue.

(3b) If the Ombudsman considers that whole or part of the subject matter of a complaint before the Ombudsman relates to conduct that involves a contravention of, or failure to comply with, Chapter 5 Part 4 Division 2 by a member of a council (other than a contravention or failure to comply that constitutes misbehaviour, repeated misbehaviour or serious misbehaviour (within the meaning of Part A1 Division 2)), the Ombudsman may refer the subject matter (or relevant part of the subject matter) of the complaint to the relevant council.

(3) Section 263A(4)—delete "constitute grounds for complaint under this Act against" and substitute:

involve a contravention of, or failure to comply with, an integrity provision by

130—Amendment of section 263B—Outcome of Ombudsman investigation

Section 263B(1) and (2)—delete subsections (1) and (2) and substitute:

(1) The recommendations that may be made by the Ombudsman under the *Ombudsman Act 1972* on the completion of an investigation of the complaint include—

(a) a recommendation requiring the council to—

(i) reprimand the member (including by means of a public statement); or

(ii) suspend the member from any office under this Act for a period not exceeding 3 months, with or without an allowance (as determined by the Ombudsman); or

(iii) ensure that a complaint is lodged against the member with SACAT; or

(b) a recommendation requiring the member to—

- (i) issue a public apology (in a manner determined by the Ombudsman); or
- (ii) attend a specified course of training or instruction; or
- (iii) take other steps; or
- (iv) reimburse the council a specified amount (which may include the reimbursement of the council's costs relating to investigation of the complaint and giving effect to a recommendation of the Ombudsman under this section).

(2) If a member of a council fails to comply with a recommendation of the Ombudsman requiring the member to take action under subsection (1), the member will be taken to have failed to comply with an integrity provision and the council is to ensure that a complaint is lodged against the member with SACAT.

131—Amendment of section 264—Complaint lodged with SACAT

(1) Section 264—before subsection (1) insert:

(a1) A complaint against a member of a council may be lodged with SACAT under this section on the ground—

- (a) that the member has contravened or failed to comply with an integrity provision; or
- (b) of alleged misbehaviour, repeated misbehaviour or serious misbehaviour by the member (within the meaning of Part A1 Division 2); or
- (c) that the member has contravened or failed to comply with—
 - (i) a recommendation of the Ombudsman requiring the member to take action under section 263A(1); or
 - (ii) an order of the Panel requiring the member to take action under section 262W(1).

(2) Section 264(1)—delete "setting out the matters that are alleged to constitute the grounds for complaint against a member of a council under this Part" and substitute:
on a ground referred to in subsection (a1)

(3) Section 264(2)—after "complaint" insert:

on the ground set out in subsection (a1)(a)

(4) Section 264—after subsection (2) insert:

(2a) In addition, a complaint may not be lodged by the chief executive officer of a council on the ground set out in subsection (a1)(b) unless the matter has been inquired into by the Panel.

132—Amendment of section 265—Hearing by SACAT

Section 265(1)—delete "the matters alleged in the complaint constitute grounds for action against the member of the council under this Part" and substitute:

a ground on which the complaint was lodged exists

133—Amendment of section 267—Outcome of proceedings

(1) Section 267(1)—delete "the grounds for complaint exist" and substitute:

a ground on which the complaint was lodged exists

(2) Section 267(1)(ba)—after "amount" insert:

(which may include the reimbursement of the council's costs relating to investigation of the complaint and giving effect to an order under this section)

(3) Section 267(1)(c)—delete "\$5 000" and substitute:

\$15 000

(4) Section 267(1)(d)—delete "two months" and substitute:

6 months

134—Repeal of section 269

Section 269—delete the section

135—Amendment of section 270—Procedures for review of decisions and requests for services

(1) Section 270—after subsection (2) insert:

(2a) In addition, the procedures must provide that—

(a) an application for review must be made within 6 months of the making of the decision of which review is sought (the *reviewable decision*); and

(b) the council may allow an application to be made more than 6 months after the making of the reviewable decision in appropriate cases.

(2) Section 270(3)—delete subsection (3) and substitute:

(3) An application for review must be accompanied by the prescribed fee.

(3a) A council may, as the council thinks fit, reduce, waive or refund (in whole or part) the fee under subsection (3).

(3) Section 270(4)—after paragraph (c) insert:

or

(d) the council or person (as the case requires) is satisfied that the subject matter of the application has been or is already the subject of a review by the council or an investigation, inquiry or review by another authority.

(4) Section 270(4a)—delete subsection (4a) and substitute:

(4a) The policies, practices and procedures established under this section—

- (a) must not provide for a review of a decision of a council to refuse to deal with, or determine to take no further action in relation to, a complaint under Part A1 Division 1 by a person who is dissatisfied with the decision; and
- (b) must be consistent with any requirement prescribed by the regulations.

(5) Section 270(5)—delete subsection (5)

136—Amendment of section 273—Action on report

(1) Section 273(1)—after paragraph (c) insert:

or

- (d) a report of the designated authority under section 123; or
- (e) a report of the Small Business Commissioner under section 225B; or
- (f) a report of the Behavioural Standards Panel under section 262W; or
- (g) a report of a person who held an appointment as administrator of a defaulting council under this section provided to the Minister on, or within 6 months after, the cessation of the period of administration of the council,

(2) Section 273(2)—delete "The" and substitute:

Subject to subsection (2a), the

(3) Section 273(2)(b)(iv)—delete "or the Ombudsman" and substitute:

, the Ombudsman or the Small Business Commissioner

(4) Section 273(2)(b)—after subparagraph (iv) insert:

- (iva) that a council has failed to respond appropriately to advice from the designated authority under section 123; or
- (ivb) that a council has failed to comply with a direction or requirement of the Panel under section 262W; or

(5) Section 273—after subsection (2) insert:

(2a) The only action that the Minister may take under subsection (2) on the basis of a report of a kind referred to in subsection (1)(g) is action of a kind referred to in subsection (2)(a).

137—Amendment of section 279—Service of documents by councils etc

Section 279(1)(e)—delete "by facsimile transmission or"

138—Amendment of section 280—Service of documents on councils

Section 280(1)(c)—delete "by facsimile transmission or"

139—Amendment of section 303—Regulations

Section 303(8a)—after "2015" insert:

or the *Statutes Amendment (Local Government Review) Act 2020*

140—Amendment of Schedule 1A—Implementation of Stormwater Management Agreement

Schedule 1A, clause 11(8)(b)—delete paragraph (b) and substitute:

- (b) a majority of the board members express their concurrence in the proposed resolution by letter, email or other written communication setting out the terms of the resolution.

141—Amendment of Schedule 2—Provisions applicable to subsidiaries

- (1) Schedule 2, clause 3(2)(c)—delete "Chapter 5, Part 4, Division 2" and substitute:

Chapter 5 Part 4 Division 1 Subdivision 2

- (2) Schedule 2, clause 5(6)(b)—delete "telex, facsimile transmission or other written communication, or electronic communication," and substitute:

email or other written communication

- (3) Schedule 2, clause 13(3)—delete "council's audit committee" and substitute:

relevant audit and risk committee

- (4) Schedule 2, clause 19(2)(c)—delete "Chapter 5, Part 4, Division 2" and substitute:

Chapter 5 Part 4 Division 1 Subdivision 2

- (5) Schedule 2, clause 21(6)(b)—delete "telex, facsimile transmission or other written communication, or electronic communication," and substitute:

email or other written communication

- (6) Schedule 2, clause 30(3)—delete "a constituent council's audit committee" and substitute:

a regional audit and risk committee established by any of the constituent councils (with 1 or more other councils, whether constituent councils or otherwise) or a council audit and risk committee established by any of the constituent councils

142—Amendment of Schedule 3—Register of Interests—Form of returns

- (1) Schedule 3, clause 1(1), after the definition of *beneficial interest* insert:

designated person or entity, in relation to a member of a council, means—

- (a) a member of the member's family; or
(b) a family company of the member; or
(c) a trustee of a family trust of the member;

- (2) Schedule 3, clause 1(1), definition of *family*, (b)—delete paragraph (b) and substitute:

- (b) a child or stepchild of the member;

- (3) Schedule 3, clause 1(1), definition of *gift*—delete the definition

- (4) Schedule 3, clause 1(1), definition of *a person related to a member*—delete the definition
- (5) Schedule 3, clause 1(1), definition of *return period*—delete the definition and substitute:

5 *return period*, in relation to a return of a member (other than a return submitted under section 65(a)), means—

- (a) in the case of a member whose last return was the return submitted under section 65(a)—the period between the date of that return and 30 June next following; or
- 10 (b) in the case of any other member—the period of 12 months expiring on 30 June on or within 60 days after which the return is required to be submitted;

(6) Schedule 3, clause 1(4)—delete subclause (4)

(7) Schedule 3, clause 2—before subclause (1) insert:

15 (a1) For the purposes of this Act, a return must be in the form determined by the Minister.

(8) Schedule 3, clause 2(1)—delete "be in the prescribed form and"

(9) Schedule 3, clause 2(1)(a)—delete "person related to the member" and substitute:
designated person or entity in relation to the member

20 (10) Schedule 3, clause 2(2)—delete "be in the prescribed form and"

(11) Schedule 3, clause 2(2)(a)—delete "person related to the member" and substitute:
designated person or entity in relation to the member

(12) Schedule 3, clause 2(2)(c) to (e)—delete paragraphs (c) to (e) (inclusive)

25 (13) Schedule 3, clause 2(3)—delete "person related to the member" wherever occurring and substitute in each case:

designated person or entity in relation to the member

(14) Schedule 3, clause 2(3)(f)—delete "related by blood or marriage to the member or to" and substitute:

a relative of the member or

30 (15) Schedule 3, clause 2(3)(g)—delete "related to the member or a member of the member's family by blood or marriage" and substitute:

a relative of the member or a member of the member's family

(16) Schedule 3, clause 2(7)—delete "person related to the member" and substitute:
designated person in relation to the member

35 (17) Schedule 3, clause 2(8)—delete "gift,"

143—Amendment of Schedule 4—Material to be included in annual report of council

Schedule 4, clause 1—after paragraph (c) insert:

- 5 (d) a report relating to contraventions of Chapter 5 Part 4 Division 2 by members of the council during the relevant financial year containing the information required by the regulations;

144—Amendment of Schedule 5—Documents to be made available by councils

- 10 (1) Schedule 5, provisions under the heading "**Codes**", 1st dot point—delete "of conduct or codes"

- (2) Schedule 5, provisions under the heading "**Meeting papers**", 3rd dot point—after "reports" insert:

(including attachments and any information or material referred to in the documents or reports) supplied

- 15 (3) Schedule 5, provisions under the heading "**Meeting papers**"—after the 4th dot point insert:

- Schedule of dates, times and places set for meetings of the council or council committee

- (4) Schedule 5—before the heading "**Policy and administrative documents**" insert:

Information and briefing session papers

- 20 • Record made by council or chief executive officer relating to an order under section 90(2) (in accordance with section 90A(4)) made at or in relation to an information or briefing session

- (5) Schedule 5, provisions under the heading "**Policy and administrative documents**", 11th dot point—delete the 11th dot point and substitute:

- 25 • Community engagement policies
• Behavioural management policies
• Behavioural support policies
• Employee behavioural standards

- 30 (6) Schedule 5, provisions under the heading "**Registers and Returns**", 1st dot point—delete "Division 2" and substitute:

Division 1 Subdivision 2

145—Amendment of Schedule 8—Provisions relating to specific land

Schedule 8, clause 13(5), definition of *Gawler Park Lands and Pioneer Park*—delete the definition and substitute:

35 *Gawler Park Lands* means the whole of the land comprised in Certificate of Title Register Book Volume 6182 Folio 891;

Pioneer Park means the whole of the land comprised in Certificate of Title Register Book Volume 5846 Folio 672 and Volume 5846 Folio 673.

146—Insertion of Schedule 9

After Schedule 8 insert:

Schedule 9—Suspension of members

1—Suspension of members

- 5 (1) This clause applies to a member of a council who is suspended from
the office of member of the council—
- (a) by SACAT or the Behavioural Standards Panel; or
 - (b) by the council in accordance with a recommendation of the
Ombudsman under section 263B; or
 - 10 (c) under section 68, 80A, 80B or 273(8); or
 - (d) under another provision of this Act prescribed by the
regulations.
- (2) Subject to this clause, the following provisions apply during the
15 period of suspension of a member of a council to whom this clause
applies:
- (a) the suspension extends to all other offices held in the
member's capacity as a member of the council or by virtue
of being a member of the council;
 - (b) the member must not use or retain a facility or service
20 provided by the council (not being a facility or service
generally provided to members of the public by the council);
 - (c) the member must not carry out any function or duty of the
office of member of the council;
 - (d) the member must not be given access by the council to
25 information, documents or materials related to the
performance or discharge of the functions or duties of
members of the council (not being information, documents
or materials generally provided to members of the public by
the council);
 - 30 (e) the member is not required—
 - (i) to submit a return for the purposes of the Register
of Interests in accordance with Chapter 5 Part 4
Division 1 Subdivision 2; or
 - 35 (ii) if relevant, to notify the chief executive officer of a
change or variation of a kind referred to in
section 67(1),
- provided that, on the cessation of the suspension, the
member—

(iii) submits any return for the purposes of the Register of Interests that the member would, but for the suspension, have been required to submit in accordance with Chapter 5 Part 4 Division 1 Subdivision 2 during the period of suspension; and

(iv) notifies the chief executive officer of a change or variation of a kind referred to in section 67(1) of which the member would, but for the suspension, have been required to notify the chief executive officer under section 67(1) during the period of suspension;

(f) to avoid doubt, section 54(1)(d) does not apply to the member.

(3) In addition, the regulations may modify the application of a provision of this Act (including this Schedule) in relation to the suspension of a member of a council to whom this clause applies.

(4) Subclause (2)(e) does not affect the obligation of a member of a council who is suspended from the office of member of the council by operation of section 68(1a) to submit to the chief executive officer the return that the member failed to submit under section 68(1a).

(5) A member of a council to whom this clause applies must not contravene or fail to comply with subclause (2)(b) or (c).

(6) Nothing in this clause affects the operation of section 273(8a).

147—Transitional provisions

(1) A council (other than a council within the ambit of section 11A(2)(a) of the principal Act (as inserted by this Act)) with more than 12 members must conduct a review of its composition under Chapter 3 Part 1 of the principal Act so as to ensure that the reduction in the composition (and changes to wards) of the council required by section 11A takes effect on or before the date of the second periodic election of the council after the commencement of section 11A.

(2) Section 51 of the principal Act (as amended by section 18 of this Act) applies to a council from—

(a) in the case of a council that commences a representation review in accordance with section 12 of the principal Act after the commencement of section 18 of this Act and completes the review before 1 January 2022—polling day for the periodic election next due to be held after the commencement of section 18; or

(b) in any other case—polling day for the second periodic election due to be held after the commencement of section 18.

(3) A reference to completing a review under subsection (2)(a) includes (if relevant) publishing any notice or notices in the Gazette under section 12(15)(b) in relation to the review.

- 5 (4) A council (other than a council within the ambit of subsection (2)(a)) constituted on the basis that the principal member is to be chosen by the members of the council from amongst their own number must conduct a review of its composition under Chapter 3 Part 1 of the principal Act so as to ensure that the appointment or election of a mayor required by section 51(1) of that Act (as amended by section 18 of this Act) takes effect on or before the date of the second periodic election of the council after the commencement of this section.
- 10 (5) The remuneration of a chief executive officer holding office on the commencement of section 99A of the principal Act (as inserted by this Act) is not affected during the term of that office by a determination under section 99A.
- 15 (6) The principal Act (as in force immediately before the commencement of this subsection) continues to apply to a contravention of, or failure to comply with, the principal Act constituting grounds for complaint against a member of a council under Chapter 13 Part 1 of the principal Act (as in force immediately before the commencement of this subsection) committed or alleged to have been committed before that commencement.
- 20 (7) Section 110 of the principal Act (as in force immediately before the commencement of this subsection) continues to apply to a contravention of, or failure to comply with, the code of conduct to be observed by employees of councils committed or alleged to have been committed before that commencement.
- (8) In this section—
principal Act means the *Local Government Act 1999*.

Part 3—Amendment of *Local Government (Elections) Act 1999*

148—Amendment of section 4—Preliminary

- 25 Section 4(1), definition of *public notice*—delete the definition and substitute:
public notice—see *Local Government Act 1999* (section 4(1aa));

149—Substitution of section 5

Section 5—delete the section and substitute:

5—Periodic elections

- 30 Elections to determine the membership of each council must be held in accordance with this Act at intervals of 4 years on the basis that voting at the elections will close at 5 pm on the second to last business day before the second Saturday of November in 2022, at 5 pm on the second to last business day before the second Saturday
35 of November in 2026, and so on.

150—Amendment of section 6—Supplementary elections

- (1) Section 6(2)(a)—delete paragraph (a) and substitute:
(a) the vacancy occurs within 12 months before polling day for—
(i) a periodic election; or

(ii) a general election (other than a periodic election) if the date of that polling day is known at the time of the occurrence of the vacancy; or

(2) Section 6(2)(b)(iii)—delete subparagraph (iii) and substitute:

(iii) —

(A) if the council has 9 or more offices (excluding the office of mayor)—there is no more than 1 other vacancy in the office of a member of the council; or

(B) in any other case—there is no other vacancy in the office of a member of the council; and

(3) Section 6(2)(b)(iv)—after "council" insert:

at the time the vacancy occurs

(4) Section 6(2)(b)(iv)—after "vacancy" insert:

or vacancies

(5) Section 6(2)—after paragraph (b) insert:

or

(c) the vacancy—

(i) is for an office of a member of the council, other than—

(A) mayor; or

(B) a member who was declared elected under section 25(1); and

(ii) occurs within 12 months after the conclusion of a periodic election (and can be filled in accordance with section 6A).

(6) Section 6(3)(a)—delete "a vacancy has" and substitute:

1 or more vacancies have

(7) Section 6(3)(c)—delete paragraph (c) and substitute:

(c) the other vacancy has not occurred within 12 months before polling day for—

(i) a periodic election; or

(ii) a general election (other than a periodic election) if the date of that polling day is known at the time of the occurrence of the vacancy,

(8) Section 6(7) and (8)—delete subsections (7) and (8) and substitute:

(7) A notice under subsection (6) must also fix—

(a) a day for the close of the voters roll for the purposes of the election (the *closing date*); and

(b) the time at which voting at the election will close on polling day.

151—Insertion of section 6A

After section 6 insert:

6A—Filling vacancy in certain circumstances

(1) If—

- 5 (a) a casual vacancy has occurred; and
(b) a supplementary election is not to be held by virtue of the operation of section 6(2)(c),

the vacancy will be filled in accordance with this section.

(2) For the purposes of subsection (1)—

- 10 (a) the returning officer must, in accordance with the regulations, determine the candidate in the most recent election for the relevant office to fill the vacancy (a *successful candidate*); and
15 (b) the returning officer must ascertain (in such manner as the returning officer thinks fit) whether the candidate who becomes a successful candidate—
20 (i) is still willing to be elected to the relevant office; and
(ii) is still eligible to be elected to the relevant office; and
(c) —
25 (i) if the person then indicates to the returning officer (within 1 month) that they are so willing and eligible, the returning officer will declare the person elected; or
30 (ii) if the person then indicates to the returning officer (within 1 month) that they are not willing or eligible, or the person does not respond to the returning officer within 1 month, the returning officer must determine the next successful candidate in accordance with the regulations and so on until the vacancy is filled or there are no candidates still willing and eligible to be elected to the relevant office.

152—Amendment of section 7—Failure of election in certain cases

(1) Section 7(3)(a)—delete paragraph (a) and substitute:

- (a) between the close of nominations and the close of voting—
35 (i) a nominated candidate dies; or
40 (ii) a nominated candidate becomes ineligible to be a candidate for election as a member of a council in accordance with section 17; and

(2) Section 7(4)—after "die" insert:

or become ineligible to be candidates for election as members of a council in accordance with section 17

153—Amendment of section 9—Council may hold polls

5 (1) Section 9(3)—delete subsection (3) and substitute:

(3) The council must fix a day as polling day for the poll by notice published on the council website.

(2) Section 9(6)(b)—delete "and voting at the election closes at 5 p.m.—at 5 p.m. on polling day" and substitute:

10 —at the time at which voting at the election closes

154—Amendment of section 13A—Information, education and publicity for general election

(1) Section 13A(2)(a)—after "voters roll" insert:

in accordance with the community engagement charter

15 (2) Section 13A—after subsection (2) insert:

(3) In this section—

community engagement charter—see *Local Government Act 1999* (section 4(1)).

155—Amendment of section 15—Voters roll

20 (1) Section 15(9)(a)—delete "13 weeks" and substitute:

81 days

(2) Section 15(10)—delete "must, within seven days after a closing date, supply the chief executive officer with a list of the persons who are, as at the closing date, enrolled (including those provisionally enrolled) as electors for the House of Assembly in respect of a place of residence within the area." and substitute:

—

(a) must, within 7 days after a closing date; and

(b) may, at any other time,

30 supply the chief executive officer with a list of the persons who are, as at the closing date or relevant time, enrolled (including those provisionally enrolled) as electors for the House of Assembly in respect of a place of residence within the area.

(3) Section 15(13), dot point—delete the dot point

(4) Section 15—after subsection (13) insert:

35 (13a) For the purposes of subsection (13), a voters roll will be taken to have been brought up-to-date when copies of the roll are available for public inspection under this section.

(5) Section 15(15)—delete "in printed form" wherever occurring

(6) Section 15—after subsection (19) insert:

(20) If a copy of the voters roll is provided to a person under this section, a person who uses that copy of the roll, or information contained in that copy of the roll, for a purpose other than the distribution of matter calculated to affect the result of a local government election or a purpose related to the holding of such an election is guilty of an offence.

Maximum penalty: \$10 000.

156—Amendment of section 17—Entitlement to stand for election

(1) Section 17(1)(a)—delete paragraph (a) and substitute:

(a) the person is an Australian citizen; and

(2) Section 17(1)(b)(ii)—delete "designated person for" and substitute:

nominee of

(3) Section 17(1)(b)(iii)—delete "designated person for" and substitute:

nominee of

(4) Section 17(1)(b)(iv)—delete "designated person for" and substitute:

nominee of

(5) Section 17—after subsection (1) insert:

(2) Subsection (1)(b) operates subject to the following qualifications:

(a) a nominee of a body corporate must be an officer of the body corporate;

(b) a nominee of a group must be a member of the group, or an officer of a body corporate that is a member of the group;

(c) a body corporate or group cannot nominate more than 1 person for a particular election;

(d) a body corporate or group cannot nominate a person who has not attained the age of majority.

(6) Section 17(5)—delete subsection (5)

157—Amendment of section 19A—Publication of candidate profiles

(1) Section 19A(1)—delete subsection (1)

(2) Section 19A(2) and (3)—delete subsections (2) and (3) and substitute:

(2) The returning officer must, as soon as is reasonably practicable after the close of nominations (and in any event within 14 days after the close of nominations), cause each candidate's profile supplied under section 19(2)(b) to be published, in accordance with any requirements of the regulations, on the Internet.

(3) Section 19A(4)—delete "his or her statement under subsection (1)" and substitute:
their profile under section 19(2)(b)

(4) Section 19A(4)—delete "the LGA,"

- (5) Section 19A(4)—delete "a statement" and substitute:
a profile

- (6) Section 19A(5)—delete subsection (5)

158—Substitution of section 21

- 5 Section 21—delete the section and substitute:

21—Publication etc of valid nominations

The returning officer must, within 24 hours after the close of nominations—

- 10 (a) provide a council with a list of all valid nominations relevant to the council's area; and
(b) publish a list of all valid nominations on the Internet.

159—Amendment of section 27—Publication of electoral material

- (1) Section 27(1)(b)—delete "address" and substitute:
prescribed information

- 15 (2) Section 27—after subsection (1) insert:

(1a) If—

- (a) electoral material is published on the Internet; and
(b) the name and address of the person who authorises publication of the material is immediately accessible on the Internet by viewers of the material in accordance with any requirements prescribed by regulation,

that name and address need not be contained in the electoral material.

- (3) Section 27(2)—delete "address" and substitute:
prescribed information

- 25 (4) Section 27—after subsection (3) insert:

- (4) If electoral material is published on the Internet by a person other than the person who established or controls the Internet site or other platform (or the relevant part of it), the person who established or controls the Internet site or other platform (or the relevant part of it) is not taken to have published the material or caused the electoral material to be published unless that person authorised, whether directly or indirectly, the publishing of the material on the Internet site or other platform.

- 30 (5) In this section—

35 *prescribed information* means—

- (a) if the printer or other person responsible for undertaking production of the printed electoral material has a physical address—that address; or

- (b) if the printer or other person responsible for undertaking production of the printed electoral material does not have a physical address—the email address or website address of the printer or other person.

5 **160—Amendment of section 28—Publication of misleading material**

Section 28—after subsection (1) insert:

- 10 (1a) A person (the *relevant person*) is not taken to have authorised, caused or permitted the publication of electoral material if it is published by a person other than the relevant person on an Internet site or other platform established or controlled (or partly established or controlled) by the relevant person unless the relevant person authorised, whether directly or indirectly, the publishing of the material on the Internet site or other platform.

15 **161—Amendment of section 29—Ballot papers**

Section 29(3)—delete subsection (3) and substitute:

- 20 (3) The drawing of lots for the purposes of subsection (2) must be conducted by the returning officer—
- (a) in the case of a periodic election—at 4 pm, or as soon as is reasonably practicable after 4 pm; or
- (b) in any other case—at 12 noon, or as soon as is reasonably practicable after 12 noon,
- on the day of the close of nominations in the presence of 2 persons who are of or above the age of majority and other persons who may wish to be present.

25 **162—Amendment of section 31—Special arrangements for issue of voting papers**

Section 31(1)(a)—delete "personal delivery of voting papers" and substitute:
delivery of voting papers (whether in printed or electronic form)

30 **163—Amendment of section 35—Special arrangements for issue of voting papers**

Section 35(a)—delete "personal delivery of voting papers" and substitute:
delivery of voting papers (whether in printed or electronic form)

164—Substitution of heading to Part 9

Heading to Part 9—delete the heading and substitute:

35 **Part 9—Voting generally**

165—Amendment of section 37—Postal voting to be used

- (1) Section 37(1)—delete "Voting" and substitute:
Subject to section 41A, voting

- (2) Section 37(2)(a)—delete "personal delivery" and substitute:
delivery (whether personal or otherwise)

166—Amendment of section 38—Notice of use of postal voting

Section 38—delete "21" and substitute:

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167—Amendment of section 39—Issue of postal voting papers

- (1) Section 39(1)—delete subsection (1) and substitute:

(1) The returning officer must, as soon as practicable after the twenty eighth day before polling day, and in any event not later than 21 days before polling day, issue to every natural person, body corporate or group who or which has their or its name on the voters roll used for the purposes of the election or poll postal voting papers consisting of—

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- (a) a ballot paper (or, in an appropriate case, ballot papers) authenticated to the satisfaction of the returning officer; and
(b) an opaque envelope bearing a declaration (in a form determined by the Electoral Commissioner), to be completed by the voter, declaring the voter's date of birth and—

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- (i) that the ballot paper contained in the envelope contains their vote; and
(ii) that they have not already voted at the election or poll; and
(iii) if the voting papers are issued to a body corporate or group—that they are eligible to vote and are the designated person for the body corporate or group.

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- (2) Section 39(4)—delete subsection (4) and substitute:

(4) Postal voting papers must also be issued to any person, body corporate or group of persons whose name does not appear on the voters roll but who claims to be entitled to vote at the election or poll and applies to the returning officer for voting papers not later than 5 pm on the seventh day before polling day.

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168—Insertion of section 41A

After section 41 insert:

41A—Assisted voting

- (1) The regulations may make provision in relation to voting in an election or poll by prescribed electors by means of an assisted voting method.

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- (2) Without limiting the generality of subsection (1), regulations made for the purposes of this section may—
- (a) determine, or provide for the determination of, the following:
 - (i) the assisted voting method;
 - (ii) matters related to voting using the assisted voting method, including the provision of assistance to electors using the method, requirements to be followed after an elector has used the method and matters of privacy and secrecy;
 - (iii) the number of places where the assisted voting method is to be available, the location of those places and the days and times at which the method is to be available;
 - (iv) which electors may use the assisted voting method; and
 - (b) require the making of a record of each person who has voted using the assisted voting method; and
 - (c) specify the information that is to be included in a record; and
 - (d) provide for the production of a record of the vote each person has cast, which must not contain any means of identifying the person who cast the vote; and
 - (e) provide for the appointment by the returning officer of officers in relation to the conduct of the assisted voting method; and
 - (f) provide for the application of this Act, or provisions of this Act, in relation to votes cast using the assisted voting method, including the modification of the application of this Act or a provision of this Act in relation to such votes; and
 - (g) make provision for any other matters related to assisted voting.
- (3) To avoid doubt, nothing in this section (or in regulations made for the purposes of this section) authorises any elector to vote in more than 1 capacity at an election or poll.
- (4) The prescribed assisted voting method must be such that an elector using the method in relation to an election or poll—
- (a) receives the same information (in the same order), and has the same voting options, as would appear in the ballot paper for the election or poll that the elector would be given if the elector were voting by postal vote under this Part; and
 - (b) is able to indicate a vote in a way that, if the elector were marking a ballot paper, would not be an informal ballot paper.

- (5) Subject to this section, if an elector votes using the assisted voting method (an *assisted vote*)—
- (a) this Act applies (subject to any modifications prescribed under subsection (2)(f)) in relation to an assisted vote as if it were a vote delivered to an electoral officer for the relevant council in a sealed envelope; and
 - (b) the record of the assisted vote produced in accordance with the regulations is to be taken to be a ballot paper for the purposes of this Act; and
 - (c) the requirements of this Act in relation to the elector's right to receive a ballot paper are to be taken to have been satisfied.
- (6) The returning officer may, by notice in the Gazette, determine that the prescribed assisted voting method is not to be used either generally or at 1 or more specified places.
- (7) A notice under subsection (6) must specify the election or poll in respect of which the determination applies.
- (8) In this section—

prescribed elector means a sight-impaired elector or an elector of a class prescribed by the regulations for the purposes of this definition;
sight-impaired elector means an elector whose sight is impaired such that the elector is unable to vote without assistance.

169—Amendment of section 43—Issue of fresh postal voting papers

Section 43(4)—delete subsection (4) and substitute:

- (4) An application for the issue of fresh voting papers must be received by the returning officer not later than 5 pm on the seventh day before polling day.

170—Amendment of section 47—Arranging postal papers

Section 47(1)—delete subsection (1) and substitute:

- (1) The returning officer will—
- (a) in the case of a supplementary election or a poll held in conjunction with a supplementary election—as soon as is practicable after the close of voting; or
 - (b) in any other case—on the second day following polling day for the election or poll (at a time determined to be reasonable by the returning officer),

with the assistance of any other electoral officers who may be present, ensure that all voting papers returned for the purposes of the election or poll in accordance with this Act are made available for the purposes of this section.

171—Amendment of section 48—Method of counting and provisional declarations

(1) Section 48(1)—after "in an election" insert:

to fill more than 1 vacancy

(2) Section 48—after subsection (1) insert:

(1a) The returning officer must, with the assistance of any other electoral officers who may be present, and in the presence of any scrutineers who may be present, conduct the counting of the votes in an election to fill 1 vacancy according to the following method:

(a) carry out the step in the method of counting votes referred to in subsection (1)(a);

(b) if, after the counting of first preference votes no candidate has received a number of votes equal to or greater than the quota, the candidate who has received the fewest first preference votes must be excluded, and each ballot paper counted to that candidate that expresses the next available preference for a continuing candidate is to be transferred (at a transfer value of 1) to the continuing candidate;

(c) if, on the completion of a transfer under paragraph (b), no continuing candidate has received a number of votes equal to or greater than the quota, the process of excluding the candidate who has the fewest votes and transferring each ballot paper counted to that candidate that expresses the next available preference for a continuing candidate in accordance with paragraph (b) is to be repeated until—

(i) 1 continuing candidate has received a number of votes equal to or greater than the quota; or

(ii) 2 candidates remain, in which case the returning officer must make a **provisional declaration** that the continuing candidate who has the larger number of votes has been elected notwithstanding that that number is below the quota and, if those candidates have the same number of votes, the candidate with the larger number of votes at the last preceding count or transfer will be taken to be elected and, if the number of votes at that count or transfer was equal, the returning officer must, in the presence of any scrutineers who may be present, draw lots to determine which of the candidates is to be elected;

- 5 (d) if the candidate who has the fewest votes is required to be excluded and 2 or more candidates each have the fewest votes, whichever of those candidates had the fewest votes at the last count or transfer at which each of those candidates had a different number of votes will be excluded but, if there has been no such count or transfer, the returning officer must, in the presence of any scrutineers who may be present, draw lots to determine which candidate will be excluded;
 - 10 (e) a ballot paper must be set aside as exhausted where on a transfer it is found that the paper expresses no preference for any continuing candidate.
- (3) Section 48(2) and (3)—delete "subsection (1)" wherever occurring and substitute in each case:
- 15 subsections (1) and (1a)
- (4) Section 48(4)—after "died" insert:
- or become ineligible to be a candidate for election as a member of a council in accordance with section 17
- (5) Section 48(4)—after "deceased" insert:
- or ineligible

20 **172—Amendment of section 55A—Filling vacancy if successful candidate dies**

Section 55A(2) to (4)—delete subsections (2) to (4) (inclusive) and substitute:

- 25 (2) In a case where this section applies—
 - (a) the returning officer must, in accordance with the regulations, determine the candidate in the most recent election for the relevant office to fill the vacancy (a **successful candidate**); and
 - (b) the returning officer must ascertain (in such manner as the returning officer thinks fit) whether the candidate who becomes a successful candidate—
 - 30 (i) is still willing to be elected to the relevant office; and
 - (ii) is still eligible to be elected to the relevant office; and
 - (c) —
 - 35 (i) if the person then indicates to the returning officer (within 1 month) that they are so willing and eligible, the returning officer will declare the person elected; or

- (ii) if the person then indicates to the returning officer (within 1 month) that they are not willing or eligible, or the person does not respond to the returning officer within 1 month, the returning officer must determine the next successful candidate in accordance with the regulations and so on until the vacancy is filled or there are no candidates still willing and eligible to be elected to the relevant office.

173—Amendment of section 57—Violence, intimidation, bribery etc

Section 57(3), definition of *bribe*—after "entertainment" insert:

where the value of the food, drink or entertainment is of or above the prescribed value.

174—Insertion of section 69A

After section 69 insert:

69A—Electoral Commissioner may lodge petition

- (1) The Electoral Commissioner may lodge a petition in the Court disputing the validity of an election under this Act if the Electoral Commissioner considers that it is appropriate to do so on the basis of an error in the recording, scrutiny, counting or recounting of votes in the election.
- (2) Section 70(1)(c) and (2)(b) do not apply to a petition lodged by the Electoral Commissioner disputing the validity of an election, but such a petition must be signed by the Electoral Commissioner.

175—Amendment of section 70—Procedure upon petition

Section 70(1)(b)—delete "to which the petitioner claims to be entitled" and substitute:
which the petitioner seeks

176—Amendment of section 73—Illegal practices and orders that may be made

Section 73—after subsection (4) insert:

- (5) An election may be declared void on the ground of the defamation of a candidate but only if the Court is satisfied, on the balance of probabilities, that the result of the election was affected by the defamation.
- (6) An election may be declared void on the ground of publication of misleading material but only if the Court is satisfied, on the balance of probabilities, that the result of the election was affected by the publication of that material.

177—Substitution of section 80

Section 80—delete the section and substitute:

80—Returns for candidates

- 5 (1) A person who is a candidate for election to an office of a council must furnish to the returning officer, in accordance with the requirements of this Part—
- (a) a return under section 81 (a *campaign donations return*) within 30 days after the conclusion of the election; and
- 10 (b) a return under section 81A (a *large gifts return*) within the period applying under section 81A(1).
- (2) A return under this Division must be in the form determined by the returning officer and completed and furnished in the manner determined by the returning officer.

178—Amendment of section 81—Campaign donations returns

- 15 (1) Section 81(1)—after "this section" insert:
and section 81B
- (2) Section 81(1)(e)—delete ", other than a registered industrial organisation"
- (3) Section 81(2)—after paragraph (b) insert:
or
- 20 (c) a gift disclosed in a large gifts return under section 81A.
- (4) Section 81(3)—delete subsection (3)

179—Insertion of sections 81A and 81B

After section 81 insert:

81A—Large gifts returns

- 25 (1) If—
- (a) a candidate for election to an office of a council receives a gift or gifts from a person during the disclosure period; and
- (b) the total amount or value of the gift or gifts is more than the prescribed amount,
- 30 the candidate must, within the prescribed period, furnish a return to the returning officer.
- (2) A large gifts return must set out—
- (a) the amount or value of each gift; and
- (b) the date on which each gift was made; and
- 35 (c) —
- (i) if the gift or gifts were made on behalf of the members of an unincorporated association—

- (A) the name of the association; and
 - (B) the names and addresses of the members of the executive committee (however described) of the association; or
- 5 (ii) if the gift or gifts were purportedly made out of a trust fund or out of the funds of a foundation—
 - (A) the names and addresses of the trustees of the fund or of the funds of the foundation; and
 - 10 (B) the title or other description of the trust fund or the name of the foundation, as the case requires; or
- (iii) in any other case—the name and address of the person who made the gift or gifts.
- 15 (3) A large gifts return need not be furnished in respect of a private gift made to the candidate.

81B—Disclosure period etc for returns

For the purposes of sections 81 and 81A—

- (a) the *disclosure period* is the period that commenced—
 - 20 (i) in relation to a candidate in an election who was a new candidate (other than a candidate referred to in subparagraph (ii))—on the day on which the person announced that they would be a candidate in the election or on the day on which the person's nomination as a candidate was lodged with the returning officer, whichever was the earlier; or
 - 25 (ii) in relation to a candidate in an election who was a new candidate and when they became a candidate in the election was a member of the council by virtue of having been appointed under Chapter 3 of the *Local Government Act 1999*—on the day on which the person was so appointed as a member of the council; or
 - 30 (iii) in relation to a candidate in an election who was not a new candidate—at the end of 21 days after polling day for the last preceding election in which the person was a candidate,
 - 35 and that ended, in any of the above cases, at the end of 21 days after polling day for the election; and
 - 40 (b) a candidate is a *new candidate*, in relation to an election, if the person had not been a candidate in the last general election of a council and had not been a candidate at a supplementary election held after the last general election of a council; and

- (c) two or more gifts (excluding private gifts) made by the same person to a candidate during the disclosure period are to be treated as 1 gift; and
- (d) a gift made to a candidate is a *private gift* if it is made in a private capacity to the candidate for their personal use and the candidate has not used, and will not use, the gift solely or substantially for a purpose related to an election.

180—Amendment of section 83—Inability to complete return

Section 83(c)—delete "chief executive" and substitute:

returning

181—Amendment of section 84—Amendment of return

- (1) Section 84(1)—delete "chief executive" and substitute:

returning

- (2) Section 84(2)(b)—delete "chief executive" and substitute:

returning

- (3) Section 84(3)—delete "chief executive" wherever occurring and substitute in each case:

returning

182—Amendment of section 86—Failure to comply with Division

- (1) Section 86(1)—delete "chief executive" and substitute:

returning

- (2) Section 86(3)—delete "(However, the office of a member of a council who fails to submit a return may become vacant under Chapter 5 Part 2 of the *Local Government Act 1999*.)"

Note—

The following Note will be inserted at the foot of section 86(3):

"Note—

The office of a member of a council who fails to submit a return may become vacant under Chapter 5 Part 2 of the *Local Government Act 1999*."

183—Amendment of section 87—Public inspection of returns

- (1) Section 87(1) to (4)—delete subsections (1) to (4) (inclusive) and substitute:

- (1) The returning officer must keep at their principal office each return furnished to the returning officer under Division 1.

- (2) The returning officer must—

- (a) in the case of a large gifts return—within the prescribed period after the return is received by the returning officer; and

- (b) in any other case—at the end of 8 weeks after the day before which the return was required to be furnished to the returning officer,

make a copy of each return available on a website maintained by the returning officer.

- (2) Section 87(5)—delete "chief executive" and substitute:

returning

184—Amendment of section 89—Requirement to keep proper records

Section 89(2)—delete "chief executive officer of the council" and substitute:

returning officer

185—Amendment of section 91A—Conduct of council during election period

- (1) Section 91A—delete subsection (2) and substitute:

(2) Subject to this section, the caretaker policy must, as a minimum—

(a) prohibit the making of a designated decision; and

(b) prohibit the use of council resources for the advantage of a particular candidate or group of candidates,

during the election period.

(2a) Nothing in subsection (2)(b) prevents a caretaker policy from allowing the equal use of council resources by all candidates for election.

- (2) Section 91A(8), definition of *designated decision*, (d)—delete paragraph (d)

186—Amendment of section 93—Regulations

Section 93—after subsection (1) insert:

(1a) The regulations may provide that a matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Electoral Commissioner or any prescribed authority.

Part 4—Amendment of *City of Adelaide Act 1998*

187—Amendment of section 4—Interpretation

Section 4, after the definition of *council member* insert:

default person, in respect of a body corporate or group, means an eligible person who has been nominated by the chief executive officer under Schedule 1 clause 3B(1) to vote on behalf of the body corporate or group in an election or poll;

eligible person, in respect of a body corporate or group, means a natural person, of or above the age of majority, who is—

- (a) in the case of a body corporate—an officer of the body corporate who is authorised to act on behalf of the body corporate for the purposes of voting; or

- (b) in the case of a group—a member of the group, or an officer of a body corporate that is a member of the group, who is authorised to act on behalf of the group for the purposes of voting,

and who is not already on the voters roll or otherwise entitled to be enrolled on the voters roll;

nominated person, in respect of a body corporate or group, means an eligible person who has been nominated by the body corporate or group under Schedule 1 clause 3A(3) or 3C(2) to vote on behalf of the body corporate or group in an election or poll.

188—Amendment of section 20—Constitution of Council

Section 20(3)—delete subsection (3)

189—Amendment of section 21—Lord Mayor

- (1) Section 21—after "Lord Mayor" first occurring insert:

as leader of the council

- (2) Section 21(a) and (b)—delete paragraphs (a) and (b) and substitute:

- (a) as the principal member of the Council—

- (i) to provide leadership and guidance to the Council; and
- (ii) to lead the promotion of positive and constructive working relationships among members of the council; and
- (iii) to provide guidance to council members on the performance of their role, including on the exercise and performance of their official functions and duties; and
- (iv) to support council members' understanding of the separation of responsibilities between elected representatives and employees of the council; and
- (v) to preside at meetings of the Council; and
- (vi) to advise the chief executive officer on the implementation of decisions of the Council between Council meetings (as necessary); and
- (vii) to act as the principal spokesperson of the Council; and
- (viii) to exercise other functions of the Council as the Council determines; and

- (b) as the principal elected member of the Council representing the capital city of South Australia—

- (i) to provide leadership and guidance to the City of Adelaide community; and
- (ii) to participate in the maintenance of inter-governmental relationships at regional, State and national levels; and
- (iii) to carry out civic and ceremonial duties associated with the office of Lord Mayor.

190—Amendment of section 22—Members

Section 22(1)(a)—delete paragraph (a) and substitute:

- (a) as a member of the governing body of the Council—
 - (i) to act with integrity; and
 - 5 (ii) to ensure positive and constructive working relationships within the Council; and
 - (iii) to recognise and support the role of the Lord Mayor under the Act; and
 - 10 (iv) to develop skills relevant to the role of a member of the Council and the functions of the Council as a body; and
 - (v) to participate in the deliberations and activities of the Council; and
 - 15 (vi) to provide community leadership and guidance to the City of Adelaide community and to participate in achieving a vision for the desired future of the City through the formulation of strategic plans and policies; and
 - (vii) to keep the Council's goals and policies under review to ensure that they are appropriate and effective; and
 - 20 (viii) to keep the Council's resource allocation, expenditure and activities, and the efficiency and effectiveness of its service delivery, under review; and
 - (ix) to participate in setting and assessing performance standards to be met under the Council's contract with the chief executive officer; and
 - 25 (x) to serve the overall public interest of the City of Adelaide; and

191—Amendment of Schedule 1—Special provisions for elections and polls

(1) Schedule 1, clause 3(2)(a) and (b)—delete paragraphs (a) and (b) and substitute:

- 30 (a) in the case of a natural person—the full name of the person and the address of the person's place of residence; and
- (b) in the case of a body corporate or group—
 - (i) the full name of the body corporate or group; and
 - (ii) —
 - 35 (A) if the body corporate or group has nominated an eligible person under clause 3A(3) or 3C(2)—the full name and date of birth of the nominated person for the body corporate or group; or
 - 40 (B) if a default person has been nominated for the body corporate or group under clause 3B(1)—the full name and date of birth of the default person for the body corporate or group; and

(2) Schedule 1, clause 3—after subclause (2) insert:

(2a) The chief executive officer must redact the full name and date of birth of a default person for a body corporate or group from any copy of the voters roll available for inspection by the public or provided to any person (other than a copy of the voters roll supplied to the returning officer in accordance with subclause (16)).

(3) Schedule 1, clause 3(9)(a)—delete "13 weeks" and substitute:

81 days

(4) Schedule 1, clause 3(10)—delete "must, within 7 days after a closing date, supply the chief executive officer with a list of the persons who are, as at the closing date, enrolled (including those provisionally enrolled) as electors for the House of Assembly in respect of a place of residence within the area." and substitute:

—

(a) must, within 7 days after a closing date; and

(b) may, at any other time,

supply the chief executive officer with a list of the persons who are, as at the closing date or relevant time, enrolled (including those provisionally enrolled) as electors for the House of Assembly in respect of a place of residence within the area.

(5) Schedule 1, clause 3(13), dot point—delete the dot point

(6) Schedule 1, clause 3—after subclause (13) insert:

(13a) For the purposes of subclause (13), a voters roll will be taken to have been brought up-to-date when copies of the roll are available for public inspection under this clause.

(7) Schedule 1, clause 3(15)—delete "in printed form" wherever occurring

(8) Schedule 1, clause 3—after subclause (19) insert:

(20) If a copy of the voters roll is provided to a person under this clause, a person who uses that copy of the roll, or information contained in that copy of the roll, for a purpose other than the distribution of matter calculated to affect the result of a local government election or a purpose related to the holding of such an election is guilty of an offence.

Maximum penalty: \$10 000.

(9) Schedule 1—after clause 3 insert:

3A—Nominating person to vote on behalf of body corporate or group

(1) The chief executive officer must, by notice in writing to each body corporate and group on the voters roll, request that the body corporate or group nominate, in the form determined by the Electoral Commissioner (the *nomination form*), an eligible person to vote on its behalf.

- (2) The notice in subclause (1) must—
- (a) be issued to each body corporate or group—
 - (i) in the case of a periodic election—not later than 7 weeks before the relevant closing date; or
 - (ii) in the case of any other election, or a poll—not later than 4 weeks before the relevant closing date; and
 - (b) enclose the nomination form.
- (3) A body corporate or group may nominate an eligible person to vote on its behalf by providing the completed nomination form to the chief executive officer by the relevant closing date.

3B—Nominating default person to vote on behalf of body corporate or group

- (1) If the chief executive officer has not received a nomination under clause 3A(3) by the relevant closing date, or the person nominated is not an eligible person, the chief executive officer must—
- (a) in the case of a body corporate—nominate the first officer of the body corporate (to be taken alphabetically); or
 - (b) in the case of a group—nominate the first member of the group or officer of a body corporate that is a member of the group (to be taken alphabetically) (as the chief executive officer thinks fit),
- to vote on behalf of the body corporate or group (a *default person*).
- (2) Despite subclause (1), the chief executive officer must not nominate a person under that subclause if the person is already on the voters roll or otherwise entitled to be enrolled on the voters roll.
- (3) For the purposes of subclause (1), the chief executive officer may—
- (a) in the case of a body corporate (including a body corporate that is a member of a group)—use the most recent information that is available after the relevant closing date from the Australian Securities and Investments Commission concerning the name and age of the persons specified in that subclause; or
 - (b) in the case of a group—use the most recent information held by the council after the relevant closing date concerning the name and age of the persons specified in that subclause.

3C—Notice of default person and further nomination of person to vote on behalf of body corporate or group

(1) The chief executive officer must, within 14 days after the relevant closing date, give notice in writing to each body corporate or group enrolled on the voters roll in respect of which there is no nominated person—

(a) if a default person has been nominated by the chief executive officer under clause 3B(1)—of the name of the default person; or

(b) if a default person has not been nominated—that no default person has been nominated,

and of the option for the body corporate or group to nominate an eligible person (if any) in the form determined by the Electoral Commissioner (the *nomination form*) and within the prescribed period.

(2) A body corporate or group may nominate an eligible person to vote on its behalf by providing the completed nomination form to the chief executive officer within the prescribed period.

(3) If the chief executive officer does not receive a nomination from the body corporate or group within the prescribed period, or receives a nomination but the person nominated is not an eligible person—

(a) where a default person has been nominated under clause 3B(1)—the default person remains the person nominated to vote on behalf of the body corporate or group; or

(b) where a default person has not been nominated—no person is nominated to vote on behalf of the body corporate or group (and ballot papers will not be issued to the body corporate or group under clause 18).

(4) In this clause—

prescribed period means 21 days after the relevant closing date.

(10) Schedule 1, clause 4(3) to (5)—delete subclauses (3) to (5) (inclusive) and substitute:

(3) A natural person is entitled to vote at an election or poll for a body corporate or group which has its name on the voters roll if—

(a) the natural person is the nominated person on the voters roll for the body corporate or group; or

(b) the natural person is the default person on the voters roll for the body corporate or group.

(11) Schedule 1, clause 5(1)(a)—delete paragraph (a) and substitute:

(a) the person is an Australian citizen; and

(12) Schedule 1, clause 5(5)—delete subclause (5)

(13) Schedule 1, clause 18(1)—delete subclause (1) and substitute:

(1) Subject to subclause (1a), the returning officer must, as soon as practicable after the twenty eighth day before polling day, and in any event not later than 21 days before polling day, issue to every natural person, body corporate or group who or which has their or its name on the voters roll used for the purposes of the election or poll postal voting papers consisting of—

(a) a ballot paper (or, in an appropriate case, ballot papers) authenticated to the satisfaction of the returning officer; and

(b) an opaque envelope bearing a declaration (in a form determined by the Electoral Commissioner), to be completed by the voter, declaring the voter's date of birth and—

(i) that the ballot paper contained in the envelope contains their vote; and

(ii) that they have not already voted at the election or poll; and

(iii) if the voting papers are issued to a body corporate or group—

(A) the voter's full name; and

(B) that the voter is the nominated person or default person for the body corporate or group.

(1a) Postal voting papers must not be issued under this clause to a body corporate or group which has its name on the voters roll for the election or poll if there is no nominated person or default person for the body corporate or group.

(14) Schedule 1, clause 18(4)—delete subclause (4) and substitute:

(4) Postal voting papers must also be issued to any person, body corporate or group of persons whose name does not appear on the voters roll but who claims to be entitled to vote at the election or poll and applies to the returning officer for voting papers not later than 5 pm on the seventh day before polling day.

(15) Schedule 1, clause 18(7)—delete "Postal" and substitute:

Subject to subclause (1a), postal

(16) Schedule 1, clause 19(2)(a)(iii)—delete "voting on behalf of a body corporate or group of persons in accordance with this Schedule" and substitute:

the nominated person or default person for a body corporate or group

(17) Schedule 1, clause 19(2)(a)(iv)—delete subparagraph (iv)

(18) Schedule 1, clause 23—delete the clause and substitute:

23—Returns for candidates

- 5 (1) A person who is a candidate for election to an office of the Adelaide
City Council must furnish to the returning officer, in accordance with
the requirements of this Part—
- (a) within 30 days after the conclusion of the election—
- (i) a campaign donations return under this Division;
and
- 10 (ii) a campaign expenditure return under this Division;
and
- (b) within the period applying under clause 24A(1)—a large
gifts return under this Division.
- 15 (2) A return under this Division must be in the form determined by the
returning officer and completed and furnished in the manner
determined by the returning officer.

(19) Schedule 1, clause 24(1)—after "this clause" insert:

and clause 24B

(20) Schedule 1, clause 24(1)(e)—delete ", other than a registered industrial organisation"

(21) Schedule 1, clause 24(2)—after paragraph (b) insert:

20 or

- (c) a gift disclosed in a large gifts return under clause 24A.

(22) Schedule 1, clause 24(3)—delete subclause (3)

(23) Schedule 1—after clause 24 insert:

24A—Large gifts returns

- 25 (1) If—
- (a) a candidate for election to an office of the Adelaide City
Council receives a gift or gifts from a person during the
disclosure period; and
- 30 (b) the total amount or value of the gift or gifts is more than the
prescribed amount,
- the candidate must, within the prescribed period, furnish a return to
the returning officer.
- (2) A large gifts return must set out—
- (a) the amount or value of each gift; and
- 35 (b) the date on which each gift was made; and
- (c) —
- (i) if the gift or gifts were made on behalf of the
members of an unincorporated association—

- 5 (A) the name of the association; and
- (B) the names and addresses of the members of the executive committee (however described) of the association; or
- 5 (ii) if the gift or gifts were purportedly made out of a trust fund or out of the funds of a foundation—
- (A) the names and addresses of the trustees of the fund or of the funds of the foundation; and
- 10 (B) the title or other description of the trust fund or the name of the foundation, as the case requires; or
- (iii) in any other case—the name and address of the person who made the gift or gifts.
- 15 (3) A large gifts return need not be furnished in respect of a private gift made to the candidate.

24B—Disclosure period etc for returns

For the purposes of clauses 24 and 24A—

- (a) the *disclosure period* is the period that commenced—
- 20 (i) in relation to a candidate in an election who was a new candidate (other than a candidate referred to in subparagraph (ii))—12 months before polling day for the election; or
- 25 (ii) in relation to a candidate in an election who was a new candidate and when they became a candidate in the election was a member of the Council by virtue of having been appointed under the *Local Government Act 1999*—on the day on which the person was so appointed as a member of the
- 30 Council; or
- (iii) in relation to a candidate in an election who was not a new candidate—at the end of 21 days after polling day for the last preceding election in which the person was a candidate,
- 35 and that ended, in any of the above cases, at the end of 21 days after polling day for the election; and
- (b) a candidate is a *new candidate*, in relation to an election, if the person had not been a candidate in the last general election of a council and had not been a candidate at a supplementary election held after the last general election of a council; and
- 40

(c) 2 or more gifts (excluding private gifts) made by the same person to a candidate during the disclosure period are to be treated as 1 gift; and

(d) a gift made to a candidate is a *private gift* if it is made in a private capacity to the candidate for their personal use and the candidate has not used, and will not use, the gift solely or substantially for a purpose related to an election.

(24) Schedule 1, clause 27(c)—delete "chief executive" and substitute:

returning

(25) Schedule 1, clause 28(1)—delete "chief executive" and substitute:

returning

(26) Schedule 1, clause 28(2)(b)—delete "chief executive" and substitute:

returning

(27) Schedule 1, clause 28(3)—delete "chief executive" wherever occurring and substitute in each case:

returning

(28) Schedule 1, clause 30(1)—delete "chief executive" and substitute:

returning

Note—

The following Note will be inserted at the foot of clause 30(3):

"Note—

The office of a member of a council who fails to submit a return may become vacant under Chapter 5 Part 2 of the *Local Government Act 1999*."

(29) Schedule 1, clause 31(1) to (4)—delete subclauses (1) to (4) (inclusive) and substitute:

(1) The returning officer must keep at their principal office each return furnished to the returning officer under Division 2.

(2) The returning officer must—

(a) in the case of a large gifts return—within the prescribed period after the return is received by the returning officer; and

(b) in any other case—at the end of 8 weeks after the day before which the return was required to be furnished to the returning officer,

make a copy of each return available on a website maintained by the returning officer.

(30) Schedule 1, clause 31(5)—delete "chief executive" and substitute:

returning

(31) Schedule 1, clause 33(2)—delete "chief executive officer of the Council" and substitute:

returning officer

Part 5—Amendment of *Crown Land Management Act 2009*

192—Insertion of section 20A

After section 20 insert:

20A—Revocation of dedicated land classified as community land

If, in relation to dedicated land that is classified as community land under Chapter 11 Part 1 Division 3 of the *Local Government Act 1999* (*relevant land*)—

- (a) the dedication of the relevant land is revoked under section 19; or
- (b) the relevant land is withdrawn from the care, control and management of a council under section 20,

the classification of the relevant land as community land under the *Local Government Act 1999* is taken to be revoked (and such revocation has effect for the purposes of the *Local Government Act 1999*).

Part 6—Amendment of *Equal Opportunity Act 1984*

193—Amendment of section 87—Sexual harassment

Section 87(6e)—delete "an officer or employee of the council." and substitute:

- (a) an officer or employee of the council; or
- (b) another member of the council.

Part 7—Amendment of *Planning, Development and Infrastructure Act 2016*

194—Amendment of section 83—Panels established by joint planning boards or councils

Section 83—after subsection (2) insert:

- (2a) Despite subsection (1)(e), a member of a council appointed as a member of an assessment panel is not required to disclose their financial interests in accordance with Schedule 1 while the member holds office as a member of a council.

195—Amendment of section 84—Panels established by Minister

Section 84—after subsection (1) insert:

- 5 (1a) Despite subsection (1)(f), a member of a council appointed as a member of an assessment panel is not required to disclose their financial interests in accordance with Schedule 1 while the member holds office as a member of a council.

Part 8—Amendment of *Public Finance and Audit Act 1987*

196—Amendment of section 4—Interpretation

10 Section 4(1), definition of *authorised officer*—delete "or to make an examination" and substitute:

or review, or to make an examination,

197—Amendment of section 30—Obligation to assist Auditor-General

Section 30—delete "or making an examination" and substitute:

or review, or making an examination,

198—Amendment of section 32—Audit etc of publicly funded bodies and projects and local government indemnity schemes

15 (1) Section 32(1)—delete subsection (1) and substitute:

(1) The Auditor-General may—

- 20 (a) audit the accounts of a publicly funded body; or
(b) examine or review the accounts of a publicly funded body; or
(c) review the efficiency, economy and effectiveness of the activities of a publicly funded body; or
(d) examine or review accounts relating to a publicly funded project and review the efficiency, economy and effectiveness of the project; or
25 (e) examine or review accounts relating to a local government indemnity scheme and review the efficiency, economy and effectiveness of the scheme.

30 (2) Section 32(1a)—before "examination" wherever occurring insert in each case:

audit, review or

(3) Section 32(1b)—before "examination" insert:

audit, review or

(4) Section 32—after subsection (1b) insert:

(1c) A person to whom information or a document is provided in connection with an audit, review or examination under this section must not disclose the information or document except as authorised under subsection (1d).

Maximum penalty: \$5 000 or imprisonment for 2 years.

(1d) Information or a document may be disclosed if—

(a) the disclosure is made with the consent of the person who provided the information; or

(b) the disclosure is authorised or required under any other Act or law; or

(c) the disclosure is authorised or required by a court or tribunal constituted by law; or

(d) the disclosure is authorised by regulation.

(1e) A person to whom a document containing a summary of findings of the Auditor-General is provided in connection with an audit, review or examination under this section must not copy or otherwise reproduce the summary (in whole or part), except—

(a) as is necessary for the purposes of making submissions or comments to the Auditor-General in relation to the audit, review or examination; or

(b) as is necessary for the purposes of obtaining legal advice in relation to the audit, review or examination; or

(c) as otherwise authorised by regulation or by the Auditor-General.

Maximum penalty: \$5 000 or imprisonment for 2 years.

(5) Section 32(2)—delete subsection (2) and substitute:

(2) After—

(a) conducting any audit or making any examination under subsection (1); or

(b) conducting a review under subsection (1) requested by the Treasurer or the Independent Commissioner Against Corruption,

the Auditor-General must prepare a report setting out the results of the audit, review or examination.

(6) Section 32(3)—delete "the report" and substitute:

a report under subsection (2)

(7) Section 32(3)(a) to (c)—before "examination" wherever occurring insert in each case:
audit, review or

(8) Section 32—after subsection (3) insert:

(4) After conducting a review of a publicly funded body under subsection (1) (other than a review requested by the Treasurer or the Independent Commissioner Against Corruption), the Auditor-General may prepare a report setting out the results of the review.

(5) The following provisions apply to a report prepared under subsection (4):

(a) the Auditor-General must deliver copies of the report to—

(i) any publicly funded body concerned in the review;
and

(ii) the President of the Legislative Council and the Speaker of the House of Assembly;

(b) the Auditor-General may deliver copies of the report to any other person the Auditor-General thinks appropriate;

(c) the Auditor-General may publish a copy of the report in such manner as the Auditor-General thinks appropriate.

(6) A document or information (including data) may be annexed to a report under this section either by including a copy of the document or information in an annexure or by including in an annexure a reference to a website on which the document or information has been, or will be, published by the Auditor-General.

199—Amendment of section 34—Powers of Auditor-General to obtain information

(1) Section 34(1)—delete "or make an examination" and substitute:

or review, or make an examination,

(2) Section 34(1)(c) and (d)—after "audit" wherever occurring insert in each case:

, review

Part 9—Amendment of *South Australian Local Government Grants Commission Act 1992*

200—Amendment of section 19—Information to be supplied to Commission

Section 19(3)—delete "Where" and substitute:

Subject to any relevant provision of the Commonwealth Act or an instrument under that Act, if