Local Government Act 1993 No 30

New South Wales

Status information

Currency of version

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Provisions in force

The provisions displayed in this version of the legislation have all commenced. See Historical Notes

Does not include amendments by:

Water Industry Competition Amendment (Review) Act 2014 No 57 (not commenced)
Dams Safety Act 2015 No 26 (not commenced)
Local Government Amendment (Governance and Planning) Act 2016 No 38, Sch 1 [4] [27] [31] [34] [35] [40] [41] [75]–[77] [84] and [85] (not commenced)
Transport Administration Amendment (Transport Entities) Act 2017 No 12, Sch 2 (not commenced)
Local Government Amendment Act 2019 No 6, Sch 1 [4] and [15]–[20] (not commenced)

Responsible Minister

Minister for Energy and Environment, Part 2A of Chapter 6; remainder, Minister for Local Government

Authorisation

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Local Government Act 1993 No 30

New South Wales

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Dictionary

Historical notes

Local Government Act 1993 No 30

New South Wales

An Act to provide for local government in New South Wales.

Chapter 1 Preliminary

1 Name of Act

This Act may be cited as the *Local Government Act 1993*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

Expressions used in this Act (or in a particular provision of this Act) which are defined in the dictionary at the end of this Act have the meanings set out in the dictionary.

4 Does this Act bind the Crown?

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities, except to the extent to which this Act otherwise provides.

Note. Particular provisions relating to the Crown are found in the following sections:

- sections 72–74—concerning determination of Crown applications for approvals
- section 111—concerning revocation or modification of approvals given to the Crown
- section 126—concerning the giving of orders affecting Crown land (including Crown managed land) and commons
- sections 555 and 561—concerning rates and charges on land owned by the Crown
- section 560—concerning the liability to pay rates in respect of land owned by the Crown
- section 611—concerning the imposition of an annual charge for certain things on, under or over public places
- section 708—service of notices on the Crown
- section 714—prohibition on sale of Crown lands for unpaid rates and charges

5 To what parts of the State does this Act apply?

This Act applies to those parts of the State that are constituted as areas for the purposes of this Act, except as provided by or under this Act.

Note. This Act does not apply to the whole of New South Wales. Some parts of the State do not come within a local government area. For example, parts of the Western Division of the State (to which the *Crown Land Management Act 2016* applies) and Lord Howe Island (to which the *Lord Howe Island Act 1953* applies) are not subject to this Act.

Some local government areas or parts may not be subject to this Act (or to all of its provisions) because of special statutory exceptions. Other exceptions may be provided by regulations made under this Act.

6 Notes in the text

Notes, charts and diagrams are explanatory notes and do not form part of this Act. They are provided to assist understanding.

Chapter 2 What are the purposes of this Act?

7 Purposes of Act

The purposes of this Act are as follows:

(a) to provide the legal framework for the system of local government for New South Wales,

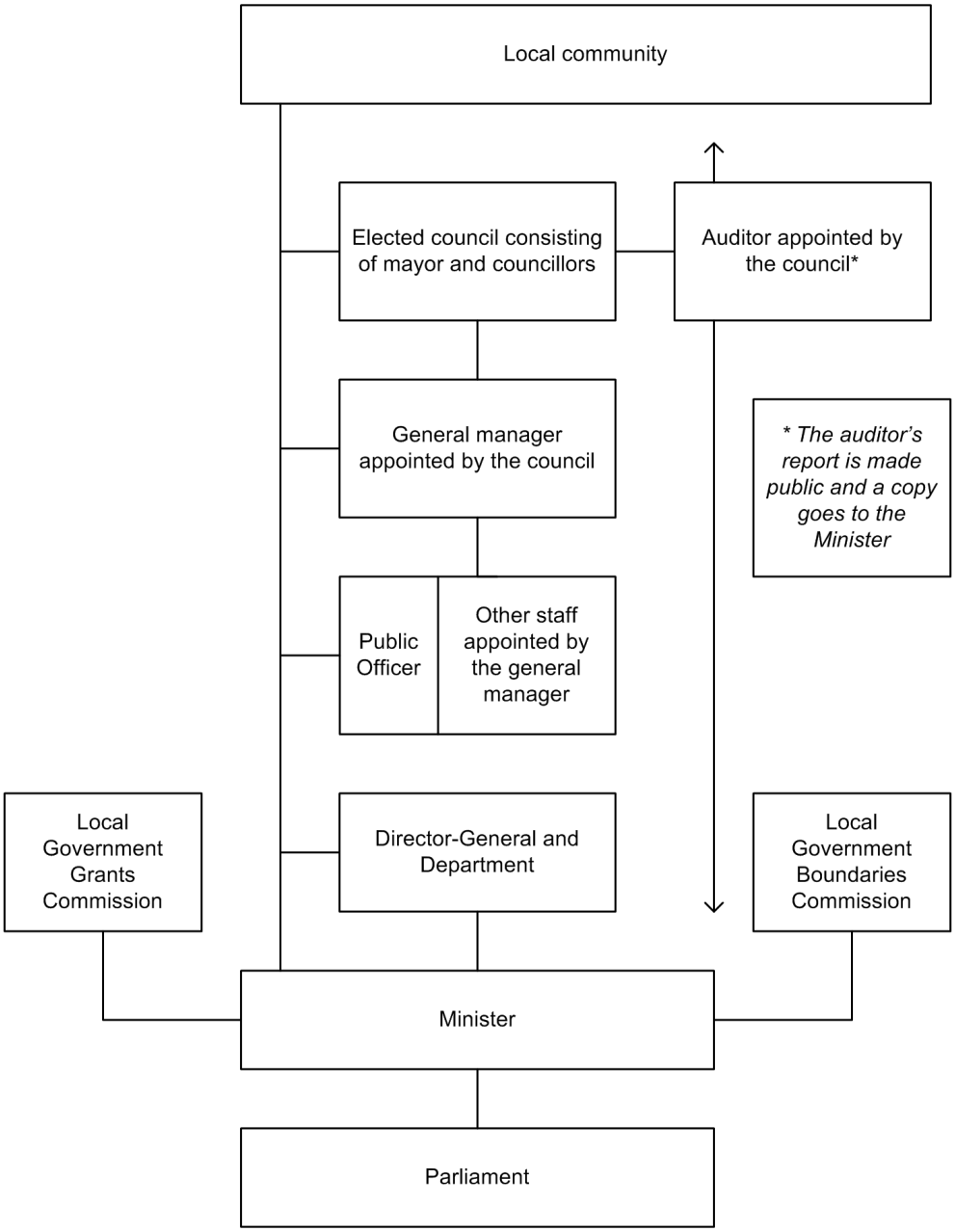
(b) to set out the responsibilities and powers of councils, councillors and other persons and bodies that constitute the system of local government,

(c) to provide for governing bodies of councils that are democratically elected,

(d) to facilitate engagement with the local community by councils, councillors and other persons and bodies that constitute the system of local government,

(e) to provide for a system of local government that is accountable to the community and that is sustainable, flexible and effective.

The system of local government in New South Wales



Chapter 3 Principles for local government

8 Object of principles

The object of the principles for councils set out in this Chapter is to provide guidance to enable councils to carry out their functions in a way that facilitates local communities that are strong, healthy and prosperous.

8A Guiding principles for councils

(1) **Exercise of functions generally**

The following general principles apply to the exercise of functions by councils:

(a) Councils should provide strong and effective representation, leadership, planning and decision-making.

(b) Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.

(c) Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.

(d) Councils should apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.

(e) Councils should work co-operatively with other councils and the State government to achieve desired outcomes for the local community.

(f) Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.

(g) Councils should work with others to secure appropriate services for local community needs.

(h) Councils should act fairly, ethically and without bias in the interests of the local community.

(i) Councils should be responsible employers and provide a consultative and supportive working environment for staff.

(2) **Decision-making**

The following principles apply to decision-making by councils (subject to any other applicable law):

(a) Councils should recognise diverse local community needs and interests.

(b) Councils should consider social justice principles.

(c) Councils should consider the long term and cumulative effects of actions on future generations.

(d) Councils should consider the principles of ecologically sustainable development.

(e) Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.

(3) **Community participation**

Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.

8B Principles of sound financial management

The following principles of sound financial management apply to councils:

(a) Council spending should be responsible and sustainable, aligning general revenue and expenses.

(b) Councils should invest in responsible and sustainable infrastructure for the benefit of the local community.

(c) Councils should have effective financial and asset management, including sound policies and processes for the following:

(i) performance management and reporting,

(ii) asset maintenance and enhancement,

(iii) funding decisions,

(iv) risk management practices.

(d) Councils should have regard to achieving intergenerational equity, including ensuring the following:

(i) policy decisions are made after considering their financial effects on future generations,

(ii) the current generation funds the cost of its services.

8C Integrated planning and reporting principles that apply to councils

The following principles for strategic planning apply to the development of the integrated planning and reporting framework by councils:

(a) Councils should identify and prioritise key local community needs and aspirations and consider regional priorities.

(b) Councils should identify strategic goals to meet those needs and aspirations.

(c) Councils should develop activities, and prioritise actions, to work towards the strategic goals.

(d) Councils should ensure that the strategic goals and activities to work towards them may be achieved within council resources.

(e) Councils should regularly review and evaluate progress towards achieving strategic goals.

(f) Councils should maintain an integrated approach to planning, delivering, monitoring and reporting on strategic goals.

(g) Councils should collaborate with others to maximise achievement of strategic goals.

(h) Councils should manage risks to the local community or area or to the council effectively and proactively.

(i) Councils should make appropriate evidence-based adaptations to meet changing needs and circumstances.

Chapter 4 How can the community influence what a council does?

Part 1 Open meetings

9 Public notice of meetings

(1) A council must give notice to the public of the times and places of its meetings and meetings of those of its committees of which all the members are councillors.

(2) A council and each such committee must have available for the public at its offices and at each meeting copies (for inspection or taking away by any person) of the agenda and the associated business papers (such as correspondence and reports) for the meeting.

(2A) In the case of a meeting whose agenda includes the receipt of information or discussion of other matters that, in the opinion of the general manager, is likely to take place when the meeting is closed to the public:

(a) the agenda for the meeting must indicate that the relevant item of business is of such a nature (but must not give details of that item), and

(b) the requirements of subsection (2) with respect to the availability of business papers do not apply to the business papers for that item of business.

(3) The copies are to be available to the public as nearly as possible to the time they are available to councillors.

(4) The copies are to be available free of charge.

(5) A notice given under this section or a copy of an agenda or of a business paper made available under this section may in addition be given or made available in electronic form.

10 Who is entitled to attend meetings?

(1) Except as provided by this Part:

(a) everyone is entitled to attend a meeting of the council and those of its committees of which all the members are councillors, and

(b) a council must ensure that all meetings of the council and of such committees are open to the public.

(2) However, a person (whether a councillor or another person) is not entitled to be present at a meeting of the council or of such a committee if expelled from the meeting:

(a) by a resolution of the meeting, or

(b) by the person presiding at the meeting if the council has, by resolution, authorised the person presiding to exercise the power of expulsion.

(3) A person may be expelled from a meeting only on the grounds specified in, or in the circumstances prescribed by, the regulations.

10A Which parts of a meeting can be closed to the public?

(1) A council, or a committee of the council of which all the members are councillors, may close to the public so much of its meeting as comprises:

(a) the discussion of any of the matters listed in subclause (2), or

(b) the receipt or discussion of any of the information so listed.

(2) The matters and information are the following:

(a) personnel matters concerning particular individuals (other than councillors),

(b) the personal hardship of any resident or ratepayer,

(c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business,

(d) commercial information of a confidential nature that would, if disclosed:

(i) prejudice the commercial position of the person who supplied it, or

(ii) confer a commercial advantage on a competitor of the council, or

(iii) reveal a trade secret,

(e) information that would, if disclosed, prejudice the maintenance of law,

(f) matters affecting the security of the council, councillors, council staff or council property,

(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,

(h) information concerning the nature and location of a place or an item of Aboriginal significance on community land,

(i) alleged contraventions of any code of conduct requirements applicable under section 440.

(3) A council, or a committee of the council of which all the members are councillors, may also close to the public so much of its meeting as comprises a motion to close another part of the meeting to the public.

(4) A council, or a committee of a council, may allow members of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

(5), (6) (Repealed)

10B Further limitations relating to closure of parts of meetings to public

(1) A meeting is not to remain closed during the discussion of anything referred to in section 10A (2):

(a) except for so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security, and

(b) if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret—unless the council or committee concerned is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest.

(2) A meeting is not to be closed during the receipt and consideration of information or advice referred to in section 10A (2) (g) unless the advice concerns legal matters that:

(a) are substantial issues relating to a matter in which the council or committee is involved, and

(b) are clearly identified in the advice, and

(c) are fully discussed in that advice.

(3) If a meeting is closed during the discussion of a motion to close another part of the meeting to the public (as referred to in section 10A (3)), the consideration of the motion must not include any consideration of the matter or information to be discussed in that other part of the meeting (other than consideration of whether the matter concerned is a matter referred to in section 10A (2)).

(4) For the purpose of determining whether the discussion of a matter in an open meeting would be contrary to the public interest, it is irrelevant that:

(a) a person may misinterpret or misunderstand the discussion, or

(b) the discussion of the matter may:

(i) cause embarrassment to the council or committee concerned, or to councillors or to employees of the council, or

(ii) cause a loss of confidence in the council or committee.

(5) In deciding whether part of a meeting is to be closed to the public, the council or committee concerned must have regard to any relevant guidelines issued by the Departmental Chief Executive.

10C Notice of likelihood of closure not required in urgent cases

Part of a meeting of a council, or of a committee of the council of which all the members are councillors, may be closed to the public while the council or committee considers a matter that has not been identified in the agenda for the meeting as a matter that is likely to be considered when the meeting is closed, but only if:

(a) it becomes apparent during the discussion of a particular matter that the matter is a matter referred to in section 10A (2), and

(b) the council or committee, after considering any representations made under section 10A (4), resolves that further discussion of the matter:

(i) should not be deferred (because of the urgency of the matter), and

(ii) should take place in a part of the meeting that is closed to the public.

10D Grounds for closing part of meeting to be specified

(1) The grounds on which part of a meeting is closed must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting.

(2) The grounds must specify the following:

(a) the relevant provision of section 10A (2),

(b) the matter that is to be discussed during the closed part of the meeting,

(c) the reasons why the part of the meeting is being closed, including (if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret) an explanation of the way in which discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

10E (Repealed)

11 Public access to correspondence and reports

(1) A council and a committee of which all the members are councillors must, during or at the close of a meeting, or during the business day following the meeting, give reasonable access to any person to inspect correspondence and reports laid on the table at, or submitted to, the meeting.

(2) This section does not apply if the correspondence or reports:

(a) relate to a matter that was received or discussed, or

(b) were laid on the table at, or submitted to, the meeting,

when the meeting was closed to the public.

(3) This section does not apply if the council or committee resolves at the meeting, when open to the public, that the correspondence or reports, because they relate to a matter specified in section 10A (2), are to be treated as confidential.

Part 2

12–13 (Repealed)

Part 3 Expressions of community opinion

Division 1 Council polls

14 Council polls

A council may take a poll of electors for its information and guidance on any matter.

Division 2 Constitutional referendums

15 What is a constitutional referendum?

A constitutional referendum is a poll initiated by a council in order to give effect to a matter referred to in section 16.

16 What matters must be dealt with at a constitutional referendum?

A council may not do any of the following unless approval to do so has been given at a constitutional referendum:

(a) divide its area into wards or abolish all wards in its area,

(b) change the basis on which the mayor attains office (that is, by election by the councillors or by election by the electors),

(c) increase or decrease the number of councillors in accordance with the limits under section 224,

(d) change the method of ordinary election of councillors for an area divided into wards.

(e) (Repealed)

17 What is the effect of a constitutional referendum?

(1) The decision made at a constitutional referendum binds the council until changed by a subsequent constitutional referendum.

(2) However, such a decision does not apply to a by-election held after the constitutional referendum and before the next ordinary election.

Division 3 General provisions concerning a council poll or constitutional referendum

18 What provisions apply to the conduct of a council poll or constitutional referendum?

Part 1 and Part 6 (except Divisions 3, 4 and 5) of Chapter 10 (How are people elected to civic office?) apply to a council poll, and Part 1 and Part 6 (except Divisions 3 and 5) of that Chapter apply to a constitutional referendum, with such modifications as may be necessary, in the same way as they apply to an election.

Note. Part 1 of Chapter 10 identifies the people who are entitled to vote in council elections, and Part 6 governs the conduct of those elections.

Division 3 of Part 6 of that Chapter deals with nominations for election, Division 4 with failure to vote and Division 5 with miscellaneous matters such as irregularities of form or procedure in elections, overdue elections and those declared void.

19 Day for taking council poll or constitutional referendum

A council poll or constitutional referendum may be taken on any Saturday, including the Saturday of an ordinary election.

20 When is a question at a council poll or constitutional referendum carried?

(1) The question at a council poll or constitutional referendum is carried if it is supported by a majority of the votes cast.

(2) The reference to votes in subsection (1) does not include a reference to any vote that, pursuant to the regulations, is found to be informal.

Expressions of community opinion

Types of expression	
Council Poll	Constitutional Referendum
Question to be determined	

Any question		• Creation or abolition of all wards • Change in the way in which the mayor is chosen • Change in number of councillors • Change in the way councillors are elected for an area divided into wards	
Result of Poll			
If Yes	If No	If Yes	If No
Council chooses whether or not to proceed		Change must proceed	Change cannot proceed until passed by a later constitutional referendum

Chapter 5 What are a council's functions?

21 Functions under this Act

A council has the functions conferred or imposed on it by or under this Act.

Note. This Act classifies certain of a council's functions as service, that is, non-regulatory (Chapter 6), regulatory (Chapter 7) or ancillary (Chapter 8). Ancillary functions are those functions that assist the carrying out of a council's service and regulatory functions.

A council also has revenue functions (Chapter 15), administrative functions (Chapters 11, 12 and 13) and functions relating to the enforcement of this Act (Chapters 16 and 17).

22 Other functions

A council has the functions conferred or imposed on it by or under any other Act or law.

Note. While the main functions of councils are provided for under this Act, councils also have functions under other Acts. An important general provision is contained in section 50 of the *Interpretation Act 1987* which provides, in part:

(1) A statutory corporation:

(a) has perpetual succession,

(b) shall have a seal,

(c) may take proceedings and be proceeded against in its corporate name,

(d) may, for the purpose of enabling it to exercise its functions, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property, and

(e) may do and suffer all other things that bodies corporate may, by law, do and suffer and that are necessary for, or incidental to, the exercise of its functions …

(4) This section applies to a statutory corporation in addition to, and without limiting the effect of, any provision of the Act by or under which the corporation is constituted.

Some other Acts and some of the functions they confer include:

Community Land Development Act 1989	planning functions as consent authority
Companion Animals Act 1998	companion animal registration and control

Conveyancing Act 1919	placing covenants on council land
Environmental Planning and Assessment Act 1979	environmental planning
Fire and Rescue NSW Act 1989	payment of contributions to fire brigade costs and furnishing of returns
Fluoridation of Public Water Supplies Act 1957	fluoridation of water supply by council
Food Act 2003	inspection of food and food premises
Impounding Act 1993	impounding of animals and articles
Library Act 1939	library services
Protection of the Environment Operations Act 1997	pollution control
Public Health Act 2010	inspection of systems for purposes of microbial control
Recreation Vehicles Act 1983	restricting use of recreation vehicles
Roads Act 1993	roads
Rural Fires Act 1997	issue of permits to light fires during bush fire danger periods
	requiring the furnishing of information to the Rural Fire Service Advisory Council and its Co-ordinating Committee
State Emergency Service Act 1989	recommending appointment of local commander
Strata Schemes Development Act 2015	approval of strata plans
Swimming Pools Act 1992	ensuring restriction of access to swimming pools

The exercise by a council of its functions under this Act may also be modified by the provisions of another Act. Some of those Acts and some of the modifications they effect include:

Environmental Offences and Penalties Act 1989	forfeiture of council functions to person appointed by Governor
Government Information (Public Access) Act 2009	council required to publish certain information and to grant access to certain documents
Heritage Act 1977	rating based on heritage valuation
Privacy and Personal Information Protection Act 1998	council required to amend certain records that are shown to be incomplete, incorrect, out of date or misleading
State Emergency and Rescue Management Act 1989	council required to prepare for emergencies
Unclaimed Money Act 1995	unclaimed money to be paid to the Chief Commissioner of Unclaimed Money

23 Supplementary, incidental and consequential functions

A council may do all such things as are supplemental or incidental to, or consequential on, the exercise of its functions.

23A Departmental Chief Executive's guidelines

(1) For the purposes of this Act, the Departmental Chief Executive may from time to time prepare, adopt or vary guidelines relating to the exercise by a council of any of its functions.

(2) The Departmental Chief Executive may only prepare, adopt or vary guidelines relating to the exercise by a council of functions conferred or imposed on the council by or under any Act or law that is not administered by or the responsibility of the Department of Local Government if the Departmental Chief Executive has first obtained the concurrence of the Minister administering or responsible for the administration of the other Act or law.

(3) A council must take any relevant guidelines issued under this section into consideration before exercising any of its functions.

(4) The guidelines for the time being in force are to be made available to councils on request and, on payment of such fee (if any) as the Departmental Chief Executive may determine, to any interested person.

WHAT ARE A COUNCIL'S FUNCTIONS?

A COUNCIL EXERCISES FUNCTIONS UNDER						
THIS ACT						OTHER ACTS
SERVICE FUNCTIONS	**REGULATORY FUNCTIONS**	**ANCILLARY FUNCTIONS**	**REVENUE FUNCTIONS**	**ADMINISTRATIVE FUNCTIONS**	**ENFORCEMENT FUNCTIONS**	**VARIOUS FUNCTIONS**
For example: • Providing community health, recreation, education & information services • Environmental protection • Waste removal & disposal • Land & property, industry & tourism development & assistance	• Approvals • Orders • Building certificates	• Resumption of land • Powers of entry and inspection	• Rates • Charges • Fees • Borrowings • Investments	For example • Employment of staff • Management plans • Financial reporting • Annual reports	For example • Proceedings for breaches of the Act • Prosecution of offences • Recovery of rates and charges	See the Note to section 22

Chapter 6 What are the service functions of councils?

Part 1 General

24 Provision of goods, services and facilities and carrying out of activities

A council may provide goods, services and facilities, and carry out activities, appropriate to the current and future needs within its local community and of the wider public, subject to this Act, the regulations and any other law.

Part 2 Public land

Note. This Part requires all land vested in a council (except a road or land to which the *Crown Land Management Act 2016* applies) to be classified as either "community" or "operational".

The classification will generally be achieved by a local environmental plan but may, in some circumstances, be achieved by resolution of the council (see sections 31, 32 and 33).

The purpose of classification is to identify clearly that land which should be kept for use by the general public (community) and that land which need not (operational). The major consequence of classification is that it determines the ease or difficulty with which land may be alienated by sale, leasing or some other means.

Community land must not be sold (except in the limited circumstances referred to in section 45 (4)). Community land must not be leased or licensed for more than 21 years and may only be leased or licensed for more than 5 years if public notice of the proposed lease or licence is given and, in the event that an objection is made to the proposed lease or licence, the Minister's consent is obtained. No such restrictions apply to operational land.

Classification or reclassification of land does not affect any estate or interest a council has in the land.

Community land would ordinarily comprise land such as a public park. Operational land would ordinarily comprise land held as a temporary asset or as an investment, land which facilitates the carrying out by a council of its functions or land which may not be open to the general public, such as a works depot or a council garage.

The use and management of community land is to be regulated by a plan of management. Until a plan of management is adopted, the nature and use of the land must not change.

Division 1 Classification and reclassification of public land

25 All public land must be classified

All public land must be classified in accordance with this Part.

26 What are the classifications?

There are 2 classifications for public land—"community" and "operational".

Note. On the commencement of this Part, certain land that is vested in or under the control of a council is taken to have been classified as community land by the operation of clause 6 of Schedule 7.

27 How are the classifications made?

(1) The classification or reclassification of public land may be made by a local environmental plan.

(2) The classification or reclassification of public land may also be made by a resolution of the council under section 31, 32 or 33.

28 Forwarding of planning proposals to Minister for Planning

(1) A council may not forward a planning proposal to the Minister for Planning under section 56 of the *Environmental Planning and Assessment Act 1979* which includes a proposal to classify or reclassify public land that is not owned by the council unless the council has obtained the consent of the owner to the proposed classification or reclassification of public land.

(2) A local environmental plan that classifies or reclassifies public land may apply to one or more areas of public land.

29 Public hearing into reclassification

(1) A council must arrange a public hearing under section 57 of the *Environmental Planning and Assessment Act 1979* in respect of a planning proposal under Part 3 of that Act to reclassify community land as operational land, unless a public hearing has already been held in respect of the same matter as a result of a determination under section 56 (2) (e) of that Act.

(2) A council must, before making any resolution under section 32, arrange a public hearing in respect of any proposal to reclassify land as operational land by such a resolution.

30 Reclassification of community land as operational

(1) A local environmental plan that reclassifies community land as operational land may make provision to the effect that, on commencement of the plan, the land, if it is a public reserve, ceases to be a public reserve, and that the land is by operation of the plan discharged from any trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land, except for:

(a) any reservations that except land out of a Crown grant relating to the land, and

(b) reservations of minerals (within the meaning of the *Crown Land Management Act 2016*).

(2) A provision referred to in subsection (1) has effect according to its tenor, but only if the Governor has, before the making of the local environmental plan, approved of the provision.

31 Classification of land acquired after 1 July 1993

(1) This section applies to land that is acquired by a council after the commencement of this Division, other than:

(a) land to which the *Crown Lands Act 1989* or the *Crown Land Management Act 2016* applied before the acquisition and continues to apply after the acquisition, and

(b) land that is acquired for the purpose of a road.

(2) Before a council acquires land, or within 3 months after it acquires land, a council may resolve (in accordance with this Part) that the land be classified as community land or operational land.

(2A) Any land acquired by a council that is not classified under subsection (2) is, at the end of the period of 3 months referred to in that subsection, taken to have been classified under a local environmental plan as community land.

(2B) While the land remains unclassified:

(a) the land may not be used for any purpose other than that for which it was being used immediately before it was acquired, and

(b) the council may not dispose of any interest in the land.

(3) A council must not resolve under this section that land be classified as operational land if:

(a) the land is classified as community land immediately before its acquisition, or

(b) the resolution would be inconsistent with any other Act, the terms of any trust applying to the land or the terms of any instrument executed by the donor or transferor of the land.

32 Reclassification of land dedicated under sec 94 of the Environmental Planning and Assessment Act 1979

(1) A council may resolve that land dedicated in accordance with a condition imposed under section 94 of the *Environmental Planning and Assessment Act 1979* is to be reclassified as operational land.

(2) A council may make such a resolution only if it is satisfied that the land has been found to be unsuitable for the provision, extension or augmentation of public amenities and public services because of any one or more of the following:

- the size of the land
- the shape of the land
- the topography of the land
- the location of the land
- the difficulty of providing public access to the land.

(3) The council must specify in the resolution the grounds on which it is satisfied the land is unsuitable.

(4) Before making the resolution, the council must give public notice of the resolution. The public notice must specify a period of not less than 28 days during which submissions may be made to the council.

(5) The net proceeds of sale by a council of any land dedicated in accordance with a condition imposed under section 94 of the *Environmental Planning and Assessment Act 1979* must be dealt with under that section as if those net proceeds were a monetary contribution paid instead of the dedication.

33 Reclassification of operational land as community land

(1) A council may resolve that public land classified as operational land is to be reclassified as community land.

(2) (Repealed)

34 Public notice to be given of classification or reclassification by council resolution

(1) A council must give public notice of a proposed resolution to classify or reclassify public land.

(2) The public notice must include the terms of the proposed resolution and a description of the public land concerned.

(3) The public notice must specify a period of not less than 28 days during which submissions may be made to the council.

(4) (Repealed)

Division 2 Use and management of community land

35 What governs the use and management of community land?

Community land is required to be used and managed in accordance with the following:

- the plan of management applying to the land
- any law permitting the use of the land for a specified purpose or otherwise regulating the use of the land
- this Division.

36 Preparation of draft plans of management for community land

(1) A council must prepare a draft plan of management for community land.

(2) A draft plan of management may apply to one or more areas of community land, except as provided by this Division.

(3) A plan of management for community land must identify the following:

(a) the category of the land,

(b) the objectives and performance targets of the plan with respect to the land,

(c) the means by which the council proposes to achieve the plan's objectives and performance targets,

(d) the manner in which the council proposes to assess its performance with respect to the plan's objectives and performance targets,

and may require the prior approval of the council to the carrying out of any specified activity on the land.

(3A) A plan of management that applies to just one area of community land:

(a) must include a description of:

(i) the condition of the land, and of any buildings or other improvements on the land, as at the date of adoption of the plan of management, and

(ii) the use of the land and any such buildings or improvements as at that date, and

(b) must:

(i) specify the purposes for which the land, and any such buildings or improvements, will be permitted to be used, and

(ii) specify the purposes for which any further development of the land will be permitted, whether under lease or licence or otherwise, and

(iii) describe the scale and intensity of any such permitted use or development.

(4) For the purposes of this section, land is to be categorised as one or more of the following:

(a) a natural area,

(b) a sportsground,

(c) a park,

(d) an area of cultural significance,

(e) general community use.

(5) Land that is categorised as a natural area is to be further categorised as one or more of the following:

(a) bushland,

(b) wetland,

(c) escarpment,

(d) watercourse,

(e) foreshore,

(f) a category prescribed by the regulations.

(6) The regulations may make provision for or with respect to the categorisation of community land under this section, including:

(a) defining any expression used in subsection (4) or (5), and

(b) prescribing guidelines for the categorisation of community land and the effect of any guidelines so prescribed.

36A Community land comprising the habitat of endangered species

(1) In this section:

critical habitat means:

(a) an area declared to be critical habitat under the *Threatened Species Conservation Act 1995*, or

(b) an area declared to be critical habitat under Part 7A of the *Fisheries Management Act 1994*.

relevant Director means:

(a) in relation to critical habitat being an area declared to be critical habitat under the *Threatened Species Conservation Act 1995*, the Chief Executive of the Office of Environment and Heritage, and

(b) in relation to critical habitat being an area declared to be critical habitat under Part 7A of the *Fisheries Management Act 1994*, the Secretary of the Department of Industry, Skills and Regional Development.

(2) A plan of management adopted in respect of an area of community land, all or part of which consists of critical habitat, is to apply to that area only, and not to other areas of land.

(3) A plan of management to be adopted for an area of community land, all or part of which consists of critical habitat:

(a) must, subject to any decision of the Chief Executive of the Office of Environment and Heritage under section 146 of the *Threatened Species Conservation Act 1995* or any decision of the Secretary of the Department of Industry, Skills and Regional Development under section 220Y of the *Fisheries Management Act 1994*, state that the land, or the relevant part, is critical habitat, and

(b) must, in complying with section 36 (3) (a), categorise the land, or the relevant part, as a natural area, and

(c) must, in complying with section 36 (3) (b), (c) and (d), identify objectives, performance targets and other matters that:

(i) take account of the existence of the critical habitat, and

(ii) are consistent with the objects of the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*, as the case requires, and

(iii) incorporate the core objectives prescribed under section 36 in respect of community land categorised as a natural area, and

(d) must:

(i) when public notice is given of the draft plan under section 38, be sent (or a copy must be sent) by the council to the relevant Director, and

(ii) incorporate any matter specified by the relevant Director in relation to the land, or the relevant part.

(4) If, after the adoption of a plan of management applying to just one area of community land, all or part of that area becomes critical habitat:

(a) the plan of management is taken to be amended, as from the date the declaration took effect, to categorise the land or the relevant part as a natural area, and

(b) the council must amend the plan of management (and, in doing so, the provisions of subsection (3) (a), (c) and (d) apply to the amendment of the plan of management in the same way as they apply to the adoption of a plan of management), and

(c) until the plan of management has been amended as required by paragraph (b):

(i) the use of the land must not be varied, except to the extent necessary to further the objects of the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*, as the case requires, or in order to give effect to the core objectives prescribed under section 36 in respect of community land categorised as a natural area, or to terminate the use, and

(ii) no lease, licence or other estate may be granted in respect of the land.

(5) If, after the adoption of a plan of management applying to several areas of community land, all or part of one of those areas becomes critical habitat:

(a) the plan of management ceases, as from the date the declaration took effect, to apply to that area, and

(b) a plan of management must be prepared and adopted by the council for that area, and

(c) the plan of management so prepared and adopted must comply with subsection (3).

36B Community land comprising the habitat of threatened species

(1) In this section:

recovery plan means a recovery plan under Part 4 of the *Threatened Species Conservation Act 1995* or Division 5 of Part 7A of the *Fisheries Management Act 1994*.

relevant Director means:

(a) in relation to a recovery plan under Part 4 of the *Threatened Species Conservation Act 1995* or a threat abatement plan under Part 5 of that Act, the Chief Executive of the Office of Environment and Heritage, and

(b) in relation to a recovery plan or a threat abatement plan under Division 5 of Part 7A of the *Fisheries Management Act 1994*, the Secretary of the Department of Industry, Skills and Regional Development.

threat abatement plan means a threat abatement plan under Part 5 of the *Threatened Species Conservation Act 1995* or Division 5 of Part 7A of the *Fisheries Management Act 1994*.

(2) For the purposes of this section, land is directly affected by a recovery plan or threat abatement plan only if the plan concerned requires measures specified in the plan to be taken by a specified council on or in respect of the land.

(3) A plan of management adopted in respect of an area of community land, all or part of which is directly affected by a recovery plan or threat abatement plan, is to apply to that area only, and not to other areas of land.

(4) A plan of management to be adopted for an area of community land, all or part of which is directly affected by a recovery plan or threat abatement plan:

(a) must state that the land, or the relevant part, is so affected, and

(b) must, in complying with section 36 (3) (a), categorise the land, or the relevant part, as a natural area, and

(c) must, in complying with section 36 (3) (b), (c) and (d), identify objectives, performance targets and other matters that:

(i) take account of the council's obligations under the recovery plan or threat abatement plan in relation to the land, and

(ii) are otherwise consistent with the objects of the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*, as the case requires, and

(iii) incorporate the core objectives prescribed under section 36 in respect of community land categorised as a natural area, and

(d) must:

(i) when public notice is given of the draft plan under section 38, be sent (or a copy must be sent) by the council to the relevant Director, and

(ii) incorporate any matter specified by the relevant Director in relation to the land, or the relevant part.

(5) If, after the adoption of a plan of management applying to just one area of community land, all or part of that area becomes directly affected by a recovery plan or threat abatement plan:

(a) the plan of management is taken to be amended, as from the date the declaration took effect, to categorise the land or the relevant part as a natural area, and

(b) the council must amend the plan of management (and, in doing so, the provisions of subsection (4) (a), (c) and (d) apply to the amendment of the plan of management in the same way as they apply to the adoption of a plan of management), and

(c) until the plan of management has been amended as required by paragraph (b):

(i) the use of the land must not be varied, except to the extent necessary to further the objects of the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*, as the case requires, or in order to give effect to the core objectives prescribed under section 36 in respect of community land categorised as a natural area, or to terminate the use, and

(ii) no lease, licence or other estate may be granted in respect of the land.

(6) If, after the adoption of a plan of management applying to several areas of community land, all or part of one of those areas becomes directly affected by a recovery plan or threat abatement plan:

(a) the plan of management ceases, as from the date the declaration took effect, to apply to that area, and

(b) a plan of management must be prepared and adopted by the council for that area, and

(c) the plan of management so prepared and adopted must comply with subsection (4).

36C Community land containing significant natural features

(1) This section applies to community land that is the subject of a resolution by the council that declares that the land, being the site of:

(a) a known natural, geological, geomorphological, scenic or other feature that is considered by the council to warrant protection or special management considerations, or

(b) a wildlife corridor,

is land to which this section applies.

(2) A plan of management adopted in respect of an area of community land, all or part of which is land to which this section applies, is to apply to that area only, and not to other areas of land.

(3) A plan of management to be adopted for an area of community land, all or part of which is land to which this section applies:

(a) must state that the land, or the relevant part, is land to which this section applies, and the reason why, and

(b) must, in complying with section 36 (3) (a), categorise the land, or the relevant part, as a natural area, and

(c) must, in complying with section 36 (3) (b), (c) and (d), identify objectives, performance targets and other matters that:

(i) are designed to protect the area, and

(ii) take account of the existence of the features of the site identified by the council's resolution, and

(iii) incorporate the core objectives prescribed under section 36 in respect of community land categorised as a natural area.

(4) If, after the adoption of a plan of management applying to just one area of community land, all or part of that area becomes the subject of a resolution of the kind described in subsection (1):

(a) the plan of management is taken to be amended, as from the date the declaration took effect, to categorise the land or the relevant part as a natural area, and

(b) the council must amend the plan of management (and in doing so, the provisions of subsection (3) (a) and (c) apply to the amendment of the plan of management in the same way as they apply to the adoption of a plan of management), and

(c) until the plan of management has been amended as required by paragraph (b):

(i) the use of the land must not be varied, except to the extent necessary to protect the features of the site identified in the council's resolution or in order to give effect to the core objectives prescribed under section 36 in respect of community land categorised as a natural area, or to terminate the use, and

(ii) no lease, licence or other estate may be granted in respect of the land.

(5) If, after the adoption of a plan of management applying to several areas of community land, all or part of one of those areas becomes the subject of a resolution of the kind described in subsection (1):

(a) the plan of management ceases, as from the date the declaration took effect, to apply to that area, and

(b) a plan of management must be prepared and adopted by the council for that area, and

(c) the plan of management so prepared and adopted must comply with subsection (3).

36D Community land comprising area of cultural significance

(1) This section applies to community land that is the subject of a resolution by the council that declares that, because of the presence on the land of any item that the council considers to be of Aboriginal, historical or cultural significance, the land is an area of cultural significance for the purposes of this Part.

(2) A plan of management adopted in respect of an area of land, all or part of which is land to which this section applies, is to apply to that land only, and not to other areas.

(3) A plan of management to be adopted for an area of community land, all or part of which consists of land to which this section applies:

(a) must state that the land, or the relevant part, is an area of cultural significance, and

(b) must, in complying with section 36 (3) (a), categorise the land, or the relevant part, as an area of cultural significance, and

(c) must, in complying with section 36 (3) (b), (c) and (d), identify objectives, performance targets and other matters that:

(i) are designed to protect the area, and

(ii) take account of the existence of the features of the site identified by the council's resolution, and

(iii) incorporate the core objectives prescribed under section 36 in respect of community land categorised as an area of cultural significance, and

(d) must:

(i) when public notice is given of it under section 38, be sent (or a copy must be sent) by the council to the Chief Executive of the Office of Environment and Heritage, and

(ii) incorporate any matter specified by the Chief Executive of the Office of Environment and Heritage in relation to the land, or the relevant part.

(4) If, after the adoption of a plan of management applying to just one area of community land, all or part of that area becomes the subject of a resolution of the kind described in subsection (1):

(a) the plan of management is taken to be amended, as from the date the declaration took effect, to categorise the land or the relevant part as an area of cultural significance, and

(b) the council must amend the plan of management (and in doing so, the provisions of subsection (3) (a), (c) and (d) apply to the amendment of the plan of management in the same way as they apply to the adoption of a plan of management), and

(c) until the plan of management has been amended as required by paragraph (b):

(i) the use of the land must not be varied, except to the extent necessary to protect any item identified in the council's resolution or in order to give effect to the core objectives prescribed under section 36 in respect of community land categorised as an area of cultural significance, or to terminate the use, and

(ii) no lease, licence or other estate may be granted in respect of the land.

(5) If, after the adoption of a plan of management applying to several areas of community land, all or part of one of those areas becomes the subject of a resolution of the kind described in subsection (1):

(a) the plan of management ceases, as from the date the declaration took effect, to apply to that area, and

(b) a plan of management must be prepared and adopted by the council for that area, and

(c) the plan of management so prepared and adopted must comply with subsection (3).

36DA Location of places and items of Aboriginal significance may be kept confidential

(1) This section applies to draft and adopted plans of management for areas of community land, all or part of which consist of land to which section 36D applies.

(2) A council may resolve (at the request of any Aboriginal person traditionally associated with the land concerned or on the council's own initiative) to keep confidential such parts of a draft or adopted plan of management to which this section applies as would disclose the nature and location of a place or an item of Aboriginal significance.

(3) Despite any other provision of this Act (including sections 38, 39 and 43) or any other law, councillors and council employees are not to disclose that part of a draft or adopted plan of management that is the subject of a resolution of confidentiality under subsection (2), except with the consent of the council.

(4) A draft or adopted plan of management that is the subject of a resolution of confidentiality under subsection (2) must contain a note stating that the whole of the plan is affected by the resolution or identifying the parts that are so affected.

(5) A council proposing to prepare a draft plan of management to which this section applies must (in accordance with the regulations) consult with the appropriate Aboriginal communities regarding public access to, and use of, information concerning any places or items of Aboriginal significance on the land concerned.

36E Core objectives for management of community land categorised as a natural area

The core objectives for management of community land categorised as a natural area are:

(a) to conserve biodiversity and maintain ecosystem function in respect of the land, or the feature or habitat in respect of which the land is categorised as a natural area, and

(b) to maintain the land, or that feature or habitat, in its natural state and setting, and

(c) to provide for the restoration and regeneration of the land, and

(d) to provide for community use of and access to the land in such a manner as will minimise and mitigate any disturbance caused by human intrusion, and

(e) to assist in and facilitate the implementation of any provisions restricting the use and management of the land that are set out in a recovery plan or threat abatement plan prepared under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*.

36F Core objectives for management of community land categorised as a sportsground

The core objectives for management of community land categorised as a sportsground are:

(a) to encourage, promote and facilitate recreational pursuits in the community involving organised and informal sporting activities and games, and

(b) to ensure that such activities are managed having regard to any adverse impact on nearby residences.

36G Core objectives for management of community land categorised as a park

The core objectives for management of community land categorised as a park are:

(a) to encourage, promote and facilitate recreational, cultural, social and educational pastimes and activities, and

(b) to provide for passive recreational activities or pastimes and for the casual playing of games, and

(c) to improve the land in such a way as to promote and facilitate its use to achieve the other core objectives for its management.

36H Core objectives for management of community land categorised as an area of cultural significance

(1) The core objectives for management of community land categorised as an area of cultural significance are to retain and enhance the cultural significance of the area (namely its Aboriginal, aesthetic, archaeological, historical, technical or research or social significance) for past, present or future generations by the active use of conservation methods.

(2) Those conservation methods may include any or all of the following methods:

(a) the continuous protective care and maintenance of the physical material of the land or of the context and setting of the area of cultural significance,

(b) the restoration of the land, that is, the returning of the existing physical material of the land to a known earlier state by removing accretions or by reassembling existing components without the introduction of new material,

(c) the reconstruction of the land, that is, the returning of the land as nearly as possible to a known earlier state,

(d) the adaptive reuse of the land, that is, the enhancement or reinforcement of the cultural significance of the land by the introduction of sympathetic alterations or additions to allow compatible uses (that is, uses that involve no changes to the cultural significance of the physical material of the area, or uses that involve changes that are substantially reversible or changes that require a minimum impact),

(e) the preservation of the land, that is, the maintenance of the physical material of the land in its existing state and the retardation of deterioration of the land.

(3) A reference in subsection (2) to land includes a reference to any buildings erected on the land.

36I Core objectives for management of community land categorised as general community use

The core objectives for management of community land categorised as general community use are to promote, encourage and provide for the use of the land, and to provide facilities on the land, to meet the current and future needs of the local community and of the wider public:

(a) in relation to public recreation and the physical, cultural, social and intellectual welfare or development of individual members of the public, and

(b) in relation to purposes for which a lease, licence or other estate may be granted in respect of the land (other than the provision of public utilities and works associated with or ancillary to public utilities).

36J Core objectives for management of community land categorised as bushland

The core objectives for management of community land categorised as bushland are:

(a) to ensure the ongoing ecological viability of the land by protecting the ecological biodiversity and habitat values of the land, the flora and fauna (including invertebrates, fungi and micro-organisms) of the land and other ecological values of the land, and

(b) to protect the aesthetic, heritage, recreational, educational and scientific values of the land, and

(c) to promote the management of the land in a manner that protects and enhances the values and quality of the land and facilitates public enjoyment of the land, and to implement measures directed to minimising or mitigating any disturbance caused by human intrusion, and

(d) to restore degraded bushland, and

(e) to protect existing landforms such as natural drainage lines, watercourses and foreshores, and

(f) to retain bushland in parcels of a size and configuration that will enable the existing plant and animal communities to survive in the long term, and

(g) to protect bushland as a natural stabiliser of the soil surface.

36K Core objectives for management of community land categorised as wetland

The core objectives for management of community land categorised as wetland are:

(a) to protect the biodiversity and ecological values of wetlands, with particular reference to their hydrological environment (including water quality and water flow), and to the flora, fauna and habitat values of the wetlands, and

(b) to restore and regenerate degraded wetlands, and

(c) to facilitate community education in relation to wetlands, and the community use of wetlands, without compromising the ecological values of wetlands.

36L Core objectives for management of community land categorised as an escarpment

The core objectives for management of community land categorised as an escarpment are:

(a) to protect any important geological, geomorphological or scenic features of the escarpment, and

(b) to facilitate safe community use and enjoyment of the escarpment.

36M Core objectives for management of community land categorised as a watercourse

The core objectives for management of community land categorised as a watercourse are:

(a) to manage watercourses so as to protect the biodiversity and ecological values of the instream environment, particularly in relation to water quality and water flows, and

(b) to manage watercourses so as to protect the riparian environment, particularly in relation to riparian vegetation and habitats and bank stability, and

(c) to restore degraded watercourses, and

(d) to promote community education, and community access to and use of the watercourse, without compromising the other core objectives of the category.

36N Core objectives for management of community land categorised as foreshore

The core objectives for management of community land categorised as foreshore are:

(a) to maintain the foreshore as a transition area between the aquatic and the terrestrial environment, and to protect and enhance all functions associated with the foreshore's role as a transition area, and

(b) to facilitate the ecologically sustainable use of the foreshore, and to mitigate impact on the foreshore by community use.

37 Requirements of plans of management for community land that is not owned by the council

A plan of management for community land that is not owned by the council:

(a) must identify the owner of the land, and

(b) must state whether the land is subject to any trust, estate, interest, dedication, condition, restriction or covenant, and

(c) must state whether the use or management of the land is subject to any condition or restriction imposed by the owner, and

(d) must not contain any provisions inconsistent with anything required to be stated by paragraph (a), (b) or (c).

38 Public notice of draft plans of management

(1) A council must give public notice of a draft plan of management.

(2) The period of public exhibition of the draft plan must be not less than 28 days.

(3) The public notice must also specify a period of not less than 42 days after the date on which the draft plan is placed on public exhibition during which submissions may be made to the council.

(4) The council must, in accordance with its notice, publicly exhibit the draft plan together with any other matter which it considers appropriate or necessary to better enable the draft plan and its implications to be understood.

39 Notice to owner of draft plan of management

(1) Before giving public notice of a draft plan of management in accordance with section 38, the council must forward a copy of the draft plan to the person who owns or controls the land if the land is not owned by the council.

(2) The council must include in the draft plan any provisions that may properly be required by the person who owns or controls the land.

40 Adoption of plans of management

(1) After considering all submissions received by it concerning the draft plan of management, the council may decide to amend the draft plan or to adopt it without amendment as the plan of management for the community land concerned.

(2) If the council decides to amend the draft plan it must either:

(a) publicly exhibit the amended draft plan in accordance with the provisions of this Division relating to the public exhibition of draft plans, or

(b) if it is of the opinion that the amendments are not substantial, adopt the amended draft plan without public exhibition as the plan of management for the community land concerned.

(2A) If a council adopts an amended plan without public exhibition of the amended draft plan, it must give public notice of that adoption, and of the terms of the amended plan of management, as soon as practicable after the adoption.

(3) The council may not, however, proceed to adopt the plan until any public hearing required under section 40A has been held in accordance with section 40A.

40A Public hearing in relation to proposed plans of management

(1) The council must hold a public hearing in respect of a proposed plan of management (including a plan of management that amends another plan of management) if the proposed plan would have the effect of categorising, or altering the categorisation of, community land under section 36 (4).

(2) However, a public hearing is not required if the proposed plan would merely have the effect of altering the categorisation of the land under section 36 (5).

(3) A council must hold a further public hearing in respect of the proposed plan of management if:

(a) the council decides to amend the proposed plan after a public hearing has been held in accordance with this section, and

(b) the amendment of the plan would have the effect of altering the categorisation of community land under section 36 (4) from the categorisation of that land in the proposed plan that was considered at the previous public hearing.

41 Amendment of plans of management

A council may amend a plan of management adopted under this Division by means only of a plan of management so adopted.

42 Revocation and cessation of plans of management

(1) A plan of management for community land may be revoked by a plan of management adopted under this Division by the council.

(2) A plan of management ceases to apply to land if:

(a) the land is reclassified as operational land, or

(b) in the case of land that is not owned by the council—the land ceases to be controlled by the council.

43 Public availability of plans of management

A plan of management must be available for public inspection at, and purchase from, the office of the council during ordinary office hours.

44 Use of community land pending adoption of plan of management

Pending the adoption of a plan of management for community land, the nature and use of the land must not be changed.

45 What dealings can a council have in community land?

(1) A council has no power to sell, exchange or otherwise dispose of community land.

(2) A council may grant a lease or licence of community land, but only in accordance with this Division.

(3) A council may grant any other estate in community land to the extent permitted by this Division or under the provisions of another Act.

Note. The word ***estate*** has a wide meaning. See the *Interpretation Act 1987*, section 21 (1).

(4) This section does not prevent a council from selling, exchanging or otherwise disposing of community land for the purpose of enabling that land to become, or be added to, Crown managed land or to become, or be added to, land that is reserved or dedicated under the *National Parks and Wildlife Act 1974*.

46 Leases, licences and other estates in respect of community land—generally

(1) A lease, licence or other estate in respect of community land:

(a) may be granted for the provision of public utilities and works associated with or ancillary to public utilities, or

(a1) may be granted for the purpose of providing pipes, conduits or other connections under the surface of the ground for the connection of premises adjoining the community land to a facility of the council or other public utility provider, or

(b) may be granted, in accordance with an express authorisation in the plan of management and such provisions of the plan of management as apply to the granting of the lease, licence or other estate:

(i) for a purpose prescribed by subsection (4), or for a purpose prescribed by any of sections 36E to 36N as a core objective of the categorisation of the land concerned, or

(ii) for a purpose prescribed by the regulations, if the plan of management applies to several areas of community land, or

(iii) for a short-term, casual purpose prescribed by the regulations, or

(iv) for a residential purpose in relation to housing owned by the council, or

(v) (Repealed)

(c) may be granted in order to allow a filming project to be carried out, whether or not the project is in accordance with the plan of management or is consistent with the core objectives of the categorisation of the land concerned,

but may not otherwise be granted.

(2) Despite subsection (1), a lease, licence or other estate in respect of community land may be granted for a purpose mentioned in subsection (1) (b) only if the purpose for which it is granted is consistent with the core objectives, as prescribed in this Part, of its categorisation.

(3) A council must not grant a lease or licence for a period (including any period for which the lease or licence could be renewed by the exercise of an option) exceeding 30 years.

(4) The following purposes are prescribed for the purposes of subsection (1) (b) (i):

(a) the provision of goods, services and facilities, and the carrying out of activities, appropriate to the current and future needs within the local community and of the wider public in relation to any of the following:

(i) public recreation,

(ii) the physical, cultural, social and intellectual welfare or development of persons,

(b) the provision of public roads.

(5) Purposes prescribed by subsection (4) in relation to the matters mentioned in subsection (4) (a) (ii) include, but are not limited to, maternity welfare centres, infant welfare centres,

kindergartens, nurseries, child care centres, family day-care centres, surf life saving clubs, restaurants or refreshment kiosks.

(5A) A council must grant an application under subsection (1) (c) for a lease, licence or other estate in respect of community land in order to allow a filming project to be carried out on the land unless:

(a) the community land is land referred to in section 47AA (1), or

(b) the plan of management for the land expressly prohibits use of the land for the purposes of filming projects, or

(c) the council is satisfied that there are exceptional circumstances that warrant refusal of the application.

(5B) Before refusing an application on a ground referred to in subsection (5A) (c), the council must consider whether any concerns it has could be addressed by imposing conditions on the grant.

(5C) If the council refuses an application, it must:

(a) inform the applicant in writing of its decision as soon as practicable after it is made, and

(b) give the applicant reasons in writing for its decision within 3 business days after it is made.

(6) A plan of management is void to the extent that it purports to authorise the grant of a lease, licence or other estate in contravention of this section.

46A Means of granting leases, licences and other estates

(1) A plan of management is to specify, in relation to the community land to which it applies, any purposes for which a lease, licence or other estate may be granted only by tender in accordance with Division 1 of Part 3.

(2) Nothing in this section precludes a council from applying a tender process in respect of the grant of any particular lease, licence or estate.

(3) A lease or licence for a term exceeding 5 years may be granted only by tender in accordance with Division 1 of Part 3, unless it is granted to a non-profit organisation.

47 Leases, licences and other estates in respect of community land—terms greater than 5 years

(1) If a council proposes to grant a lease, licence or other estate in respect of community land for a period (including any period for which the lease, licence or other estate could be renewed by the exercise of an option) exceeding 5 years, it must:

(a) give public notice of the proposal (including on the council's website), and

(b) exhibit notice of the proposal on the land to which the proposal relates, and

(c) give notice of the proposal to such persons as appear to it to own or occupy the land adjoining the community land, and

(d) give notice of the proposal to any other person, appearing to the council to be the owner or occupier of land in the vicinity of the community land, if in the opinion of the council the

land the subject of the proposal is likely to form the primary focus of the person's enjoyment of community land.

(2) A notice of the proposal must include:

- information sufficient to identify the community land concerned
- the purpose for which the land will be used under the proposed lease, licence or other estate
- the term of the proposed lease, licence or other estate (including particulars of any options for renewal)
- the name of the person to whom it is proposed to grant the lease, licence or other estate (if known)
- a statement that submissions in writing may be made to the council concerning the proposal within a period, not less than 28 days, specified in the notice.

(3) Any person may make a submission in writing to the council during the period specified for the purpose in the notice.

(4) Before granting the lease, licence or other estate, the council must consider all submissions duly made to it.

(5) The council must not grant the lease, licence or other estate except with the Minister's consent, if:

(a) a person makes a submission by way of objection to the proposal, or

(b) in the case of a lease or licence, the period (including any period for which the lease or licence could be renewed by the exercise of an option) of the lease or licence exceeds 21 years.

(6) If the council applies for the Minister's consent, it must forward with its application:

- a copy of the plan of management for the land
- details of all objections received and a statement setting out, for each objection, the council's decision and the reasons for its decision
- a statement setting out all the facts concerning the proposal to grant the lease, licence or other estate
- a copy of the public notice of the proposal
- a statement setting out the terms, conditions, restrictions and covenants proposed to be included in the lease, licence or other estate
- if the application relates to a lease or licence for a period (including any period for which the lease or licence could be renewed by the exercise of an option) exceeding 21 years, a statement outlining the special circumstances that justify the period of the lease or licence exceeding 21 years

- a statement setting out the manner in which and the extent to which the public interest would, in the council's opinion, be affected by the granting of the proposed lease, licence or other estate, including the manner in which and the extent to which the needs of the area with respect to community land would, in the council's opinion, be adversely affected by the granting of the proposed lease, licence or other estate.

(7) On receipt of the application, the Minister must request the Director of Planning to furnish a report concerning the application within such period as the Minister specifies.

(8) After considering the application and any report of the Director of Planning, the Minister, if satisfied that:

(a) subsections (1), (2) and (6) have been complied with, and

(b) such consent would not contravene section 46, and

(c) in all the circumstances, it is desirable to grant consent,

may consent to the granting of a lease, licence or other estate in respect of the whole or part of the land to which the application relates, subject to such terms and conditions as the Minister specifies.

(8AA) The Minister may consent to a lease or licence referred to in subsection (5) (b) only if the Minister is satisfied that there are special circumstances that justify the period of the lease or licence exceeding 21 years.

(8A) On request by any person, the Minister must provide that person, within 14 days of that request, with a written statement of reasons for consenting to, or refusing to consent to, the granting of a lease, licence or other estate in accordance with subsection (8).

(9) The Minister's consent is conclusive evidence that the council has complied with subsections (1), (2) and (6).

(10) For the purposes of this section, any provision made by a lease or licence, or by an instrument granting any other estate, in respect of community land, according to which the council:

(a) would suffer a disadvantage or penalty if the same or a similar lease, licence or estate were not to be granted, for a further term, after the expiry of the current lease, licence or other estate, or

(b) would enjoy an advantage or benefit if the same or a similar lease, licence or estate were to be so granted,

is taken to confer an option for renewal for a term equal to the further term.

47A Leases, licences and other estates in respect of community land—terms of 5 years or less

(1) This section applies to a lease, licence or other estate in respect of community land granted for a period that (including any period for which the lease, licence or other estate could be renewed by the exercise of an option) does not exceed 5 years, other than a lease, licence or other estate exempted by the regulations.

(2) If a council proposes to grant a lease, licence or other estate to which this section applies:

(a) the proposal must be notified and exhibited in the manner prescribed by section 47, and

(b) the provisions of section 47 (3) and (4) apply to the proposal, and

(c) on receipt by the council of a written request from the Minister, the proposal is to be referred to the Minister, who is to determine whether or not the provisions of section 47 (5)–(9) are to apply to the proposal.

(3) If the Minister, under subsection (2) (c), determines that the provisions of section 47 (5)–(9) are to apply to the proposal:

(a) the council, the Minister and the Director of Planning are to deal with the proposal in accordance with the provisions of section 47 (1)–(8), and

(b) section 47 (9) has effect with respect to the Minister's consent.

47AA Special provisions for leases, licences and other estates granted for filming projects

(1) A council that proposes to grant a lease, licence or other estate in respect of community land under section 47A in order to allow a filming project to be carried out on community land:

(a) that is critical habitat (as defined in section 36A (1)), or

(b) that is directly affected by a recovery plan or threat abatement plan, as referred to in section 36B (2), or

(c) that is declared to be an area of cultural significance under section 36D (1) because of the presence on the land of any item that the council considers to be of Aboriginal significance,

must, in addition to complying with section 47A, notify or advertise the proposal in the manner prescribed by the regulations for the purposes of this section.

(2) Despite section 47A (2), a council that is of the opinion that a filming project proposed to be carried out under a lease, licence or other estate granted under section 47A will have a minor impact on the environment and on public amenity may state in the notice of the proposal required by section 47A (2) that submissions in writing may be made to the council concerning the proposal within a period, not less than 7 days, specified in the notice.

(3) Regulations may be made for or with respect to guidelines that must be taken into consideration by councils in determining whether to grant a lease, licence or other estate in respect of community land in order to allow a filming project to be carried out on the land.

47B Lease or licence in respect of natural area

(1) A lease, licence or other estate must not be granted, in respect of community land categorised as a natural area:

(a) to authorise the erection or use of a building or structure that is not a building or structure of a kind prescribed by this section or the regulations, or

(b) to authorise the erection or use of a building or structure that is not for a purpose prescribed by this section or the regulations.

(2) A lease, licence or instrument granting any other estate is void to the extent that its provisions are inconsistent with this section.

(3) In this section, ***erection*** of a building or structure includes rebuilding or replacement of a building or structure.

(4) The following buildings and structures are prescribed for the purposes of subsection (1) (a):

(a) walkways,

(b) pathways,

(c) bridges,

(d) causeways,

(e) observation platforms,

(f) signs.

(5) The following purposes are prescribed for the purposes of subsection (1) (b):

(a) information kiosks,

(b) refreshment kiosks (but not restaurants),

(c) work sheds or storage sheds required in connection with the maintenance of the land,

(d) toilets or rest rooms.

(6) Despite subsection (1), a lease, licence or other estate may be granted, in respect of community land categorised as a natural area, to authorise the erection or use of any building or structure necessary to enable a filming project to be carried out, subject to the conditions prescribed by subsection (7) and the regulations.

(7) It is a condition of any lease, licence or other estate referred to in subsection (6):

(a) that any building or structure so erected must be temporary in nature, and

(b) that as soon as practicable after the termination of the lease, licence or other estate:

(i) any building or structure erected must be removed, and

(ii) any damage to the land caused by the erection or use of a building or structure must be made good, and

(iii) the land must be restored as nearly as possible to the condition that it was in at the time the lease, licence or other estate was granted,

at the expense of the person to whom the lease, licence or other estate was granted.

47C Sublease of community land

(1) In addition to any restrictions created by the lease, community land that is the subject of a lease cannot be sublet for a purpose other than:

(a) the purpose for which, as notified under section 47 (2), the land was to be used under the lease, or

(b) a purpose prescribed by the regulations.

(2) A lease is void to the extent that its provisions are inconsistent with this section.

47D Occupation of community land otherwise than by lease or licence

(1) The exclusive occupation or exclusive use by any person of community land otherwise than in accordance with:

(a) a lease, licence or estate to which section 47 or 47A applies, or

(b) a sublease or other title directly or indirectly derived from the holder of such a lease, licence or estate,

is prohibited.

(2) This section does not apply to:

(a) the occupation or use of part of the site of a senior citizens' centre or home or community care facility by a duly appointed manager of the centre, or

(b) the occupation or use of community land by persons, and in circumstances, prescribed by the regulations.

47E Development of community land

(1) No power of a council under an environmental planning instrument to consent to the carrying out of development on community land may be delegated by the council, if:

(a) the development involves the erection, rebuilding or replacement of a building (other than a building exempted by or under subsection (2) from the operation of this paragraph), or

(b) the development involves extensions to an existing building that would occupy more than 10 per cent of its existing area, or

(c) the development involves intensification, by more than 10 per cent, of the use of the land or any building on the land, or

(d) the location of the development has not been specified in the plan of management applying to the land and the development is likely, in the opinion of the council, to be unduly intrusive to nearby residents.

(2) The following buildings are exempt from the operation of subsection (1) (a):

(a) toilet facilities,

(b) small refreshment kiosks,

(c) shelters for persons from the sun and weather,

(d) picnic facilities,

(e) structures (other than accommodations for spectators) required for the playing of games or sports,

(f) playground structures,

(g) work sheds or storage sheds,

(h) buildings of a kind prescribed by the regulations.

(3) An ***existing area*** referred to in subsection (1) (b) does not include the area of any awning, balcony, verandah or other thing that extends beyond the main structural outline of the building.

(4) A delegation granted before the commencement of this section, to the extent that the delegation could not have been granted if this section had been in force at the time it was granted, is void.

47F Dedication of community land as public road

(1) Community land may not be dedicated as a public road under section 10 of the *Roads Act 1993* unless:

(a) the road is necessary to facilitate enjoyment of the area of community land on which the road is to be constructed or of any facility on that land, and

(b) the council has considered means of access other than public road access to facilitate that enjoyment, and

(c) there is a plan of management applying only to the land concerned and provision of the public road is expressly authorised in the plan of management.

(2) Subsection (1) does not apply to:

(a) a dedication of land for the purpose of widening an existing public road, or

(b) a dedication of land for the purpose of other roadworks of a minor character, authorised by the plan of management applying to the land, in respect of existing roads, or

(c) a dedication of land for the purpose of a road that is the subject of an order under Division 1 of Part 5 of the *Roads Act 1993*.

Division 3 Miscellaneous

47G Public hearings

(1) In this section, ***public hearing*** means any public hearing required to be arranged under this Part.

(2) The person presiding at a public hearing must not be:

(a) a councillor or employee of the council holding the public hearing, or

(b) a person who has been a councillor or employee of that council at any time during the 5 years before the date of his or her appointment.

(3) Not later than 4 days after it has received a report from the person presiding at the public hearing as to the result of the hearing, the council must make a copy of the report available for inspection by the public at a location within the area of the council.

48 Responsibility for certain public reserves

(1) Except as provided by section 2.22 of the *Crown Land Management Act 2016*, a council has the control of:

(a) public reserves that are not under the control of or vested in any other body or persons and are not held by a person under lease from the Crown, and

(b) public reserves that the Governor, by proclamation, places under the control of the council.

(2) If any doubt arises as to whether any land comes within the operation of this section, or as to the boundaries of a public reserve, the Governor may, by proclamation, determine the matter.

49 Public reserves and drainage reserves dedicated on subdivision, transfer or conveyance

(1) On the registration by the Registrar-General of a plan on which land is marked with the words "public reserve", or of a transfer or conveyance to a council of land identified in the transfer or conveyance as being for use as a public reserve, the land is dedicated as a public reserve and vests in the council for an estate in fee simple.

(2) If the land so dedicated is under the *Real Property Act 1900*, the Registrar-General, on registration of the plan or transfer, must create a folio of the Register under that Act for the estate of the council in the land and record in the folio, by reference to this section or otherwise, that the land is dedicated as a public reserve.

(3) On the registration by the Registrar-General of a plan on which land is marked with the words "drainage reserve", or of a transfer or conveyance to a council of land identified in the transfer or conveyance as being for use as a drainage reserve, the land vests in the council for an estate in fee simple and is held by the council for drainage purposes.

(4) This section does not apply to a subdivision of land the plan of which was approved by the council before 15 June 1964.

50 Public garden and recreation space and drainage reserves provided for in subdivisions approved before 15.6.1964

(1) This section applies to a subdivision of land the plan of which was approved by the council:

- in the case of public garden and recreation space—before 15 June 1964
- in the case of drainage reserves—after 24 November 1922 and before 15 June 1964.

Note. 15 June 1964 is the date of commencement of the *Local Government and Conveyancing (Amendment) Act 1964*. 24 November 1922 is the date of commencement of the *Local Government (Validation and Amendment) Act 1922*.

(2) If a subdivision made provision for public garden and recreation space, the council may direct:

(a) that the space be conveyed or transferred to the council, or

(b) because the space is adjacent to land reserved or dedicated for the purpose of public recreation under the *Crown Land Management Act 2016* or to a public park that is not vested in the council, that the space be surrendered to the Crown.

Public garden and recreation space surrendered to the Crown is taken to be Crown land.

(3) If a subdivision made provision for a drainage reserve, the council may direct that the reserve be conveyed or transferred to the council.

(4) Instead of directing that land be conveyed or transferred to it, the council may publish a notice in the Gazette notifying that the land is vested in it.

(5) On publication of the notice, the land vests in the council for an estate in fee simple and is taken:

- in the case of public garden and recreation space—to be dedicated as a public reserve
- in the case of drainage reserves—to be held by the council for drainage purposes.

(6) When creating a folio of the Register under the *Real Property Act 1900* for public garden and recreation space vested in the council under this section, the Registrar-General must record in the folio, by reference to this section or otherwise, that the land is dedicated as a public reserve.

51 Use of land held for drainage purposes

Land that is held by council for drainage purposes may be used for any other purpose that is not inconsistent with its use for drainage purposes, subject to the *Environmental Planning and Assessment Act 1979* and any environmental planning instrument applying to the land.

52 Effect of sec 28 of the Environmental Planning and Assessment Act 1979

This Part is not a regulatory instrument for the purposes of section 28 of the *Environmental Planning and Assessment Act 1979*.

Note. Section 28 of the *Environmental Planning and Assessment Act 1979* empowers an environmental planning instrument to provide that, to the extent necessary to enable development to be carried out in accordance with such an instrument or with a consent granted under that Act, a regulatory instrument (an Act, rule, regulation, by-law, ordinance, proclamation, agreement, covenant or instrument by or under whatever authority made) is not to apply to the development. Section 52 prevents section 28 of that Act from removing any of the controls imposed by this Part.

53 The council's land register

(1) A council is required to keep a register of all land vested in it or under its control.

(2) The register must include the following:

- the name (if any) by which the land is known
- the address or location of the land
- the reference to title of the land
- the name of the owner of the land
- whether or not the land is Crown land

- the classification under this Part of the land
- whether or not there is a plan of management for the land
- the zoning (if any) of the land under an environmental planning instrument
- particulars of any agreement (including any lease or licence) entered into by the council with respect to the land.

54 Certificate as to classification of land

(1) A person may apply to the council for a certificate as to the classification of any public land.

(2) The application must be in the approved form and be accompanied by the approved fee.

(3) The council is to issue a certificate to the applicant stating the classification of the public land as at the date of the certificate.

(4) The production of the certificate is taken for all purposes to be conclusive proof of the matter certified.

54A Community land to be described in common terms

Any public notice given by a council with respect to a parcel of community land must describe the land by reference to its common description (such as its address, or the name by which it is generally known) whether or not the notice also describes the land by reference to a more formal legal description.

54B Transfer of certain institutional private trust land

(1) In this section:

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

institution has the same meaning as in Division 6 of Part 2 of Schedule 7 to the *Crown Land Management Act 2016*.

liabilities means any liabilities, debts or obligations (whether present or future and whether vested or contingent).

private trust land means any land reserved, dedicated or granted under any Act or instrument, or otherwise held, for the purposes of an institution, but does not include any such land if it is Crown land (or land otherwise vested in the Crown) or was Crown land (or land otherwise vested in the Crown) before being reserved, dedicated, granted or held for the purposes of an institution.

rights means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).

trustees of private trust land means the majority of the trustees for the time being of that land.

(2) A council and the trustees of private trust land may enter into an agreement for the land to be transferred to the council.

(3) Any such agreement may contain provisions relating to the purposes for which the land is to be used after it is transferred.

(4) The trustees may enter into any such agreement to transfer private trust land, and the agreement has effect, despite the terms and provisions of any Act, deed, reservation, dedication, grant or other instrument relating to the land.

(5) Land that is transferred to a council under such an agreement is:

(a) freed and discharged from any trusts, estates, interests, reservations dedications, conditions, restrictions and provisions affecting the land, and

(b) to be used and managed by the council as community land.

(6) Subsection (5) (a) is subject to any agreement entered into by the council under this section for the transfer of the land.

(7) In preparing a draft plan of management in relation to any land transferred to it under this section, the council must, in addition to the other requirements under Division 2:

(a) advise the Minister that it is preparing the draft plan, and

(b) take into account the purposes for which the land was reserved, dedicated, granted or held as an institution, and

(c) comply as far as practicable with the agreement entered into between the trustees of the private trust land concerned and the council, and

(d) before giving public notice of the draft plan in accordance with section 38, consult with such persons or bodies as the council considers appropriate or as the Minister directs.

(8) On the transfer of any private trust land to a council under this section, the following provisions have effect:

(a) any assets, rights or liabilities in relation to the land, or in relation to the trustees of the land in their capacity as trustees, become the assets, rights or liabilities of the council,

(b) all proceedings relating to those assets, rights and liabilities that were commenced by or against the trustees before the transfer are taken to be proceedings pending by or against the council,

(c) any act, matter or thing done or omitted to be done in relation to those assets, rights and liabilities by, to or in respect of the trustees before the transfer is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted to be done by, to or in respect of the council.

How do councils manage public land?

Land owned or controlled by councils consists of

<table>
<tr><td>• Public roads
• Land to which the Crown Land Management Act 2016
• Commons</td><td colspan="2">• All other land
(It is this other land that this Act defines to be public land.)</td></tr>
<tr><td>What regulates this land?</td><td colspan="2">This land may be classified by a local environmental plan or council resolution as</td></tr>
<tr><td rowspan="11">• PUBLIC ROADS—Roads Act 1993
• CROWN LAND—Crown Land Management Act 2016
• COMMONS—Commons Management Act 1989</td><td>Community</td><td>Operational</td></tr>
<tr><td colspan="2">MANAGEMENT PLAN REQUIRED?</td></tr>
<tr><td>YES</td><td>NO</td></tr>
<tr><td colspan="2">IS USE RESTRICTED?</td></tr>
<tr><td>• Use must not change until management plan adopted
• Use and management must be in accordance with:
— plan of management adopted by council
— provisions of any relevant law</td><td>NO</td></tr>
<tr><td colspan="2">IS DISPOSAL RESTRICTED?</td></tr>
<tr><td>• Sale prohibited
• No lease or licence over 21 years
• Leases or licences over 5 years only with Minister’s consent if anyone objects to the lease or licence</td><td>NO</td></tr>
<tr><td colspan="2">RECLASSIFICATION?</td></tr>
<tr><td>By local environmental plan or, in some circumstances, by council resolution</td><td>By council resolution</td></tr>
</table>

Part 2A Environmental upgrade agreements

54C Definitions

In this Part:

environmental upgrade agreement—see section 54D.

environmental upgrade charge—see section 54G.

environmental upgrade works—see section 54E.

owners corporation for a strata scheme means the owners corporation for the strata scheme constituted under the *Strata Schemes Management Act 2015*.

strata building means a building containing a lot or part of a lot that is the subject of a strata scheme.

strata scheme means a strata scheme under the *Strata Schemes Development Act 2015*.

54D Environmental upgrade agreement

(1) A council may enter into an environmental upgrade agreement with a building owner and a finance provider in relation to a building.

(2) An ***environmental upgrade agreement*** is an agreement under which:

(a) a building owner agrees to carry out environmental upgrade works in respect of a building, and

(b) a finance provider agrees to advance funds to the building owner to finance those environmental upgrade works, and

(c) the council agrees to levy a charge on the relevant land for the purpose of repaying the advance to the finance provider.

(3) A building owner is a person who is the owner of the land on which the building is erected.

(4) For a building erected on land that is the subject of a strata scheme, the owners corporation for the strata scheme is taken to be the building owner.

(5) The function of entering into an environmental upgrade agreement can be delegated by a council only to the general manager of the council. The delegation must specify the building or buildings to which the delegation relates.

(6) Other persons may also be party to an environmental upgrade agreement.

54E What are environmental upgrade works?

(1) For the purposes of this Part, ***environmental upgrade works*** are works to improve the energy, water or environmental efficiency or sustainability of the building to which the agreement relates.

(2) Environmental upgrade works include any works declared by the regulations to be environmental upgrade works.

(3) Environmental upgrade works do not include any works declared by the regulations to be excluded works.

(4) More than one environmental upgrade agreement may be entered into in relation to the same environmental upgrade works.

54F Buildings that can be subject of environmental upgrade agreement

(1) An environmental upgrade agreement must relate to an existing building (that is, a building that is complete and ready for lawful use and occupation at the time the agreement is entered into).

(2) The building must be a non-residential building or a strata building that is the subject of a multi-residence scheme.

(3) A non-residential building is a building used wholly or predominantly for commercial, industrial or other non-residential purposes.

(4) A multi-residence scheme is a strata scheme comprising more than 20 lots (disregarding utility lots and lots used for parking).

(5) The building must be located in the council's area at the time that the agreement is entered into.

54G Contents of environmental upgrade agreement

(1) An environmental upgrade agreement must specify the following:

(a) the environmental upgrade works to be carried out by or on behalf of the building owner under the agreement,

(b) the amount of the advance or advances to be made by the finance provider under the agreement,

(c) the arrangements for repayment of the advance or advances (the ***agreed repayment arrangements***).

(2) The agreed repayment arrangements may require the council to levy a charge (an ***environmental upgrade charge***) for the purpose of discharging the building owner's obligation to repay the advance or advances made by the finance provider under the agreement (including any interest or other charges payable under the agreement).

(3) The agreed repayment arrangements must specify:

(a) the amount of the environmental upgrade charge or charges to be levied by the council under the agreement (or a method for calculating the amount of the charge or charges), and

(b) the date or dates on which the charge or charges are to be levied by the council, and

(c) any adjustments to be made to the charge or charges in the event of late payment.

(4) Money paid to a council in respect of an environmental upgrade charge is to be paid by the council to the finance provider in accordance with the environmental upgrade agreement.

(5) An environmental upgrade agreement may permit the early repayment of any amount payable under the agreement.

(6) An environmental upgrade agreement must be in writing.

(7) An environmental upgrade agreement may include any other provisions agreed to by the parties.

(8) An environmental upgrade agreement may be varied or terminated by further agreement between the council, the finance provider and the building owner for the time being.

54H Council fees under agreement

(1) An environmental upgrade agreement may authorise a council to deduct from any money paid in respect of an environmental upgrade charge, and retain, as a council fee:

(a) a service fee, being a fee to cover any costs incurred by the council in entering into, or administering, the agreement, and

(b) a late payment fee, being the amount, or a part of the amount, charged under the agreement for late payment of an environmental upgrade charge.

(2) The environmental upgrade agreement must specify the amount of, or a method for calculating, any such council fee.

(3) Part 10 of Chapter 15 does not apply in respect of a council fee charged under an environmental upgrade agreement.

(4) However, section 610D applies to the service fee component of the council fee.

54I Power to levy environmental upgrade charge

(1) A council may levy an environmental upgrade charge in accordance with an environmental upgrade agreement.

(2) An environmental upgrade charge may be levied only on the land on which the building to which the environmental upgrade agreement relates is erected or, in the case of a strata building, the land that is the subject of the relevant strata scheme.

54J Application of other charge provisions to environmental upgrade charge

(1) The relevant provisions apply in respect of an environmental upgrade charge in the same way as they apply in respect of a charge levied under Chapter 15.

(2) The ***relevant provisions*** are the following provisions:

(a) Chapter 15—sections 543, 544, 545, 546 (1), (3), (4) and (5), 550, 561, 569, 571, 573, 602 and 603,

(b) Chapter 17—sections 695, 696 and 712 and Division 5 of Part 2.

(3) The relevant provisions apply with the following modifications:

(a) in section 545, a reference to a provision of Part 4 of Chapter 15 is taken to include a reference to a provision of this Part,

(b) in section 550, a reference to a rate or charge levied under this Act is taken to include a reference to any amount charged under an environmental upgrade agreement for late payment of an environmental upgrade charge.

(4) The regulations may further apply, disapply or modify the operation of any provision of this Act that relates to charges levied by a council in respect of an environmental upgrade charge.

54K Special provisions relating to strata buildings

(1) An environmental upgrade charge that is levied in respect of land that is the subject of a strata scheme is payable by the owners corporation for that strata scheme.

(2) This section has effect despite section 561, as applied by this Part.

(3) An owners corporation may determine whether environmental upgrade charges are to be paid from its sinking fund or its administrative fund.

(4) An owners corporation for a strata scheme must, on the request of an owner of a lot that forms part of the strata scheme, provide to the owner a copy of any environmental upgrade agreement that relates to premises the subject of the strata scheme.

(5) The regulations may disapply or modify the operation of any provision of the *Strata Schemes Management Act 2015* in relation to environmental upgrade charges.

54L Payment of environmental upgrade charge

(1) An environmental upgrade charge is to be paid within 28 days after notice of the charge is served on the person liable to pay it.

(2) When an environmental upgrade charge is paid to a council, the council may deduct from the payment, and retain, any amount that the council is authorised to deduct and retain as a council fee under the agreement.

(3) Money paid to a council in respect of an environmental upgrade charge, other than any council fee retained by the council, may be held, pending its payment to the finance provider to which it is to be paid, in the council's trust fund in trust for the finance provider.

(4) A separate account is to be established in the council's trust fund for money paid in respect of environmental upgrade charges.

(5) Money paid to a council in respect of an environmental upgrade charge does not form part of the council's general income under Part 2 of Chapter 15.

54M Liability of council to recover charge

(1) A council must use its best endeavours to recover an environmental upgrade charge in accordance with any requirements imposed on it by an environmental upgrade agreement.

(2) However, a council is not liable for any failure by a person to pay an environmental upgrade charge or part of an environmental upgrade charge.

(3) Accordingly, any such failure does not make the council liable to pay the outstanding amount to the finance provider.

54N Recovery of contributions from lessees

(1) A provision of a lease may require a lessee to pay to the lessor a contribution towards an environmental upgrade charge payable under an environmental upgrade agreement that relates to premises that are the subject of the lease.

(2) The amount recoverable by the lessor as a contribution must not exceed a reasonable estimate of the cost savings to be made by the lessee, as a consequence of the environmental upgrade works provided for by the environmental upgrade agreement, during the period to which the contribution relates.

(3) An environmental upgrade agreement may make provision for the recovery of contributions by a lessor (including by providing for the methodology by which the cost savings to be made by a

lessee are to be estimated), in which case a contribution is recoverable only in accordance with that agreement.

(4) The methodology may permit both savings made directly by the lessee and a proportion of savings made by all occupants of the relevant building to be counted towards the cost savings made by the lessee.

(5) The parties to a lease may agree that subsections (2)–(4) do not apply in respect of the lease. In such a case, the lease may make alternative provision for the payment by the lessee of a contribution towards an environmental upgrade charge payable under an environmental upgrade agreement.

(6) A lessor is not entitled to recover a contribution from a lessee towards the payment of an environmental upgrade charge unless the lessor provides to the lessee, on request by the lessee, a copy of the environmental upgrade agreement to which the contribution relates.

(7) This section applies despite section 23 of the *Retail Leases Act 1994* and section 40 of the *Residential Tenancies Act 2010*.

(8) To avoid doubt, a contribution referred to in this section is an outgoing for the purposes of the *Retail Leases Act 1994*.

Note. See, in particular, section 27 of the *Retail Leases Act 1994*.

(9) The regulations may make further provision for or with respect to the making of contributions towards environmental upgrade charges by lessees.

(10) In particular, the regulations may disapply or modify the operation of any provision of the *Retail Leases Act 1994* or the *Residential Tenancies Act 2010* in relation to any such contribution.

(11) In this section:

lease means an agreement under which a person grants to another person for value a right of occupation of premises.

54O Agreements to be made on a voluntary basis

(1) Entry into an environmental upgrade agreement is voluntary.

(2) A council must not require a person to enter into an environmental upgrade agreement, whether as a condition of a development consent or a requirement of an order under the *Environmental Planning and Assessment Act 1979* or by any other means.

(3) This section does not prevent a planning agreement under the *Environmental Planning and Assessment Act 1979* making provision for entry into an environmental upgrade agreement.

54P Reporting requirements

(1) A council must include particulars of any environmental upgrade agreement entered into by the council in its annual report, in accordance with any requirements imposed under section 406.

(2) The Departmental Chief Executive is to consult with the Chief Executive of the Office of Environment and Heritage regarding the requirements that are to apply under that section in respect of environmental upgrade agreements.

(3) A council is authorised to disclose information about any environmental upgrade agreement to which it is a party to the Chief Executive of the Office of Environment and Heritage.

(4) A council is required to disclose any information about an environmental upgrade agreement to which it is a party that is requested by the Chief Executive of the Office of Environment and Heritage.

54Q Guidelines

(1) The Minister for Climate Change and the Environment may, with the concurrence of the Minister administering this Act, from time to time prepare, adopt or vary guidelines relating to environmental upgrade agreements and the functions of councils under this Part.

(2) In particular, the guidelines may specify provisions that may be included in an environmental upgrade agreement with respect to:

(a) the making of contributions by lessees towards environmental upgrade charges payable under an agreement (including by providing for the methodology by which the cost savings to be made by a lessee as a consequence of environmental upgrade works are to be estimated), and

(b) progress or implementation reports to be made by a building owner under an environmental upgrade agreement.

(3) The methodology may permit both savings made directly by the lessee and a proportion of savings made by all occupants of the relevant building to be counted towards the cost savings made by the lessee.

(4) A council must take the guidelines into consideration before exercising any of its functions under this Part.

(5) The regulations may adopt the guidelines, or any part of the guidelines, as mandatory requirements.

(6) A council must comply with any mandatory requirements of the guidelines in exercising its functions under this Part.

(7) Guidelines made under this section are to be published in the Gazette.

54R Changes to council area

The functions of a council under an environmental upgrade agreement may be exercised by any council to which the assets, rights and liabilities of the council with respect to the agreement are transferred by proclamation referred to in section 213.

Part 3 Restraints and qualifications that apply to service functions

Division 1 Tendering

55 Requirements for tendering

(1) A council must invite tenders before entering into any of the following contracts:

(a) a contract to carry out work that, by or under any Act, is directed or authorised to be carried out by the council,

(b) a contract to carry out work that, under some other contract, the council has undertaken to carry out for some other person or body,

(c) a contract to perform a service or to provide facilities that, by or under any Act, is directed or authorised to be performed or provided by the council,

(d) a contract to perform a service or to provide facilities that, under some other contract, the council has undertaken to perform or provide for some other body,

(e) a contract for the provision of goods or materials to the council (whether by sale, lease or otherwise),

(f) a contract for the provision of services to the council (other than a contract for the provision of banking, borrowing or investment services),

(g) a contract for the disposal of property of the council,

(h) a contract requiring the payment of instalments by or to the council over a period of 2 or more years,

(i) any other contract, or any contract of a class, prescribed by the regulations.

(2) Tenders are to be invited, and invitations to tender are to be made, by public notice and in accordance with any provisions prescribed by the regulations.

(2A) Nothing in this section prevents a council from tendering for any work, service or facility for which it has invited tenders.

(3) This section does not apply to the following contracts:

(a) subject to the regulations, a contract for the purchase of goods, materials or services specified by a person prescribed by the regulations made with another person so specified, during a period so specified and, if a rate is so specified, at a rate not exceeding the rate so specified,

(b) a contract entered into by a council with the Crown (whether in right of the Commonwealth, New South Wales or any other State or a Territory), a Minister of the Crown or a statutory body representing the Crown,

(c) a contract entered into by a council with another council,

(d) a contract for the purchase or sale by a council of land,

(e) a contract for the leasing or licensing of land by the council, other than the leasing or licensing of community land for a term exceeding 5 years to a body that is not a non-profit organisation (see section 46A),

(f) a contract for purchase or sale by a council at public auction,

(g) a contract for the purchase of goods, materials or services specified by the NSW Procurement Board or the Department of Administrative Services of the Commonwealth, made with a person so specified, during a period so specified and, if a rate is so specified, at a rate not exceeding the rate so specified,

(h) a contract for the employment of a person as an employee of the council,

(i) a contract where, because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders,

(j) contract for which, because of provisions made by or under another Act, a council is exempt from the requirement to invite a tender,

(k) a contract made in a case of emergency,

(l) a contract to enter into a public-private partnership,

(m) if a council has entered into a public-private partnership—a contract entered into by the council for the purposes of carrying out a project under the public-private partnership (but only to the extent that the contract is part of the project that has been assessed or reviewed under Part 6 of Chapter 12),

(n) a contract involving an estimated expenditure or receipt of an amount of:

(i) less than $250,000 or another amount as may be prescribed by the regulations, or

(ii) less than $150,000 or another amount as may be prescribed by the regulations for a contract involving the provision of services where those services are, at the time of entering the contract, being provided by employees of the council,

(o) a contract that is an environmental upgrade agreement (within the meaning of Part 2A),

(p) a contract or arrangement between a council and the Electoral Commissioner for the Electoral Commissioner to administer the council's elections, council polls and constitutional referendums,

(q) a contract made with a person or body approved as a disability employment organisation under the *Public Works and Procurement Act 1912* for the purchase of goods or services in relation to which the person or body is so approved.

Note. Despite the person or body being approved under the *Public Works and Procurement Act 1912*, that Act does not otherwise apply to the procurement of goods and services by or for a council.

(4) A council that invites tenders from selected persons only is taken to comply with the requirements of this section if those persons are selected:

(a) from persons who have responded to a public advertisement for expressions of interest in the particular contract for which tenders are being invited, or

(b) from persons who have responded to a public advertisement for recognition as recognised contractors with respect to contracts of the same kind as that for which tenders are being invited.

(5)–(7) (Repealed)

55A Extended operation of section 55 to council-related entities

(1) A council must comply with the requirements of section 55 (including any regulations made under that section) even though the contract to which that section applies involves something being done to or by an entity that the council has formed or participated in forming.

(2) However, if the entity concerned is formed under a public-private partnership, subsection (1) has effect only to the extent that the contract is not part of a project that has been assessed or reviewed in accordance with Part 6 of Chapter 12.

(3) In this section:

entity means any partnership, trust, corporation, joint venture, syndicate or other body (whether or not incorporated), but does not include any such entity that is of a class prescribed by the regulations as not being within this definition.

Division 2 Water supply, sewerage and stormwater drainage works and facilities

56 Application of Division

(1) The provisions of this Division relating to water supply and sewerage (but not stormwater drainage) do not apply to:

(a) land within the area of operations of the Sydney Water Board under the *Sydney Water Act 1994*, or

(b) land within the area of operations of the Hunter Water Board under the *Hunter Water Act 1991*.

(2) The provisions of this Division (sections 57, 58 and 59 excepted) relating to water supply and sewerage (but not stormwater drainage) do not apply to land within the area of operations of a water supply authority constituted under the *Water Management Act 2000*.

57 Construction of works

(1) The Minister for Primary Industries may, on the application of one or more councils, construct works of water supply, sewerage or stormwater drainage under the *Public Works Act 1912*.

(2) The Minister for Primary Industries may agree to the construction of the works by the council or councils concerned on the Minister's behalf.

58 Handing over of works

(1) The Minister for Primary Industries may, on or before the completion of any such works, by notice given to the council or councils concerned, charge the council or councils with the care and management of the whole or part of the works (and of land on which the works are, or are being, constructed).

(2) The notice may include provisions relating to the responsibility of the council or councils concerned for financial costs associated with the works.

(3) The notice has effect according to its tenor from the date the notice is given to the council or councils concerned.

(4) If more than one council is charged with the care and management of works, each council may be charged with the care and management of a specified portion of the works or the councils may be charged jointly as to the whole or a specified portion.

59 Vesting of works

(1) The Minister for Primary Industries may, by notice published in the Gazette, do either or both of the following:

(a) declare that land acquired for the purposes of any such works, or any part of the works, is vested in the council or councils,

(b) declare that all right, title and interest of the Minister in any such works, or part of the works, are vested in the council or councils.

(2) The notice has effect according to its tenor from the date the notice is published in the Gazette.

(3) If, on the date on which a notice under this section is published in the Gazette, the council or councils concerned have not made all payments to the Minister that may finally be required to be made in respect of the cost of the acquisition of the land and of constructing the works, or part of the works (whether or not that cost has been finally determined), the council or councils concerned continue to be liable to make those payments.

59A Ownership of water supply, sewerage and stormwater drainage works

(1) Subject to this Division, a council is the owner of all works of water supply, sewerage and stormwater drainage installed in or on land by the council (whether or not the land is owned by the council).

(2) A council may operate, repair, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other things that are necessary or appropriate to any of its works to ensure that, in the opinion of the council, the works are used in an efficient manner for the purposes for which the works were installed.

(3) The provisions of this section have effect despite anything contained in section 42 of the *Real Property Act 1900*.

60 Council works for which the approval of the Minister for Primary Industries is required

A council must not, except in accordance with the approval of the Minister for Primary Industries, do any of the following:

(a) as to works of water supply—construct or extend a dam for the impounding or diversion of water for public use or any associated works,

(b) as to water treatment works—construct or extend any such works,

(c) as to sewage—provide for sewage from its area to be discharged, treated or supplied to any person,

(d) as to flood retarding basins prescribed by the regulations—construct or extend any such basins.

61 Directions of the Minister for Primary Industries concerning certain works

(1) The Minister for Primary Industries or a person authorised by the Minister may direct a council to take such measures as are specified in the direction to ensure the proper safety, maintenance and working of any of the following works:

(a) dams for the impounding or diversion of water for public use or any associated works,

(b) water treatment works,

(c) sewage treatment works.

(2) The council must comply with the direction.

62 Powers of Minister during emergencies

(1) The Minister for Primary Industries or a person authorised by the Minister may direct a council to take such measures with respect to any works to which this Division applies as are specified in the direction if the Minister or person is of the opinion that an emergency exists that constitutes a threat to public health or public safety or that is causing or is likely to cause damage to property.

(2) A direction may not be given unless the Minister for Primary Industries has obtained the concurrence of the Minister for Health.

(3) The council must comply with the direction.

63 Effect of failure to comply with directions

(1) If a council does not comply with a direction under section 61 or 62 within a reasonable time after notice requiring compliance with the direction is given to it by the Minister for Primary Industries or the person authorised by the Minister, the Minister may do all such things as may be necessary to give effect to the direction.

(2) The Minister may recover any cost incurred from the council as a debt.

64 Construction of works for developers

Division 5 of Part 2 of Chapter 6 of the *Water Management Act 2000* applies to a council exercising functions under this Division in the same way as it applies to a water supply authority exercising functions under that Act.

65 Powers of Minister for Primary Industries—entry on to land and other powers

Part 2 of Chapter 8 applies, in relation to works of water supply and sewerage to which this Division applies, to the Minister for Primary Industries and a person authorised by the Minister in the same way as it applies to a council and a council employee (or other person) authorised by the council.

66 Appointment of administrator

(1) The Minister for Primary Industries (the ***appointing Minister***) may, with the concurrence of the Minister for Local Government, by order published in the Gazette, appoint an administrator to exercise all the functions under this Division, or specified functions under this Act, of a council.

(1A) If more than one administrator is appointed, each administrator has the functions of the council specified in the instrument of appointment.

(2) Such an order may not be made until after a public inquiry concerning the exercise by the council of the relevant functions has been held.

(3) The appointment of one or more persons as a commissioner or commissioners to hold the public inquiry may, despite Part 8 of Chapter 13, be made by the Minister for Primary Industries with the concurrence of the Minister for Local Government.

(4) An administrator is to be paid a salary determined by the appointing Minister, with the concurrence of the Minister for Local Government, from the council's funds.

(5) An administrator has, during the administrator's term of office and to the exclusion of the council, the functions the administrator was appointed to exercise.

(5A) If more than one administrator is appointed for a council, the appointing Minister may give directions for the purpose of resolving any issues that arise as a result of there being more than one administrator.

(6) The regulations may make provision for or with respect to:

- the appointment and term of office of an administrator
- an administrator's accommodation, and the accommodation of persons assisting the administrator, at the offices of the council
- the assistance to be rendered to an administrator by the council's employees.

Division 3 Private works

67 Private works

(1) A council may, by agreement with the owner or occupier of any private land, carry out on the land any kind of work that may lawfully be carried out on the land.

Note. Examples of the kind of work that a council might carry out under this section include:

- paving and roadmaking
- kerbing and guttering
- fencing and ditching
- tree planting and tree maintenance
- demolition and excavation
- land clearing and tree felling
- water, sewerage and drainage connections
- gas and electricity connections.

(2) A council must not carry out work under this section unless:

(a) it proposes to charge an approved fee for carrying out the work as determined by the council in accordance with Division 2 of Part 10 of Chapter 15, or

(b) if it proposes to charge an amount less than the approved fee, the decision to carry out the work is made, and the proposed fee to be charged is determined, by resolution of the council at an open meeting before the work is carried out.

(3) A council must include details or a summary of any resolutions made under this section and of work carried out under subsection (2) (b) in its next annual report.

(4) A report of work to which subsection (2) (b) applies must be given to the next meeting of the council after the work is carried out specifying:

- the person for whom the work was carried out
- the nature of the work
- the type and quantity of materials used
- the charge made for those materials
- the total of the number of hours taken by each person who carried out the work
- the total amount charged for carrying out the work (including the charge made for materials)
- the reason for carrying out the work.

(5) This section does not apply to work carried out by a council, or by two or more councils jointly, for another council or for a public authority.

(6) This section does not apply to any graffiti removal work carried out by a council in accordance with Part 4 of the *Graffiti Control Act 2008*.

Division 4

67A–67C (Repealed)

Chapter 7 What are the regulatory functions of councils?

Part 1 Approvals

Division 1 What activities require approval?

68 What activities, generally, require the approval of the council?

(1) A person may carry out an activity specified in the following Table only with the prior approval of the council, except in so far as this Act, the regulations or a local policy adopted under Part 3 allows the activity to be carried out without that approval.

(2) This section does not apply to the carrying out of an activity specified in Part B of the following Table:

(a) on land within the area of operations of the Sydney Water Board under the *Sydney Water Act 1994*, or

(b) on land within the area of operations of the Hunter Water Board under the *Hunter Water Act 1991*.

(3) This section does not apply to the carrying out of an activity specified in item 1, 2, 3, 4 or 6 of Part B of the following Table on land within the area of operations of a water supply authority constituted under the *Water Management Act 2000*.

Note. A person who fails to obtain an approval or who carries out an activity otherwise than in accordance with an approval is guilty of an offence—see secs 626 and 627.

Table
Approvals
Part A Structures or places of public entertainment

1 Install a manufactured home, moveable dwelling or associated structure on land

2, 3 (Repealed)

Part B Water supply, sewerage and stormwater drainage work

1 Carry out water supply work

2 Draw water from a council water supply or a standpipe or sell water so drawn

3 Install, alter, disconnect or remove a meter connected to a service pipe

4 Carry out sewerage work

5 Carry out stormwater drainage work

6 Connect a private drain or sewer with a public drain or sewer under the control of a council or with a drain or sewer which connects with such a public drain or sewer

Part C Management of waste

1 For fee or reward, transport waste over or under a public place

2 Place waste in a public place

3 Place a waste storage container in a public place

4 Dispose of waste into a sewer of the council

5 Install, construct or alter a waste treatment device or a human waste storage facility or a drain connected to any such device or facility

6 Operate a system of sewage management (within the meaning of section 68A)

Part D Community land

1 Engage in a trade or business

2 Direct or procure a theatrical, musical or other entertainment for the public

3 Construct a temporary enclosure for the purpose of entertainment

4 For fee or reward, play a musical instrument or sing

5 Set up, operate or use a loudspeaker or sound amplifying device

6 Deliver a public address or hold a religious service or public meeting

Part E Public roads

1 Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway

2 Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road

3 (Repealed)

Part F Other activities

1 Operate a public car park

2 Operate a caravan park or camping ground

3 Operate a manufactured home estate

4 Install a domestic oil or solid fuel heating appliance, other than a portable appliance

5 Install or operate amusement devices

6 (Repealed)

7 Use a standing vehicle or any article for the purpose of selling any article in a public place

8, 9 (Repealed)

10 Carry out an activity prescribed by the regulations or an activity of a class or description prescribed by the regulations

68A Meaning of "operate a system of sewage management"

(1) In this Part, ***operate a system of sewage management*** means hold or process, or re-use or discharge, sewage or by-products of sewage (whether or not the sewage is generated on the premises on which the system of sewage management is operated).

(2) Without limiting subsection (1), ***operate a system of sewage management*** includes the following:

(a) use artificial wetlands, transpiration mounds, trenches, vegetation and other effluent polishing, dispersal or re-use arrangements in related land application areas,

(b) hold or process sewage that is to be subsequently discharged into a public sewer.

(3) However, ***operate a system of sewage management*** does not include any of the following:

(a) any action relating to the discharge of sewage directly into a public sewer,

(b) any action relating to sewage or by-products of sewage after their discharge into a public sewer.

(4) In this section:

public sewer means a sewer operated by a council or county council, a water supply authority (within the meaning of the *Water Management Act 2000*), a State owned corporation specified in Schedule 1 or 5 to the *State Owned Corporations Act 1989* (or a subsidiary of such a corporation) or any other public or local authority.

related land application area, in relation to a sewage management facility, means the area of land (if any) where it is intended that effluent and bio-solid waste from the facility will be re-used, applied or dispersed into the environment.

sewage includes any effluent of the kind referred to in paragraph (a) of the definition of ***waste*** in the Dictionary to this Act.

sewage management facility means:

(a) a human waste storage facility, or

(b) a waste treatment device intended to process sewage,

and includes a drain connected to such a facility or device.

68B Approvals not personal property under Personal Property Securities Act 2009 (Cth)

An approval under this Part is declared not to be personal property for the purposes of the *Personal Property Securities Act 2009* of the Commonwealth.

Note. The *Personal Property Securities Act 2009* of the Commonwealth does not apply in relation to a right, licence or authority granted by or under a law of a State that is declared by the law not to be personal property for the purposes of that Act.

Division 2 Crown activities

69 Crown exemption from approval to do things incidental to erection or demolition of building

Section 68 does not require the Crown or a person prescribed by the regulations to obtain the approval of a council to do anything that is incidental to the erection or demolition of a building.

70, 71 (Repealed)

72 Determination of applications by the Crown

(1) A council, in respect of an application for approval made by the Crown or a person prescribed by the regulations, must not:

(a) refuse to grant approval, except with the written consent of the Minister, or

(b) impose a condition of an approval, except with the written consent of the Minister or the applicant.

(2) If the council proposes to refuse to grant approval or to impose a condition of approval, it must immediately notify the applicant.

(3) After the applicant is so notified, the council must submit to the Minister:

(a) a copy of the application for approval, and

(b) details of its proposed determination of the application, and

(c) the reasons for the proposed determination, and

(d) any relevant reports of another public authority.

(4) The applicant may refer the application to the Minister whether or not the council complies with subsection (3).

(5) After receiving the application from the council or the applicant, the Minister must notify the council and the applicant of:

(a) the Minister's consent to the refusal of approval, or

(b) the Minister's consent to the imposition of the council's proposed conditions, or

(c) the Minister's intention not to agree with the council's proposed refusal and the period within which the council may submit any conditions it wishes to impose as conditions of approval, or

(d) the Minister's refusal to agree with the council's proposed conditions and any conditions to which the Minister's consent may be assumed.

(6) At the end of the period specified in subsection (5) (c), the Minister must notify the council and the applicant:

(a) whether the Minister consents to the imposition of any of the conditions submitted by the council during that period and, if so, which conditions, or

(b) of the conditions to which the Minister's consent may be assumed.

(7) The Minister must notify the council and the applicant of the reasons for a decision under subsection (5) or (6).

(8) If the council does not determine the application within the period notified by the Minister for the purpose, the council is taken, on the expiration of that period, to have determined the application in accordance with the Minister's consent.

73 Effect of council's failure to determine Crown application

(1) If the council does not determine an application to which section 72 applies within the relevant period specified in section 105, the council is taken, on the expiration of that period, to have refused the application.

(2) If the application is taken to have been refused, the applicant may refer the application to the Minister for determination.

(3) The Minister may determine an application so referred to the Minister.

(4) The Minister's determination has effect as if it were a determination of the council.

74 Prohibition on appeals concerning Crown applications

No review or appeal lies against a determination that the council is taken to have made under section 72 (8) or a decision or determination of the Minister under section 72 or 73.

Division 3 Making and determination of applications for approval—generally

75 Applications for approval

An application may be made to the council for an approval under this Part.

76 What may an application relate to?

The application may relate to:

- the whole or part of an activity
- the whole or any part of land on which the activity is proposed to be carried out
- more than one activity.

77 Relevant regulations and local policies to be brought to notice of intending applicants

A council must take such steps as are reasonably practicable to bring the existence of any relevant regulations and any relevant local policy adopted under Part 3 to the notice of any person it knows to be an intending applicant for an approval.

78 Who may make an application?

(1) An application may be made by the person seeking to carry out the activity for which the council's approval is required.

(2) If the application applies to particular land, the applicant must be the owner of the land or a person who has the consent of the owner.

(3) If the Crown is the owner of the land, the application may be made by or with the consent of a Minister or a person authorised for the purpose by a Minister.

79 What is the form of application?

An application must be made in the approved form.

80 Is there an application fee?

(1) An application must be accompanied by the approved fee.

(2) A council may require payment of a further approved fee if the application is subsequently amended.

81 What matters must accompany an application?

An application must be accompanied by such matters as may be prescribed by the regulations and such matters specified by the council as may be necessary to provide sufficient information to enable the council to determine the application.

82 Objections to application of regulations and local policies

(1) An applicant for an approval may lodge with the council an objection:

(a) that the regulations or a local policy adopted under Part 3 by the council relating to the activity for which approval is sought do not make appropriate provision with respect to that activity, or

(b) that compliance with any provision of those regulations or such a policy is unreasonable or unnecessary in the particular circumstances of the case.

(2) The applicant must specify the grounds of the objection.

(3) If the objection relates to the regulations and the council is satisfied that the objection is well founded, it may, with the concurrence of the Departmental Chief Executive, in determining the application, direct that:

(a) such provisions of any regulation relating to that activity as are specified in the direction:

(i) are not to apply, or

(ii) are to apply with such modifications as are specified in the direction,

in respect of the carrying out of that activity, or

(b) such requirements as are specified in the direction are to apply to the carrying out of that activity,

or give directions under both paragraphs (a) and (b).

(3A) If the objection relates to a local policy adopted under Part 3 by the council and the council is satisfied that the objection is well founded, it may, in determining the application, direct that:

(a) such provisions of any local policy relating to that activity as are specified in the direction:

(i) are not to apply, or

(ii) are to apply with such modifications as are specified in the direction,

in respect of the carrying out of that activity, or

(b) such requirements as are specified in the direction are to apply to the carrying out of that activity,

or give directions under both paragraphs (a) and (b) and the council must give the reasons for its direction or directions.

(3B) An objection is well founded for the purposes of subsection (3A) only if the council is satisfied that no person or the public interest will be adversely affected by the variation and that any variation is consistent with the principles of ecologically sustainable development.

(4) Any direction given by the council under subsection (3) or (3A), if the council's approval to the application concerned is granted, has effect according to its tenor and, in the case of a direction referred to in subsection (3) (a) (ii) or (b) or subsection (3A) (a) (ii) or (b), is a condition of that approval.

83 Ownership and use of plans and specifications

One copy of any plans and specifications accompanying an application becomes the property of the council, but must not be used for any purpose other than giving effect to the provisions of this Act or any other Act.

Note. This section does not prevent the use of the plans and specifications for other purposes with the consent of the applicant and with any other necessary consent.

84 Acknowledgment of application

The council, on receiving an application, must give written acknowledgment to the applicant of its receipt, unless the council rejects the application under section 85.

85 Rejection of unclear or illegible applications

(1) The council may reject an application within 7 days after its receipt if it is not clear as to the approval sought or if it is not easily legible.

(2) An application so rejected is taken not to have been made and the application fee is to be refunded.

86 Request for more information

(1) The council may, before it determines or is taken to have determined an application, request an applicant to provide it with more information that is reasonably necessary to enable the proper determination of the application.

(2) The request must be made within 21 days after the council receives the application.

(3) The information must be provided within a reasonable period specified by the council for the purpose, subject to subsection (4).

(4) The period of time that elapses between the date of the council's request and the date on which:

(a) the information is provided, or

(b) the applicant notifies the council that the information will not be provided, or

(c) the period specified by the council ends,

whichever is the sooner, is not to be taken into consideration in calculating the period referred to in section 105.

(5) A second or subsequent request for information may be made by the council, but such a request has no effect for the purposes of section 105.

87 Amendment of applications

(1) An applicant, at any time before the application is determined, may make a minor amendment to the application and may amend any matter accompanying the application.

(2) The making of a minor amendment does not require the application to be further notified to anyone.

(3) For the purposes of section 105, the application is taken not to have been made until the amendment is made.

88 Withdrawal of applications

(1) An applicant may withdraw an application at any time before its determination by the council by giving the council notice to that effect signed by the applicant.

(2) An application withdrawn under this section is taken for the purposes of this Act never to have been made.

(3) However, the question whether the application fee should be refunded is at the absolute discretion of the council.

89 Matters for consideration

(1) In determining an application, the council:

(a) must not approve the application if the activity or the carrying out of the activity for which approval is sought would not comply with the requirements of any relevant regulation, and

(b) must take into consideration any criteria in a local policy adopted under Part 3 by the council which are relevant to the subject-matter of the application, and

(c) must take into consideration the principles of ecologically sustainable development.

(2) If no requirements are prescribed for the purposes of subsection (1) (a), and no criteria are adopted for the purposes of subsection (1) (b), the council in determining an application:

(a) is to take into consideration, in addition to the principles of ecologically sustainable development, all matters relevant to the application, and

(b) is to seek to give effect to the applicant's objectives to the extent to which they are compatible with the public interest.

(3) Without limiting subsection (2), in considering the public interest the matters the council is to consider include:

(a) protection of the environment, and

(b) protection of public health, safety and convenience, and

(c) any items of cultural and heritage significance which might be affected.

90 Concurrence

(1) The council must not grant an approval in relation to a matter for which this Act or a regulation requires the council to obtain the concurrence of some other person or authority unless the council has obtained the concurrence of the person or authority.

(2) The person or authority may give the council notice that the concurrence may be assumed with such qualifications or conditions as are specified in the notice.

(3) The person or authority may amend its notice by a further notice.

(4) An approval given in accordance with a notice in force under this section is as valid as it would be if the council had obtained the concurrence of the person or authority concerned.

(5) Concurrence is to be assumed if at least 40 days have passed since concurrence was sought and the person or authority has not, within that period, expressly refused concurrence.

91 Giving effect to concurrence

(1) In granting an approval for which the concurrence of a person or authority has been given or may be assumed, the council must grant the approval subject to any conditions of the concurrence (whether the concurrence is given under section 90 (1) or (2)).

(2) This section does not affect the council's right to impose conditions under this Division not inconsistent with the conditions referred to in subsection (1) or to refuse approval.

92 Approval where an accreditation is in force

A council must not refuse to give its approval to an activity on the ground that any component, process or design relating to the activity is unsatisfactory if the component, process or design is accredited under Division 5 or under the regulations under the *Environmental Planning and Assessment Act 1979*.

93 Certification by qualified persons

(1) A council or the Minister may be satisfied that:

(a) a particular design, material, process or product complies with a criterion for approval, or

(b) an activity has been carried out in compliance with an approval,

by relying on a certificate to that effect from an appropriately qualified person.

(2) A certificate relating to a particular design, material, process or product must specify the particular criterion with which the design, material, process or product complies.

(3) The council or the Minister must rely on such a certificate if it is from an appropriately qualified person and is furnished by a public authority.

Note. Sections 92 and 93 specify circumstances in which a council does not have to form an independent judgment about some aspect of an activity for which approval is being sought, but may rely on an accreditation or certification of a competent person.

A component, process or design relating to an activity may be accredited in accordance with the procedure set out in Division 5 of this Part.

Section 732 exempts a council, councillor or employee of a council from liability that would otherwise be incurred as a consequence of relying on an accreditation or certification.

94 Determination of application

(1) The council may determine an application:

(a) by granting approval to the application, either unconditionally or subject to conditions, or

(b) by refusing approval.

(2) This section does not affect section 72.

95 "Deferred commencement" approval

(1) An approval may be granted subject to a condition that the approval is not to operate until the applicant satisfies the council as to any matter specified in the condition. Nothing in this Act prevents a person from doing such things as may be necessary to comply with the condition.

(2) Such an approval must be clearly identified as a "deferred commencement" approval (whether by the use of that expression or by reference to this section or otherwise).

(3) A "deferred commencement" approval must clearly distinguish conditions concerning matters as to which the council must be satisfied before the approval can operate from any other conditions.

(4) A council may specify the period in which the applicant must produce evidence to the council sufficient to enable it to be satisfied as to those matters.

(5) The applicant may produce evidence to the council sufficient to enable it to be satisfied as to those matters and, if the council has specified a period for the purpose, the evidence must be produced within that period.

(6) If the applicant produces evidence in accordance with this section, the council must notify the applicant whether or not it is satisfied as to the relevant matters. If the council has not notified the applicant within the period of 28 days after the applicant's evidence is produced to it, the council is, for the purposes only of section 177, taken to have notified the applicant that it is not satisfied as to those matters on the date on which that period expires.

96 Staged approval

(1) An approval may be granted:

(a) for the activity or one or more of the activities for which the approval is sought, or

(b) for such an activity, except for a specified part or aspect of the activity, or

(c) for a specified part or aspect of such an activity.

(2) Such an approval may be granted subject to a condition that the activity or the specified part or aspect of the activity, or any thing associated with the activity or the carrying out of the activity, must be the subject of:

(a) a further approval, or

(b) a consent, approval or permission under another Act,

or both.

97 Conditions concerning security

(1) An approval may be granted subject to a condition that the applicant provides to the council security for the payment of the cost of either or both of the following:

(a) making good any damage that may be caused to any council property as a consequence of doing or not doing any thing to which the approval relates,

(b) completing any works (other than works prescribed by the regulations) that may be required in connection with the approval.

Note. Works the completion of which may be required in connection with an approval could include footpaths, kerbing and guttering, road works, trunk drainage and environmental controls.

(2) The security is to be for such reasonable amount as is determined by the council and specified in the condition.

(3) The security may be provided, at the applicant's choice, by:

(a) a deposit with the council, or

(b) a guarantee satisfactory to the council.

(4) Security provided by way of deposit may be paid out to meet any cost referred to in subsection (1).

(5) A security deposit (or part) if repaid to the person who provided it is to be repaid with any interest accrued on the deposit (or part) as a consequence of its investment.

98 Other conditions

(1) An approval may be granted subject to a condition that a specified aspect of the activity that is ancillary to the core purpose of the activity is to be carried out to the satisfaction of the council or a person specified by the council.

(2) An approval is subject to any condition prescribed by the regulations as a condition of the approval.

99 Notice to applicant of determination of application

(1) The council (or the Minister in the case of a determination by the Minister under section 72) must give notice of the determination of an application to the applicant as soon as practicable after the determination.

(2) The date of the determination and the date from which the approval operates (if approval is granted) must be endorsed on the notice.

(3) In the case of an approval granted subject to a condition that the approval is not to operate until the applicant satisfies the council as to any matter specified in the condition (a "deferred commencement" approval):

(a) the date from which the approval operates must not be endorsed on the notice, and

(b) if the applicant satisfies the council as to the matter, the council must, as soon as practicable after being satisfied, give notice to the applicant of the date from which the approval operates.

(4) If the determination is made by the granting of approval subject to conditions or by refusing approval, the notice must notify the applicant:

(a) of the council's (or the Minister's) reasons for the imposition of each condition or for refusing approval, and

(b) of the provisions of this Act conferring a right of review of the determination (if relevant) and, in the case of a determination by the council, a right of appeal against the determination.

100 Review of determination

(1) An applicant may request the council to review a determination of the applicant's application.

(2) The request for a review must be made within 28 days after the date of the determination.

(3) An approved fee must, if required by the council, be paid in connection with a request for a review.

(4) The council may review the determination and, as a consequence of its review, may confirm or change the determination.

(4A) The decision whether or not to review the determination must not be made by the person who made the determination, unless that person was the council, but is to be made by a person who is qualified under subsection (5) to make the review.

(5) If the council reviews the determination, the review must be made by:

(a) if the determination was made by a delegate of the council—the council or another delegate of the council who is not subordinate to the delegate who made the determination, or

(b) if the determination was made by the council—the council.

(6) The council must give notice of the result of the review to the applicant as soon as practicable after the review.

(7) The date of review must be endorsed on the notice.

(8) If, as a consequence of a review, the council changes a determination, the changed determination replaces the earlier determination as from the date of the review.

(9) A determination on a review may not be further reviewed under this section.

101 Date from which approval operates

(1) An approval operates from the date specified for the purpose in the notice under section 99 or 100, subject to this section and section 102.

(2) If an appeal is made (and not withdrawn) against an approval granted on the determination of an application, the approval does not operate until the date of the decision on that appeal, except where that decision is to refuse approval.

(3) An approval is void and (except for the purposes of section 176) is taken never to have been granted if an appeal under section 176 is dismissed and approval is refused.

(4) If a determination is made by refusing approval or if an application is taken by section 105 to have been so determined, and the decision on the appeal made under section 176 in respect of that determination has the effect of granting approval, the decision is taken to be an approval granted under this Part and the approval operates from the date of that decision.

(5) An approval in respect of an application that is taken to have been approved under section 72 operates from the date on which it is taken to have been approved.

102 Insurance for residential building work

(1) This section applies if the council approves (whether or not subject to conditions) of the doing of any residential building work (within the meaning of the *Home Building Act 1989*) other than work by an owner-builder.

(2) The council must not forward or deliver to the applicant or any other person a copy of the plans and specifications submitted to it with the application unless:

(a) it is satisfied that the builder or other person who is to do the residential building work has complied with the applicable requirements of Part 6 of the *Home Building Act 1989*, and

(b) it has endorsed on the copy that it is so satisfied.

(3) Even though the council has approved of the doing of any such work, the approval has no effect unless the council has so endorsed a copy of the plans and specifications and forwarded or delivered the copy to the applicant after that approval was given.

(4) If the builder or person who is to do the residential building work is not known when the work is approved by the council, subsections (2) and (3) do not apply and subsection (5) applies instead.

(5) The council must grant the approval subject to a condition that the builder or person who does the residential building work complies with the applicable requirements of Part 6 of the *Home Building Act 1989*.

102A Evidence of insurance-related matters

(1) A statement purporting to be signed by an owner of land and declaring that:

(a) the owner intends to do residential building work (within the meaning of the *Home Building Act 1989*) on the land, and

(b) the reasonable market cost of the labour and materials involved in the work is not high enough for the owner to need an owner-builder permit to do the work,

is, for the purpose of the council's making an endorsement, sufficient evidence of the matter referred to in subsection (1) (b).

(2) A certificate purporting to be issued by an approved insurer under Part 6 of the *Home Building Act 1989* to the effect that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purpose of the council's making an endorsement, sufficient evidence that the person has complied with the requirements of that Part.

103 When does an approval lapse?

(1) An approval lapses:

(a) 5 years after the date from which it operates, except as provided by paragraph (b), or

(b) in the case of an approval that is subject to a condition under section 96 (2), 2 years after the date on which the last approval, consent or permission required to be obtained in accordance with the condition operates.

(2) A council, in granting an approval, may vary either or both of the periods referred to in subsection (1).

(3) Such a variation may not be made so as to cause:

(a) (Repealed)

(b) an approval of a kind prescribed by the regulations to lapse within the period prescribed by the regulations in relation to the approval.

(4) This section does not prevent the extension or renewal of an approval under section 107.

(5) In this section, ***vary*** means increase or reduce.

104 (Repealed)

105 Circumstances in which approval is taken to have been refused

(1) If the council has not determined an application:

(a) within the period of 40 days after the application is lodged with it, except as provided by paragraph (b), or

(b) within the period of 80 days after the application is lodged with it in the case of an application for which the concurrence of a person or authority is required by or under this Act,

the council is, for the purposes only of section 176, taken to have determined the application by refusing approval on the date on which that period expires.

(2) Nothing in subsection (1) prevents the council from determining an application after the expiration of the 40-day or 80-day period, whether on a review under section 100 or otherwise.

(3) A determination under subsection (2) does not prejudice or affect the continuance or determination of an appeal made under section 176 in respect of a determination that is taken under subsection (1) to have been made, subject to subsection (4).

(4) Where a determination under subsection (2) is made by granting approval, the council is entitled, with the consent of the applicant and without prejudice to costs, to have an appeal made under

section 176 in respect of a determination that is taken by subsection (1) to have been made, withdrawn at any time before the appeal is determined.

106 Can approvals be amended?

(1) A person to whom an approval is granted or any other person entitled to act on an approval may apply to the council to amend the approval.

(2) Sections 78–86, 89, 97–99 and 105 apply to an application to amend an approval in the same way as they apply to an application for approval.

(3) The council may amend an approval if:

(a) it is satisfied that the approval as amended will be substantially the same as the original approval, and

(b) it is satisfied that no prejudice will be caused to any person who made a submission concerning the application for the original approval, and

(c) it has consulted with any person or authority whose concurrence to the original approval was required to be obtained and the person or authority has not, within 21 days after being consulted, objected to the amendment of the original approval.

(4) (Repealed)

(5) If the council amends an approval under this section, the amended approval replaces the original approval as from the date endorsed on the notice of determination of the application.

(6) In the case of an approval granted by the Land and Environment Court, a reference in this section to the council is taken to be a reference to the Court, but no appeal lies from the Court's determination of the application.

107 Can approvals be extended or renewed?

(1) The council may determine to extend or renew an approval (but without changing the terms of the approval) if satisfied there is good cause for doing so.

(2) The renewal of an approval operates as if it were an approval granted on the date of renewal.

(3) The extension or renewal may be granted before the approval lapses or at any time within 3 months after the approval lapses.

(4) The relevant provisions of:

(a) sections 72, 73, 74, 78, 79, 80, 84, 85, 87, 88, 99 and 105, and

(b) Division 1 of Part 5,

apply to an application made by the Crown or a person prescribed by the regulations referred to in section 72 (1) to extend or renew an approval in the same way as they apply to an application for an approval.

(5) The relevant provisions of:

(a) sections 78, 79, 80, 84, 85, 87, 88, 99 and 105, and

(b) Division 1 of Part 5,

apply to an application made by any other person to extend or renew an approval in the same way as they apply to an application for an approval.

107A Special provision—renewal of approvals relating to operation of sewage management systems

(1) This section applies to an approval to operate a system of sewage management.

(2) The council may by notice in writing (in any form determined by the council) invite any person to whom an approval to which this section applies has been granted to apply to renew the approval.

Note. For example, an invitation in writing to a person to renew an approval could be made in the form of an account or invoice.

(3) A person to whom such an invitation is made is taken to have made an application under section 107 to renew the approval on the same terms as the original approval if the person pays any required application fee (being an approved fee under section 80).

108 Can approvals be revoked or modified?

(1) A council may revoke or modify an approval in the circumstances set out in section 109.

(2) A modification may take the form of the imposition of an additional condition or the variation or rescission of a condition to which the approval is subject.

(3) Notice of a revocation of an approval or a modification of an approval that restricts or reduces the authority conferred by the approval may be served on any person who appears to the council to be acting under that authority or to be entitled to act under that authority.

(4) A revocation or modification takes effect on the date of service of the notice of the revocation or modification or a later date specified in the notice.

(5) At the same time as or as soon as practicable after the notice of the revocation or modification is served, the council is required to send:

(a) a copy of the notice to each person who, in its opinion, is likely to be disadvantaged by the revocation or modification, and

(b) a copy of the notice and the reasons for the revocation or modification to the Building Services Corporation, if the approval is for:

- the transfer, alteration, repair or extension of water service pipes, or
- the carrying out of sanitary plumbing work, sanitary drainage work or stormwater drainage work.

(6) This section does not apply to an approval granted by the Land and Environment Court.

109 In what circumstances can an approval be revoked or modified?

An approval may be revoked or modified in any of the following circumstances:

(a) if the approval was obtained by fraud, misrepresentation or concealment of facts,

(b) for any cause arising after the granting of the approval which, had it arisen before the approval was granted, would have caused the council not to have granted the approval (or not to have granted it in the same terms),

(c) for any failure to comply with a requirement made by or under this Act relating to the subject of the approval,

(d) for any failure to comply with a condition of the approval.

110 Notice to be given of proposed revocation or modification

(1) Before revoking or modifying an approval, the council must inform, by notice:

(a) each person who, in its opinion, will be disadvantaged by the revocation or modification of the approval, and

(b) each person and authority whose concurrence was required to the granting of the approval.

(2) The notice must include the council's reasons for revoking or modifying the approval.

(3) The council must give those persons and authorities the opportunity of appearing before the council (or a person appointed by it) to show cause why the approval should not be revoked or modified.

111 Application of secs 108, 109 and 110 to the Crown

(1) A council that proposes to revoke or modify an approval given to the Crown or a person prescribed by the regulations for the purposes of section 72 must also give notice of its proposal to the Minister.

(2) A council must not revoke or modify such an approval except with the written consent of the Minister.

112 Entitlement to compensation

A person aggrieved by the revocation or modification of an approval in the circumstances set out in section 109 (b) may recover compensation from the council for expenditure which is rendered abortive by the revocation or modification and which was incurred pursuant to the approval during the period between the date on which the approval commenced to operate and the date specified in the relevant notice served under section 108 (4).

113 Record of approvals

(1) A council must keep a record of approvals granted under this Part and of decisions on appeal from any determination made by it under this Part.

(2) The record is to include the following:

- the serial number that identifies the application for the approval
- the date on which the application for the approval was made to the council
- the amount of any fee payable in connection with the application
- the date or dates on which any such fee, or any part of it, was paid to the council
- the date from which the approval operates
- the name and address of the person to whom the approval is granted
- the name or address of any place in relation to which the approval is granted
- a brief description of the subject-matter of the approval
- any conditions to which the approval is subject
- the duration of the approval
- whether the approval has been revoked or modified
- in the case of approvals concerning residential building work (within the meaning of the *Building Services Corporation Act 1989*), the names of licensees and owner-builders and the numbers endorsed on contractor licences and permits of which it is informed by owners of affected land.

(3) The council may include any other information in the record.

(4) The council must make such amendments to the record as are necessary as a consequence of any decision made by the Land and Environment Court on an appeal.

(5) The information in the record is to be available for public inspection, without charge, at the office of the council during ordinary office hours.

Division 4 Approvals for filming

114 What is the purpose of this Division?

(1) The purpose of this Division is to establish a streamlined procedure for obtaining any council approvals that are necessary in order to carry out filming.

(2) In this Division:

approval means:

(a) any approval, authorisation, consent, permit, determination or other decision that may be granted by a council (acting in any capacity) under this or any other Act or law (including the granting of a lease, licence or other estate in land, other than community land) prescribed by the regulations for the purposes of this paragraph, or

(b) if no regulations are made for the purposes of paragraph (a), any approval, authorisation, consent, permit, determination or other decision that may be granted by a council (acting in

any capacity) under this or any other Act or law (including the granting of a lease, licence or other estate in land, other than community land).

grant includes give, approve, authorise, consent, determine or otherwise decide.

115 Applications for approvals for filming

(1) A person intending to carry out a filming project may lodge with the council a filming proposal in which the person makes an application for one or more approvals that are necessary in order to enable the filming project to be carried out and that may be granted by the council (acting in any capacity) under this or any other Act or law.

(2) A filming proposal may contain applications relating to the whole or part of a filming project.

(3) A filming proposal cannot be lodged for more than one filming project.

116 Form of, and security deposits, bonds, fees and charges for, filming proposal

(1) A filming proposal must be made in the approved form.

(2) A filming proposal is to be accompanied by the fee (if any) payable for each application made in the proposal, if at the time of lodging the proposal the amount of that fee can be determined.

(3) Except as provided by subsection (4), the security deposit, bond, fee or charge (however expressed) for each application is to be determined in accordance with the Act, statutory instrument or law under which the application is made.

(4) If under any Act, statutory instrument or law the council has a discretion to determine the security deposit, bond, fee or charge (however expressed) in respect of an application, it must determine it in accordance with the applicable filming protocol and the amount determined must not exceed the maximum amount (if any) prescribed by the regulations for such an application.

(5) If the person who lodged the filming proposal does not pay the fee payable for making an application within 14 days after the day on which the proposal is lodged, the council may refuse to consider the application until the fee payable with respect to the application is paid.

Note. See section 119F (2).

117 Acknowledgment of application and notification of fees

(1) The council must within 7 days after the day on which a filming proposal is lodged with it:

(a) give written acknowledgment of its receipt to the person who lodged the proposal, unless the council rejects the application under subsection (2), and

(b) if a fee payable for any application made in the proposal has not been determined or paid, advise the person what that fee is.

(2) The council may reject an application made in a filming proposal within 7 days after the day on which the filming proposal is lodged if the application is not clear as to the approval sought or if it is not easily legible.

(3) An application so rejected is taken not to have been made and any application fee is to be refunded.

118 What matters must accompany a filming proposal?

A filming proposal must be accompanied by:

(a) such matters as are required to accompany each application made in the proposal (whether required by or under this Act or any another Act, statutory instrument or law), and

(b) such matters specified by the council as may be necessary to provide sufficient information to enable the council to determine the applications made in the proposal.

119 Filming protocol to be brought to attention of intending applicants

A council must take such steps as are reasonably practicable to bring the filming protocol, the existence of any relevant regulations and any relevant local policy adopted under Part 3 to the notice of any person who lodges or whom the council knows to be intending to lodge a filming proposal.

119A Amendment and withdrawal of applications

(1) A person who lodges a filming proposal may amend or withdraw an application made in the proposal in accordance with the Act, statutory instrument or law under which the application is made.

(2) However, the making of a minor amendment to an application does not stop the running of a period of time specified in section 116 or 117.

119B Application for approvals under Division 3

(1) An application for an approval under Division 3 made in a filming proposal is to be dealt with under Division 3, except as provided by this section.

(2) In determining the application, the council must comply with the applicable filming protocol in addition to taking into consideration the matters specified in section 89.

(2A) In the event of an inconsistency between any criteria in a local policy required to be taken into consideration under section 89 and the applicable filming protocol, the applicable filming protocol prevails.

(3) For the purposes of Division 3:

(a) a council is taken to have received an application made in a filming proposal on the day on which the approved fee for the application was paid, and

(b) a reference to an applicant, in relation to an application, is taken to be a reference to the person who lodged the filming proposal making the application concerned.

(4) An application for an approval under this Part made in a filming proposal that complies with sections 115, 116 and 118 is not subject to section 79, 80 (1), 81 or 85.

(5) A council that complies with sections 117 and 119 is not subject to section 77 or 84.

(6) If the council refuses an application, it must notify the applicant of the matters specified in section 99 within 3 business days after the refusal.

119C Application for approval other than under Division 3

(1) An application for an approval other than under Division 3 made in a filming proposal is to be dealt with as an application made under the relevant provision of the relevant Act, statutory instrument or law, except as provided by this Division.

(2) In determining the application, the council must comply with the applicable filming protocol in addition to any other requirements relating to determination of the application

(2A) In the event of an inconsistency between any requirements relating to determination of the application and the applicable filming protocol, the applicable filming protocol prevails.

(3) In relation to such an application, a reference to:

(a) a fee for making the application (however expressed) is taken to be a reference to the fee paid in relation to that application accompanying the filming proposal, and

(b) an applicant (however expressed) is taken to be a reference to the person who lodged the filming proposal with the council.

(4) An application referred to in subsection (1) made in a filming proposal that complies with sections 115, 116 and 118 is taken to have complied with any requirements (however expressed) under the relevant Act or statutory instrument as to:

(a) the form of the application, and

(b) any fee for making the application, and

(c) any matters required to accompany the application.

(5) A council that complies with sections 116 and 117 is taken to have complied with any requirements (however expressed) under the relevant Act or statutory instrument as to acknowledgement of an application and determination of a fee for making the application.

(6) An application referred to in subsection (1) is to be determined under the relevant provisions of the relevant Act or statutory instrument.

(7) A determination of such an application is (subject to subsection (8)) to be notified in accordance with the relevant provisions of the relevant Act or statutory instrument (if any).

(8) If the council refuses an application, it must:

(a) inform the applicant in writing of its determination as soon as practicable after it is made, and

(b) give the applicant reasons in writing for its determination within 3 business days after it is made, and

(c) if the relevant Act, statutory instrument or law confers a right of review of the determination or right of appeal against the determination—notify the applicant of that right within 3 business days after it is made.

119CA Presumption in favour of grant of approval

(1) The council must grant an application referred to in section 119B or 119C made to it in accordance with the Act, statutory instrument or law under which it is made unless the council:

(a) is satisfied that there are exceptional circumstances that warrant refusal of the application, or

(b) is required by the Act under which the application is made to refuse the application.

(2) Before refusing an application, the council must consider whether any concerns it has could be addressed by imposing conditions on the approval.

119D Applicable filming protocol

(1) For the purposes of this Division, the ***applicable filming protocol*** in relation to a council is:

(a) the filming protocol, issued by the Departmental Chief Executive under this section, as in force from time to time, or

(b) if the council has adopted a filming protocol and it has been approved by order in writing by the Departmental Chief Executive—that filming protocol.

(2) The Departmental Chief Executive may, by order in writing, issue a filming protocol that includes any of the following:

(a) information about procedures for obtaining approvals for carrying out filming,

(b) guidelines or heads of consideration to be taken into account by councils in determining applications for approvals made in a filming proposal,

(c) codes of conduct for the carrying out of filming,

(d) provisions for determining fees for an application, and fees and charges for services related to an application, made in a filming proposal,

(e) any other matter related to filming.

(3) The Departmental Chief Executive must not approve a filming protocol adopted by a council unless the Departmental Chief Executive is satisfied that it is comparable to the filming protocol issued by the Departmental Chief Executive.

(4) Before issuing a filming protocol, or approving a filming protocol adopted by a council, the Departmental Chief Executive must consult with such persons or bodies as he or she considers appropriate for such period as he or she considers appropriate.

(5) Except as provided by sections 119B (2A) and 119C (2A), a filming protocol has no effect to the extent that it is inconsistent with an express provision of an Act or statutory instrument.

119E Advertising or notification of applications made in filming proposal

(1) An application made in a filming proposal must comply with all the advertising or notification requirements for that application under any relevant Act or statutory instrument.

(2) However, two or more applications made in a filming proposal that are required or permitted to be advertised or notified by particular means may be advertised or notified by those means in one advertisement or notice if that advertisement or notice satisfies all the advertising or notification requirements for the applications concerned under the relevant Act or statutory instrument.

119F Application of this Division

(1) The provisions of this Division prevail to the extent of any inconsistency between the provisions of this Division and the provisions of any other Act, statutory instrument or law.

(2) Except as provided by section 116 (3) and (4), nothing in section 116 affects the operation of section 97 or any provision of any other Act, statutory instrument or law that allows a council to require payment of a security deposit, bond, fee or charge (however expressed) in relation to an application made in a filming proposal.

(3) Nothing in this Division affects any right of appeal under this or any other Act, statutory instrument or law.

Division 5 Accreditation of components, processes and designs

120 Application for accreditation

(1) Any person may apply to the Departmental Chief Executive for the accreditation of any component, process or design relating to an activity which is subject to the approval under this Part of a council.

(2) An application must be made in the approved form and be accompanied by the approved fee.

(3) Before deciding whether or not to grant an accreditation, the Departmental Chief Executive may require the applicant to submit such information relating to the component, process or design (including information describing any relevant method of installation, attachment or construction) as the Departmental Chief Executive considers appropriate.

(4) The Departmental Chief Executive may refuse to consider an application but in that event must refund the fee paid.

121 Determination of application

(1) The Departmental Chief Executive has a discretion to accredit a component, process or design.

(2) An accreditation may be granted subject to such conditions and qualifications, and for such period, as the Departmental Chief Executive thinks fit.

(3) In determining an application for accreditation, the Departmental Chief Executive may have regard to sources of information published or otherwise made available by such persons or bodies as the Departmental Chief Executive considers appropriate.

(4) In granting an accreditation, the Departmental Chief Executive must state the provisions of any regulation which the accredited component, process or design satisfies or with which the accredited component, process or design complies.

122 Revocation of accreditation

(1) The Departmental Chief Executive may at any time revoke an accreditation if the Departmental Chief Executive finds that:

(a) the accreditation has been obtained by fraud, misrepresentation or concealment of facts, or

(b) the standard of the component, process or design which is the subject of the accreditation:

(i) is unsatisfactory, or

(ii) differs from or fails to comply with the standard of that component, process or design as at the time the accreditation was granted, or

(c) an accreditation granted in any place outside New South Wales in respect of the component, process or design has been revoked or cancelled.

(2) If the Departmental Chief Executive determines to revoke an accreditation, the Departmental Chief Executive must notify the applicant for accreditation of the Departmental Chief Executive's determination.

123 Councils to be informed of accreditation and revocation

The Departmental Chief Executive must notify each council of an accreditation under this Division and of the revocation of any such accreditation as soon as practicable after the accreditation is granted or the accreditation is revoked.

123A Application for extension or renewal of accreditation

(1) A person who has been granted an accreditation under the *Local Government Act 1919* or under this Division (section 123B (b) excepted) may apply to the Departmental Chief Executive for an extension or renewal of the accreditation.

(2) This Division applies:

(a) to an application under this section in the same way as it applies to an application for accreditation, and

(b) to the extension or renewal of an accreditation in the same way as it applies to an accreditation.

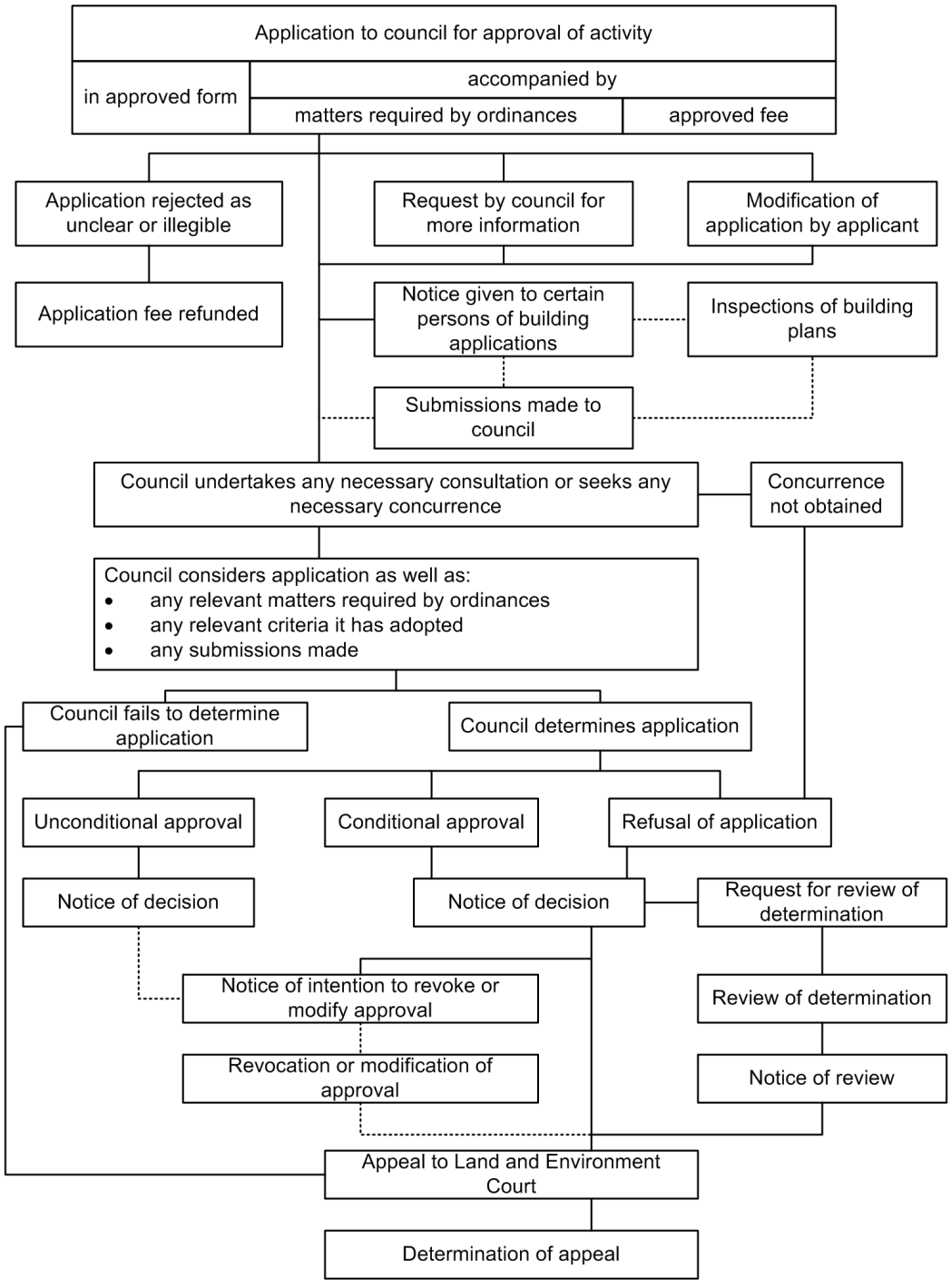
123B Acceptance of accreditation by others

The regulations:

(a) may provide for the submission with an application under this Division of an accreditation granted, or an assessment or appraisal made or given by a person or body other than the Departmental Chief Executive, and

(b) may provide that an accreditation granted by a person or body other than the Departmental Chief Executive is to be taken to be an accreditation granted and notified under, and subject to the revocation provisions of, this Division.

The main procedures concerning approvals



Part 2 Orders

Division 1 Giving of orders

124 Orders

A council may order a person to do or to refrain from doing a thing specified in Column 1 of the following Table if the circumstances specified opposite it in Column 2 of the Table exist and the person comes within the description opposite it in Column 3 of the Table.

Note. This section does not affect the power of a council to give an order (or a notice or direction) under the authority of another Act.

For example, some of those Acts and the orders (or notices or directions) that may be given include:

Food Act 2003	(by delegation) improvement notice or prohibition order
Protection of the Environment Operations Act 1997	environment protection notices
Public Health Act 2010	direction concerning maintenance or use of certain regulated systems
Roads Act 1993	order preventing the passage of traffic along a road or tollway
	order for the removal of an obstruction or encroachment on a road
Swimming Pools Act 1992	order requiring owner of swimming pool to bring it into compliance with the Act

A person who fails to comply with an order is guilty of an offence—see sec 628.

Table
Orders

Orders requiring or prohibiting the doing of things to or on premises

Column 1		Column 2	Column 3
To do what?		**In what circumstances?**	**To whom?**
1	To demolish or remove a building	(a)–(c) (Repealed) (d) Building is erected in a catchment district and causes or is likely to cause pollution of the water supply	Owner of building
2	(Repealed)		
3	To repair or make structural alterations to a building	(a), (b) (Repealed) (c) Building is erected in a catchment district and causes or is likely to cause pollution of the water supply	Owner of building
4	(Repealed)		

5	To take such action as is necessary to bring into compliance with relevant standards or requirements set or made by or under this Act or under the *Local Government Act 1919*: (a) a camping ground, caravan park or manufactured home estate (b) a moveable dwelling or manufactured home (c) (Repealed) (d) a place of shared accommodation (e) a hairdressers shop or beauty salon (f) a mortuary (g) a water meter on premises (h) a water supply or sewerage system on premises, but only in relation to any work that is not plumbing and drainage work within the meaning of the *Plumbing and Drainage Act 2011*	Failure to comply with relevant standards or requirements set or made by or under this Act or under the *Local Government Act 1919*	Owner, occupier or manager or, in the case of a water meter, water supply or sewerage system in respect of which a defect occurs in work due to faulty workmanship of, or defective material supplied by, a licensed contractor (being the holder of a licence in force under the *Home Building Act 1989* authorising the holder to contract to do the work) within 12 months after the work is carried out or the material is supplied, the licensed contractor
6	(Repealed)		
7	To fence land	Public health, safety or convenience renders it necessary or expedient to do so and there is no adequate fence between the land and a public place	Owner or occupier of land
8	To identify premises with such numbers or other identification in such manner as is specified in the order	Premises have a frontage to or entrance from a road and there are no markings that can readily be seen and understood from the road	Owner or occupier of land
9	To fence, empty, fill in or cover up a hole or waterhole in the manner specified in the order	Hole or waterhole is or may become dangerous to life	Owner or occupier of land

10	To remove or stack articles or matter, to cover articles or matter, to erect fences or screens or to plant trees	Land is in the immediate vicinity of a public place and is used for the storage of articles or matter so as to create or be likely to create unsightly conditions	Owner or occupier of land
11	To do or to refrain from doing such things as are specified in the order to prevent environmental damage, to repair environmental damage or to prevent further environmental damage	Work carried out on land has caused or is likely to cause environmental damage, being damage to the physical environment that is caused by: (a) drainage, or (b) drainage works, or (c) obstructing a natural watercourse other than by a work constructed or used under a water management work approval granted under the *Water Management Act 2000*, not being environmental damage arising from premises, works or equipment the subject of a licence issued under the *Protection of the Environment Operations Act 1997* or the subject of a notice or direction issued by a regulatory authority under that Act	Owner or occupier of land
12	To do such things as are necessary to control the flow of surface water across land	Other land, or a building on the land or other land, is being damaged or is likely to be damaged	Owner or occupier of land
13, 14	(Repealed)		

Orders requiring that premises be used or not used in specified ways

Column 1	Column 2	Column 3
To do what?	**In what circumstances?**	**To whom?**

15	Not to conduct, or to cease conducting, an activity on premises (whether or not the activity is approved under this Act)	The activity constitutes or is likely to constitute: (a) a life threatening hazard, or (b) a threat to public health or public safety and is not regulated or controlled under any other Act by a public authority	Any person apparently engaged in promoting, conducting or carrying out the activity
15A	(Repealed)		
16	To cease the use of premises or to evacuate premises	A person to whom order No 15 is given has failed to comply with the order	The person to whom order No 15 is given
17	To leave premises or not to enter premises	A person to whom order No 15 is given has failed to comply with the order	Any person
18	Not to keep birds or animals on premises, other than of such kinds, in such numbers or in such manner as specified in the order	Birds or animals kept on premises are: (a) in the case of any premises (whether or not in a catchment district)—of an inappropriate kind or number or are kept inappropriately, or (b) in the case of premises in a catchment district—birds or animals (being birds or animals that are suffering from a disease which is communicable to man or to other birds or animals) or pigs	Occupier of premises
19	To use or not to use a tennis court as specified	Actual or likely annoyance or threat to the safety of neighbours or users of a public place	Occupier of land

Orders requiring the preservation of healthy conditions

Column 1	Column 2	Column 3
To do what?	**In what circumstances?**	**To whom?**

20	To do such things as are specified in the order to put premises, vehicles or articles used for the manufacture, preparation, storage, sale, transportation or other handling or use of or in relation to food into a clean or sanitary condition	The premises, vehicle or article is not in a clean or sanitary condition	Owner or occupier of premises or owner or operator of vehicle or article
21	To do or refrain from doing such things as are specified in the order to ensure that land is, or premises are, placed or kept in a safe or healthy condition	The land or premises are not in a safe or healthy condition	Owner or occupier of land or premises
22	To store, treat, process, collect, remove, dispose of or destroy waste which is on land or premises in the manner specified in the order, provided that it is not inconsistent with regulations made under the *Protection of the Environment Operations Act 1997*	Waste is present or generated on the land or premises and is not being dealt with satisfactorily, and is not regulated or controlled by, or subject to, a licence or notice granted or issued under the *Protection of the Environment Operations Act 1997*	Owner or occupier of land or premises, owner of or person responsible for the waste or for any receptacle or container in which the waste is contained
22A	To remove or dispose of waste that is on any residential premises or to refrain from keeping waste on those premises	The waste is causing or is likely to cause a threat to public health or the health of any individual	Owner or occupier of the premises
23	To connect premises to the council's water supply by a specified date	The premises are situated within 225 metres of a water pipe of the council	Owner or occupier of land
24	To connect premises with a sewerage system by a specified date	The premises are situated within 75 metres of a sewer of the council	Owner or occupier of premises
25	Not to use or permit the use of a human waste storage facility on premises after a specified date	It is necessary for the purpose of protecting public health	Owner or occupier of premises

Orders requiring the protection or repair of public places

Column 1	Column 2	Column 3
To do what?	**In what circumstances?**	**To whom?**
26 (Repealed)		

27	To remove an object or matter from a public place or prevent any object or matter being deposited there	The object or matter: (a) is causing or is likely to cause an obstruction or encroachment of or on the public place and the obstruction or encroachment is not authorised by or under any Act, or (b) is causing or is likely to cause danger, annoyance or inconvenience to the public	Person causing obstruction or encroachment or owner or occupier of land from which the object or matter emanates or is likely to emanate
28	To take whatever steps are necessary to prevent damage to a public place and to repair damage to a public place	There is actual or likely damage:	
		(a) by excavation or removal of material from or adjacent to the public place, or	Person responsible for the excavation or the removal of the material
		(b) by a work or structure, or	Owner or person entitled to the benefit of the work or structure
		(c) by surface drainage or irrigation	Owner or occupier of land from which surface drainage flows or from which spray emanates
29	To alter or repair a work or structure on, over or under a public place	It is in the public interest to do so	Owner of the work or structure

Orders requiring compliance with approval

Column 1		Column 2	Column 3
To do what?		**In what circumstances?**	**To whom?**
30	To comply with an approval	The approval is not being complied with	Person entitled to act on the approval or person acting otherwise than in compliance with the approval

Note. See also Part 4 of the *Building Products (Safety) Act 2017*.

125 Abatement of public nuisances

A council may abate a public nuisance or order a person responsible for a public nuisance to abate it.

Note. ***Abatement*** means the summary removal or remedying of a nuisance (the physical removal or suppression of a nuisance) by an injured party without having recourse to legal proceedings.

Nuisance consists of interference with the enjoyment of public or private rights in a variety of ways. A nuisance is "public" if it materially affects the reasonable comfort and convenience of a sufficient class of people to constitute the public or a section of the public. For example, any wrongful or negligent act or omission in a public road that interferes with the full, safe and convenient use by the public of their right of passage is a public nuisance.

126 Giving orders to public authorities

(1) An order under this Division may not be given in respect of the following land without the prior written consent of the Minister:

- vacant Crown land
- Crown managed land
- a common.

(2) The Minister must not give consent in respect of vacant Crown land or Crown managed land until after the Minister has consulted the Minister administering the *Crown Land Management Act 2016*.

127 Making of regulations for the purposes of this Division

The regulations may prescribe acts or circumstances that are taken to be included in or excluded from any of the acts or circumstances specified in Column 1 or 2 of the Table to section 124.

128 Catchment districts

(1) The Governor may proclaim a district to be a catchment district for the purposes of this Act.

(2) An owner of a building who complies with order No 1 in the Table to section 124 in the circumstances specified in paragraph (d) for that order, or order No 3 in that Table in the circumstances specified in paragraph (c) for that order, under section 124 is entitled to compensation from the council for the expenses incurred by the owner in complying with the order.

128A Orders about removal or keeping of waste

(1) An order in terms of order No 22A in the Table to section 124 ceases to have effect, unless earlier revoked under section 153, at the end of the period of 5 years after it is given.

(2) The protection of public health is the paramount consideration in giving any such order.

Division 2 Procedures to be observed before giving orders

129 Circumstances in which compliance with this Division is required

(1) Before giving an order, a council must comply with this Division.

(2) This section does not apply to:

(a) an order in terms of order No 15 in the Table to section 124, or

(a1) an order in terms of order No 22A in the Table to section 124 (except to the extent that this section would otherwise require compliance with section 131A), or

(b) an order given, and expressed to be given, in an emergency.

130 Effect of compliance with this Division

A council that complies with this Division is taken to have observed the rules of natural justice (the rules of procedural fairness).

131 Criteria to be considered before order is given

If the council has adopted criteria in a local policy under Part 3 on which it is to give an order, the council is required to take the criteria into consideration before giving the order.

131A Orders that make or are likely to make residents homeless

(1) If an order will or is likely to have the effect of making a resident homeless, the council must consider whether the resident is able to arrange satisfactory alternative accommodation in the locality.

(2) If the person is not able to arrange satisfactory alternative accommodation in the locality, the council must provide the person with:

(a) information as to the availability of satisfactory alternative accommodation in the locality, and

(b) any other assistance that the council considers appropriate.

132 Notice to be given of proposed order

(1) Before giving an order, a council must give notice to the person to whom the order is proposed to be given of its intention to give the order, the terms of the proposed order and the period proposed to be specified as the period within which the order is to be complied with.

(2) The council's notice must also indicate that the person to whom the order is proposed to be given may make representations to the council as to why the order should not be given or as to the terms of or period for compliance with the order.

(3) The notice may provide that the representations are to be made to the council or a specified committee of the council on a specified meeting date or to a specified councillor or employee of the council on or before a specified date being, in either case, a date that is reasonable in the circumstances of the case.

133 Making of representations

(1) A person may, in accordance with a notice under section 132, make representations concerning the proposed order.

(2) For the purpose of making the representations, the person may be represented by an Australian legal practitioner or agent.

134 Hearing and consideration of representations

The council or a specified committee, or the specified councillor or employee of the council, is required to hear and to consider any representations made under section 133.

135 Procedure after hearing and consideration of representations

(1) After hearing and considering any representations made concerning the proposed order, the council, the committee, or the councillor or employee concerned, may determine:

(a) to give an order in accordance with the proposed order, or

(b) to give an order in accordance with modifications made to the proposed order, or

(c) not to give an order.

(2) If the determination is to give an order in accordance with modifications made to the proposed order, the council is not required to give notice under this Division of the proposed order as so modified.

Division 3 Orders generally

136 Reasons for orders to be given

(1) A council must give the person to whom an order is directed the reasons for the order.

(2) The reasons may be given in the order or in a separate instrument.

(3) The reasons must be given when the order is given, except in a case of urgency. In a case of urgency, the reasons may be given the next working day.

137 Period for compliance with order

(1) An order must specify a reasonable period within which the terms of the order are to be complied with, subject to this section.

(2) An order may require immediate compliance with its terms in circumstances which the council believes constitute a serious risk to health or safety or an emergency.

138 Notice of right to appeal against order

(1) A council must, in giving a person notice of an order:

(a) state that the person may appeal to the Land and Environment Court against the order or a specified part of the order, and

(b) specify the period within which an appeal may be made.

(2) This section does not apply in relation to order No 22A in the Table to section 124.

138A Approval or consent not required to comply with order

A person who carries out work in compliance with a requirement of an order does not have to make an application under Division 1, 2 or 3 of Part 1 for approval of the work or an application under Part 4 of the *Environmental Planning and Assessment Act 1979* for consent to carry out the work.

139 Order may specify standards and work that will satisfy those standards

(1) Instead of specifying the things the person to whom the order is given must do or refrain from doing, an order:

(a) may specify the standard that the premises are required to meet, and

(b) may indicate the nature of the work that, if carried out, would satisfy that standard.

(2) Such an order may require the owner or occupier to prepare and submit to the council, within the period (not exceeding 3 months) specified in the order, particulars of the work the owner or occupier considers necessary to make provision for such matters as may be so specified.

140 Compliance with order referred to in sec 139 (2)

(1) A person complies with a requirement of an order referred to in section 139 (2) by submitting to the council such matters as the person would be required to submit under section 81 if applying to the council for approval of the work.

(2) (Repealed)

141 Council's response to submission of particulars of work by owner

(1) The council must, within 28 days after particulars of work are submitted to it in accordance with section 139 (2):

(a) accept the particulars without modification or with such modifications as it thinks fit, or

(b) reject the particulars.

(2) If a council accepts the particulars of work without modification, the council must forthwith order the owner to carry out that work.

(3) If a council accepts the particulars of work with modifications or rejects the particulars, or if an owner fails to submit particulars of work in accordance with section 139 (2), the council must:

(a) prepare, within 3 months after the acceptance, rejection or failure, particulars of the work that it considers necessary to make provision for the matters specified in the order referred to in section 139 given to the owner, and

(b) order the owner to carry out that work.

(4) An order under this section is not invalid merely because of the failure of the council to accept or reject any particulars of work or prepare particulars of any work, as the case may be, within the period it is required to do so by this section.

(4A) An order under this section forms part of the order under section 124 to which it relates.

(5) A council may recover from an owner as a debt its expenses of preparing particulars of work under this section.

142 Orders affecting heritage items

(1) This section applies to an item of the environmental heritage:

(a) which is listed in the Register of the National Estate kept in pursuance of the *Australian Heritage Commission Act 1975* of the Commonwealth, or

(b) to which an interim heritage order or listing on the State Heritage Register under the *Heritage Act 1977* applies or to which an order under section 136 of that Act applies, or

(c) which is identified as such an item in an environmental planning instrument.

(2) A council must not give an order under this Part in respect of an item of the environmental heritage to which this section applies until after it has considered the impact of the order on the heritage significance of the item.

(3) A council must not give an order under this Part in respect of an item of the environmental heritage to which subsection (1) (a) or (b) applies until after it has given notice of the order to the Heritage Council and has considered any submissions duly made to it by the Heritage Council.

(3A) The Heritage Council may, by instrument in writing served on a council, exempt the council from the requirements of subsection (3).

(3B) An exemption under subsection (3A) may be given unconditionally or subject to such conditions as the Heritage Council determines, and may be varied or revoked by a subsequent instrument in writing made by the Heritage Council and served on the council.

(4) The Heritage Council may make a submission:

(a) within 28 days after it is given notice by the council, or

(b) if, within 28 days after it is given notice by the council, the Heritage Council requests that a joint inspection of the item be made, within 28 days after the joint inspection is made.

(5) If the Heritage Council notifies a council that it wishes to be consulted in connection with an order under section 141, the council must include a statement to that effect in any order under section 139.

(6) This section does not apply to order No 15, 16, 17 or 22A in the Table to section 124 if given by a council in an emergency.

143 Combined orders

(1) A council may include two or more orders in the same instrument.

(2) However, an order in terms of order No 22A in the Table to section 124 cannot be included with another order in the same instrument.

144 Giving and taking effect of orders

An order is given by serving a copy of the order on the person to whom it is addressed and takes effect from the time of service or a later time specified in the order.

145 Orders may be given to two or more persons jointly

If appropriate in the circumstances of the case, an order may direct two or more people to do the thing specified in the order jointly.

146 Notice in respect of land or building owned or occupied by more than one person

(1) If land, including land on which a building is erected, is owned or occupied by more than one person:

(a) an order in respect of the land or building is not invalid merely because it was not given to all of those owners or occupiers, and

(b) any of those owners or occupiers may comply with such an order without affecting the liability of the other owners or occupiers to pay for or contribute towards the cost of complying with the order.

(2) Nothing in this Division affects the right of an owner or occupier to recover from any other person all or any of the expenses incurred by the owner or occupier in complying with such an order.

147 Compliance with orders by occupiers or managers

If an occupier or manager complies with an order, the occupier or manager may (unless the occupier or manager has otherwise agreed) deduct the cost of so complying (together with interest at the rate currently prescribed by the Supreme Court rules in respect of unpaid judgment debts) from any rent payable to the owner or may recover the cost (and that interest) from the owner as a debt in any court of competent jurisdiction.

148 Occupier of land may be required to permit owner to carry out work

(1) The council may order the occupier of any land to permit the owner of the land to carry out such work on the land as is specified in the order (being work that is, in the council's opinion, necessary to enable the requirements of this Act or the regulations, or of any order under Division 1, to be complied with).

(2) An occupier of land on whom such an order is served must, within 2 days after the order is served, permit the owner to carry out the work specified in the order.

(3) The owner of the land is not guilty of an offence arising from his or her failure to comply with the requirements of this Act or the regulations, or of any order under Division 1, if, while an order under this section is in force, the occupier of the land refuses to permit the owner to carry out the work specified in the order.

(4) Subsection (3) applies only if the owner of the land satisfies the Court that the owner has, in good faith, tried to comply with the requirements concerned.

149–151 (Repealed)

152 Modification of orders

A council may, at any time, modify an order it has given to a person (including a modification of the period specified for compliance with the order) if the person agrees to that modification.

153 Revocation of orders

(1) An order given by the council may be revoked by the council at any time.

(2) An order given by the Minister may be revoked by the Minister at any time.

(3) (Repealed)

154 The Minister may exercise any function concerning an order that a council may exercise

(1) The Minister may exercise any function under this Part that the council may exercise.

(2) This Part (except Division 2) applies to the Minister in the same way as it applies to a council for the purpose of exercising any such function.

(3) The Minister must not give an order to protect public health until after the Minister has consulted the Minister administering the *Public Health Act 2010*.

(3A) The Minister must not give an order that relates to an activity that is the subject of a development consent granted under the *Environmental Planning and Assessment Act 1979* by the Minister administering that Act until after the Minister has consulted that other Minister. However, the Minister is not required to consult, but must notify, the other Minister in the case of:

(a) an order in terms of order No 15 in the Table to section 124, or

(b) an order given, and expressed to be given, in an emergency.

(4) If the Minister's functions under this section are delegated, a person to whom an order by the Minister's delegate is given may apply to the Minister for a review of the order within 28 days after service of the order.

(5) The Minister's decision on the review is final.

(6) Part 5 (Appeals) does not apply to an order given under this section.

(7) The Minister must forward a copy of an order given under this section to the relevant council.

155 Effect of inconsistency between council's order and Minister's order

An order given by a council under Division 1, to the extent to which it is inconsistent with an order given by the Minister under section 154, is void.

156 Minister may revoke or modify a council's order

(1) The Minister may revoke or modify an order given by a council.

(1A) The Minister administering the *Environmental Planning and Assessment Act 1979* may revoke or modify an order given by a council that relates to an activity that is the subject of a development consent granted under that Act. A reference in this section to the Minister includes a reference to the Minister administering that Act.

(2) Notice of the revocation or modification must be given to the council and the person to whom the order was given.

(3) The revocation or modification takes effect from the date specified in the Minister's notice. The date may be the date on which the order was given by the council or a later date.

(4) The Minister may prohibit a council from re-making an order that is revoked or modified under this section, totally or within such period or except in accordance with such terms and conditions (if any) as the Minister may specify.

(5) Notice of a prohibition may be given in the same notice as notice of the revocation or modification of an order or in a separate notice.

157 Limitation on Minister's orders

The Minister must not give an order under this Part that is inconsistent with, or has the effect of revoking or modifying, an order given by the council unless the Minister is of the opinion that:

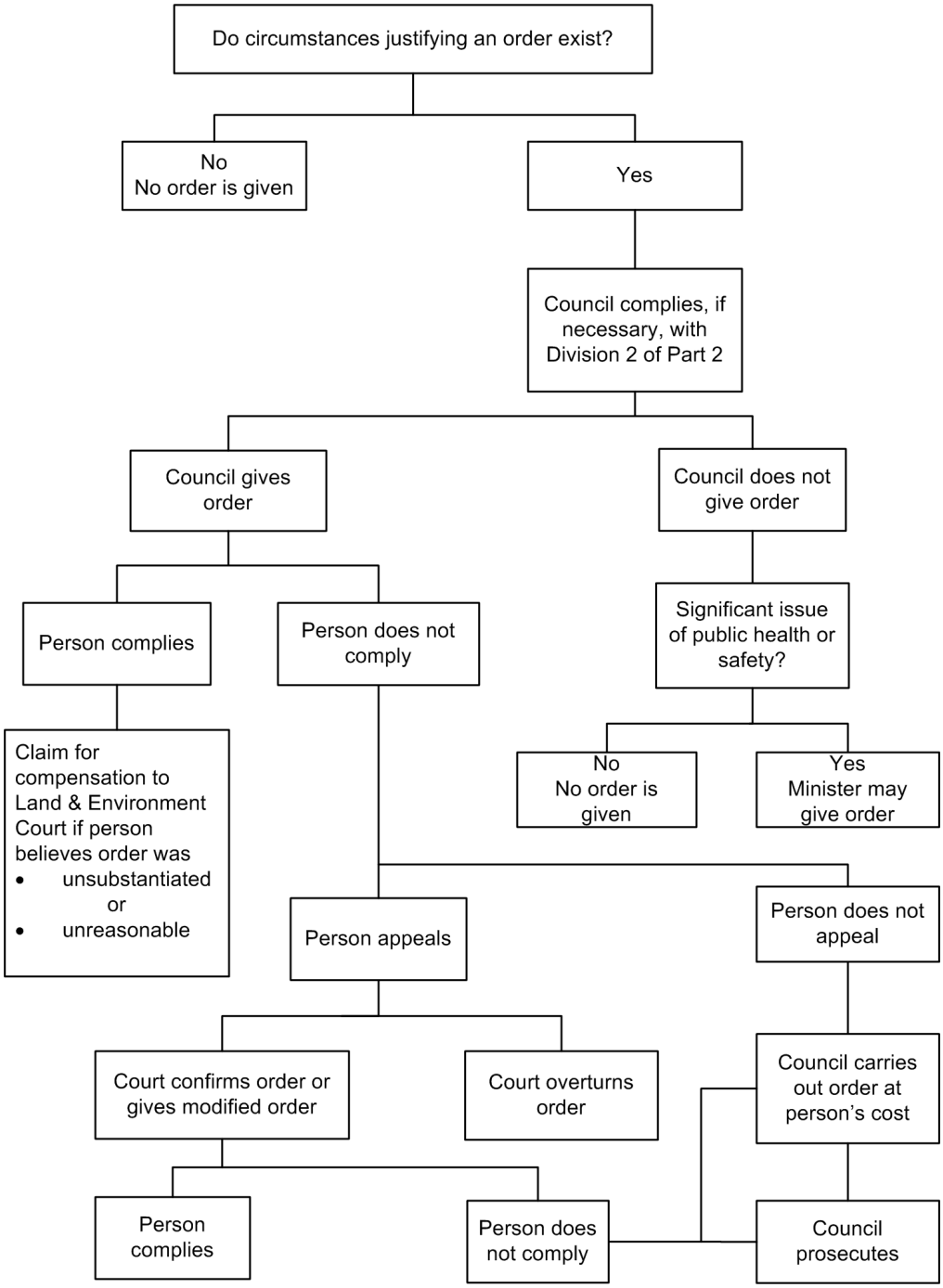
(a) it is necessary because of an emergency, or

(b) it is necessary because of the existence or reasonable likelihood of a serious risk to health or safety, or

(c) the order relates to a matter of State or regional significance, or

(d) the order relates to a matter in which the intervention of the Minister is necessary in the public interest.

Orders



Part 3 Adoption of local policies concerning approvals and orders

158 Preparation of draft local policy for approvals

(1) A council may prepare a draft local approvals policy.

(2) A draft local approvals policy is to consist of three parts.

(3) Part 1 is to specify the circumstances (if any) in which (if the policy were to be adopted) a person would be exempt from the necessity to obtain a particular approval of the council.

(4) Part 2 is to specify the criteria (if any) which (if the policy were to be adopted) the council must take into consideration in determining whether to give or refuse an approval of a particular kind.

(5) Part 3 is to specify other matters relating to approvals.

159 Preparation of draft local policy for orders

(1) A council may prepare a draft local orders policy.

(2) A draft local orders policy is to specify the criteria which (if the policy were to be adopted) the council must take into consideration in determining whether or not to give an order under section 124.

(3) This section does not apply in relation to order No 22A in the Table to section 124.

160 Public notice and exhibition of draft local policy

(1) The council must give public notice of a draft local policy after it is prepared.

(2) The period of public exhibition must be not less than 28 days.

(3) The public notice must also specify a period of not less than 42 days after the date on which the draft local policy is placed on public exhibition during which submissions may be made to the council.

(4) The council must, in accordance with its notice, publicly exhibit the draft local policy together with any other matter which it considers appropriate or necessary to better enable the draft local policy and its implications to be understood.

161 Adoption of draft local policy

(1) After considering all submissions received by it concerning the draft local policy, the council may decide:

(a) to amend its draft local policy, or

(b) to adopt it without amendment, or

(c) not to adopt it, except where the adoption of criteria is mandatory.

(2) If the council decides to amend its draft local policy, it may publicly exhibit the amended draft local policy in accordance with this Part or, if the council is of the opinion that the amendments are not substantial, it may adopt the amended draft local policy without public exhibition.

162 Departmental Chief Executive's consent required to exemption from necessity for approval

A council has no power to adopt that part of a draft local approvals policy that specifies circumstances in which (if the policy were to be adopted) a person would be exempt from the necessity to obtain a particular approval of the council, unless the council has received the Departmental Chief Executive's consent to the adoption of that part.

163 Effect of inconsistency between council's local policy and this Act or the regulations

A local policy adopted under this Part by a council, to the extent to which it is inconsistent with this Act or the regulations, is void.

164 Local policy not to be more onerous than this Act or the regulations

(1) If a criterion is prescribed by this Act or the regulations in relation to:

(a) a specified aspect of an activity that may be carried out only with the prior approval of the council, or

(b) a specified aspect of anything for which an order may be given under Part 2,

a local policy adopted under this Part by a council, to the extent to which its provisions impose a more onerous criterion in relation to the specified aspect, is void.

(2) However, for the purposes of this section, the imposition of a criterion in a local policy in relation to a specified aspect, does not, in the absence of the prescription by this Act or the regulations of a criterion in relation to that aspect, constitute a more onerous criterion.

165 Amendment and revocation of local policy

(1) A council may amend a local policy adopted under this Part by means only of a local policy so adopted.

(2) An amending local policy may deal with the whole or part of the local policy amended.

(3) A council may at any time revoke a local policy adopted under this Part.

(4) A local policy (other than a local policy adopted since the last general election) is automatically revoked at the expiration of 12 months after the declaration of the poll for that election.

166 Public notice of adoption of local policy

The council must give public notice, in a form and manner prescribed by the regulations (or, if no form and manner are so prescribed, in a form and manner determined by the council), of the adoption or revocation (other than by section 165 (4)) of a local policy.

167 Public availability of local policy

(1) A local policy adopted under this Part by a council must be available for public inspection free of charge at the office of the council during ordinary office hours.

(2) Copies of the local policy must also be available free of charge or, if the council determines, on payment of the approved fee.

Part 4

168–175 (Repealed)

Part 5 Appeals

Division 1 Approvals and orders

176 Appeal by an applicant concerning an approval

(1) An applicant who is dissatisfied with the determination of a council with respect to the applicant's application for an approval may appeal to the Land and Environment Court.

(2) The appeal must be made within 12 months after:

(a) the date endorsed on the notice under section 99 or 100 in respect of the application, or

(b) the date on which the application is taken to have been determined under section 105, or

(c) the date endorsed on the notice of extension or renewal of the approval if the approval has been extended or renewed under section 107 or the date endorsed on the refusal to extend or renew the approval if extension or renewal of the approval is refused under section 107,

as the case requires.

177 Appeal by an applicant as to whether a "deferred commencement" approval operates

(1) An applicant who is dissatisfied with a decision that a council is not satisfied as to a matter, being a matter as to which it must be satisfied before a "deferred commencement" approval under section 95 can operate, may appeal to the Land and Environment Court.

(2) The appeal must be made within 12 months after the council notifies the applicant of its decision.

178 Appeal against the revocation or modification of an approval

(1) If an approval is revoked or modified under section 108, the applicant for the approval may appeal to the Land and Environment Court.

(2) The appeal must be made within 3 months after the date on which the revocation or modification takes effect.

(3) The Court may determine the appeal by affirming, varying or cancelling the instrument of revocation or modification.

179 Awarding of compensation concerning approvals

(1) The Land and Environment Court, on the hearing of an appeal or otherwise, has a discretion to award compensation to an applicant for an approval for any expense incurred by the person as a consequence of:

(a) a council's refusal to grant the approval, or

(b) a council's delay in granting the approval,

if the Court considers that the council would not have acted in the way it did but for the fact that it was unduly influenced by vexatious or unmeritorious submissions made by members of the public or that the council has acted vexatiously.

(2) An application for compensation may be made on the hearing of an appeal or by proceedings brought for the purpose of claiming compensation.

(3) A claim for compensation may not be made more than 28 days after the date on which the Court gives its decision on an appeal concerning the application for approval or more than 3 months after the date of the council's determination of the application if an appeal is not made against the determination.

(4) Compensation under this section is to be awarded against the council.

Note. The Land and Environment Court has other powers to award compensation under section 677.

180 Appeals concerning orders

(1) A person on whom an order is served may appeal against the order to the Land and Environment Court.

(2) (Repealed)

(3) The appeal must be made within 28 days after the service of the order on the person or, if an order is given under section 141, within 28 days after the service of the order given under section 141 on the person. The person may make an appeal within the later period whether or not the person has made an appeal within the earlier period.

(4) On hearing an appeal, the Court may:

(a) revoke the order, or

(b) modify the order, or

(c) substitute for the order any other order that the council could have made, or

(d) find that the order is sufficiently complied with, or

(e) make such order with respect to compliance with the order as the Court thinks fit, or

(f) make any other order with respect to the order as the Court thinks fit.

(5) This section does not apply in relation to order No 22A in the Table to section 124.

181 Awarding of compensation concerning orders

(1) The Land and Environment Court, on the hearing of an appeal or otherwise, has a discretion to award compensation to a person on whom an order is served for any expense incurred by the person as a consequence of the order, including the cost of any investigative work or reinstatement carried out by the person as a consequence of the order, but only if the person satisfies the Court that the giving of the order was unsubstantiated or the terms of the order were unreasonable.

(2) A claim for compensation may not be made more than 28 days after the date on which the Court gives its decision on the appeal or more than 3 months after the date of the order if an appeal is not made against the order.

(3) Compensation under this section is to be awarded against the council.

182 Appeals concerning particulars of work submitted to councils

(1) A person may appeal to the Land and Environment Court against the failure of the council:

(a) to accept or reject, under section 141 (1), particulars of work submitted to it in accordance with section 139 (2), or

(b) to prepare, under section 141 (3) (a), particulars of the work that it considers necessary to make provision for the matters specified in an order given to an owner under section 139.

(2) The appeal must be made within 28 days after the period limited under section 141 (1) or (3) (a) for compliance by the council.

(3) On hearing an appeal, the Court may:

(a) make any order that the council could have made, or

(b) order the council to perform its functions under section 141 (1) or (3) (a) within such time as is specified in the order.

(4) This section does not apply in relation to order No 22A in the Table to section 124.

183 Effect of appeal on order

If an appeal is duly made to the Land and Environment Court against an order, the appeal does not effect a stay of the order.

184 Court's powers not limited by this Division

This Division does not limit a power of the Land and Environment Court under the *Land and Environment Court Act 1979*.

Division 2

185 (Repealed)

Chapter 8 What ancillary functions does a council have?

Part 1 Acquisition of land

186 For what purposes may a council acquire land?

(1) A council may acquire land (including an interest in land) for the purpose of exercising any of its functions.

(2) Without limiting subsection (1), a council may acquire:

(a) land that is to be made available for any public purpose for which it is reserved or zoned under an environmental planning instrument, or

(b) land which forms part of, or adjoins or lies in the vicinity of, other land proposed to be acquired under this Part.

(3) However, if the land acquired is, before its acquisition, community land vested in a council, the acquisition does not discharge the land from any trusts, estates, interests, dedications, conditions, restrictions or covenants that affected the land or any part of the land immediately before that acquisition.

187 How does a council acquire land?

(1) Land that a council is authorised to acquire under this Part may be acquired by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

(2) A council may not give a proposed acquisition notice under the *Land Acquisition (Just Terms Compensation) Act 1991* without the approval of the Minister.

188 Restriction on compulsory acquisition of land for re-sale

(1) A council may not acquire land under this Part by compulsory process without the approval of the owner of the land if it is being acquired for the purpose of re-sale.

(2) However, the owner's approval is not required if:

(a) the land forms part of, or adjoins or lies in the vicinity of, other land acquired at the same time under this Part for a purpose other than the purpose of re-sale, or

(b) the owner of the land cannot be identified after diligent inquiry has been made and at least 6 months has elapsed since that inquiry was made.

(3) For the purposes of subsection (2) (b), ***diligent inquiry*** has the meaning given by the regulations, and includes the giving of notice of the proposed acquisition to the New South Wales Aboriginal Land Council and to the relevant Local Aboriginal Land Council.

189 No restriction as to area

Land may be acquired by a council under this Part even if it lies wholly or partly outside the council's area.

190 Special provisions relating to land containing minerals

Division 4 of Part 8 of the *Public Works Act 1912* applies to a council and land acquired by a council in the same way as that Division applies to a Constructing Authority and land acquired by a Constructing Authority.

Part 2 Entry on to land and other powers

191 Power of entry

(1) For the purpose of enabling a council to exercise its functions, a council employee (or other person) authorised by a council may enter any premises.

(2) Entry may only be made at any reasonable hour in the daytime or at any hour during which business is in progress or is usually carried on at the premises.

191A Power of entry—construction and maintenance of water supply, sewerage and stormwater drainage works

(1) Without limiting section 191, a council employee (or other person) authorised by a council may enter any premises to carry out water supply work, sewerage work or stormwater drainage work on or under the premises (being work that the council is authorised by this or any other Act to carry out).

(2) Subsection (1) does not apply to premises that comprise a National Parks and Wildlife reserve.

192 Inspections and investigations

For the purpose of enabling a council to exercise its functions, a person authorised to enter premises under this Part may:

(a) inspect the premises and any food, vehicle, article, matter or thing on the premises, and

(b) for the purpose of an inspection:

(i) open any ground and remove any flooring and take such measures as may be necessary to ascertain the character and condition of the premises and of any pipe, sewer, drain, wire or fitting, and

(ii) require the opening, cutting into or pulling down of any work if the person authorised has reason to believe or suspect that anything on the premises has been done in contravention of this Act or the regulations, and

(c) take measurements, make surveys and take levels and, for those purposes, dig trenches, break up the soil and set up any posts, stakes or marks, and

(d) require any person at those premises to answer questions or otherwise furnish information in relation to the matter the subject of the inspection or investigation, and

(e) examine and test any meter, and

(f) measure a supply of water, and

(g) take samples or photographs in connection with any inspection.

193 Notice of entry

(1) Before a person authorised to enter premises under this Part does so, the council must give the owner or occupier of the premises written notice of the intention to enter the premises.

(2) The notice must specify the day on which the person intends to enter the premises and must be given before that day.

(3) This section does not require notice to be given:

(a) if entry to the premises is made with the consent of the owner or occupier of the premises, or

(b) if entry to the premises is required because of the existence or reasonable likelihood of a serious risk to health or safety, or

(c) if entry is required urgently and the case is one in which the general manager has authorised in writing (either generally or in the particular case) entry without notice, or

(d) if entry is made solely for the purpose of reading a meter or other device for measuring:

(i) the supply of water to the premises from the council's water mains, or

(ii) the discharge of sewage or other waste matter from the premises into the council's sewer mains.

194 Use of force

(1) Reasonable force may be used for the purpose of gaining entry to any premises (other than residential premises) under a power conferred by this Part, but only if authorised by the council in accordance with this section.

(2) The authority of the council:

(a) must be in writing, and

(b) must be given in respect of the particular entry concerned, and

(c) must specify the circumstances which are required to exist before force may be used.

195 Notification of use of force or urgent entry

(1) A person authorised to enter premises under this Part who:

(a) uses force for the purpose of gaining entry to the premises, or

(b) enters the premises in an emergency without giving written notice to the owner or occupier,

must promptly advise the council.

(2) The council must give notice of the entry to such persons or authorities as appear to the council to be appropriate in the circumstances.

196 Care to be taken

(1) In the exercise of a function under this Part, a person authorised to enter premises must do as little damage as possible. The council must provide, if necessary, other means of access in place of any taken away or interrupted by a person authorised by it.

(2) As far as practicable, entry on to fenced land is to be made through an existing opening in the enclosing fence. If entry by that means is not practicable, a new opening may be made in the enclosing fence, but the fence is to be fully restored when the need for entry ceases.

(3) If, in the exercise of a function under this Part, any pit, trench, hole or bore is made, the council must, if the owner or occupier of the premises so requires:

(a) fence it and keep it securely fenced so long as it remains open or not sufficiently sloped down, and

(b) without unnecessary delay, fill it up or level it or sufficiently slope it down.

197 Recovery of cost of entry and inspection

If a person authorised by a council enters any premises under this Part for the purpose of making an inspection and as a result of that inspection, under a power conferred on the council, the council requires any work to be carried out on or in the premises, the council may recover the reasonable costs of the entry and inspection from the owner or occupier of the premises.

198 Compensation

A council must pay compensation for any damage caused by any person authorised by the council under this Part to enter premises, other than damage arising from work done for the purpose of an inspection which reveals that there has been a contravention of this or any other Act.

Note. Section 730 provides for the resolution of claims for compensation under this section in cases of dispute between the person claiming the compensation and the council.

199 Authority to enter premises

(1) A power conferred by this Part to enter premises, or to make an inspection or take other action on premises, may not be exercised unless the person proposing to exercise the power is in possession of an authority and produces the authority if required to do so by the owner or occupier of the premises.

(2) The authority must be a written authority which is issued by the council and which:

(a) states that it is issued under this Act, and

(b) gives the name of the person to whom it is issued, and

(c) describes the nature of the powers conferred and the source of the powers, and

(d) states the date (if any) on which it expires, and

(e) describes the kind of premises to which the power extends, and

(f) bears the signature of the general manager.

(3) This section does not apply to a power conferred by a search warrant.

200 In what circumstances can entry be made to a residence?

The powers of entry and inspection conferred by this Part are not exercisable in relation to that part of any premises being used for residential purposes except:

(a) with the permission of the occupier of that part of the premises, or

(b) if entry is necessary for the purpose of inspecting work being carried out under an approval, or

(c) under the authority conferred by a search warrant.

201 Search warrants

(1) An authorised person may apply to an authorised officer if the authorised person has reasonable grounds for believing that the provisions of this Act or the regulations or the terms of an approval or order under this Act have been or are being contravened in or on any premises.

(2) An authorised officer to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised person named in the warrant:

(a) to enter the premises, and

(b) to search the premises for evidence of a contravention of this Act or the regulations or the terms of an approval or order.

(3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

(4) Without limiting the generality of section 71 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, a police officer:

(a) may accompany an authorised person executing a search warrant issued under this section, and

(b) may take all reasonable steps to assist the authorised person in the exercise of the person's functions under this section.

(5) In this section:

authorised officer has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

202, 203 (Repealed)

Chapter 9 How are councils established?

Part 1 Areas

Division 1 How are areas constituted and dissolved?

204 Constitution of areas

(1) The Governor may, by proclamation, constitute any part of New South Wales as an area.

(2) The area is to have the boundaries determined by the Governor by proclamation.

(3) An area must be a single area of contiguous land.

205 Land taken to be included in an area

(1) The land and water between high-water mark and low-water mark on the foreshores of an area is taken to be in the area.

(2) The land and water enclosed by:

(a) a straight line drawn between the low-water marks of consecutive headlands to any body of water on the foreshores of an area, and

(b) those foreshores,

is taken to be in the area.

(3) Land on the boundary of an area is taken to be in the area if:

(a) it is reclaimed from tidal waters, or

(b) it is on the foreshores of the area and beyond low-water mark,

and it is privately owned or has a structure erected on it.

(4) This section is subject to any proclamation made under this Division.

206 Constitution of cities

The Governor may, by proclamation, constitute an area as a city.

207 Names of areas

The Governor may, by proclamation, name or rename an area.

208 Effect of changing name

When an area is constituted as a city or an area or ward is renamed, a reference in an Act or instrument to the old name of the area, the council concerned or the ward is taken to include a reference to the new name of the area, council or ward.

209 (Repealed)

210 Division of areas into wards

(1) The council may divide its area into divisions, called "wards".

(2) The council may abolish all wards.

(3) The council may alter ward boundaries.

(4) The council may name or rename a ward.

(5) A council must not divide an area into wards or abolish all wards unless it has obtained approval to do so at a constitutional referendum.

(6) A by-election held after an alteration of ward boundaries and before the next ordinary election is to be held as if the boundaries had not been altered.

(7) The division of a council's area into wards, or a change to the boundaries of a ward, must not result in a variation of more than 10 per cent between the number of electors in each ward in the area.

210A Consultation, public notice and exhibition of proposals regarding ward boundaries

(1) Before dividing a council's area into wards or altering a council's ward boundaries, the council must:

(a) consult the Electoral Commissioner and the Australian Statistician to ensure that, as far as practicable, the proposed boundaries of its wards correspond to the boundaries of

appropriate districts (within the meaning of the *Electoral Act 2017*) and census districts, and to ensure that the proposed boundaries comply with section 210 (7), and

(b) prepare and publicly exhibit a plan detailing the proposed division or alteration (the ***ward boundary plan***).

(2) The council must give public notice of the following:

(a) the place at which the ward boundary plan may be inspected,

(b) the period for which the plan will be exhibited (being a period of not less than 28 days),

(c) the period during which submissions regarding the ward boundary plan may be made to the council (being a period of not less than 42 days after the date on which the ward boundary plan is placed on public exhibition).

(3) The council must, in accordance with its notice, publicly exhibit the ward boundary plan together with any other matter that it considers appropriate or necessary to better enable the plan and its implications to be understood.

(4) Any person may make a submission to the council regarding the ward boundary plan within the period referred to in subsection (2) (c).

(5) The council must consider submissions made in accordance with this section.

210B Approval to abolish all wards in council's area

(1) A council may resolve to make an application to the Minister to approve the abolition of all wards of the council's area.

(2) The council must give not less than 42 days' public notice of its proposed resolution.

(3) After passing the resolution, the council must forward to the Minister a copy of the resolution, a summary of any submissions received by it and its comments concerning those submissions.

(4) The Minister may approve the application or may decline to approve it.

(5) If the Minister approves the application, all the wards in the council's area are abolished with effect on and from the day appointed for the next ordinary election of councillors after the application is approved.

(6) Section 16 does not apply to a resolution of a council to make an application to the Minister under this section.

(7) An application may be made under this section only within the period of 5 months from the commencement of this section.

(8) Nothing in this section prevents a council from making more than one application under this section or from taking action under section 210 to abolish all wards of the council's area.

211 Ward boundaries

(1) The council of an area divided into wards must keep the ward boundaries under review.

(2) If:

(a) during a council's term of office, the council becomes aware that the number of electors in one ward in its area differs by more than 10 per cent from the number of electors in any other ward in its area, and

(b) that difference remains at the end of the first year of the following term of office of the council,

the council must, as soon as practicable, alter the ward boundaries in a manner that will result in each ward containing a number of electors that does not differ by more than 10 per cent from the number of electors in each other ward in the area.

(3) Nothing in subsection (2) prevents a council that has become aware of the discrepancy referred to in subsection (2) (a) from altering its ward boundaries before the end of the first year of the following term of office of the council.

212 Dissolution of areas

(1) The Governor may, by proclamation, dissolve the whole or part of an area.

(2) The Minister may not recommend the making of a proclamation to dissolve the whole or part of an area until after a public inquiry has been held and the Minister has considered the report made as a consequence of the inquiry.

213 Facilitating provisions of proclamations

(1) A proclamation of the Governor for the purposes of this Division may include such provisions as are necessary or convenient for giving effect to the proclamation, including provisions for or with respect to:

- the transfer or apportionment of assets, rights and liabilities
- the transfer of staff
- the application of regulations
- the alteration of ward boundaries
- the holding of elections
- the delivery or retention of records
- the termination, cessation, dissolution or abolition of anything existing before the proclamation takes effect
- the preservation or continuance of anything existing before the proclamation takes effect
- the making of appointments
- the inclusion or exclusion, as a constituent council of any related county council or related joint organisation, of the council of any area constituted or dissolved by the proclamation.

Note. If a proclamation for the purposes of this Division transfers staff members (other than senior staff) from the employment of one council to another council, the provisions of Part 6 of Chapter 11 apply in relation to the transferred staff members.

(2) Such a proclamation may:

(a) apply generally or be limited in its application by reference to specified exceptions or factors, or

(b) apply differently according to different factors of a specified kind, or

(c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(3) In this section:

related county council, in relation to an area constituted or dissolved by a proclamation of the Governor, means a county council that has an area of operations that includes the whole or part of the area so constituted or dissolved.

related joint organisation, in relation to an area constituted or dissolved by a proclamation of the Governor, means a joint organisation for a joint organisation area that includes the whole or part of the area so constituted or dissolved.

Division 2 What must be done before areas can be constituted?

Note. This Division sets out the things that must be done before areas can be constituted.

Land may only be constituted as an area if the public has been notified of the proposal to do so and the councils and electors concerned have been given an opportunity to make representations concerning the proposal.

It also provides for the Boundaries Commission to consider proposals to constitute areas.

214 Exercise of functions under sec 204

A function under section 204 may be exercised only after a proposal for the exercise of the function is dealt with under this Division.

215 Who may initiate a proposal?

(1) A proposal may be made by the Minister or it may be made to the Minister by a council affected by the proposal or by an appropriate minimum number of electors.

(2) An appropriate minimum number of electors is:

(a) if a proposal applies to the whole of an area or the proposal is that part of an area be constituted as a new area—250 of the enrolled electors for the existing area or 10 per cent of them, whichever is the greater, or

(b) if a proposal applies only to part of an area—250 of the enrolled electors for that part or 10 per cent of them, whichever is the lesser.

216 Public notice to be given of a proposal

The Minister must give at least 28 days' public notice of a proposal that the Minister decides to proceed with.

217 Making of representations

(1) Within the period of public notice, representations concerning the proposal may be made to the Minister by a council or elector affected by the proposal.

(2) The Minister must consider all representations made.

218 Referral of proposal for examination and report

(1) If the Minister decides to continue with the proposal, the Minister must refer it for examination and report to the Boundaries Commission.

(2) The Minister may recommend to the Governor that the proposal be implemented:

(a) with such modifications as arise out of the Boundaries Commission's report, and

(b) with such other modifications as the Minister determines,

but may not do so if of the opinion that the modifications constitute a new proposal.

(3) The Minister may decline to recommend to the Governor that the proposal be implemented.

Division 2A How are areas amalgamated or their boundaries altered?

218A Amalgamation of areas

(1) The Governor may, by proclamation, amalgamate two or more areas into one or more new areas.

(2) On the date specified in the proclamation as the date on which the areas are to be amalgamated:

(a) the areas are dissolved, and

(b) the new area or new areas are constituted, and

(c) subject to section 218C, the councillors of the former areas cease to hold office.

(3) Divisions 1 and 2 apply to a new area constituted by a proclamation under this section in the same way as they apply to an area constituted by a proclamation under section 204.

(4) Section 212 (2) does not apply to the dissolution of a former area by a proclamation under this section.

218B Alteration of boundaries of areas

The Governor may, by proclamation, alter the boundaries of one or more areas.

218C Facilitating provisions of proclamations

(1) A proclamation of the Governor for the purposes of this Division may include provisions of the same kind as are referred to in section 213.

(2) Such a proclamation may also include provisions for or with respect to:

(a) the appointment of administrators for any area constituted by the proclamation, and

(b) the continuation in office, as councillors of any area constituted by the proclamation, of any or all of the councillors of any area dissolved by the proclamation.

Note. If a proclamation for the purposes of this Division transfers staff members (other than senior staff) from the employment of one council to another council, the provisions of Part 6 of Chapter 11 apply in relation to the transferred staff members.

(3) Section 224 (1) does not apply to any councillors who continue in office by virtue of such a proclamation.

218CA Maintenance of staff numbers in rural centres

(1) This section applies to a council (the ***transferee council***):

(a) that is constituted as a result of the amalgamation of two or more areas, where the council of one of those areas (the ***previous council***) employed regular staff at a rural centre in the area of the transferee council immediately before the amalgamation took effect, or

(b) whose geographical area is increased as a result of the alteration of the boundaries of two or more areas, where a council (the ***previous council***) whose geographical area is reduced as a result of the alteration employed regular staff at a rural centre in the area of the transferee council immediately before the alteration took effect.

(2) The transferee council must ensure that the number of regular staff of the council employed at the rural centre is, as far as is reasonably practicable, maintained at not less than the same level of regular staff as were employed by the previous council at the centre immediately before the amalgamation or alteration of boundaries took effect.

(3) Subsection (2) does not have effect, or ceases to have effect, in such circumstances (if any) as are prescribed by the regulations.

(4) In this section:

regular staff of a council means:

(a) staff appointed to a position within the organisational structure of the council, otherwise than on a temporary basis, and

(b) casual staff who are engaged by the council on a regular and systematic basis for a sequence of periods of employment during a period of at least 6 months and who have a reasonable expectation of continuing employment with the council,

but does not include senior staff.

rural centre has the meaning given by section 354B.

218CB Transitional provision for maintenance of pre-amalgamation rate paths

(1) The Minister may make a determination for the purpose of requiring a new council, in levying rates for land, to maintain the rate path last applied for the land by the relevant former council.

(2) A determination applies to the levying of rates by the new council for the 4 rating years immediately following the rating year for which the relevant proclamation makes provision for the levying of rates (the ***relevant period***).

(3) Without limiting the content of a determination, a determination is to set out the methodology that the new council is to apply when setting rates for land for the relevant period, including in relation to the following:

(a) the structure of rates,

(b) the categorisation or subcategorisation of land for rating purposes,

(c) the calculation of the new council's notional general income for rating purposes,

(d) the treatment of any variation of a former council's notional general income under Part 2 of Chapter 15 that would have been applicable, had the amalgamation effected by the relevant proclamation not occurred, to the determination of rates and charges for land within the new area.

(4) A determination must be published in the Gazette and may be revoked or varied only by a further determination of the Minister published in the Gazette.

(5) While a determination is in force, the provisions of this Act that apply in relation to rates are modified to the extent necessary to give effect to the determination.

(6) This section does not apply to a new council constituted before 12 May 2016.

(7) This section does not affect any power to make a proclamation under this Part relating to rates.

(8) Nothing in this section prevents Mid-Coast Council from making an application under section 508A during the relevant period.

(9) A determination under this section is to take into account a determination under section 508A made on an application referred to in subsection (8).

(10) A determination under section 508A made on an application referred to in subsection (8) has effect despite subsection (5).

(11) Any prohibition that expressly prevents any new council from making an application under section 508A that is contained in the guidelines made under that section does not apply to Mid-Coast Council.

(12) In this section:

former council, in relation to a new council, means a council of a former area.

new area means the area constituted by the amalgamation of areas (***former areas***) by the relevant proclamation.

new council means the council of a new area constituted by section 219.

relevant proclamation means the proclamation made pursuant to Part 1 of Chapter 9 that amalgamates former areas into the new area and constitutes the new council.

Division 2B What must be done before areas can be amalgamated or their boundaries altered?

218D Exercise of functions under secs 218A and 218B

A function under section 218A or 218B may be exercised only after a proposal for the exercise of the function is dealt with under this Division.

218E Who may initiate a proposal?

(1) A proposal may be made by the Minister or it may be made to the Minister by a council affected by the proposal or by an appropriate minimum number of electors.

(2) An appropriate minimum number of electors is:

(a) if a proposal applies to the whole of one or more areas, 250 of the enrolled electors for each area or 10 per cent of them, whichever is the greater, or

(b) if a proposal applies to part only of an area, 250 of the enrolled electors for that part or 10 per cent of them, whichever is the lesser.

218F Referral of proposal for examination and report

(1) On making or receiving a proposal, the Minister must refer it for examination and report to the Boundaries Commission or to the Departmental Chief Executive.

(2) Sections 263, 264 and 265 apply to the examination of a proposal by the Departmental Chief Executive in the same way as they apply to the examination of a proposal by the Boundaries Commission.

(3) For the purpose of examining a joint proposal of 2 or more councils for the amalgamation of two or more areas under section 218A, the Boundaries Commission or Departmental Chief Executive, as the case requires, must seek the views of electors of each of those areas:

(a) by means of:

(i) advertised public meetings, and

(ii) invitations for public submissions, and

(iii) postal surveys or opinion polls, in which reply-paid questionnaires are distributed to all electors, or

(b) by means of formal polls.

(4) The period over which the views of electors are to be sought as referred to in subsection (3) must be a period of at least 40 days.

(5) Part 3 of Chapter 4 applies to a formal poll taken by the Boundaries Commission or Departmental Chief Executive in the same way as it applies to a council poll referred to in that Part.

(6) If a proposal that is not supported by one or more of the councils affected by it, or that is an amalgamation proposal, has been referred to the Departmental Chief Executive under subsection (1):

(a) the Departmental Chief Executive must furnish the Departmental Chief Executive's report to the Boundaries Commission for review and comment, and

(b) the Boundaries Commission must review the report and send its comments to the Minister.

(7) The Minister may recommend to the Governor that the proposal be implemented:

(a) with such modifications as arise out of:

(i) the Boundaries Commission's report, or

(ii) the Departmental Chief Executive's report (and, if applicable, the Boundaries Commission's comments on that report), and

(b) with such other modifications as the Minister determines,

but may not do so if of the opinion that the modifications constitute a new proposal.

(8) The Minister may decline to recommend to the Governor that the proposal be implemented.

Division 2C

218G–218K (Repealed)

Part 2 Councils

Division 1 Constitution

219 Constitution of councils

A council is constituted by this Act for each area.

220 Legal status of a council

(1) A council is a body politic of the State with perpetual succession and the legal capacity and powers of an individual, both in and outside the State.

(2) A council is not a body corporate (including a corporation).

(3) A council does not have the status, privileges and immunities of the Crown (including the State and the Government of the State).

(4) A law of the State applies to and in respect of a council in the same way as it applies to and in respect of a body corporate (including a corporation).

221 What is a council's name?

(1) The name of a council of an area other than a city is the "Council of X" or the "X Council", X being the name of the council's area.

(2) The name of a council of a city is the "Council of the City of X" or the "X City Council", X being the name of the city.

222 Who comprise the governing body?

The elected representatives, called "councillors", comprise the governing body of the council.

223 Role of governing body

(1) The role of the governing body is as follows:

(a) to direct and control the affairs of the council in accordance with this Act,

(b) to provide effective civic leadership to the local community,

(c) to ensure as far as possible the financial sustainability of the council,

(d) to ensure as far as possible that the council acts in accordance with the principles set out in Chapter 3 and the plans, programs, strategies and polices of the council,

(e) to develop and endorse the community strategic plan, delivery program and other strategic plans, programs, strategies and policies of the council,

(f) to determine and adopt a rating and revenue policy and operational plans that support the optimal allocation of the council's resources to implement the strategic plans (including the community strategic plan) of the council and for the benefit of the local area,

(g) to keep under review the performance of the council, including service delivery,

(h) to make decisions necessary for the proper exercise of the council's regulatory functions,

(i) to determine the process for appointment of the general manager by the council and to monitor the general manager's performance,

(j) to determine the senior staff positions within the organisation structure of the council,

(k) to consult regularly with community organisations and other key stakeholders and keep them informed of the council's decisions and activities,

(l) to be responsible for ensuring that the council acts honestly, efficiently and appropriately.

(2) The governing body is to consult with the general manager in directing and controlling the affairs of the council.

224 How many councillors does a council have?

(1) A council must have at least 5 and not more than 15 councillors (one of whom is the mayor).

(2) Not less than 12 months before the next ordinary election, the council must determine the number, in accordance with subsection (1), of its councillors for the following term of office.

(3) If the council proposes to change the number of councillors, it must, before determining the number, obtain approval for the change at a constitutional referendum.

224A Approval to reduce number of councillors

(1) A council may resolve to make an application to the Minister to approve a decrease in the number of councillors within the limits referred to in section 224 (1).

(2) The council must give not less than 42 days' public notice of its proposed resolution.

(3) After passing the resolution, the council must forward to the Minister a copy of the resolution, a summary of any submissions received by it and its comments concerning those submissions.

(4) The Minister may approve the application without amendment or may decline to approve the application.

(5) If the Minister approves the application, the number of councillors of the council is reduced to the number specified in the application with effect on and from the day appointed for the next ordinary election of councillors after the application is approved.

(6) Section 16 does not apply to a resolution of a council to make an application to the Minister under this section.

(7) An application may be made under this section after the commencement of the *Local Government Amendment (Elections) Act 2011* but before the expiry of 5 months after that commencement.

(8) Nothing in this section prevents a council from making more than one application under this section or from taking action under section 224 to change the number of its councillors.

(9) A council for an area that is divided into wards may not make an application under this section for a decrease in the number of councillors that would result in the number of councillors for each ward being fewer than 3.

Division 2 The mayor

225 The mayor

An area must have a mayor who is elected in accordance with this Division.

226 Role of mayor

The role of the mayor is as follows:

(a) to be the leader of the council and a leader in the local community,

(b) to advance community cohesion and promote civic awareness,

(c) to be the principal member and spokesperson of the governing body, including representing the views of the council as to its local priorities,

(d) to exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council,

(e) to preside at meetings of the council,

(f) to ensure that meetings of the council are conducted efficiently, effectively and in accordance with this Act,

(g) to ensure the timely development and adoption of the strategic plans, programs and policies of the council,

(h) to promote the effective and consistent implementation of the strategic plans, programs and policies of the council,

(i) to promote partnerships between the council and key stakeholders,

(j) to advise, consult with and provide strategic direction to the general manager in relation to the implementation of the strategic plans and policies of the council,

(k) in conjunction with the general manager, to ensure adequate opportunities and mechanisms for engagement between the council and the local community,

(l) to carry out the civic and ceremonial functions of the mayoral office,

(m) to represent the council on regional organisations and at inter-governmental forums at regional, State and Commonwealth level,

(n) in consultation with the councillors, to lead performance appraisals of the general manager,

(o) to exercise any other functions of the council that the council determines.

227 Who elects the mayor?

The mayor of an area is the person elected to the office of mayor by:

(a) the councillors from among their number, unless there is a decision in force under this Division which provides for the election of the mayor by the electors, or

(b) the electors, if such a decision is in force.

Note. As to the election of the mayor, see also section 282.

228 How is it decided that the mayor be elected by the electors?

(1) It may be decided at a constitutional referendum that the mayor be elected by the electors.

(2) A decision that the mayor be elected by the electors takes effect in relation to the next ordinary election after the decision is made.

229 Can the decision be changed?

(1) A decision that the mayor be elected by the electors is rescinded only if a constitutional referendum decides in favour of discontinuing that means of election.

(2) The rescission takes effect in relation to the next ordinary election after the rescission occurs.

230 For what period is a mayor elected?

(1) A mayor elected by the councillors holds the office of mayor for 2 years, subject to this Act.

(2) A mayor elected by the electors holds the office of mayor for 4 years, subject to this Act.

(3) The office of mayor:

(a) commences on the day the person elected to the office is declared to be so elected, and

(b) becomes vacant when the person's successor is declared to be elected to the office, or on the occurrence of a casual vacancy in the office.

(4) A person elected to fill a casual vacancy in the office of mayor holds the office for the balance of the predecessor's term.

231 Deputy mayor

(1) The councillors may elect a person from among their number to be the deputy mayor.

(2) The person may be elected for the mayoral term or a shorter term.

(3) The deputy mayor may exercise any function of the mayor at the request of the mayor or if the mayor is prevented by illness, absence or otherwise from exercising the function or if there is a casual vacancy in the office of mayor.

(4) The councillors may elect a person from among their number to act as deputy mayor if the deputy mayor is prevented by illness, absence or otherwise from exercising a function under this section, or if no deputy mayor has been elected.

Division 3 The councillors

232 The role of a councillor

(1) The role of a councillor is as follows:

(a) to be an active and contributing member of the governing body,

(b) to make considered and well informed decisions as a member of the governing body,

(c) to participate in the development of the integrated planning and reporting framework,

(d) to represent the collective interests of residents, ratepayers and the local community,

(e) to facilitate communication between the local community and the governing body,

(f) to uphold and represent accurately the policies and decisions of the governing body,

(g) to make all reasonable efforts to acquire and maintain the skills necessary to perform the role of a councillor.

(2) A councillor is accountable to the local community for the performance of the council.

233 For what period is a councillor elected?

(1) A councillor (other than the mayor) holds office for 4 years, subject to this Act.

(2) The office of councillor:

(a) commences on the day the person elected to the office is declared to be so elected, and

(b) becomes vacant on the day appointed for the next ordinary election of councillors, or on the occurrence of a casual vacancy in the office.

(3) A person elected to fill a casual vacancy in the office of councillor holds the office for the balance of the predecessor's term.

233A Oath and affirmation for councillors

(1) A councillor must take an oath of office or make an affirmation of office at or before the first meeting of the council after the councillor is elected.

(2) The oath or affirmation may be taken or made before the general manager of the council, an Australian legal practitioner or a justice of the peace and is to be in the following form:

Oath

I [*name of councillor*] swear that I will undertake the duties of the office of councillor in the best interests of the people of [*name of council area*] and the [*name of council*] and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the *Local Government Act 1993* or any other Act to the best of my ability and judgment.

Affirmation

I [*name of councillor*] solemnly and sincerely declare and affirm that I will undertake the duties of the office of councillor in the best interests of the people of [*name of council area*] and the [*name of council*] and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the *Local Government Act 1993* or any other Act to the best of my ability and judgment.

(3) A councillor who fails, without a reasonable excuse, to take the oath of office or make an affirmation of office in accordance with this section is not entitled to attend a meeting as a councillor (other than the first meeting of the council after the councillor is elected to the office or a meeting at which the councillor takes the oath or makes the affirmation) until the councillor has taken the oath or made the affirmation.

(4) Any absence of a councillor from an ordinary meeting of the council that the councillor is not entitled to attend because of this section is taken to be an absence without prior leave of the council.

(5) Failure to take an oath of office or make an affirmation of office does not affect the validity of anything done by a councillor in the exercise of the councillor's functions.

(6) The general manager must ensure that a record is to be kept of the taking of an oath or the making of an affirmation (whether in the minutes of the council meeting or otherwise).

234 When does a vacancy occur in a civic office?

(1) A civic office becomes vacant if the holder:

(a) dies, or

(b) resigns the office by writing addressed to the general manager, or

(c) is disqualified from holding civic office, or

(d) is absent from 3 consecutive ordinary meetings of the council (unless the holder is absent because he or she has been suspended from office under this Act or because the council has been suspended under this Act or as a consequence of a compliance order under section 438HA) without:

(i) prior leave of the council, or

(ii) leave granted by the council at any of the meetings concerned, or

(e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or

(f) becomes a mentally incapacitated person, or

(g) is dismissed from civic office, or

(g1) in the case of the office of a councillor, is elected as mayor by the electors, or

(h) ceases to hold the office for any other reason.

Note. See section 275 for the circumstances in which a person is disqualified from holding civic office.

(2) For the purposes of subsection (1) (d), a councillor applying for a leave of absence from a meeting of a council does not need to make the application in person and the council may grant such leave in the absence of that councillor.

(3) If the holder of a civic office attends a council meeting (whether or not an ordinary meeting) despite having been granted leave of absence, the leave of absence is taken to have been rescinded as regards any future council meeting.

(4) Subsection (3) does not prevent the council from granting further leave of absence in respect of any future council meeting.

(5) The office of a mayor elected by councillors becomes vacant if the mayor ceases to hold office as a councillor.

Division 4 Local Government Remuneration Tribunal

235 Local Government Remuneration Tribunal

There is established by this Act a tribunal to be known as the Local Government Remuneration Tribunal.

236 Assessors

(1) For the purposes of this Part, there are to be 2 assessors:

(a) one of whom is to be the Departmental Chief Executive, and

(b) the other of whom is to be a person appointed by the Governor on the nomination of the Minister, being a person who has, in the Minister's opinion, special knowledge of the system of local government in New South Wales.

(2) The Remuneration Tribunal, in exercising the Remuneration Tribunal's functions is:

(a) to be assisted by the assessors, and

(b) to take into consideration the views and recommendations tendered by the assessors.

237 Provisions relating to the appointment, term of office and remuneration of the Remuneration Tribunal and assessors

Schedule 1 has effect with respect to the Remuneration Tribunal and the assessors.

238 Functions of the Remuneration Tribunal

(1) The Remuneration Tribunal has the functions conferred or imposed on the Remuneration Tribunal by or under this Act.

(2) In addition, the Remuneration Tribunal has such functions as may be conferred or imposed on the Remuneration Tribunal by the Minister.

239 Categorisation of councils and mayoral offices

(1) The Remuneration Tribunal must, at least once every 3 years:

(a) determine categories for councils and mayoral offices, and

(b) place each council and mayoral office into one of the categories it has determined.

(2) The determination of categories by the Remuneration Tribunal is for the purpose of enabling the Remuneration Tribunal to determine the maximum and minimum amounts of fees to be paid to mayors and councillors in each of the categories so determined.

240 How are the categories to be determined?

(1) The Remuneration Tribunal is to determine categories for councils and mayoral offices according to the following matters:

- the size of areas
- the physical terrain of areas
- the population of areas and the distribution of the population
- the nature and volume of business dealt with by each council
- the nature and extent of the development of areas
- the diversity of communities served
- the regional, national and international significance of the council

- such matters as the Remuneration Tribunal considers relevant to the provision of efficient and effective local government
- such other matters as may be prescribed by the regulations.

(2) In the application of this section to county councils, the categories of county councils are to be determined having regard also to the functions of county councils.

241 Determination of fees

The Remuneration Tribunal must, not later than 1 May in each year, determine, in each of the categories determined under section 239, the maximum and minimum amounts of fees to be paid during the following year to councillors (other than mayors) and mayors.

242 Special determinations

(1) The Minister may direct the Remuneration Tribunal to make a determination as to whether, and (if so) how, a determination already made should be altered in relation to such councillors or mayors as are specified in the direction.

(2) Such a determination must be made before the date specified for the purpose in the Minister's direction.

(3) In making the determination, the Remuneration Tribunal is to take into consideration such matters as are specified in the Minister's direction and such other matters as the Remuneration Tribunal thinks fit.

242A Tribunal to give effect to declared government policy on remuneration for public sector staff

(1) In making a determination, the Remuneration Tribunal is to give effect to the same policies on increases in remuneration as those that the Industrial Relations Commission is required to give effect to under section 146C of the *Industrial Relations Act 1996* when making or varying awards or orders relating to the conditions of employment of public sector employees.

(2) The policies referred to in subsection (1) do not include any policy that provides for increases in remuneration based on employee-related savings.

(3) This section does not apply to a determination by the Remuneration Tribunal that changes the category of a council or mayoral office (whether or not the effect of the change is to increase the range of amounts payable to the councillors and mayor of a council).

(4) To avoid doubt, this section extends to a determination of the minimum and maximum amounts payable for a category in existence when the determination is made.

243 Inquiries

(1) Before making a determination, the Remuneration Tribunal may make such inquiry as the Remuneration Tribunal thinks necessary.

(2) In exercising a function, the Remuneration Tribunal:

(a) may obtain and assess information in such manner as the Remuneration Tribunal thinks fit, and

(b) may receive written or oral submissions, and

(c) is not required to conduct any proceedings in a formal manner, and

(d) is not bound by the rules of evidence.

244 Reports of the Remuneration Tribunal

(1) The Remuneration Tribunal must, within 7 days after making a determination under section 239, make a report to the Minister of the determination.

(2) The Remuneration Tribunal must, not later than 1 May in each year, make a report to the Minister of the determination made under section 241.

(3) The Remuneration Tribunal must, within 7 days after making a determination under section 242, make a report to the Minister of the determination.

245 Publication and tabling of reports

(1) The report of a determination of the Remuneration Tribunal must:

(a) be published in the Gazette as soon as practicable after the report is received by the Minister, and

(b) be laid before each House of Parliament within 14 sitting days of that House after the day on which it is so published.

(2) Failure to lay a report before each House of Parliament in accordance with this section does not affect the validity of a determination, but the report must nevertheless be laid before each House.

246 Effect of determination

A determination of the Remuneration Tribunal may not be challenged, reviewed, quashed or called into question before any court in any legal proceedings, or restrained, removed or otherwise affected by proceedings in the nature of prohibition, mandamus, certiorari or otherwise.

247 Assistance for the Remuneration Tribunal

The Minister is to make available to the Remuneration Tribunal such Public Service employees as may be necessary to assist the Remuneration Tribunal in the exercise of the Remuneration Tribunal's functions.

Division 5 What fees, expenses and facilities may be paid or provided to councillors?

248 Fixing and payment of annual fees for councillors

(1) A council must pay each councillor an annual fee.

(2) A council may fix the annual fee and, if it does so, it must fix the annual fee in accordance with the appropriate determination of the Remuneration Tribunal.

(3) The annual fee so fixed must be the same for each councillor.

(4) A council that does not fix the annual fee must pay the appropriate minimum fee determined by the Remuneration Tribunal.

248A Annual fees or other remuneration not to be paid during period of suspension

A council must not at any time pay any fee or other remuneration, or any expenses, to which a councillor would otherwise be entitled as the holder of a civic office, in respect of any period during which:

(a) the councillor is suspended from civic office under this Act, or

(b) the councillor's right to be paid any such fee or other remuneration, or expense, is suspended under this Act,

unless another provision of this Act specifically authorises payment to be made, or specifically permits a person to authorise payment to be made, when the suspension is terminated.

249 Fixing and payment of annual fees for the mayor

(1) A council must pay the mayor an annual fee.

(2) The annual fee must be paid in addition to the fee paid to the mayor as a councillor.

(3) A council may fix the annual fee and, if it does so, it must fix the annual fee in accordance with the appropriate determination of the Remuneration Tribunal.

(4) A council that does not fix the annual fee must pay the appropriate minimum fee determined by the Remuneration Tribunal.

(5) A council may pay the deputy mayor (if there is one) a fee determined by the council for such time as the deputy mayor acts in the office of the mayor. The amount of the fee so paid must be deducted from the mayor's annual fee.

250 At what intervals are fees to be paid?

Fees payable under this Division by a council are payable monthly in arrears for each month (or part of a month) for which the councillor holds office.

251 What is the consequence of paying fees?

(1) A person is not, for the purposes of any Act, taken to be an employee of a council and is not disqualified from holding civic office merely because the person is paid a fee under this Division.

(2) A fee paid under this Division does not constitute salary for the purposes of any Act.

252 Payment of expenses and provision of facilities

(1) Within the first 12 months of each term of a council, the council must adopt a policy concerning the payment of expenses incurred or to be incurred by, and the provision of facilities to, the mayor, the deputy mayor (if there is one) and the other councillors in relation to discharging the functions of civic office.

(2) The policy may provide for fees payable under this Division to be reduced by an amount representing the private benefit to the mayor or a councillor of a facility provided by the council to the mayor or councillor.

(3) A council must not pay any expenses incurred or to be incurred by, or provide any facilities to, the mayor, the deputy mayor (if there is one) or a councillor otherwise than in accordance with a policy under this section.

(4) A council may from time to time amend a policy under this section.

(5) A policy under this section must comply with the provisions of this Act, the regulations and any relevant guidelines issued under section 23A.

253 Requirements before policy concerning expenses and facilities can be adopted or amended

(1) A council must give public notice of its intention to adopt or amend a policy for the payment of expenses or provision of facilities allowing at least 28 days for the making of public submissions.

(2) Before adopting or amending the policy, the council must consider any submissions made within the time allowed for submissions and make any appropriate changes to the draft policy or amendment.

(3) Despite subsections (1) and (2), a council need not give public notice of a proposed amendment to its policy for the payment of expenses or provision of facilities if the council is of the opinion that the proposed amendment is not substantial.

(4) (Repealed)

(5) A council must comply with this section when proposing to adopt a policy in accordance with section 252 (1) even if the council proposes to adopt a policy that is the same as its existing policy.

254 Decision to be made in open meeting

The council or a council committee all the members of which are councillors must not close to the public that part of its meeting at which a policy for the payment of expenses or provision of facilities is adopted or amended, or at which any proposal concerning those matters is discussed or considered.

254A Circumstances in which annual fees may be withheld

(1) Despite this Division, a council may resolve that an annual fee will not be paid to a councillor or that a councillor will be paid a reduced annual fee determined by the council:

(a) for any period of not more than 3 months for which the councillor is absent, with or without leave, from an ordinary meeting or ordinary meetings of the council, or

(b) in any other circumstances prescribed by the regulations.

Note. Section 428 (2) (f) requires a council to include, in its annual report:

- the total amount of money expended during the year on mayoral fees and councillor fees
- the council's policy on the provision of facilities for, and the payment of expenses to, councillors
- the total amount of money expended during the year on providing those facilities and paying those expenses.

(2) Despite this Division, if a councillor is absent, with or without leave of the council, from ordinary meetings of the council for any period of more than 3 months, the council must not pay any annual fee, or part of an annual fee, to that councillor that relates to the period of absence that is in excess of 3 months.

Division 6 Appointment of administrator

255 Governor may dismiss mayor and councillors

(1) The Governor may, by proclamation, declare all civic offices in relation to a council to be vacant if:

(a) a public inquiry concerning the council has been held, and

(b) the Minister has recommended that the Governor make such a declaration.

(1A) The Minister may recommend that the Governor make such a declaration only:

(a) after considering the results of the public inquiry, or

(b) if the Minister decides to issue a performance improvement order to the council in response to the results of the public inquiry—after issuing the order and considering whether the council has complied with the order.

(2) The Governor may, by proclamation, declare all civic offices in relation to a council to be vacant if the Independent Commission Against Corruption, in a report referred to in section 74C of the *Independent Commission Against Corruption Act 1988*, recommends that consideration be given to the making of such a declaration because of systemic corruption within the council.

(3) If the Independent Commission Against Corruption makes such a recommendation, all civic offices in relation to the council may be declared vacant under subsection (2) without the holding of a public or other inquiry concerning the council. However, the making of such a recommendation does not preclude the holding of a public or other inquiry.

(4) For the purposes of this Act, a council is ***dismissed*** if the Governor declares all civic offices in relation to the council to be vacant.

256 Governor may appoint administrator or order fresh election

(1) By the same proclamation under section 255 or by one or more subsequent proclamations, the Governor is:

(a) to appoint an administrator of the council for a specified term, or

(b) to order the holding of a fresh council election,

or both.

(1A) More than one administrator may be appointed (with the same or different functions).

(2) The Governor may, by those or other proclamations, make such further orders as the Minister recommends are necessary in the circumstances.

257 Declaration of council as non-functioning

(1) An administrator may be appointed for an area by the Governor without the necessity for a public inquiry if the Governor declares the council to be non-functioning because:

(a) the requirements of this Act as to the making and levying of an ordinary rate have not been followed, or

(b) the council has not exercised its functions for 6 months or more, or

(c) there are not enough councillors for there to be a quorum at council meetings.

(2) The Governor may, as an alternative to the appointment of an administrator on the ground referred to in subsection (1) (c), appoint (or authorise a special election to elect) councillors to fill all the vacancies on the council or such number of those vacancies as will provide a quorum at meetings.

258 Administrator

(1) When an administrator of a council appointed under this Division takes office:

(a) any persons holding civic office in relation to the council cease to hold office, and

(b) the administrator has all the functions of the council (including all the functions of a councillor and the mayor) until immediately before the first meeting of the council held after the fresh election.

(1A) If more than one administrator is appointed, each administrator has the functions of the council specified in the instrument of appointment.

(1B) If more than one administrator is appointed, one of the administrators is to be specified in the instrument of appointment as the person who is to exercise the functions of the mayor of the council.

(2) An administrator must be paid a salary from the council's funds determined by the Governor.

(2A) If more than one administrator is appointed for a council, the Minister may give directions for the purpose of resolving any issues that arise as a result of there being more than one administrator.

(3) The Governor may terminate an administrator's appointment at any time.

(4) An administrator ceases to hold office:

(a) immediately before the first meeting of the council held after the fresh election, or

(b) if the administrator's appointment is earlier terminated by the Governor.

259 Temporary exercise of the council's functions

(1) In this section, ***the transitional period*** means the period between:

(a) the appointment of an administrator of a council and the time at which the administrator takes office, or

(b) the declaration of a council to be non-functioning and the time at which the appointed or elected councillors for the area take office, if the declaration provides for their appointment or election instead of the appointment of an administrator.

(2) During the transitional period, the mayor, or the general manager if there is no mayor, may temporarily exercise the following functions of the council:

(a) the continuation of works and services already commenced,

(b) the payment of council employees,

(c) the payment of accounts due,

(d) the administration of the area without expenditure other than those payments and payments approved by the Minister.

Part 3 Local Government Boundaries Commission

260 Constitution of the Boundaries Commission

There is constituted by this Act a body corporate with the name of Local Government Boundaries Commission.

261 Membership of Boundaries Commission

(1) The Boundaries Commission is to consist of 4 commissioners appointed by the Governor.

(2) Of the commissioners:

(a) one is to be a person nominated by the Minister, and

(b) one is to be a person employed in the Department nominated by the Departmental Chief Executive, and

(c) 2 are to be persons appointed from the panel constituted under section 262 (1).

(3) Despite subsection (2), the Boundaries Commission is taken to be properly constituted when the commissioners referred to in paragraphs (a) and (b) of that subsection have been appointed.

(4) The commissioner referred to in subsection (2) (a) is the chairperson of the Boundaries Commission.

(5) Schedule 2 has effect with respect to the commissioners and the procedure of the Boundaries Commission.

262 How is a panel to be constituted for the purposes of making an appointment as a commissioner?

(1) There is to be a panel consisting of 8 persons who are councillors nominated by the executive of the Local Government and Shires Association of New South Wales.

(2) The nomination of members of the panel must be made in the manner determined by the Minister. A person must not be nominated as a member of the panel unless he or she has consented in writing to be nominated.

(3) If an insufficient number of nominations have been made to the panel to enable the Governor to appoint a commissioner or commissioners in accordance with this Part, the Governor may appoint a person to be a commissioner on the recommendation of the Minister.

263 Functions of the Boundaries Commission

(1) The Boundaries Commission is required to examine and report on any matter with respect to the boundaries of areas and the areas of operation of county councils which may be referred to it by the Minister.

(2) For the purpose of exercising its functions, the Boundaries Commission:

(a) may hold an inquiry if the Minister so approves, and

(b) must hold an inquiry if the Minister so directs,

but may not hold an inquiry otherwise than as referred to in paragraph (a) or (b).

(2A) Despite subsection (2), the Boundaries Commission must hold an inquiry for the purpose of exercising its functions in relation to a proposal for the amalgamation of two or more areas that has been referred to it in accordance with section 218F.

(2B) Reasonable public notice must be given of the holding of an inquiry under this section.

(3) When considering any matter referred to it that relates to the boundaries of areas or the areas of operations of county councils, the Boundaries Commission is required to have regard to the following factors:

(a) the financial advantages or disadvantages (including the economies or diseconomies of scale) of any relevant proposal to the residents and ratepayers of the areas concerned,

(b) the community of interest and geographic cohesion in the existing areas and in any proposed new area,

(c) the existing historical and traditional values in the existing areas and the impact of change on them,

(d) the attitude of the residents and ratepayers of the areas concerned,

(e) the requirements of the area concerned in relation to elected representation for residents and ratepayers at the local level, the desirable and appropriate relationship between elected representatives and ratepayers and residents and such other matters as it considers relevant in relation to the past and future patterns of elected representation for that area,

(e1) the impact of any relevant proposal on the ability of the councils of the areas concerned to provide adequate, equitable and appropriate services and facilities,

(e2) the impact of any relevant proposal on the employment of the staff by the councils of the areas concerned,

(e3) the impact of any relevant proposal on rural communities in the areas concerned,

(e4) in the case of a proposal for the amalgamation of two or more areas, the desirability (or otherwise) of dividing the resulting area or areas into wards,

(e5) in the case of a proposal for the amalgamation of two or more areas, the need to ensure that the opinions of each of the diverse communities of the resulting area or areas are effectively represented,

(f) such other factors as it considers relevant to the provision of efficient and effective local government in the existing and proposed new areas.

(4) The Boundaries Commission is not entitled to examine or report on any matter relating to the area of operations of a county council constituted or proposed to be constituted for the supply of electricity.

(5) The Boundaries Commission must allow members of the public to attend any inquiry held by the Commission under this section.

(6) The Boundaries Commission may continue with an examination or inquiry even though a commissioner or acting commissioner replaces another commissioner during the course of the examination or inquiry.

(7) The Supreme Court may not make an order in the nature of prohibition in respect of, or an order for removing to the Court or quashing, any decision or proceeding made or conducted by the Boundaries Commission in connection with the exercise of its functions.

264 Can a person be represented in proceedings before the Boundaries Commission?

(1) In proceedings before the Boundaries Commission, a person is not entitled to be represented:

(a) by an Australian lawyer or by a person qualified for admission as an Australian lawyer, or

(b) by any person acting for a fee or reward.

(2) However, this section does not prevent:

(a) an employee of a person from representing the person before the Boundaries Commission if the employee is not a person referred to in subsection (1) (a), or

(b) a person who is the mayor of an area or the chairperson of a county council from appearing in that capacity in proceedings before that Commission, or

(c) a person referred to in subsection (1) (a) from preparing any documents or submissions or tendering any legal advice in connection with any proceedings before that Commission.

265 Boundaries Commission may conduct survey or poll

(1) To assist it in determining the attitude of the residents and ratepayers of an area or areas for the purposes of section 263 (3) (d), the Boundaries Commission may conduct (in such manner as it thinks appropriate) an opinion survey or poll of the residents and ratepayers.

(2) The residents and ratepayers of the area or areas concerned may participate in any such opinion survey or poll but are not required to do so.

(3) The Boundaries Commission may request the Electoral Commissioner, a council or any other person or organisation to conduct any such opinion survey or poll.

Chapter 10 How are people elected to civic office?

Part 1 Who may vote?

266 Who has the right to be enrolled as an elector?

(1) A person who is entitled to vote at an election of members of the Legislative Assembly or an election of members of the Commonwealth House of Representatives is entitled to be enrolled as an elector for a ward if:

(a) he or she is a resident of the ward, or

(b) he or she is not a resident of the ward but is an owner of rateable land in the ward, or

(c) he or she is an occupier, or ratepaying lessee, of rateable land in a ward.

(2) Despite subsection (1), a person who has been convicted of an offence, whether in New South Wales or elsewhere, and has been sentenced in respect of that offence to imprisonment for 12 months or more and is in prison serving that sentence is not entitled to be enrolled as an elector for a ward.

Note. See section 30 (4) of the *Electoral Act 2017* for the equivalent disqualification in relation to enrolment for State elections.

267 Who has the right to vote?

(1) A person whose name is on the roll kept under Division 2 of Part 6 for a ward is entitled to vote:

(a) at an election of councillors for the ward, and

(b) at an election of the mayor by all the electors of the area.

(2) A person who changes his or her name from that on the roll may, until the roll is corrected, vote under the enrolled name.

(3) The right of an enrolled person to vote at an election is not affected by:

(a) a change of residence within a ward or within an area that is not divided into wards, or

(b) a change in the qualification that entitles an enrolled person to vote.

(4) A person who:

(a) is qualified in respect of more than one parcel of land to be enrolled for a ward, and

(b) is enrolled in respect of only one of the parcels, and

(c) ceases to be qualified in respect of that parcel,

is not disqualified from voting at an election held while the person is enrolled in respect of that parcel if the returning officer is satisfied that the person is then qualified in respect of another of the parcels.

(5) This section does not confer a right to vote at an election on a person who by or under this Act is disqualified from voting, or is not qualified to vote, at the election.

268 One vote per elector

Nothing in this Chapter entitles a person to more than one vote in one area in an election.

Note. A person may not exercise more than one vote in any one area even if:

- the person is entitled to be enrolled as an elector for more than one ward in the area; or the person's entitlement is based on more than one of the criteria in section 266 (1) (a), (b) and (c), or
- the person's entitlement is based on the ownership or occupation of more than one parcel of land in the area.

269 Who is a "resident" for the purposes of this Part?

(1) For the purposes of this Part, a person is a resident of a ward if the person is enrolled (within the meaning of the *Electoral Act 2017*) in respect of an address that is within the ward.

(2) (Repealed)

(3) In this section, ***place of living*** includes the place of residence to which a person temporarily residing elsewhere intends to return in order to continue living there.

270 Who is an "owner of rateable land" for the purposes of this Part?

(1) For the purposes of this Part, a person is the owner of rateable land if:

(a) the person is not a corporation, is the sole owner of the rateable land and does not own it as trustee, or

(b) the person is not a corporation, is a joint or several owner of the rateable land and is nominated in writing as an elector by the only other owner of the land, or by a majority of all the owners of the land, or

(c) the person is not a corporation, is not a nominee under paragraph (b) and is nominated in writing as an elector by a corporation which is the owner, or by trustees who are the owners, of the land, or

(d) the person is a lessee of the land from the Crown and the land is rateable Crown land.

(2) Land is not rateable land for the purposes of this Part if it is a lot in a strata plan that is registered under the *Strata Schemes Development Act 2015* and is provided only for the purpose of parking a motor vehicle.

(3) If there is more than one person who (by virtue of subsection (1)) is the owner of the same parcel of rateable land, only one of the persons is entitled to be enrolled as an elector for a ward.

(4) If a corporation or trustees own more than one parcel of land in an area, or if joint or several owners of one parcel of land in an area are also joint or several owners of any other parcel of land in the area, it or they can nominate a person as the owner of rateable land only in respect of one of those parcels.

(5) A nomination under this section is to be lodged with the general manager.

271 Who is an "occupier" or "ratepaying lessee" for the purposes of this Part?

(1) For the purposes of this Part, a person is an occupier of rateable land if the person has a legally enforceable right to continuous occupation of rateable land (jointly or severally, but not as owner or ratepaying lessee) for not less than 3 years following the relevant date.

(2) If there is more than one such occupier of the same parcel of rateable land, only one of them is entitled to be enrolled as an elector for a ward.

(2A) If a corporation or trustees is or are occupiers of more than one parcel of land in an area, or if joint or several occupiers of one parcel of land in an area are also joint or several occupiers of any other parcel of land in the area, it or they can nominate a person as the occupier of rateable land only in respect of one of those parcels.

(3) For the purposes of this Part, a person is a ratepaying lessee of rateable land if the person is jointly or severally liable, under a lease in writing or other document of title relating to the land, to pay to any person the whole or any part of any rates that may, during the 3 years following the relevant date, be made or levied in respect of the land.

(4) If there is more than one such ratepaying lessee of the same parcel of rateable land, only one of them is entitled to be enrolled as an elector for a ward.

(4A) If a corporation or trustees is or are ratepaying lessees of more than one parcel of land in an area, or if joint or several ratepaying lessees of one parcel of land in an area are also joint or several ratepaying lessees of any other parcel of land in the area, it or they can nominate a person as the ratepaying lessee of rateable land only in respect of one of those parcels.

(5) The ***relevant date*** for the purposes of this section is:

(a) the date on which the claim for enrolment is made, if the claim is for inclusion in the roll of occupiers and ratepaying lessees, or

(b) the closing date for the election referred to in Part 4, if the claim is for the purpose of voting in the election.

272 Competing claimants

(1) If two or more persons apply to be enrolled as an elector for a ward as owners of the same parcel of rateable land, and those persons do not nominate one of their number to be so enrolled, the general manager may do so instead.

(2) Likewise, if two or more persons apply to be enrolled as an elector for a ward as occupiers, or as ratepaying lessees, or as occupier and ratepaying lessee, of the same parcel of land, and those

persons do not nominate one of their number to be so enrolled, the general manager may do so instead.

273 Application of Part to area not divided into wards

If an area is not divided into wards, this Part applies to the area in the same way as it applies to a ward.

Part 2 Who may be elected?

274 What are the qualifications for civic office?

A person is qualified to hold civic office if:

(a) the person is entitled to be enrolled as an elector, and

(b) the person is not disqualified from holding civic office by this Act, and

(c) the person is not prevented from being elected to civic office by section 276 (2).

275 Who is disqualified from holding civic office?

(1) A person is disqualified from holding civic office:

(a) while disqualified from being an elector, or

(a1) while a member of the Parliament of New South Wales, except as provided by subsections (5) and (7), or

(b) while a judge of any court of the State or the Commonwealth, or

(c) while serving a sentence (including a sentence the subject of an intensive correction order) for a serious indictable offence or any other offence, except a sentence imposed for a failure to pay a fine, or

(d) if he or she is while holding that office, or has been within 2 years before nomination for election, election or appointment to the office, convicted of an offence under the regulations made for the purposes of section 748 (3), or

(e) if he or she is while holding that office, or has been within 7 years before nomination for election, election or appointment to the office, convicted in New South Wales of an offence that is punishable by imprisonment for 5 years or more, or convicted in another State or Territory, or under a law of the Commonwealth, of an offence that, if committed in New South Wales, would be an offence so punishable, or

(e1) if he or she is while holding that office, or has been within 2 years before nomination for election, election or appointment to the office, convicted of an offence under the *Election Funding, Expenditure and Disclosures Act 1981* that is punishable by imprisonment for 2 years or more, or

(f) while a surcharge, payable by the person under Part 5 of Chapter 13 and not paid within 6 months after it became payable, remains unpaid, or

(g) while disqualified from holding a civic office under a provision of this Act or Part 4A of the *Crimes Act 1900* (Corruptly receiving commissions and other corrupt practices), or

(h) while disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001* of the Commonwealth.

(1A) If:

(a) an order for suspension from civic office for misconduct is made (after the commencement of this subsection) against a person under this Act by the Departmental Chief Executive or the Civil and Administrative Tribunal on a referral from the Departmental Chief Executive, and

(b) it is the third or subsequent such order that has been made against the person (including orders made before the commencement of this subsection),

the person is disqualified from holding civic office for 5 years after the date the order takes effect.

(2) A person is disqualified from holding civic office on a council if he or she is an employee of the council or holds an office or place of profit under the council.

(3) A person is not disqualified from holding a civic office only because, while holding the civic office, the person ceases to be a resident in the area, to own property in the area or to be an occupier or ratepaying lessee of rateable land in the area.

(4) A person is taken not to be disqualified from holding civic office if the former Administrative Decisions Tribunal or the Civil and Administrative Tribunal, in proceedings under section 329, has refused to order the dismissal of the person in circumstances to which subsection (4) of that section applies.

(5) If:

(a) on the commencement of this subsection, a member of the Parliament of New South Wales is a councillor or mayor, or

(b) after the commencement of this subsection, a councillor or mayor becomes a member of the Parliament of New South Wales,

the person is not disqualified from holding civic office because of subsection (1) (a1) for the balance of the person's term of office as a councillor or for the period of 2 years (whichever is the shorter period).

(6) Subsection (5) does not apply where a councillor or mayor becomes a member of the Parliament of New South Wales after the commencement of that subsection and within 12 months after last ceasing to be a member of that Parliament.

(7) Despite anything to the contrary in this Chapter, a member of the Parliament of New South Wales is not disqualified because of subsection (1) (a1) from being nominated for election or being elected to a civic office. If elected, the person is disqualified from holding that civic office unless:

(a) the person has ceased to be a member of that Parliament before the first meeting of the council concerned after the election, or

(b) it is an election as mayor by the councillors during the period that the person is not disqualified by the operation of subsection (5).

Note. If a person while holding civic office becomes subject to disqualification under this section, the office becomes vacant under section 234.

276 What is the effect of disqualification?

(1) A person who is disqualified from holding civic office may not be elected or appointed to a civic office and may not hold, or act in, a civic office.

(2) A person who vacates the office of councillor by resignation or disqualification may not be elected to a civic office in the same area (and may not hold, or act in, a civic office in the same area) until:

(a) if the person is not disqualified—the first anniversary of the vacation of office, or the next ordinary election for the area (whichever occurs first), or

(b) if the person is disqualified—the first ordinary election after the person ceases to be disqualified.

(3) A person convicted of an offence under Part 6 of Chapter 16 for acting in a civic office while disqualified under section 275:

(a) is disqualified from holding civic office for 7 years from the time of conviction, unless the court determines a shorter period, and

(b) is not entitled to receive or recover from the council any money relating to the civic office in respect of the period in which the person is disqualified.

(4) The council may, within 2 years after the person so convicted receives money from the council relating to the civic office in respect of the period in which the person is disqualified, recover the money from the person as a debt.

277 May the holder of a civic office be re-elected?

(1) The holder of a civic office is eligible for re-election, subject to this Act.

(2) The holder of a civic office is not disqualified from being re-elected merely because the holder, or the council, is suspended under this Act.

Part 3 What is the system of election?

278 Election of councillors for an area not divided into wards

The councillors for an area that is not divided into wards are to be elected by an electorate comprising all the electors for the area.

279 Alternative methods for election of councillors for an area divided into wards

(1) The councillors for an area that is divided into wards are to be elected in accordance with either section 280 or 281.

(2) The method of election under section 280 (method 1) is to apply unless a decision made at a constitutional referendum is in force which:

(a) requires the method of election under section 281 (method 2) to apply, and

(b) specifies the number of councillors each of whom is to be elected by an electorate comprising all the electors for a ward and the number of councillors (if any) each of whom is to be elected by an electorate comprising all the electors for the area.

280 Ward election of councillors—method 1

(1) Each councillor for an area that is divided into wards may be elected by an electorate comprising all the electors for a ward.

(2) The same number of councillors is to be elected for each ward. The mayor is to be excluded when determining that number if the mayor is to be elected by all the electors for the area.

(3) The same person is not to be a candidate for election as a councillor by the electors for more than one ward, unless the election is for the mayor as such.

281 Election of councillors partly by wards, partly by area—method 2

(1) The councillors for an area that is divided into wards may be elected:

(a) as to some of them—each by an electorate comprising all the electors for a ward, and

(b) as to the others—by an electorate comprising all the electors for the area.

(2) The same number of councillors is to be elected for each ward. The mayor is to be excluded when determining that number if the mayor is to be elected by all the electors for the area.

(3) If a person is a candidate for election as a councillor by the electors for a ward, the person must not at the same time be a candidate for election as a councillor by the electors for another ward or a candidate for election as a councillor by all the electors for the area, unless the election is for the mayor as such.

282 Election of mayor

(1) The mayor of an area who is to be elected by the electors is to be elected by an electorate comprising all the electors for the area, even if the area is divided into wards.

(2) The mayor of an area who is to be elected by the councillors for the area is to be elected by the councillors from among their number.

(3) A mayor elected for an area is one of the councillors of the council for the area.

283 Double candidature

(1) A person may be a candidate for election as mayor and a candidate for election as a councillor at the same time.

(2) If a person is elected by the electors as mayor and the person is also a candidate for election as a councillor, the votes cast for the person as a councillor are not to be counted for that person but are to be distributed as prescribed by the regulations.

(3) (Repealed)

284 Voting system for election of the mayor by all the electors of the area

The voting system in a contested election of the mayor by all the electors of the area is to be optional preferential.

285 Voting system for election of councillors

The voting system in a contested election of a councillor or councillors is to be:

(a) optional preferential, if only one councillor is to be elected, or

(b) proportional, if 2 or more councillors are to be elected.

286 Is voting compulsory?

Whichever voting system applies, electors on the residential roll must vote at a contested election unless exempt from voting under this Act. Electors on the non-residential roll or the roll of occupiers and ratepaying lessees may vote, but are not required to vote.

Part 4 When are elections held?

287 When is an ordinary election of councillors held?

(1) An ordinary election of the councillors for an area is to be held on the second Saturday of September 2008 and on the second Saturday of September in every fourth year after 2008.

(2) An election of the councillors for an area is to be held on a Saturday proclaimed for the purpose if:

(a) the area is constituted after the commencement of this Part, or

(b) the council for the area is dismissed, or

(c) the council is declared to be non-functioning under section 257.

288 Delayed elections of councillors

(1) If the Minister is of the opinion that it would be impracticable or inconvenient to hold an election as provided by section 287, the Minister may, by order published in the Gazette, appoint a subsequent Saturday for the election.

(2) The subsequent Saturday must not be more than 28 days later than the day when the election should have been held.

(3) If a day is appointed under this section for an election, the retiring councillors continue in office until the election is held and, if a retiring councillor resigns in the meantime, his or her office is vacant until the election is held.

289 When is an election of a mayor by the electors to be held?

(1) The election of a mayor by the electors for an area is to be held (unless its purpose is the filling of a casual vacancy):

(a) on the day on which the election of the councillors for the area is held, or

(b) if the election of the councillors is uncontested, on the day on which the election of the councillors would have been held if it had been contested.

(2) If a mayor of an area is to be elected by the electors on the day on which a contested election of councillors for the area is to be held and the election of the councillors is delayed for any reason, the election of the mayor is also delayed but must be held on the same day as the delayed election of the councillors.

290 When is an election of a mayor by the councillors to be held?

(1) The election of the mayor by the councillors is to be held:

(a) if it is the first election after an ordinary election of councillors—within 3 weeks after the ordinary election, or

(b) if it is not that first election or an election to fill a casual vacancy—during the month of September, or

(c) if it is the first election after the constitution of an area—within 14 days after the appointment of a provisional council or the first election of the council if a provisional council is not appointed, or

(d) if the relevant council is a non-functioning council, or a council of which all civic offices have been declared vacant, and the election is the first to be held after the appointment or election of the councillors—within 14 days after the appointment or election of the councillors.

(2) If the councillors fail to elect a mayor as required by this section, the Governor may appoint one of the councillors as the mayor.

(3) For the purposes of this section, an election of councillors does not conclude until the declaration of election of all the councillors of the council concerned.

Note. The filling of a casual vacancy in the office of a mayor elected by the councillors is dealt with in section 295.

Note. Elections are not held while a council is suspended under Part 7 or 8 of Chapter 13.

Part 5 How are casual vacancies filled?

291 By-elections

If a casual vacancy occurs in a civic office, the office is to be filled by a by-election, subject to this Part.

Note. The circumstances in which casual vacancies occur are specified in Chapter 9.

291A Countback to be held instead of by-election in certain circumstances

(1) This section applies to a casual vacancy in the office of a councillor if:

(a) the casual vacancy occurs within 18 months after the date of the last ordinary election of the councillors for the area, and

(b) the council has at its first meeting following that ordinary election of councillors, by resolution, declared that any such casual vacancy is to be filled by a countback of votes cast at the last election for that office.

(2) This section does not apply to a casual vacancy in the office of a councillor if the councillor who vacated office was elected:

(a) in an election using the optional preferential voting system (including the election of a mayor elected by the electors of an area), or

Note. See section 285 (Voting system for election of councillors).

(b) in an election without a poll being required to be held.

Note. See section 311 (Uncontested elections).

(3) A casual vacancy to which this section applies is to be filled by a countback election conducted in accordance with the regulations.

(4) A countback election to fill a casual vacancy to which this section applies must be conducted:

(a) by the returning officer who conducted the election at which the person whose departure created the casual vacancy was elected, or

(b) if that is not possible, by the substitute returning officer at that election, or

(c) if that is not possible, by a returning officer appointed in accordance with this Act.

(5) If a countback election fails or the returning officer is otherwise unable to fill the casual vacancy by a countback election:

(a) the returning officer must notify the general manager of the council concerned, and

(b) a by-election in accordance with this Part must be held to fill the casual vacancy.

(6) This section does not apply to a casual vacancy in the office of a councillor if the vacancy occurs before the day prescribed for the purposes of this section by the regulations.

292 When is a by-election to be held?

A by-election to fill a casual vacancy in the office of a councillor or a mayor elected by the electors of an area is to be held on a Saturday that:

(a) falls not later than 3 months after the vacancy occurs, and

(b) is fixed by the general manager (in relation to an election administered by the general manager) or the Electoral Commissioner (in relation to an election administered by the Electoral Commissioner).

293 Delayed by-elections

(1) If the Minister is of the opinion that it would be impractical or inconvenient to hold a by-election as provided by section 292, the Minister may, by order published in the Gazette, appoint a subsequent Saturday for the by-election.

(2) The subsequent Saturday must not be more than 28 days later than the day when the by-election should have been held.

294 Dispensing with by-elections

(1) This section applies if a casual vacancy occurs in the office of a councillor, including a mayor elected by the electors of an area, within 18 months before the date specified for the next ordinary election of the councillors for the area.

(2) If such a casual vacancy occurs in the office of a councillor (but not the office of a mayor elected by the electors), the Minister may, on the application of the council:

(a) order that the vacancy not be filled, or

(b) order the holding on a stated day of a by-election to fill the vacancy and revoke any earlier order made under paragraph (a).

(3) If such a casual vacancy occurs in the office of a mayor elected by the electors, the casual vacancy is to be filled by the Governor appointing to the vacant office a councillor nominated by the council.

(4) If the council does not nominate a councillor for the purposes of subsection (3), the Governor may appoint one of the councillors to the vacant office.

294A Casual vacancy not to be filled where councillor numbers reduced

(1) A casual vacancy in the office of a councillor (but not a mayor elected by the electors) is not to be filled if the Minister has approved an application under section 224A to reduce the number of councillors but the reduction has not yet taken effect.

(2) However, subsection (1) does not authorise a vacancy to remain unfilled if the vacancy will result in the council having less councillors than the reduced number approved by the Minister under section 224A.

(3) Subsection (1) applies to a casual vacancy whether occurring before or after the commencement of this section or before or after the approval of the relevant application under section 224A.

294B Casual vacancy not to be filled where councillor numbers reduced—approved by constitutional referendum

(1) Despite section 17 (2), a casual vacancy in the office of a councillor (but not a mayor elected by the electors) is not to be filled if a constitutional referendum has approved a reduction in the number of councillors but the reduction has not yet taken effect.

(2) However, subsection (1) does not authorise a vacancy to remain unfilled if the vacancy will result in the council having less councillors than the reduced number approved by the constitutional referendum.

(3) Subsection (1) applies to a casual vacancy whether occurring before or after the commencement of this section or before or after the constitutional referendum.

295 Casual vacancy in office of mayor elected by the councillors

(1) If a casual vacancy occurs in the office of a mayor elected by the councillors, the vacancy is to be filled at a meeting of the council to be held within 14 days after the occurrence of the vacancy.

(2) If the councillors fail to elect a mayor as required by this section, the Governor may appoint one of the councillors as the mayor.

Part 6 How are elections conducted?

Division 1 Administration of elections

296AA Councils to plan for administration of elections

(1) At least 18 months before the next ordinary election of councillors for a council, the council must resolve:

(a) to enter into an arrangement with the Electoral Commissioner, by contract or otherwise, for the Electoral Commissioner to administer elections of the council (as provided by section 296), or

(b) that the elections of the council are to be administered by an electoral services provider engaged by the council.

(2) A resolution referred to in subsection (1) (b) must include the following information:

(a) whether the general manager has identified an electoral services provider to be engaged for the next ordinary election of councillors and, if so, the name of that provider,

(b) any other information required by the regulations.

(3) As soon as practicable after the making of a resolution referred to in subsection (1) (b), the general manager of the council must publish a copy of the resolution on the council's website.

(4) If a council fails to comply with subsection (1), the general manager of the council must publish a notice of that failure on the council's website.

(5) Despite the other provisions of this section, a council may make a resolution under subsection (1) on or before 1 October 2019 for the purposes of an arrangement that includes the ordinary election of councillors in 2020.

296 How elections are to be administered

(1) Elections for the purposes of this Chapter are to be administered by an electoral services provider engaged by the council concerned, except as provided by this section.

Note. Section 18 provides that certain provisions of this Act (relating to the conduct of elections) apply to council polls and constitutional referendums, with such modifications as may be necessary, in the same way as they apply to elections.

(2) A council can enter into an arrangement (an ***election arrangement***) with the Electoral Commissioner, by contract or otherwise, for the Electoral Commissioner to administer elections of the council as provided by this section. If such an arrangement is entered into, the Electoral Commissioner is to administer elections of the council in accordance with the arrangement.

(3) An election arrangement for the Electoral Commissioner to administer all elections of a council can be entered into if:

(a) the council resolves at least 18 months before the next ordinary election of councillors that such an arrangement is to be entered into, and

(b) the arrangement is entered into no later than 15 months before the next ordinary election of councillors.

(4) An election arrangement for the Electoral Commissioner to administer a particular election of a council (other than an ordinary election of councillors) can be entered into at any time if the council has resolved that an election arrangement for the election is to be entered into.

(5) An election arrangement for the Electoral Commissioner to administer an ordinary election of councillors can be entered into less than 15 months before the election if:

(a) the council has resolved that an election arrangement for the election is to be entered into, and

(b) the Electoral Commissioner is satisfied that there are exceptional circumstances that make it necessary or desirable for the election to be administered by the Electoral Commissioner.

(5A) Without limiting subsection (5), an election arrangement for the Electoral Commissioner to administer all elections of a council that is to include the ordinary election of councillors in 2020, or to administer that particular election, may be entered into if:

(a) the council resolves on or before 1 October 2019 that an arrangement is to be entered into, and

(b) the arrangement is entered into on or before 1 January 2020.

(6) An election arrangement for the Electoral Commissioner to administer all elections of a council can be terminated by the council or the Electoral Commissioner at any time after the next ordinary election of councillors (by giving written notice of termination). If the arrangement is not terminated by either party after an ordinary election of councillors, the arrangement is automatically terminated 18 months before the next ordinary election of councillors.

(7) The Electoral Commissioner is to administer the first election for an area after its constitution. Expenses incurred by the Electoral Commissioner (including the remuneration of election officials) in connection with such an election are to be met by the council and are recoverable from the council as a debt owed to the Electoral Commissioner.

(8) This section does not apply to an election of the mayor or a deputy mayor by councillors.

296A Elections administered by an electoral services provider

(1) This section applies to an election administered by an electoral services provider engaged by a council.

(2) The electoral services provider is to appoint a returning officer and a substitute returning officer for the election. In the absence of the returning officer, the substitute returning officer is to exercise the functions of the returning officer.

(3) The returning officer is to appoint one or more electoral officials.

(4) An employee of a council for an area cannot be appointed as a returning officer or substitute returning officer for that area. However, an electoral official may be an employee of the council.

(5) A general manager cannot be appointed as a returning officer, substitute returning officer or electoral official for any area.

(6) For the purpose of conducting an election, the returning officer and substitute returning officer for an area are entitled to access to any relevant records of the council for the area.

(7) For the purpose of administering an election, the electoral services provider is to:

(a) appoint the polling places, and

(b) determine the fees payable to the returning officer, substitute returning officer and electoral officials.

(8) For the purpose of conducting an election, the returning officer is to determine any matter not provided for by this Act or the regulations.

(9) Expenses incurred by the returning officer, substitute returning officer and electoral officials in connection with an election are to be met by the council.

(10) The returning officer and the substitute returning officer must not vote at any election that they are conducting.

296B Elections administered by the Electoral Commissioner

(1) This section applies to an election administered by the Electoral Commissioner.

(2) The Electoral Commissioner is to appoint a returning officer and a substitute returning officer for each area. The returning officer is to conduct elections on behalf of, and under the direction of, the Electoral Commissioner. In the absence of the returning officer, the substitute returning officer is to exercise the functions of the returning officer.

(3) The returning officer is to appoint one or more electoral officials.

(4) An employee of a council for an area cannot be appointed as a returning officer or substitute returning officer for that area. However, an electoral official may be an employee of the council.

(5) For the purpose of conducting an election, the returning officer and substitute returning officer for an area are entitled to access to any relevant records of the council for the area.

(6) For the purpose of conducting an election, the Electoral Commissioner is to:

(a) appoint the polling places, and

(b) determine the fees payable to the returning officer, substitute returning officer and electoral officials, and

(c) determine any matter not provided for by this Act or the regulations.

(7) The Electoral Commissioner, the returning officer and the substitute returning officer must not vote at any election that they are conducting.

297 Delegation of functions by the Electoral Commissioner

The Electoral Commissioner may delegate to a person any of the Electoral Commissioner's functions under this Act, other than this power of delegation.

Division 2 Electoral rolls

298 Residential roll

(1) The Electoral Commissioner is to keep a roll for each area of persons who, in the opinion of the Electoral Commissioner, are entitled, in accordance with Part 1, to be enrolled as electors because they are residents of the area.

(2) The Electoral Commissioner may use information kept on the Electoral Information Register (within the meaning of the *Electoral Act 2017*) or on any roll used for Commonwealth elections as sources of information for compiling the residential roll.

(3) As soon as practicable after the closing date for an election that is to be administered by an electoral services provider engaged by the council concerned, the Electoral Commissioner is to provide the general manager with a printed and an electronic copy of the residential roll for the area and, if the area is divided into wards, a separate printed and electronic copy of the roll for each ward.

(4) The electronic copy of the residential roll is to be provided in the format specified by the regulations (if any).

(5) An electoral services provider engaged by a council or any other person must not use or disclose any information provided in a residential roll under this section other than for the purpose of administering an election under this Act.

(6) A person must not use or disclose any such information for a commercial purpose.

(7) Without limiting subsection (6), information is used for a commercial purpose if it is sold or offered for sale.

(8) The costs of the Electoral Commissioner with respect to the carrying out of any function under subsection (3) are to be met by the council concerned and are recoverable from the council as a debt.

Maximum penalty (subsections (5) and (6)): 1,000 penalty units.

299 Non-residential roll

(1A) As soon as is practicable after a roll of non-resident owners of rateable land for an election lapses under this section, the general manager is to prepare a new roll of non-resident owners of rateable land within the area for the next election and keep it updated.

(1) Not later than the closing date for an election, the general manager is to finalise that roll of non-resident owners of rateable land for confirmation as the roll of non-resident owners of rateable land within the area for that election.

(2) The roll of non-resident owners of rateable land lapses after the election for which it is prepared.

(2A) The roll of non-resident owners of rateable land prepared by the general manager is to include the names of the persons who:

(a) have applied, at any time, for the inclusion of their names in any such roll, and

(b) on the closing date are, in the opinion of the general manager, qualified for inclusion in that roll.

(3) The general manager (in relation to an election administered by an electoral services provider) is to confirm as the roll of non-resident owners of rateable land for the election the roll referred to in subsection (1) if, in the general manager's opinion, the roll contains the names of the persons who on the closing date are qualified for inclusion in the roll of non-resident owners of rateable land.

(4) The Electoral Commissioner (in relation to an election administered by the Electoral Commissioner) is to confirm as the roll of non-resident owners of rateable land for the election a roll certified by the general manager as being, in the general manager's opinion, a roll of the persons who on the closing date are qualified for inclusion in the roll of non-resident owners of rateable land.

300 Roll of occupiers and ratepaying lessees

(1A) As soon as is practicable after a roll of occupiers and ratepaying lessees for an election lapses under this section, the general manager is to prepare a new roll of occupiers and ratepaying lessees (of land within the area) for the next election and keep it updated.

(1) Not later than the closing date for an election, the general manager is to finalise that roll of occupiers and ratepaying lessees for confirmation as the roll of occupiers and ratepaying lessees (of land within the area) for the election.

(2) The roll of occupiers and ratepaying lessees lapses after the election for which it is prepared.

(2A) The roll of occupiers and ratepaying lessees prepared by the general manager is to include the names of the persons who:

(a) have applied, at any time, for the inclusion of their names in any such roll, and

(b) on the closing date are, in the opinion of the general manager, qualified for inclusion in that roll.

(3) The general manager (in relation to an election administered by an electoral services provider) is to confirm as the roll of occupiers and ratepaying lessees for the election the roll referred to in subsection (1) if, in the general manager's opinion, the roll contains the names of the persons who on the closing date are qualified for inclusion in the roll of occupiers and ratepaying lessees.

(4) The Electoral Commissioner (in relation to an election administered by the Electoral Commissioner) is to confirm as the roll of occupiers and ratepaying lessees for the election a roll certified by the general manager as being, in the general manager's opinion, a roll of the persons who on the closing date are qualified for inclusion in the roll of occupiers and ratepaying lessees.

301 Roll of electors

(1) The roll of electors for an area is a composite roll, consisting of the residential roll kept by the Electoral Commissioner under section 298 for the area, the non-residential roll prepared and confirmed under section 299 for the area, and the roll of occupiers and ratepaying lessees prepared and confirmed under section 300 for the area.

(2) For each election, an authorised copy of the roll of electors is to be compiled in accordance with this Division.

(3) If an area is divided into wards, the authorised copy of the roll of electors is to be prepared separately for each ward or, if the authorised copy of the roll is for a by-election to fill a casual vacancy, only for the ward in which the by-election is to be held.

(4) An ***authorised copy of the roll*** referred to in subsections (2) and (3) is a printed or electronic copy of the roll of the electors for the area or ward concerned as at the closing date for the election.

302 Public inspection of roll of electors

(1) The Electoral Commissioner is to make the latest copy of the residential roll available for public inspection at any reasonable time during office hours at the office of the Electoral Commissioner and at any other place determined by the Electoral Commissioner.

(2) The general manager is to make the latest copy of the non-residential roll and of the roll of occupiers and ratepaying lessees (once it is prepared) available for public inspection at any reasonable time during office hours at the office of the council.

303 Making of claims for inclusion in the roll

(1) A person may lodge with the Electoral Commissioner (in the case of the residential roll) or the general manager (in the case of another roll):

(a) a claim for the inclusion of his or her name in the roll or for the amendment of any particulars entered in the roll against the name, or

(b) an objection to the inclusion in the roll of his or her name or the name of another person, or

(c) an objection to the inclusion in the roll of specified particulars entered against his or her name or the name of another person.

(2) Within 7 days after the lodging of a claim for inclusion in, or of an objection to an entry in, a roll, the Electoral Commissioner or general manager:

(a) is to decide whether the claim or objection is to be allowed or disallowed, and

(b) as soon as practicable, is to make such entries in, or alterations to, the roll as give effect to the decision, and

(c) is to serve notice of the decision on the claimant or objector and, in the case of an objection, on any other person to whom the objection relates.

(3) A person dissatisfied with the decision of the Electoral Commissioner or general manager may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision.

(4) The Electoral Commissioner or general manager is to make as soon as practicable such entries in the appropriate roll as are necessary to give effect to the decision on an application to the Civil and Administrative Tribunal.

(5) Despite this section, the non-residential roll and the roll of occupiers and ratepaying lessees are not to be altered between the closing date for an election and the end of polling day.

304 Enrolment if qualified in more than one respect

(1) A person may not, in respect of the same ward, be enrolled more than once in a roll of electors.

(2) A person who is qualified for enrolment in respect of more than one ward of an area may be enrolled only in respect of the ward for which the person is qualified as a resident or, if the person is not so qualified:

(a) the ward specified in a notice given by the person to the general manager before the closing date for the election, or

(b) if no such notice is given, a ward chosen by the general manager.

305 Provisional voting

The regulations may prescribe circumstances in which a person is to be permitted to vote at an election under this Act where:

(a) the person is not enrolled for the area or ward concerned, but claims to be entitled to be enrolled on the residential roll for that area, or

(b) the person claims that the person's name has been omitted from the roll for the area (for any reason), but claims he or she is entitled to vote at an election, or

(c) there is other uncertainty as to a person's entitlement to vote at an election (for example, the person claims the person's name has been incorrectly marked off a roll at an election).

Division 3 Nominations and election

306 Nominations

(1) A person who is not duly nominated is not eligible for election as a councillor, or for election by the electors of an area as mayor.

(2) To be duly nominated for election as a councillor for an area, or for election as mayor of an area by the electors of an area, a person must be enrolled as an elector for the area, and must be qualified to hold that civic office, at the closing date for the election.

(3) A person may not be nominated for election as a councillor for more than one ward.

(4) A nomination is to be proposed to and made by the returning officer as prescribed by the regulations and may be withdrawn by the nominee as prescribed by the regulations.

(5) A nomination is to be rejected if the returning officer has not been paid the deposit prescribed by the regulations for the nomination or (if none is prescribed) a deposit of 50 per cent of the deposit required to be deposited for the nomination of a candidate for election to the Legislative Assembly.

(5A) However, if a group that comprises more than 5 candidates:

(a) proposes the nomination of all members of the group, and pays the deposit for the nomination of all members of the group, at the same time, and

(b) has lodged a claim under section 308A (2),

the amount of the deposit for each candidate included in the group is 5 times the deposit for one candidate divided by the number of candidates in that group.

(6) If a returning officer rejects a proposed nomination and the nominated person applies in writing for an explanation of the rejection, the returning officer must provide the nominated person with a written explanation within 7 days.

(7) A deposit may be refunded in accordance with the regulations.

307 Nomination where name omitted from roll

Despite section 306, a person whose nomination for election to a civic office would, but for this section, be rejected on the ground only that he or she is not enrolled as an elector for the area may be nominated if:

(a) the name of the person has been omitted from the roll of electors mistakenly or accidentally, and

(b) but for that omission the nomination would not have been rejected.

308 Candidate information sheets

(1) A nomination of a candidate for election to a civic office is to be accompanied by a candidate information sheet in the form of a statutory declaration made by the candidate.

(2) The regulations may make provision for the matters that are to be included in, or that may or may not be included in, a candidate information sheet. The regulations may not prohibit the inclusion in a candidate information sheet of matter relating to a candidate's policies.

(3) The returning officer is to make each candidate information sheet available for public inspection at any reasonable time during office hours at the office of the returning officer and at any other place determined by the returning officer.

(4) An electoral official at each polling place is to ensure that a copy of each candidate information sheet is displayed at the polling place.

308A Grouping of candidates

(1) This section applies to an election in which there are 2 or more councillors to be elected.

(2) Two or more candidates duly proposed for nomination for election may, before noon on the nomination day prescribed by the regulations, claim to have their names included in a group on the ballot-papers and in the order specified in the claim. The claim is to be lodged with the returning officer.

(3) A claim under subsection (2) may also include a request for a group voting square for the group to appear on the ballot-papers to be used in the election concerned, but only if:

(a) in the case of an area not divided into wards—the number of candidates in the group on the nomination day prescribed by the regulations is at least half the number of candidates to be elected, or

(b) in the case of an area divided into wards—there are at least as many candidates in the group on the nomination day prescribed by the regulations as there are candidates to be elected.

(4) A group voting square is to be printed on the ballot-papers above the names of the candidates in each group that has duly requested a group voting square under subsection (3), but only if more than one group has duly requested a group voting square.

(5) An application under Part 7 for the name of a political party to be printed adjacent to the name of a candidate on the ballot-papers may include a further request for that name or a composite name to be printed on the ballot-papers adjacent to the candidates' group voting square.

308B Group voting—recording of votes

(1) This section applies if a ballot-paper has group voting squares.

(2) Instead of marking the separate voting squares for the candidates, the voter may record a vote:

(a) by placing the number "1" in any one of the group voting squares, and

(b) (if he or she wishes) by placing consecutive numbers (beginning with the number "2") in any other of those group voting squares, in the order of his or her preference for the various groups of candidates.

(3) The number "1" appearing in a group voting square for a group indicates:

(a) that the voter's first preference vote is for the first candidate in the group, and

(b) that the voter's subsequent preference votes are for the other candidates in the group in the order in which their names appear on the ballot-paper.

(4) Subsequent numbers appearing in group voting squares for other groups indicate that the voter's preferences (subsequent to those referred to in subsection (3)) are for the candidates in those groups:

(a) in the order in which those groups are numbered by the voter, and

(b) within each group, in the order in which the names of the candidates in that group appear on the ballot-paper.

308C Group voting—marking of ballot-papers

(1) If a voter records a vote on a ballot-paper by placing a mark in a group voting square but also indicates preferences for individual candidates, the following provisions apply:

(a) if the indication of preferences for individual candidates would, if it stood alone, constitute a formal vote, that indication of preferences is taken to be the vote of the voter and the mark in the group voting square is to be disregarded,

(b) if the indication of preferences for individual candidates would not, if it stood alone, constitute a formal vote, it is to be disregarded and the vote of the voter is to be taken to have been expressed by the mark in the group voting square.

(2) A ballot-paper is not informal by reason only that the voter has recorded a vote by placing a cross or a tick in a group voting square and not placing any mark or writing in any other group voting square, but the ballot-paper is to be treated as if the cross or tick were the number "1".

(3) A ballot-paper is not informal by reason only that the voter has recorded a vote by placing the number "1" or a tick in a group voting square and placing a cross in (or a line through) all or some of the other group voting squares on the ballot-paper, but the ballot-paper is to be treated as if the marks in those other squares did not appear on the ballot-paper and any such tick were the number "1".

(4) A ballot-paper on which the voter has recorded a vote by placing in one group voting square the number "1" is not informal by reason only that:

(a) the same preference (other than the first preference) is recorded on the ballot-paper for more than one group, but in that event the ballot-paper is to be treated as if those and any subsequent preferences had not been recorded, or

(b) there is a break in the order of preferences for groups, but in that event the ballot-paper is to be treated as if any preference after the break had not been recorded, or

(c) fewer preferences are recorded than there are candidates to be elected.

(5) The ballot-papers for an election are not informal by reason only that they contain the name of a candidate whom a court has declared to be incapable of being elected at that election, but a preference for such a candidate (whether individually or as a member of a group) is to be disregarded, and (if necessary) subsequent preferences are to be renumbered accordingly.

Note. The regulations make further provision regarding the formality of ballot-papers.

308D Group voting—regulations

The regulations may make provision for or with respect to the grouping of candidates, group voting squares and the matter to be printed on ballot-papers.

309 Contested elections

(1) If the number of candidates nominated for election as councillors for a ward or an area is greater than the number required to be elected for the ward or area, the election is to be a contested election.

(2) If there are two or more candidates for election by the electors of an area as mayor of the area, there is to be a contested election for the office.

(3) If a candidate who is nominated for election to a civic office in respect of a ward or area dies before the day when the poll at a contested election closes, the election fails in respect of that civic office for the ward or area.

310 Conduct of contested elections

A contested election for a civic office is to be conducted as prescribed by the regulations.

310A Postal votes

At any election, any postal vote must be accepted for further scrutiny if:

(a) the postal vote is received by the returning officer before 6 pm on the first business day immediately following the close of the poll, and

(b) the returning officer is satisfied that the voter has indicated, in accordance with the regulations, that the postal vote was completed before the close of the poll.

310B Elections may be conducted exclusively by postal voting

(1) This section applies to:

(a) the City of Sydney local government area, and

(b) any other local government area prescribed by the regulations for the purposes of this section.

(2) A council may by a resolution made at least 18 months before the next ordinary election of councillors determine that voting at that election is to be conducted:

(a) by means of attendance and postal voting, or

(b) exclusively by means of postal voting.

(3) Voting at an ordinary election of councillors must be conducted by the same means, whether by means of attendance and postal voting or exclusively by means of postal voting, as the previous ordinary election of councillors was conducted unless the council has determined by a resolution that complies with subsection (2) to change the means of conducting the voting.

(4) Voting at a by-election must be conducted by the same means, whether by means of attendance and postal voting or exclusively by means of postal voting, as the previous ordinary election of councillors was conducted unless the council determines by a resolution made not later than 14 days after the casual vacancy occurred to change the means of conducting the voting.

(5) Voting at a constitutional referendum or council poll must be conducted by the same means, whether by means of attendance and postal voting or exclusively by means of postal voting, as the previous ordinary election of councillors was conducted unless the council determines by a resolution made at the same meeting that the council determined to hold the referendum or take the poll to change the means of conducting the voting.

(6) An election, constitutional referendum or council poll to be conducted exclusively by means of postal voting is to be conducted in accordance with the regulations.

311 Uncontested elections

(1) A candidate nominated for election as a councillor for a ward or area is, without a poll being held, taken to have been elected if the number of candidates nominated for election as councillors for the ward or area is no greater than the number of councillors required to be elected for the ward or area.

(2) A candidate nominated for election by the electors of the area as the mayor of the area is, without a poll being held, taken to have been elected if he or she is the only nominee for election as the mayor.

(3) A person holding civic office under this section without a poll being held is taken to have been elected:

(a) on the day on which the poll would have been held, if the election were an ordinary election, or

(b) on the day of nomination, if paragraph (a) does not apply.

(4) If a candidate who is nominated for election to a civic office in respect of a ward or area dies before the day referred to in subsection (3), the election in respect of that civic office for that ward or area is taken to have failed and no candidate in that election can be taken to have been elected in respect of that civic office for that ward or area.

Division 4 Where residents fail to vote

312 Offence

A person whose name is on the residential roll in respect of a ward or area must vote at any contested election in the ward or area (other than an election of the mayor by the councillors) unless the person has a sufficient reason not to vote.

Maximum penalty: 1 penalty unit.

313 Check on double-voting and failure to vote

(1) After the close of the poll at a contested election, the copies of the roll of electors used at the election are to be checked by the Electoral Commissioner in accordance with this section to determine:

(a) which electors' names (if any) have been marked more than once, and

(b) which electors (if any) appear to have failed to vote.

(2) In the case of an election administered by an electoral services provider engaged by a council, the general manager must (within the period specified by the Electoral Commissioner) forward the copies of the roll of electors used at that election to the Electoral Commissioner for checking.

(3) The Electoral Commissioner is, for each contested election, to prepare a list of the names of the persons on the residential roll who, although entitled to vote at the election, appear to have failed to vote and do not appear to have a sufficient reason for the failure.

314 Penalty notice to be issued for failure to vote

(1) The Electoral Commissioner is to serve a penalty notice on each resident who is indicated on the list prepared under section 313 as appearing not to have a sufficient reason for failing to vote at an election.

(2) A penalty notice is to be served within 3 months after the close of the poll at the election to which it relates and, if not served personally, is to be served by post at the address of the resident last known to the Electoral Commissioner.

(3) A penalty notice is a notice in the form prescribed by the regulations to the effect that, if the resident does not desire to have the failure to vote dealt with by a court:

(a) the Electoral Commissioner must be given, within a time stated in the notice, a sufficient reason for the failure to vote, or

(b) a penalty of 0.5 penalty unit must be paid to the Electoral Commissioner.

(4) If, within 28 days after service of the penalty notice, the Electoral Commissioner is given a sufficient reason for the failure to vote or the penalty is paid, the resident is not liable to any further proceedings for the offence to which the penalty notice relates.

(5) If an insufficient reason for a failure to vote is given in response to a penalty notice, the Electoral Commissioner is to include a statement to that effect in any penalty reminder notice served under the *Fines Act 1996* in relation to the penalty notice.

(6) For the purposes of this section, it is a sufficient reason for a failure by a resident to vote if the Electoral Commissioner is satisfied that the resident:

(a) is dead, or

(b) was absent from the area on polling day, or

(c) was ineligible to vote, or

(d) had an honest belief that he or she had a religious duty to abstain from voting, or

(e) (Repealed)

(f) was unable to vote for any other reason acceptable to the Electoral Commissioner.

(7) If a penalty notice is served, the Electoral Commissioner is to note on the list prepared under section 313, or on a separate list of the residents on whom penalty notices have been served, whether or not there has been a response to the penalty notice and, if there has been a response, whether a sufficient reason has been given, or a penalty paid, for the failure to vote.

315 Evidence in list of non-voters

(1) It is evidence:

(a) of service of a penalty notice on a resident, or

(b) of a lack of response to a penalty notice served on a resident, or

(c) that a reason was given for a failure by a resident to vote at an election, but the reason was insufficient,

if there is on a certified list a notation to that effect in relation to the resident.

(2) For the purposes of this section, a certified list is a list that is certified by the Electoral Commissioner as (or as a copy of or extract from) the list prepared under section 313 or the separate list prepared under section 314 (7).

Division 5 Miscellaneous

316 Position on ballot-paper

The order of candidates' names on ballot-papers is to be determined by a method of random selection (including by electronic means) in accordance with the regulations.

317 Validity of elections

(1) An election is not invalid just because:

(a) there was a formal defect or error in or relating to the election, if the election was held substantially in accordance with this Act, or

(b) there was a defect in the appointment of the returning officer, or

(c) the time for closing the poll for postal voting was extended with the approval of the Electoral Commissioner or returning officer (in relation to an election administered by the Electoral Commissioner) or an electoral services provider or returning officer (in relation to an election administered by an electoral services provider) conducting the election, or

(d) on polling day the name of a political party, or the abbreviation of that name, as registered in the Local Government Register of Political Parties appears printed adjacent to the name of a candidate on the ballot-papers for the election, but between the time the candidate was endorsed by the party and the polling day the candidate has ceased to be so endorsed.

(2) A proclamation of the Governor to the effect that a specified irregularity does not invalidate an election is conclusive as to the matter stated in the proclamation.

318 Lapsed or void election

(1) If an election for a civic office is not held when it is due, fails or is later declared void:

(a) the holder of the civic office at the time when the election should have been held or when the election failed (or, in the case of a void election, if there is no such holder, the candidate purporting to have been elected at the void election), holds the office as if duly elected until an election is held under paragraph (b), and

(b) the returning officer is to hold another election as if a casual vacancy had occurred in the civic office.

(2) An election held for the purposes of this section is as valid as it would have been if it had been held at the time originally appointed for the purpose.

Part 6A Postponement of elections

318A Definition

In this Part:

election requirements of this Act means the requirements of Parts 4 and 5 with respect to the holding of an ordinary election referred to in section 287 or a by-election referred to in section 292.

318B Postponement of elections

(1) The Minister may, by order published in the Gazette, postpone the election requirements of this Act in relation to a specified council if:

(a) the council is the subject of:

(i) an investigation under section 430 or any other provision of this Act, or

(ii) a public inquiry, or

(iii) an investigation by an authority (as defined in the Dictionary at the end of this Act) under any Act, or

(b) without limiting anything else in this subsection, a matter affecting the boundaries of the council's area is under consideration by the Boundaries Commission (whether or not involving an inquiry by the Commission).

(2) The latest date to which the election requirements of this Act may be postponed by an order under this section is:

(a) the date occurring 12 months after the order is made, or

(b) if the postponement is extended by a further order under this section, 31 December in the calendar year following that in which the first such order was made.

(3) An order may be made under this section even though the election requirements of this Act are in operation with respect to an election for the council.

(4) On the making of an order under this section:

(a) the election requirements of this Act are suspended in relation to the council for the period specified in the order, including with respect to an election for which the election

requirements of this Act were in operation when the order was made, but not with respect to an election held on or before the day on which the order is published, and

(b) the retiring councillors continue in office (subject to this Act) until an election is held, and

(c) anything already done, under or for the purposes of those requirements in relation to the council for an election that would (but for the making of the order) have been held during the suspension period, has no effect or operation, and

(d) a person who is taken to have been elected under section 311 at an election that would (but for the making of the order) be held during the suspension period is taken not to have been elected.

(5) The suspension ceases to have effect if the order is revoked under section 318C.

(6) If the suspension ceases to have effect through the passage of time and not through revocation of the order, the provisions of section 318C (other than subsections (1) (a) and (3) (a)) apply as if the order had been revoked.

(7) If while an order under this section is in force a casual vacancy occurs in the office of mayor elected by the electors, the casual vacancy is to be filled in accordance with the provisions of section 295 as if it were a casual vacancy in the office of mayor elected by the councillors.

318C Revocation of postponement

(1) The Minister may, by order published in the Gazette:

(a) revoke a former order that has been made in relation to a council, and

(b) if:

(i) the day on which an election would (but for the former order) have been required to be held has passed, or

(ii) the day on which an election is required to be held will occur within 3 months after the day on which the order is made,

appoint a day as the day on which the election is to be held.

(2) The day appointed by the order as the day on which an election is to be held is to be a Saturday occurring not less than 3 months, and not more than 6 months, after the day on which the order is made.

(3) On the making of an order under this section:

(a) the suspension by the former order of the election requirements of this Act is terminated, and

(b) an election is to be held in accordance with the election requirements of this Act:

(i) on the day ascertained in accordance with those requirements, or

(ii) if the order appoints a different day, on the day so appointed.

(4) In this section, ***former order*** means an order under section 318B.

Part 7 Political parties

319 Local Government Register of Political Parties

(1) The Electoral Commissioner is to keep a register containing the names of the parties registered under this Part and other particulars or documents required by this Part.

(2) The register is to be called the Local Government Register of Political Parties.

(3) The register is to be kept in the form and manner decided by the Electoral Commissioner.

320 Registration of political parties

(1) The political parties registered under this Part are:

(a) the political parties registered for the time being under Part 6 of the *Electoral Act 2017*, and

(b) any other political parties registered for the time being for the purposes of this Act.

(2) A party may be registered for the purposes of this Act in accordance with the procedure applicable under Part 6 of the *Electoral Act 2017*, subject to the following modifications of that Part:

(a) references to an eligible party are to be read as references to an eligible local government party (as defined in subsection (3)),

(b) references to Parliament are to be read as references to a council,

(c) references to the names and addresses of 750 electors are to be read as references to the names, addresses and signatures of 100 electors,

(d) references to the Register of Parties are to be read as references to the Local Government Register of Political Parties,

(e) references to the issue of a writ for an election are to be read as references to the closing date for an election,

(f) sections 58, 59 (4), 63 (2) and 66 (6) (b) of that Act are to be disregarded,

(g) the reference in section 63 (1) (a) of that Act to Division 3 of Part 7 of that Act is a reference to any regulations under this Act regarding a political party proposing a candidate for nomination,

(g1) the reference in section 63 (1) (b) of that Act to Subdivision 2 of Division 5 of Part 7 of that Act is a reference to section 321 of this Act,

(g2) the reference in section 63 (1) (c) of that Act to Subdivision 6 of Division 14 of Part 7 of that Act is a reference to any regulations under this Act regarding registration of electoral material,

(h) such other modifications as are prescribed by the regulations.

(3) For the purposes of subsection (2), an ***eligible local government party*** is a party:

(a) that has at least 100 members, and

(b) that is established on the basis of a written constitution (however expressed) that sets out the platform or objectives of the party.

321 Party endorsement on ballot-papers

(1) The registered officer for a political party may apply to the returning officer to arrange for the name of the party as registered in the Local Government Register of Political Parties, or the abbreviation of the name as so registered, to be printed adjacent to the name of a candidate on the ballot-papers for an election to civic office, but only if the candidate has been endorsed for that election by the party.

(2) A candidate at an election is taken to have been endorsed for the election by a political party registered in the Local Government Register of Political Parties only if:

(a) the candidate is stated by the registered officer for the party to be so endorsed, or

(b) the name of the candidate is included in a statement that is signed by the registered officer for the party, sets out the names of the candidates endorsed by the party for the election and is given to the returning officer before noon on the day for the nomination of candidates at the election, or

(c) the returning officer is satisfied, after making such inquiries as the returning officer thinks appropriate, that the candidate is so endorsed.

(3) A candidate for an election who has been endorsed by two or more political parties is taken to have been endorsed:

(a) by the political party whose registered officer nominated the candidate, if the candidate was nominated by the registered officer, or

(b) by the political party whose registered officer applied for the endorsement, if paragraph (a) does not apply, or

(c) in any other case, by the political party specified by the candidate in a notice given to the returning officer.

(4) An application under this section must be in writing signed by the applicant and delivered to the returning officer before noon on the day for the nomination of candidates at the election.

(5) An application under this section may be withdrawn by the candidate by written notice to the returning officer before noon on the day for nomination.

322 Independent candidate on ballot-papers

(1) A candidate for election to civic office may apply to the returning officer to arrange for the word "Independent" to be printed adjacent to the name of the candidate on the ballot-papers for the election.

(2) The application is to be in writing signed by the applicant and given to the returning officer before noon on the day for the nomination of candidates at the election.

(3) If an application is made under both this section and section 321 in relation to the same candidate, the application under section 321 is void and is to be disregarded.

(4) An application under this section may be withdrawn by the candidate by written notice to the returning officer before noon on the day for nomination.

323 Printing of political party name on ballot-papers

(1) The name of a political party is to be printed adjacent to the name of a candidate on the ballot-papers for an election to civic office if:

(a) the candidate has been endorsed by the party as a candidate at the election, and

(b) an application for the name of the party to be printed on the ballot-papers adjacent to the name of the candidate has been accepted by the returning officer.

(2) The word "Independent" is to be printed adjacent to the name of a candidate for election to civic office if an application made by the candidate to have the word so printed has been accepted by the returning officer.

324 Form of political party name on ballot-papers

(1) The name of a political party to be printed on ballot-papers under this Part is the name entered for the party in the Local Government Register of Political Parties or the abbreviated name so entered for the party if application was made for the printing of the abbreviated name.

(2) The names, or abbreviated names, of political parties printed on ballot-papers adjacent to the names of candidates are to be in capital letters in type that is uniform in size and style for all of the political parties' names or abbreviated names.

Part 8 Enforcement powers in relation to elections

325 Enforcement powers of Electoral Commission

(1) For the purpose of enforcing compliance with this Act and the regulations under this Act in connection with elections, the Electoral Commission may exercise any investigative or other functions the Electoral Commission has under the *Electoral Funding Act 2018* for the purpose of enforcing compliance with that Act.

(2) Accordingly, a reference in sections 137, 138 and 155 of that Act to "this Act" is taken to be a reference to this Act and the regulations under this Act, but only in connection with the conduct of elections.

326–328 (Repealed)

Part 8A Political donations

328A General manager to keep register of political donation disclosures

(1) The general manager is required to keep a register of copies of current declarations of disclosures of political donations lodged with the New South Wales Electoral Commission by or on behalf of councillors of the council concerned (including in their capacity as candidates for election as councillors).

(2) For the purposes of this section, current declarations of disclosures of political donations are declarations lodged under Part 6 of the *Election Funding, Expenditure and Disclosures Act 1981* in respect of the relevant disclosure period that includes the date of the last election (other than a by-election) and all subsequent relevant disclosure periods.

Note. Part 6 of the *Election Funding, Expenditure and Disclosures Act 1981* makes provision for disclosure by councillors and candidates for civic office (and parties registered in connection with local government elections) of political donations and electoral expenditure.

328B Reference by general manager to Departmental Chief Executive of political donation matters

(1) If the general manager reasonably suspects that a councillor has not complied with the provisions of the code of conduct under section 440 relating to the disclosure of political donations or the manner of dealing with any perceived conflict of interest in relation to political donations, the general manager is to refer the matter to the Departmental Chief Executive.

(2), (3) (Repealed)

Part 9 Dismissal from civic office

329 Can the holder of a civic office be dismissed?

(1) Any person may apply to the Civil and Administrative Tribunal for an order that a person be dismissed from civic office.

(2) On any such application, the Tribunal may order the dismissal of a person from civic office:

(a) if there has been any irregularity in the manner in which the person has been elected or appointed to that office, or

(b) if the person is disqualified from holding civic office.

(3) Proceedings based on the ground that there has been an irregularity in the manner in which a person has been elected or appointed to civic office may not be commenced more than 3 months after the date of the person's election or appointment to that office.

(4) If the proceedings are based on the ground that a person is disqualified from holding civic office, the Tribunal may refuse to order the dismissal of the person from that office if it is satisfied:

(a) that the facts and circumstances giving rise to the disqualification are of a trifling character, and

(b) that the acts which gave rise to that disqualification were done in good faith and without knowledge that the person would incur disqualification by doing those acts.

(5) Subsection (4) does not apply to a person who is disqualified from holding civic office by a decision of the Governor under section 440B.

(6) (Repealed)

330 (Repealed)

331 When does an order of dismissal take effect?

An order of dismissal made by the Tribunal takes effect:

(a) if no appeal is made under the *Civil and Administrative Tribunal Act 2013* against the order, at the end of the period during which such an appeal may be made, or

(b) if such an appeal is made within that period and the order is confirmed on appeal, when the order is confirmed, or

(c) if, within that period, the person against whom the order is made serves on the general manager of the council concerned written notice of intention not to appeal against the order, when the notice is lodged.

Chapter 11 How are councils staffed?

Part 1 Organisation structure

332 Determination of structure

(1) A council must, after consulting the general manager, determine the following:

(a) the senior staff positions within the organisation structure of the council,

(b) the roles and reporting lines (for other senior staff) of holders of senior staff positions,

(c) the resources to be allocated towards the employment of staff.

(1A) The general manager must, after consulting the council, determine the positions (other than the senior staff positions) within the organisation structure of the council.

(1B) The positions within the organisation structure of the council are to be determined so as to give effect to the priorities set out in the strategic plans (including the community strategic plan) and delivery program of the council.

(2) A council may not determine a position to be a senior staff position unless:

(a) the responsibilities, skills and accountabilities of the position are generally equivalent to those applicable to the Executive Band of the Local Government (State) Award, and

(b) the total remuneration package payable with respect to the position is equal to or greater than the minimum remuneration package (within the meaning of Part 3B of the *Statutory and Other Offices Remuneration Act 1975*) payable with respect to senior executives whose positions are graded Band 1 under the *Government Sector Employment Act 2013*.

(3) For the purposes of subsection (2) (b), the total remuneration package payable with respect to a position within a council's organisation structure includes:

(a) the total value of the salary component of the package, and

(b) the total amount payable by the council by way of the employer's contribution to any superannuation scheme to which the holder of the position may be a contributor, and

(c) the total value of any non-cash benefits for which the holder of the position may elect under the package, and

(d) the total amount payable by the council by way of fringe benefits tax for any such non-cash benefits.

333 Re-determination and review of structure

The organisation structure may be re-determined under this Part from time to time. The council must review, and may re-determine, the organisation structure within 12 months after any ordinary election of the council.

Part 2 The general manager and other senior staff

334 Appointment of general manager

(1) A council must appoint a person to be its general manager. The person must not be a body corporate.

(2) The position of general manager is a senior staff position.

335 Functions of general manager

The general manager of a council has the following functions:

(a) to conduct the day-to-day management of the council in accordance with the strategic plans, programs, strategies and policies of the council,

(b) to implement, without undue delay, lawful decisions of the council,

(c) to advise the mayor and the governing body on the development and implementation of the strategic plans, programs, strategies and policies of the council,

(d) to advise the mayor and the governing body on the appropriate form of community consultation on the strategic plans, programs, strategies and policies of the council and other matters related to the council,

(e) to prepare, in consultation with the mayor and the governing body, the council's community strategic plan, community engagement strategy, resourcing strategy, delivery program, operational plan and annual report,

(f) to ensure that the mayor and other councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their functions,

(g) to exercise any of the functions of the council that are delegated by the council to the general manager,

(h) to appoint staff in accordance with the organisation structure determined under this Chapter and the resources approved by the council,

(i) to direct and dismiss staff,

(j) to implement the council's workforce management strategy,

(k) any other functions that are conferred or imposed on the general manager by or under this or any other Act.

336 Filling of vacancy in position of general manager

(1) If a vacancy occurs in the position of general manager, the council must immediately appoint a person under section 334 to the vacant position or appoint a person to act in the vacant position.

(2) A vacancy occurs in the position of general manager if the general manager:

(a) dies, or

(b) completes the term of his or her contract and is not re-appointed, or

(c) resigns from the position, or

(d) becomes a mentally incapacitated person and is removed from the position by the council because of that mental incapacity, or

(e) is sentenced to imprisonment, or

(f) is removed from the position for breach of or under the terms of the general manager's contract with the council.

(3) A person may be removed from office under subsection (2) (d) only if, taking into account the person's past training, qualifications and experience relevant to employment as a general manager, the person's performance as an employee, and all other relevant factors that it is reasonable to take into account, the person because of his or her mental incapacity:

(a) would be unable to carry out the inherent requirements of the position of general manager, or

(b) would, in order to carry out those requirements, require services or facilities that are not required by persons who are not mentally incapacitated persons and the provision of which would impose an unjustifiable hardship (within the meaning of the *Disability Discrimination Act 1992* of the Commonwealth) on the council.

337 Council to be consulted as to appointment and dismissal of senior staff

The general manager may appoint or dismiss senior staff only after consultation with the council.

338 Nature of contracts for senior staff

(1) The general manager and other senior staff of a council are to be employed under contracts that are performance-based.

(2) The term of a contract must not be less than 12 months or more than 5 years (including any option for renewal). A term that is less than 12 months is taken to be for 12 months and a term for more than 5 years is taken to be limited to 5 years.

(3) Contracts may be renewed from time to time.

(4) The Departmental Chief Executive may, by order in writing, approve one or more standard forms of contract for the employment of the general manager or other senior staff of a council.

(5) A standard form of contract approved by the Departmental Chief Executive is not to include provisions relating to the level of remuneration or salary (including employment benefits) of the general manager or other senior staff of a council, performance-based requirements or the duration of the contract.

(6) A council is not to employ a person to a position to which one or more standard forms of contract approved for the time being under this section applies or apply except under such a standard form of contract.

(7) The council may include in an employment contract for the general manager or another member of the senior staff additional provisions to those contained in the standard form of contract but only if those provisions relate to any of the following:

(a) the level of remuneration or salary (including employment benefits) of the person employed under the contract,

(b) subject to subsections (1) and (2), performance-based requirements or the duration of the contract.

(8) Despite subsection (6), the approval, amendment or substitution of a standard form of contract under this section does not affect any employment contract between a council and the general manager of the council or another member of the senior staff of the council if the employment contract was entered into before the approval, amendment or substitution of the standard form of contract.

(9) However, subsection (6) does apply to the renewal of any such employment contract occurring after the standard form of contract is approved, amended or substituted and to all new contracts entered into after the standard form of contract is approved, amended or substituted.

339 (Repealed)

340 Industrial arbitration excluded

(1) In this section, a reference to the employment of the general manager or another senior staff member is a reference to:

(a) the appointment of, or failure to appoint, a person to the vacant position of general manager or to another vacant senior staff position, or

(b) the removal, retirement, termination of employment or other cessation of office of the general manager or another senior staff member, or

(c) the remuneration or conditions of employment of the general manager or another senior staff member.

(2) The employment of the general manager or another senior staff member, or any matter, question or dispute relating to any such employment, is not an industrial matter for the purposes of the *Industrial Relations Act 1996*.

(3) Subsection (2) applies whether or not any person has been appointed to the vacant position of general manager or another vacant senior staff position.

(4) No award, agreement, contract determination or order made or taken to have been made or continued in force under the *Industrial Relations Act 1996*, whether made before or after the commencement of this section, has effect in relation to the employment of senior staff members.

(5) No proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, lie in respect of the appointment of or failure to appoint a person to the position of general manager or to another senior staff position, the entitlement or non-entitlement of a person to be so appointed or the validity or invalidity of any such appointment.

341 Duty to report bankruptcy

(1) If a person who is a senior staff member becomes bankrupt or makes a composition, arrangement or assignment for the benefit of the person's creditors, the person must:

(a) immediately give notice of the bankruptcy, composition, arrangement or assignment to the general manager, and

(b) provide the general manager, within the time specified by the general manager, with any further information concerning the cause of the bankruptcy or of the making of the composition, arrangement or assignment required by the general manager.

(2) If the person is the general manager, subsection (1) applies as if references to the general manager were references to the council.

Part 3 The public officer

342 Appointment of the public officer

(1) The general manager is to designate a member of staff as the public officer of the council.

(2) The position of public officer may, but need not be, a senior staff position.

343 Functions of the public officer

(1) The public officer:

- may deal with requests from the public concerning the council's affairs
- has the responsibility of assisting people to gain access to public documents of the council
- may receive submissions made to the council
- may accept service of documents on behalf of the council
- may represent the council in any legal or other proceedings
- has such other functions as may be conferred or imposed on the public officer by the general manager or by or under this Act.

(2) The public officer is subject to the direction of the general manager.

Part 4 Equal employment opportunity

344 Objects

(1) The objects of this Part are:

(a) to eliminate and ensure the absence of discrimination in employment on the grounds of race, sex, marital or domestic status and disability in councils, and

(b) to promote equal employment opportunity for women, members of racial minorities and persons with disabilities in councils.

(2) In this section, ***disability*** has the same meaning as in the *Disability Discrimination Act 1992* of the Commonwealth.

Note. The *Disability Discrimination Act 1992* of the Commonwealth defines disability to include such things as loss of bodily or mental function, loss of a part of the body, malfunction, malformation or disfigurement of a part of the body and certain other conditions, disorders, illnesses and diseases. That Act makes it unlawful for an employer to discriminate against a person on the ground of the other person's disability in certain contexts. These include in determining who should be offered employment (section 15 of that Act). Such discrimination is unlawful unless the person, because of his or her disability, would be unable to carry out the inherent requirements of the particular employment or would, in order to carry out those requirements, require services or facilities that are not required by persons without the disability and the provision of which would impose an unjustifiable hardship on the employer.

345 Preparation and implementation of EEO management plans

(1) A council must prepare and implement an equal employment opportunity management plan in order to achieve the objects of this Part.

(2) The plan is to include provisions relating to:

(a) the devising of policies and programs by which the objects of this Part are to be achieved, and

(b) the communication of those policies and programs to persons within the staff of the council, and

(c) the collection and recording of appropriate information, and

(d) the review of personnel practices within the council (including recruitment techniques, selection criteria, training and staff development programs, promotion and transfer policies and patterns, and conditions of service) with a view to the identification of any discriminatory practices, and

(e) the setting of goals or targets, where these may reasonably be determined, against which the success of the plan in achieving the objects of this Part may be assessed, and

(f) the means, other than those referred to in paragraph (e), of evaluating the policies and programs referred to in paragraph (a), and

(g) the revision and amendment of the plan, and

(h) the appointment of persons within the council to implement the provisions referred to in paragraphs (a)–(g).

(3) An equal employment opportunity management plan may include provisions, other than those referred to in subsection (2), that are not inconsistent with the objects of this Part.

(4) A council may, from time to time, amend its equal employment opportunity management plan.

346 Inconsistencies with the Anti-Discrimination Act 1977

(1) The provisions of an equal employment opportunity management plan, to the extent of any inconsistency between those provisions and the provisions of the *Anti-Discrimination Act 1977*, prevail.

(2) This section does not apply to or in respect of the provisions of a plan which are the subject of a reference under section 347 to the Anti-Discrimination Board or the Public Service Commissioner.

Note. This section adopts the principles in section 122K of the *Anti-Discrimination Act 1977*. Those principles are designed to ensure that full effect can be given to the objects of this Part.

347 References

(1) Where the Minister is dissatisfied with any matter relating to the preparation, amendment or implementation of an equal employment opportunity management plan by a council or any failure or omission of a council with respect to the preparation, amendment or implementation of any such plan, the Minister may refer the matter to the Anti-Discrimination Board or the Public Service Commissioner.

(2) The provisions of section 122N of the *Anti-Discrimination Act 1977*, and the succeeding provisions of Part 9A of that Act, apply to and in respect of a reference under this section to the Anti-Discrimination Board as if it were a reference under section 122M of that Act and as if the council were an authority within the meaning of that Part.

(3) A reference in this section to a provision of Part 9A of the *Anti-Discrimination Act 1977* is a reference to that provision as in force immediately before the repeal of that Part of that Act by the *Government Sector Employment Act 2013*.

Part 5 Other provisions concerning staff

348 Advertising of staff positions

(1) When it is proposed to make an appointment to a position within the organisation structure of the council, the position must be advertised in a manner sufficient to enable suitably qualified persons to apply for the position.

(2) (Repealed)

(3) This section does not apply to:

(a) the re-appointment, under a new contract, of a senior staff member, or

(b) the appointment of an employee if the term of employment is for:

(i) not more than 12 months, or

(ii) two or more periods that together are not more than 12 months in any period of 2 years.

349 Appointments to be on merit

(1) When the decision is being made to appoint a person to a position:

(a) only a person who has applied for appointment to the position may be selected, and

(b) from among the applicants eligible for appointment, the applicant who has the greatest merit is to be selected.

(2) The merit of the persons eligible for appointment to a position is to be determined according to:

(a) the nature of the duties of the position, and

(b) the abilities, qualifications, experience and standard of work performance of those persons relevant to those duties.

(3) In determining the merit of a person eligible for appointment to a position, regard is to be had to the objects of Part 4 of this Chapter (see section 344).

350 Appointments to which secs 348 and 349 do not apply

Sections 348 and 349 do not apply to:

(a) an appointment by way of demotion, or

(b) an appointment by way of lateral transfer, unless the council decides that those sections are to apply to the appointment.

351 Temporary appointments

(1) If a position (including a senior staff position) within the organisation structure of the council is vacant or the holder of such a position is suspended from duty, sick or absent:

(a) the council, in the case of the general manager's position, or

(b) the general manager, in the case of any other position,

may appoint a person to the position temporarily.

(2) A person who is appointed to a position temporarily may not continue in that position:

(a) if the holder of the position is on parental leave—for a period of more than 24 months, or

(b) in any other case—for a period of more than 12 months.

352 Independence of staff for certain purposes

(1) A member of staff of a council is not subject to direction by the council or by a councillor as to the content of any advice or recommendation made by the member.

(2) This section does not prevent the council or the mayor from directing the general manager of the council to provide advice or a recommendation.

353 Other work

(1) The general manager must not engage, for remuneration, in private employment or contract work outside the service of the council without the approval of the council.

(2) A member of staff must not engage, for remuneration, in private employment or contract work outside the service of the council that relates to the business of the council or that might conflict with the member's council duties unless he or she has notified the general manager in writing of the employment or work.

(3) The general manager may prohibit a member of staff from engaging, for remuneration, in private employment or contract work outside the service of the council that relates to the business of the council or that might conflict with the member's council duties.

(4) A member of staff must not engage, for remuneration, in private employment or contract work outside the service of the council if prohibited from doing so under subsection (3).

354 Restriction on appointment of a former mayor or councillor

(1) A person who has held civic office in relation to a council must not be appointed to any paid position on the staff of the council within 6 months after ceasing to hold the office.

(2) A purported appointment in contravention of this section is void.

354A Ministerial approval for certain termination payments to senior staff

(1) A council must not make a payment to the general manager or other senior staff member of the council in relation to his or her termination of employment (including termination on the ground of redundancy) without first obtaining the Minister's approval to the payment.

(2) The Minister may refuse to approve a payment under subsection (1) if the Minister is not satisfied the payment is appropriate.

(3) A payment referred to in subsection (1) that is made without the Minister's approval:

(a) is to be repaid to the council, and

(b) is a debt due to the council recoverable by the council or the Minister in any court of competent jurisdiction.

(4) Subsection (1) does not apply to payments of a kind exempted from this section by the regulations.

(5) To remove doubt, this section extends to:

(a) a termination payment made under a contract and to an ex gratia termination payment, and

(b) a termination payment made under a contract entered into before the commencement of this section.

Part 6 Arrangements for council staff affected by the constitution, amalgamation or alteration of council areas

354B Definitions

(1) In this Part:

boundary alteration means an alteration of the boundaries of one or more areas by or under a proclamation under Chapter 9.

existing staff member of a transferee council means, in relation to a staff transfer occurring in connection with a boundary alteration, a person who was a member of the staff of the transferee council immediately before the transfer day and who has not ceased to be a member of that staff.

Note. In the case of a staff transfer effected in connection with the amalgamation of areas under Chapter 9, no members of staff continue in the employment of the councils of the areas being amalgamated because all those areas are dissolved. The members of staff would become employees of the newly constituted council.

former council, in relation to a transferred staff member, means the council that employed the staff member immediately before the transfer day.

proposal means:

(a) a proposal made under section 215 to constitute one or more areas, or

(b) a proposal made under section 218E to amalgamate one or more areas, or

(c) a proposal made under section 218E to alter the boundaries of one of more areas.

proposal period means (subject to subsection (2)) the period:

(a) starting on the day the proposal is made, and

(b) ending on the following day:

(i) if the Minister decides not to proceed with the proposal—the day that decision is made under section 215 or 218E,

(ii) if the Minister refers the proposal to the Boundaries Commission or the Departmental Chief Executive but decides to decline to recommend to the Governor that the proposal be implemented—the day that decision is made,

(iii) if the Minister recommends to the Governor that the proposal be implemented—immediately before the date specified in the proclamation implementing the proposal.

remaining staff member of a transferor council means, in relation to a staff transfer occurring in connection with a boundary alteration, a person who was a member of the staff of the transferor council immediately before the transfer day and who has not ceased to be a member of that staff.

Note. In the case of a staff transfer effected in connection with the amalgamation of areas under Chapter 9, no members of staff continue in the employment of the councils of the areas being amalgamated because all those areas are dissolved. The members of staff would become employees of the newly constituted council.

rural centre means a centre of population of 5,000 people or fewer, and includes a geographical area that is prescribed, or is of a kind prescribed, by regulations in force for the purposes of this definition as being a rural centre.

staff transfer means a transfer of staff from the employment of one council to the employment of another council by or under a proclamation under Chapter 9.

transfer day, in relation to a staff transfer, means the day on which the staff concerned were transferred from the employment of one council to the employment of another council.

transferee council, in relation to a staff transfer, means the council into whose employment the staff concerned were transferred on the transfer day.

transferor council, in relation to a staff transfer, means the council from whose employment the staff concerned were transferred on the transfer day.

transferred staff member means a member of the staff of a council who is transferred to the employment of another council by or under a proclamation under Chapter 9.

work base means the office, depot or other place of work at or from which any staff work.

(2) The Minister may, by notice in writing to a council, extend the proposal period in relation to that council by determining an earlier date for the start of the period than the date the proposal is made under section 215 or 218E.

354C No forced redundancy of affected staff members during proposal period

The employment of a member of staff of a council that is affected by a proposal (other than of a senior staff member) must not be terminated, without the staff member's agreement, during the proposal period on the ground of redundancy.

354D Preservation of entitlements of staff members

(1) If a staff transfer occurs, the employment of:

(a) a transferred staff member, and

(b) in the case of a boundary alteration:

(i) a remaining staff member of the transferor council, and

(ii) an existing staff member of the transferee council,

other than a senior staff member, continues on the same terms and conditions that applied to the staff member immediately before the transfer day, subject to section 354E.

(2) Subsection (1) applies until other provision is duly made under any Act or law.

(3) Neither the contract of employment nor the period of employment of a transferred staff member is taken to have been broken by the transfer for the purposes of any law, award or agreement relating to the employment of that staff member.

(4) A transferred staff member is not entitled to receive any payment or other benefit merely because the staff member ceases to be a staff member of the former council.

(5) The transfer of a transferred staff member does not affect any accrued rights the staff member had immediately before the transfer, including in relation to recreation leave, sick leave, long service leave and superannuation, but does not entitle the staff member to claim dual benefits of the same kind for the same period of service.

354E Certain increases or decreases in staff entitlements during proposal period not binding on transferee council without approval

(1) This section applies to a determination of the terms and conditions of employment of staff members of a council that is made during the proposal period, and extends to any such determination made in an industrial agreement with or on behalf of the staff members, in an employment contract with a staff member or in an employment policy of the council.

(2) After the transfer day:

(a) the transferee council is not bound by any such determination, and

(b) any such determination is to be disregarded for the purposes of section 354D (1),

unless the determination has been approved by the Minister under this section or the approval of the Minister is not required under this section.

(3) If an application is made to the Minister for approval of a determination to which this section applies, the Minister may refuse to approve the determination only if the Minister is satisfied that the determination arises from or is in anticipation of the proposal and would result in an unjustifiable increase or decrease in the obligations of the transferee council in relation to transferred staff members.

(4) A determination to which this section applies is not required to be approved by the Minister if:

(a) it complies with the requirements of regulations made for the purposes of this section, or

(b) the Minister determines in writing that approval is not required.

354F No forced redundancy of non-senior staff members for 3 years after transfer

If a staff transfer occurs, the employment of:

(a) a transferred staff member, and

(b) in the case of a boundary alteration:

(i) a remaining staff member of the transferor council, and

(ii) an existing staff member of the transferee council,

other than a senior staff member, must not be terminated, without the staff member's agreement, within 3 years after the transfer day on the ground of redundancy arising from the staff transfer.

354G Lateral transfer of non-senior staff members

(1) This section applies if either:

(a) the following subparagraphs apply:

(i) a staff transfer occurs in connection with the constitution of a new area, whether as a result of the amalgamation of two or more areas or otherwise, and

(ii) within 3 years after the transfer day, the general manager proposes to make an appointment to a position within the organisational structure of the council (***the council***), other than a senior staff position, and

(iii) a transferred staff member (other than a senior staff member) was, immediately before the transfer day, performing substantially the same duties for the staff member's former council as are required to be performed in the position to be filled, or

(b) the following subparagraphs apply:

(i) a staff transfer occurs in connection with a boundary alteration, and

(ii) within 3 years after the transfer day, the general manager of a council (***the council***) affected by the boundary alteration proposes to make an appointment to a position within the organisational structure of the council, other than a senior staff position, and

(iii) a staff member (other than a senior staff member) of the council was, immediately before the transfer day, performing substantially the same duties for either or any of the affected councils as are required to be performed in the position to be filled.

(2) The council:

(a) must notify its staff members of the position and give its staff members a reasonable opportunity to apply for the position, and

(b) must not externally advertise the position.

(3) A person who:

(a) applies for appointment to a position referred to in this section, and

(b) is employed by the council at the time of making the application, and

(c) is a person referred to in subsection (1) (a) (iii) or (b) (iii), as the case requires,

must be considered for appointment to the position in preference to any other applicant for the position who is not such a person.

(4) If there is more than one person referred to in subsection (3) who is eligible for appointment to a position, the applicant who has the greatest merit, determined in accordance with section 349 (2) and (3), is to be selected.

(5) Subject to subsection (4), sections 348 and 349 do not apply to an appointment to a position referred to in this section and the Council may not decide, under section 350 (b), that those sections apply to the appointment.

354H External advertising not required in certain circumstances

(1) This section applies if either:

(a) the following subparagraphs apply:

(i) a staff transfer occurs in connection with the constitution of a new area, whether as a result of the amalgamation of two or more areas or otherwise, and

(ii) within 3 years after the transfer day, the general manager proposes to make an appointment to a position within the organisational structure of the council (***the council***), other than a senior staff position, and

(iii) the general manager is satisfied that one or more of the transferred staff members (other than a senior staff member) are suitably qualified for the position, and

(iv) section 354G does not apply with respect to the position, or

(b) the following subparagraphs apply:

(i) a staff transfer occurs in connection with a boundary alteration, and

(ii) within 3 years after the transfer day, the general manager of a council (***the council***) affected by the boundary alteration proposes to make an appointment to a position within the organisational structure of the council, other than a senior staff position, and

(iii) the general manager is satisfied that one or more of the staff members (other than a senior staff member) of the council who were, immediately before the transfer day, members of the staff of either or any of the affected councils are suitably qualified for the position, and

(iv) section 354G does not apply with respect to the position.

(2) The council:

(a) must notify its staff members of the position and give its staff members a reasonable opportunity to apply for the position, and

(b) must not externally advertise the position.

(3) Section 348 does not apply to an appointment to a position referred to in this section.

354I Limitations on transfer of work base of non-senior staff

(1) This section applies, where a staff transfer occurs, to:

(a) a transferred staff member, and

(b) in the case of a boundary alteration:

(i) a remaining staff member of the transferor council, and

(ii) an existing staff member of the transferee council,

other than a senior staff member.

(2) The staff member must not be required by the council employing the staff member to be based within 3 years after the transfer day at a work base located:

(a) in a case where the staff member is a transferred staff member—outside the boundaries of the area of his or her former council as they existed immediately before the transfer day, or

(b) in a case where the staff member is a remaining staff member of the transferor council—outside the boundaries of the area of the transferor council as they existed immediately before the transfer day, or

(c) in a case where the staff member is an existing staff member of the transferee council—outside the boundaries of the area of the transferee council as they existed immediately before the transfer day,

unless the staff member gives his or her written consent to the change of work base or such a requirement would not cause the staff member to suffer unreasonable hardship because of the distance required to travel to the proposed work base.

Chapter 12 How do councils operate?

Part 1 General

355 How a council may exercise functions

A function of a council may, subject to this Chapter, be exercised:

(a) by the council by means of the councillors or employees, by its agents or contractors, by financial provision, by the provision of goods, equipment, services, amenities or facilities or by any other means, or

(b) by a committee of the council, or

(c) partly or jointly by the council and another person or persons, or

(d) jointly by the council and another council or councils (including by means of a joint organisation or a Voluntary Regional Organisation of Councils of which the councils concerned are members), or

(e) by a delegate of the council (which may, for example, be a joint organisation or a Voluntary Regional Organisation of Councils of which the council is a member).

356 Can a council financially assist others?

(1) A council may, in accordance with a resolution of the council, contribute money or otherwise grant financial assistance to persons for the purpose of exercising its functions.

(2) A proposed recipient who acts for private gain is not ineligible to be granted financial assistance but must not receive any benefit under this section until at least 28 days' public notice of the council's proposal to pass the necessary resolution has been given.

(3) However, public notice is not required if:

(a) the financial assistance is part of a specific program, and

(b) the program's details have been included in the council's draft operational plan for the year in which the financial assistance is proposed to be given, and

(c) the program's proposed budget for that year does not exceed 5 per cent of the council's proposed income from the ordinary rates levied for that year, and

(d) the program applies uniformly to all persons within the council's area or to a significant group of persons within the area.

(4) Public notice is also not required if the financial assistance is part of a program of graffiti removal work.

Note. Part 4 of the *Graffiti Control Act 2008* deals with graffiti removal work.

357 Can a council exercise its functions only within its area?

A council may exercise its functions within its area or outside its area, but may exercise its regulatory functions under Chapter 7 only within its area.

358 Restrictions on formation of corporations and other entities

(1) A council must not form or participate in the formation of a corporation or other entity, or acquire a controlling interest in a corporation or other entity, except:

(a) with the consent of the Minister and subject to such conditions, if any, as the Minister may specify, or

(b) as provided by this Act.

(2) This section does not prevent a council from being a member of a co-operative society or a company limited by guarantee and licensed not to use the word "Limited" in its name.

(3) In applying for the Minister's consent under subsection (1) (a), the council is required to demonstrate, to the Minister's satisfaction, that the formation of, or the acquisition of the controlling interest in, the corporation or entity is in the public interest.

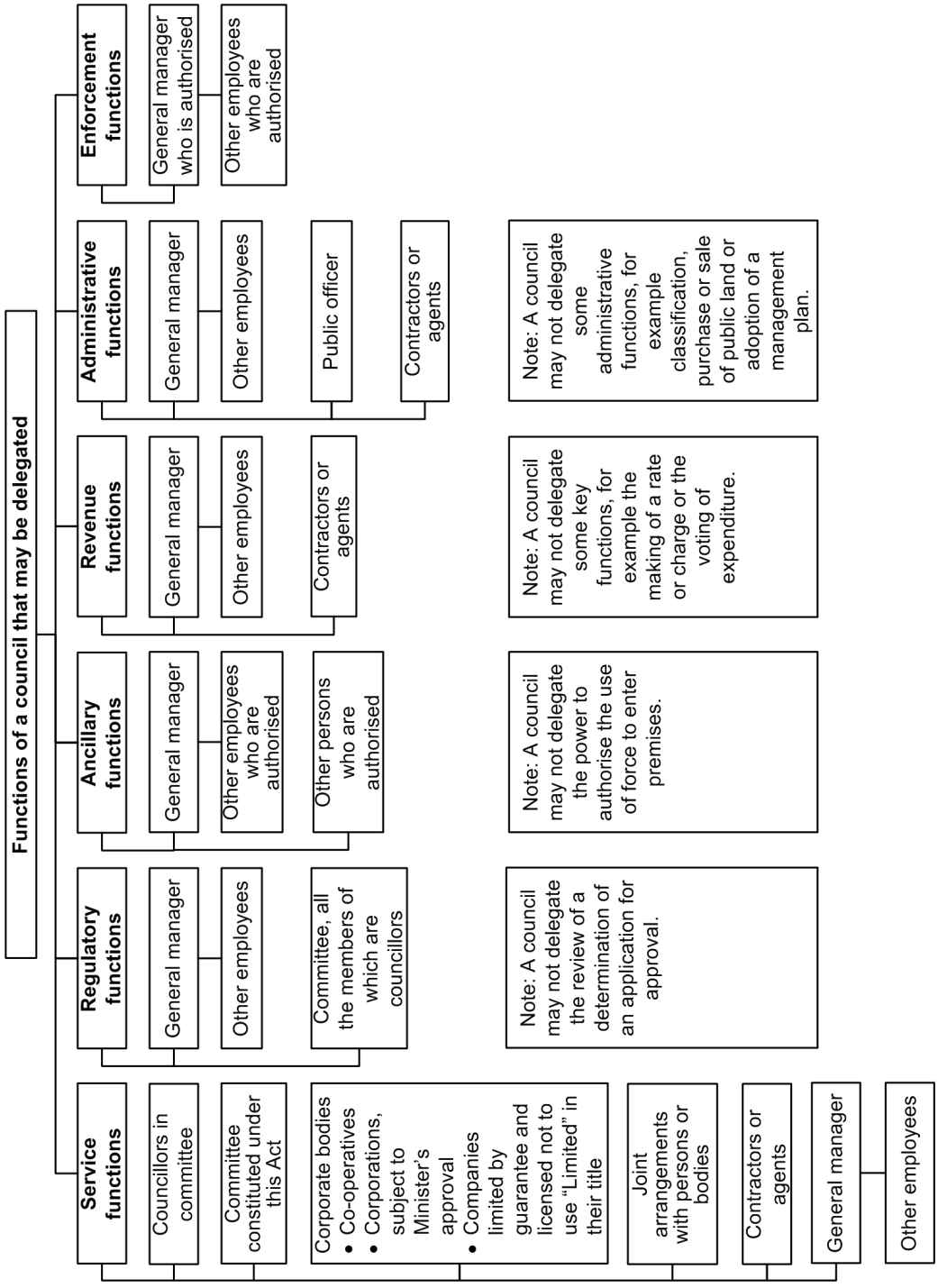
(3A) The regulations may make provision for or with respect to the matters to be taken into account by the Minister in deciding whether to grant consent under this section and the conditions that may or must be specified by the Minister under this section.

(4) In this section, ***entity*** means any partnership, trust, joint venture, syndicate or other body (whether or not incorporated), but does not include any such entity that is of a class prescribed by the regulations as not being within this definition.

359 Can a council act as an agent?

A council may act as the agent of another person or of the Crown, subject to the regulations.

How can a council exercise its functions?



Part 2 How are decisions made?

Division 1 Code of meeting practice

360 Conduct of meetings of councils and committees

(1) The regulations may prescribe a model code of meeting practice for the conduct of meetings of councils and committees of councils of which all the members are councillors.

(2) The model code may contain both mandatory and non-mandatory provisions.

(3) A council must, not later than 12 months after an ordinary election of councillors, adopt a code of meeting practice that incorporates the mandatory provisions of the model code prescribed by the regulations. The adopted code may also incorporate the non-mandatory provisions and other provisions.

(4) A code adopted or amended by the council must not contain provisions that are inconsistent with the mandatory provisions.

(5) A council and a committee of the council of which all the members are councillors must conduct its meetings in accordance with the code of meeting practice adopted by it.

361 Preparation, public notice and exhibition of draft code

(1) Before adopting a code of meeting practice, a council must prepare a draft code.

(2) The council must give public notice of the draft code after it is prepared.

(3) The period of public exhibition must not be less than 28 days.

(4) The public notice must also specify a period of not less than 42 days after the date on which the draft code is placed on public exhibition during which submissions may be made to the council.

(5) The council must publicly exhibit the draft code in accordance with its notice.

362 Adoption of draft code

(1) After considering all submissions received by it concerning the draft code, the council may decide:

(a) to amend those provisions of its draft mandatory code that are non-mandatory provisions, or

(b) to adopt the draft code as its code of meeting practice.

(2) If the council decides to amend its draft code, it may publicly exhibit the amended draft in accordance with this Division or, if the council is of the opinion that the amendments are not substantial, it may adopt the amended draft code without public exhibition as its code of meeting practice.

363 Amendment of the code

A council may amend a code adopted under this Part by means only of a code so adopted.

364 Public availability of the code

(1) The code of meeting practice adopted under this Division by a council must be available for public inspection free of charge at the office of the council during ordinary office hours.

(2) Copies of the code must be available free of charge or, if the council determines, on payment of the approved fee.

Division 2 Other provisions concerning council meetings

365 How often does the council meet?

The council is required to meet at least 10 times each year, each time in a different month.

366 Calling of extraordinary meeting on request by councillors

If the mayor receives a request in writing signed by at least 2 councillors, the mayor must call an extraordinary meeting of the council to be held as soon as practicable but in any event within 14 days after receipt of the request.

367 Notice of meetings

(1) The general manager of a council must send to each councillor, at least 3 days before each meeting of the council, a notice specifying the time and place at which and the date on which the meeting is to be held and the business proposed to be transacted at the meeting.

(2) Notice of less than 3 days may be given of an extraordinary meeting called in an emergency.

(3) A notice under this section and the agenda for, and the business papers relating to, the meeting may be given to a councillor in electronic form but only if all councillors have facilities to access the notice, agenda and business papers in that form.

368 What is the quorum for a meeting?

(1) The quorum for a meeting of the council is a majority of the councillors of the council who hold office for the time being and are not suspended from office.

(2) This section does not apply if the quorum is required to be determined in accordance with directions of the Minister in a performance improvement order issued in respect of the council.

369 Who presides at meetings of the council?

(1) The mayor or, at the request of or in the absence of the mayor, the deputy mayor (if any) presides at meetings of the council.

(2) If the mayor and the deputy mayor (if any) are absent, a councillor elected to chair the meeting by the councillors present presides at a meeting of the council.

370 What are the voting entitlements of councillors?

(1) Each councillor is entitled to one vote.

(2) However, the person presiding at a meeting of the council has, in the event of an equality of votes, a second or casting vote.

370A Powers of Minister in relation to meetings

(1) The Minister may, conditionally or unconditionally, allow a councillor or a member of a council committee who has a pecuniary interest in a matter with which the council is concerned to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:

(a) that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or

(b) that it is in the interests of the electors for the area to do so.

(2) A councillor or member of a council committee who attends a meeting in accordance with this section is not, for that reason only, taken to have engaged in misconduct within the meaning of Division 3 of Part 1 of Chapter 14.

371 What constitutes a decision of the council?

A decision supported by a majority of the votes at a meeting of the council at which a quorum is present is a decision of the council.

372 Rescinding or altering resolutions

(1) A resolution passed by a council may not be altered or rescinded except by a motion to that effect of which notice has been duly given in accordance with the council's code of meeting practice.

(2) If notice of motion to rescind a resolution is given at the meeting at which the resolution is carried, the resolution must not be carried into effect until the motion of rescission has been dealt with.

(3) If a motion has been negatived by a council, a motion having the same effect must not be considered unless notice of it has been duly given in accordance with the council's code of meeting practice.

(4) A notice of motion to alter or rescind a resolution, and a notice of motion which has the same effect as a motion which has been negatived by the council, must be signed by 3 councillors if less than 3 months has elapsed since the resolution was passed, or the motion was negatived, as the case may be.

(5) If a motion to alter or rescind a resolution has been negatived, or if a motion which has the same effect as a previously negatived motion, is negatived, no similar motion may be brought forward within 3 months. This subsection may not be evaded by substituting a motion differently worded, but in principle the same.

(6) A motion to which this section applies may be moved on the report of a committee of the council and any such report must be recorded in the minutes of the meeting of the council.

(7) The provisions of this section concerning negatived motions do not apply to motions of adjournment.

373 Committee of council

A council may resolve itself into a committee to consider any matter before the council.

374 Certain circumstances do not invalidate council decisions

Proceedings at a meeting of a council or a council committee are not invalidated because of:

(a) a vacancy in a civic office, or

(b) a failure to give notice of the meeting to any councillor or committee member, or

(c) any defect in the election or appointment of a councillor or committee member, or

(d) a failure of a councillor or a committee member to disclose a pecuniary interest, or to refrain from the consideration or discussion of, or vote on, the relevant matter, at a council or committee meeting in accordance with the council's code of conduct, or

(e) a failure to comply with the code of meeting practice.

375 Minutes

(1) The council must ensure that full and accurate minutes are kept of the proceedings of a meeting of the council.

(2) The minutes must, when they have been confirmed at a subsequent meeting of the council, be signed by the person presiding at that subsequent meeting.

375A Recording of voting on planning matters

(1) In this section, ***planning decision*** means a decision made in the exercise of a function of a council under the *Environmental Planning and Assessment Act 1979*:

(a) including a decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but

(b) not including the making of an order under Division 2A of Part 6 of that Act.

(2) The general manager is required to keep a register containing, for each planning decision made at a meeting of the council or a council committee, the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.

(3) For the purpose of maintaining the register, a division is required to be called whenever a motion for a planning decision is put at a meeting of the council or a council committee.

(4) Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document, and is to include the information required by the regulations.

(5) This section extends to a meeting that is closed to the public.

376 Attendance of general manager at meetings

(1) The general manager is entitled to attend, but not to vote at, a meeting of the council or a meeting of a committee of the council of which all the members are councillors.

(2) The general manager is entitled to attend a meeting of any other committee of the council and may, if a member of the committee, exercise a vote.

(3) However, the general manager may be excluded from a meeting of the council or a committee while the council or committee deals with a matter relating to the standard of performance of the general manager or the terms of the employment of the general manager.

Part 3 Delegation of functions

377 General power of the council to delegate

(1) A council may, by resolution, delegate to the general manager or any other person or body (not including another employee of the council) any of the functions of the council under this or any other Act, other than the following:

(a) the appointment of a general manager,

(b) the making of a rate,

(c) a determination under section 549 as to the levying of a rate,

(d) the making of a charge,

(e) the fixing of a fee,

(f) the borrowing of money,

(g) the voting of money for expenditure on its works, services or operations,

(h) the compulsory acquisition, purchase, sale, exchange or surrender of any land or other property (but not including the sale of items of plant or equipment),

(i) the acceptance of tenders to provide services currently provided by members of staff of the council,

(j) the adoption of an operational plan under section 405,

(k) the adoption of a financial statement included in an annual financial report,

(l) a decision to classify or reclassify public land under Division 1 of Part 2 of Chapter 6,

(m) the fixing of an amount or rate for the carrying out by the council of work on private land,

(n) the decision to carry out work on private land for an amount that is less than the amount or rate fixed by the council for the carrying out of any such work,

(o) the review of a determination made by the council, and not by a delegate of the council, of an application for approval or an application that may be reviewed under section 82A of the *Environmental Planning and Assessment Act 1979*,

(p) the power of the council to authorise the use of reasonable force for the purpose of gaining entry to premises under section 194,

(q) a decision under section 356 to contribute money or otherwise grant financial assistance to persons,

(r) a decision under section 234 to grant leave of absence to the holder of a civic office,

(s) the making of an application, or the giving of a notice, to the Governor or Minister,

(t) this power of delegation,

(u) any function under this or any other Act that is expressly required to be exercised by resolution of the council.

(1A) Despite subsection (1), a council may delegate its functions relating to the granting of financial assistance if:

(a) the financial assistance is part of a specified program, and

(b) the program is included in the council's draft operational plan for the year in which the financial assistance is proposed to be given, and

(c) the program's proposed budget for that year does not exceed 5 per cent of the council's proposed income from the ordinary rates levied for that year, and

(d) the program applies uniformly to all persons within the council's area or to a significant proportion of all the persons within the council's area.

(2) A council may, by resolution, sub-delegate to the general manager or any other person or body (not including another employee of the council) any function delegated to the council by the Departmental Chief Executive except as provided by the instrument of delegation to the council.

(3) A council may delegate functions to a joint organisation only with the approval, by resolution, of the board of the joint organisation.

378 Delegations by the general manager

(1) The general manager may delegate any of the functions of the general manager, other than this power of delegation.

(2) The general manager may sub-delegate a function delegated to the general manager by the council to any person or body (including another employee of the council).

(3) Subsection (2) extends to a function sub-delegated to the general manager by the council under section 377 (2).

379 Delegation of regulatory functions

(1) A regulatory function of a council under Chapter 7 must not be delegated or sub-delegated to a person or body other than:

(a) a committee of the council of which all the members are councillors or of which all the members are either councillors or employees of the council, or

(b) an employee of the council, or

(c) a county council, or

(d) a joint organisation.

(2) A regulatory function of a county council under Chapter 7 must not be delegated or sub-delegated to a person or body other than:

(a) a committee of the county council of which all the members are members of the county council or of which all the members are either members of the county council or employees of the county council, or

(b) an employee of the county council, or

(c) a council.

(2A) A council may delegate a regulatory function to a joint organisation only with the approval, by resolution, of the board of the joint organisation.

(3) However, if:

(a) a regulatory function is delegated to a county council, the function may be delegated to the general manager and by the general manager to an employee of the county council, or

(b) a regulatory function is delegated to a council, the function may be delegated to the general manager and by the general manager to an employee of the council, or

(c) a regulatory function is delegated to a joint organisation, the function may be delegated to the executive officer and by the executive officer to an employee of the joint organisation.

380 Review of delegations

Each council must review all its delegations during the first 12 months of each term of office.

381 Exercise of functions conferred or imposed on council employees under other Acts

(1) If, under any other Act, a function is conferred or imposed on an employee of a council or on the mayor or a councillor of a council, otherwise than by delegation in accordance with this section, the function is taken to be conferred or imposed on the council.

(2) Such a function may be delegated by the council in accordance with this Part.

(3) A person must not, under any other Act, delegate a function to:

- the general manager, except with the approval of the council
- an employee of the council, except with the approval of the council and the general manager.

Part 4 Insurance

382 Insurance against liability

(1) A council must make arrangements for its adequate insurance against public liability and professional liability.

(2) The regulations may make provision with respect to:

- arrangements for insurance
- minimum amounts of insurance

- risk management
- claims management
- the keeping of records concerning insurance
- other matters concerning insurance.

Part 5 County councils

383 Proposal to establish or dissolve a county council or amend its constitution

(1) A council, a county council, a public authority or the Departmental Chief Executive may make a proposal to the Minister to establish or dissolve a county council or to amend the constitution of a county council.

(2) The Minister may propose to establish or dissolve a county council or to amend the constitution of a county council.

384 Public notice to be given of a proposal

The Minister must give at least 28 days' public notice of a proposal made to the Minister that the Minister decides to proceed with or of a proposal initiated by the Minister.

385 Making of representations

Within the period of public notice, representations concerning the proposal may be made to the Minister by anyone affected by the proposal.

386 Minister's recommendation concerning the proposal

After considering all representations received concerning the proposal, the Minister may recommend to the Governor that the proposal be implemented, with or without modifications, or may decline to recommend that the proposal be implemented.

387 Formation of county councils

(1) The Governor may, by proclamation, establish county councils for the purposes of this Act.

(2) A proclamation under this section must contain the following particulars:

(a) the name of the county council,

(b) a description of the county council's area of operations,

(b1) the name of each council (referred to in this Part as a ***constituent council***) whose area lies wholly or partly within the county council's area of operations,

(c) the number of persons to be elected by each constituent council to the county council's governing body,

(d) a description of the county council's functions.

(3) A proclamation under this section conferring weed control functions on a county council is to be made only with the concurrence of the Minister administering the **Biosecurity Act 2015**.

388 Legal status of county councils

(1) A proclamation establishing a county council operates to constitute the county council as a body politic of the State with perpetual succession and the legal capacity and powers of an individual, both in and outside the State.

(2) A county council is not a body corporate (including a corporation).

(3) A county council does not have the status, privileges and immunities of the Crown (including the State and the Government of the State).

(4) A law of the State applies to and in respect of a county council in the same way as it applies to and in respect of a body corporate (including a corporation).

389 What is a county council's name?

The name of a county council is to be "X County Council", where "X" is the name specified by the proclamation.

390 Who comprise the governing body?

(1) A county council must have a governing body elected by its constituent councils.

(2) Provisions concerning the membership of a county council's governing body are to be as prescribed by the proclamation establishing the county council.

(3) A member of a county council is to be elected from among the councillors of the constituent councils in accordance with the regulations.

(4) The governing body of a county council is responsible for managing the affairs of the county council.

391 The chairperson

(1) The chairperson of a county council is the person elected to the office of chairperson by the members of the county council from among their number.

(2) The chairperson holds office for one year, subject to this Act.

(3) The office of chairperson:

(a) commences on the day the person elected to the office is declared to be so elected, and

(b) becomes vacant when the person's successor is declared to be elected to the office, or on the occurrence of a casual vacancy in the office.

391A What are the functions of the chairperson?

The role of the chairperson of a county council is:

(a) to preside at meetings of the county council, and

(b) to exercise such other functions of the county council as the county council determines.

392 Vacancy in office of member

(1) A member of a county council vacates that office on ceasing to be a councillor of a constituent council.

(2) This section does not limit the other circumstances in which a member of a county council vacates that office.

393 Area of operations of county council

The area of operations of a county council may, in accordance with a proclamation made for the purposes of this Part, comprise the whole or any part of one or more local government areas.

394 Functions of county council

(1) The functions of a county council may, in accordance with a proclamation made for the purposes of this Part, comprise any one or more of the functions of a council under this or any other Act.

(2) A council may not undertake a function conferred on a county council whose area of operations includes the whole or any part of the council's area, subject to the regulations or a proclamation made for the purposes of this Part.

(3) Subsection (2) does not prevent a council from exercising a function delegated to it by a county council.

394A County councils to consider regional strategies

A county council must, when exercising its functions, take into account any strategic regional priorities and other plans, programs, strategies and policies of a joint organisation that apply to any relevant part of the county council's area of operations or that are relevant to the county council's operational functions.

395 General manager of county council

(1) A county council must employ a general manager.

(2) The general manager of a county council has the same functions in relation to the county council as the general manager of a council has in relation to the council.

396 How often does a county council meet?

A county council is required to meet at least 4 times each year.

397 Amendment and dissolution of county councils

(1) The Governor may, by proclamation, amend or revoke a proclamation in force under section 387 for the purpose of amending the constitution of, or of dissolving, a county council.

(2) A proclamation for the purpose of amending the constitution of a county council:

(a) may change the name of the county council, or

(b) may vary the county council's area of operations, or

(c) may vary the number of persons who comprise the county council's governing body, or

(c1) may vary the number of persons to be elected by each constituent council to the county council's governing body, or

(d) may vary the county council's functions.

398 Facilitating provisions of proclamations

A proclamation of the Governor for the purposes of this Part may include provisions of the same kind as are referred to in section 213.

399 Making of financial contributions by constituent councils

The regulations may make provision for or with respect to the making of financial contributions to a county council by the constituent councils, including the following:

- the purposes for which contributions may be made
- the circumstances in which contributions may be required
- the assessment of contributions
- the payment of contributions
- the recovery of contributions.

400 Application of Act to county councils

(1) This Act (except Part 1 and Divisions 1 and 2 of Part 2 of Chapter 9, Chapter 10, section 365, Part 7 of this Chapter and the provisions of Chapter 15 concerning the making and levying of ordinary rates) applies:

(a) to county councils in the same way as it applies to councils, and

(b) to the members of county councils in the same way as it applies to the councillors of councils,

with such exceptions and modifications (if any) as the regulations may provide.

(2) In the application of this Act to county councils and members of county councils:

(a) a reference to the mayor of a council includes a reference to the chairperson of a county council, and

(b) a reference to mayoral office includes a reference to the office of the chairperson of a county council, and

(c) a reference to a councillor includes a reference to a member of a county council.

400AA Special provisions relating to Cudgegong (Abattoir) County Council

Schedule 9 has effect.

400A (Repealed)

Part 6 Public-private partnerships

Division 1 Preliminary

400B Definitions

(1) For the purposes of this Act, a ***public-private partnership*** means an arrangement:

(a) between a council and a private person to provide public infrastructure or facilities (being infrastructure or facilities in respect of which the council has an interest, liability or responsibility under the arrangement), and

(b) in which the public infrastructure or facilities are provided in part or in whole through private sector financing, ownership or control,

but does not include any such arrangement if it is of a class that has been excluded from the operation of this Part by the regulations.

(1A) For the purposes of subsection (1), the provision of public infrastructure or facilities includes the delivery of services during the carrying out of any project under the public-private partnership.

(2) In this Part:

arrangement includes a contract or understanding (whether or not involving the formation of an entity).

entity means any partnership, trust, corporation, joint venture, syndicate or other body (whether or not incorporated).

PPP guidelines means the guidelines in force from time to time under section 400C.

private person means any person other than:

(a) the Government (including the State, the Crown and a Minister of the Crown), or

(b) a public or local authority (including a council or a State owned corporation), or

(c) a public sector employee or other person or body acting in an official capacity on behalf of the Government or a public or local authority.

relevant council, in relation to public-private partnership or proposed public-private partnership, means the council that has entered into, or is proposing to enter into, the partnership.

significant project means:

(a) any project with an estimated total cost of more than $50 million or such other amount as may be prescribed by the regulations, or

(b) any project in respect of which the relevant council's financial contribution, or its equity position, amounts to 25% or more of the council's annual revenue that is lawfully available for spending on facilities or services of the kind to which the project relates.

(3) In determining a relevant council's financial contribution or equity position in relation to a project for the purposes of this Part, all elements of the project that the council provides are to be taken into account, including land value, the provision of non-monetary goods and services and any costs associated with the council's contractual liability in the event of the council incurring a loss under the project.

(4) For the purposes of this Part, a project under a public-private partnership that is carried out in stages is to be treated as a single project. The PPP guidelines may also specify other circumstances in which related projects carried out under a public-private partnership are to be treated as a single project for the purposes of this Part.

400C Guidelines to be followed by councils in relation to public-private partnerships

(1) The Departmental Chief Executive may from time to time issue guidelines requiring specified procedures and processes to be followed by councils in relation to entering into, and carrying out projects under, public-private partnerships.

(2) Without limitation, the PPP guidelines may contain provisions requiring:

(a) feasibility and risk assessment, and

(b) the identification of appropriate governance and administrative arrangements (including appropriate management structures and auditing requirements), and

(c) the undertaking of on-going risk management measures, and

(d) due diligence in the carrying out of projects under public-private partnerships.

400D Ancillary provisions relating to PPP guidelines

(1) The PPP guidelines are to be made available to councils in such manner as the Departmental Chief Executive thinks appropriate.

(2) The Departmental Chief Executive may from time to time amend or replace the PPP guidelines.

Division 2 Restrictions relating to public-private partnerships

400E General requirements

(1) A council must not:

(a) enter into a public-private partnership, or

(b) carry out any project under a public-private partnership,

except in accordance with this Part.

(2) Without limiting subsection (1), a council is required to comply with the PPP guidelines at all times while carrying out a project under a public-private partnership.

400F Council to provide assessment of PPP project to Departmental Chief Executive

(1) A council must not enter into a public-private partnership unless the council has provided the Departmental Chief Executive with an assessment of the project to be carried out under the partnership.

(2) In providing such an assessment, the general manager of the council is required to certify that it has been prepared in accordance with the PPP guidelines.

(3) If:

(a) the project to be carried out under the public-private partnership is a significant project, or

(b) the Departmental Chief Executive is of the opinion, having regard to the criteria specified in the PPP guidelines, that the project has a high risk,

the Departmental Chief Executive is to advise the council that the project is required to be referred to the Project Review Committee for review.

(4) If the Departmental Chief Executive advises the council that the project is not required to be referred to the Project Review Committee, the council is entitled:

(a) subject to obtaining the Minister's consent under section 358 (1) (a), to enter into the public-private partnership, and

(b) subject to this Division, to carry out the project that is the subject of the assessment.

400G Minister may require PPP project to be referred to Project Review Committee

(1) The Minister may direct a council to refer any project that is to be carried out, or is being carried out, under a public-private partnership to the Project Review Committee for review.

(2) Any such direction:

(a) may be given at any stage in the process of entering into the public-private partnership or in the carrying out of the project under the partnership, and

(b) must be complied with by the council.

(3) A direction may be given under this section only if the Minister is of the opinion that the council concerned has not complied with the PPP guidelines in relation to entering into the public-private partnership or carrying out the project.

400H Departmental Chief Executive may require council to provide assessment of varied PPP project

(1) If the Departmental Chief Executive is of the opinion that a project that is to be carried out, or is being carried out, under a public-private partnership has been, or is proposed to be, varied in a significant manner, the Departmental Chief Executive may require the relevant council to provide the Departmental Chief Executive with an assessment of the project as varied or proposed to be varied. Section 400F (2) applies in relation to any such assessment.

(2) If the Departmental Chief Executive is of the opinion that the project has or will become:

(a) a significant project, or

(b) a high risk project (having regard to the criteria specified in the PPP guidelines),

the Departmental Chief Executive is to advise the council that the project is required to be referred to the Project Review Committee for review.

(3) The relevant council must comply with a direction under subsection (1).

400I Review of PPP project by Project Review Committee

(1) If a project is required or directed to be referred to the Project Review Committee for review, the relevant council must not enter into a public-private partnership to carry out the project, or proceed with the carrying out of the project under a public-private partnership, unless:

(a) the relevant council has provided the Project Review Committee with an assessment of the project in accordance with the PPP guidelines, and

(b) the Project Review Committee has reviewed the project and is satisfied that the requirements of the PPP guidelines have been complied with in relation to the project.

(2) The relevant council has the responsibility of demonstrating to the Project Review Committee, in conducting its review of the project, that the requirements of the PPP guidelines have been complied with in relation to the project.

(3) If the Project Review Committee advises the council that the Committee is satisfied that the requirements of the PPP guidelines have been complied with in relation to the project, the council is entitled:

(a) to enter into the public-private partnership (if it has not already entered into it), or

(b) subject to this Division, to proceed with the carrying out of the project.

(4) The Project Review Committee's decision as to whether or not the relevant council has complied with the requirements of the PPP guidelines in relation to a project is final and cannot be reviewed by any court or tribunal.

Division 3 Local Government Project Review Committee

400J Establishment and constitution of Project Review Committee

(1) A Local Government Project Review Committee is established.

(2) The Project Review Committee is to consist of the following members:

(a) the Departmental Chief Executive (or a person employed in the Department nominated by the Departmental Chief Executive) who is to be the chairperson of the Committee,

(b) the Secretary of the Treasury (or a person employed in the Treasury nominated by the Secretary),

(c) the Secretary of the Department of Premier and Cabinet (or a person employed in that Department nominated by that Secretary),

(d) (Repealed)

(e) the Secretary of the Department of Planning and Environment (or a person employed in that Department nominated by that Secretary),

(f) such other persons as may be appointed by the Departmental Chief Executive for the purposes of enabling the Project Review Committee to exercise its functions.

(3) The appointment by the Departmental Chief Executive of persons as members of the Project Review Committee under subsection (2) (f) is to be made on the basis of the nature, or subject-matter, of the project that is before the Committee for review. In doing so, the Departmental Chief Executive is to ensure that any person appointed as a member has the relevant expertise to enable the Committee to properly exercise its functions in relation to the project concerned.

(4) Without limiting subsection (3), the Departmental Chief Executive may appoint persons from the private sector as members of the Project Review Committee.

(5) The Project Review Committee has such functions as are conferred or imposed on it by or under this or any other Act.

(6) Schedule 3 has effect with respect to the members and procedure of the Project Review Committee.

Division 4 Miscellaneous provisions

400K Compensation not payable

(1) Compensation is not payable by or on behalf of the State arising directly or indirectly from any of the following matters occurring before or after the commencement of this Part:

(a) the enactment of the *Local Government Amendment (Public-Private Partnerships) Act 2004* or the operation of this Part,

(b) the exercise by the Minister, a person employed in the Department or a member of the Project Review Committee of any function under this Part (including any failure or delay in exercising any such function),

(c) any statement or conduct in connection with public-private partnerships or this Part.

(2) Compensation is not payable by a council to any private person as a consequence of the council being prevented, by the operation of this Part, from entering into a public-private partnership or from carrying out a project under a public-private partnership.

(3) However, subsection (2) does not apply in relation to a council if the public-private partnership concerned is a partnership referred to in section 400N (2).

(4) In this section:

compensation includes damages or any other form of monetary compensation.

conduct includes any act or omission, whether unconscionable, misleading, deceptive or otherwise.

statement includes a representation of any kind, whether made verbally or in writing and whether negligent, false or misleading or otherwise.

the State means the Crown within the meaning of the *Crown Proceedings Act 1988*, and includes an officer, employee or agent of the Crown or any member of the Project Review Committee.

400L Decision by council to enter into public-private partnership

Any decision by a council in relation to entering into a public-private partnership may only be made by resolution of the council.

400M No contracting out

This Part applies regardless of the terms of any arrangement between a council and a private person.

400N Application of Part

(1) This Part does not apply to any public-private partnership that a council resolved, before 28 June 2004, to enter into.

(2) However, if a council resolved, on or after 28 June 2004 but before the commencement of this Part, to enter into a public-private partnership, this Part applies to and in respect of the partnership.

Part 7 Joint organisations

400O Formation of joint organisations

(1) The Governor may, by proclamation, establish joint organisations for the purposes of this Act.

(2) A proclamation under this section must contain the following particulars:

(a) the name of the joint organisation,

(b) the council areas that are to form the area of the joint organisation (which is to consist of the whole of 2 or more council areas).

(3) A proclamation under this section may contain transitional provisions to facilitate the establishment and early operation of the joint organisation.

(4) Each council whose area is within the joint organisation area is a ***member council*** of the joint organisation.

400P Council must approve inclusion of council area in joint organisation area

The Minister must not recommend the making of a proclamation under this Part (including an amending proclamation) that includes the area of a council in a joint organisation area unless the Minister certifies that:

(a) not less than 28 days before the certificate was given, the council, by resolution, approved the inclusion of the council's area in the joint organisation area, and

(b) when the certificate was given, the resolution had not been rescinded.

400Q Legal status of joint organisations

(1) A proclamation establishing a joint organisation operates to constitute the joint organisation as a body corporate.

(2) A joint organisation as so constituted has the legal capacity and powers of an individual, both in and outside the State.

Note. While the main functions of joint organisations are provided for under this Part, powers are also conferred on the joint organisation as a statutory corporation under section 50 of the *Interpretation Act 1987*.

400R Principal functions of joint organisations

(1) A joint organisation has the following principal functions:

(a) to establish strategic regional priorities for the joint organisation area and to establish strategies and plans for delivering those strategic regional priorities,

(b) to provide regional leadership for the joint organisation area and to be an advocate for strategic regional priorities,

(c) to identify and take up opportunities for inter-governmental co-operation on matters relating to the joint organisation area.

(2) In establishing strategic regional priorities for the joint organisation area, a joint organisation is to consider any relevant strategic priorities or plans of member councils and the State government.

(3) A strategic regional priority, or a plan or strategy for delivering a strategic regional priority, established by a joint organisation does not limit the operation of or otherwise affect any regional plan or strategy given effect to under the *Environmental Planning and Assessment Act 1979* (including any regional plan made under Part 3B of that Act).

400S Other functions of joint organisations

(1) A joint organisation may deliver services and provide assistance to or on behalf of councils (including capacity building), as agreed with the councils, and subject to any restrictions imposed by the regulations.

Note. Some functions may also be delegated to a joint organisation by a council, see sections 377 and 379.

(2) A joint organisation has any other function conferred on the joint organisation by or under this Act or any other law.

400T Board of joint organisation

(1) The board of a joint organisation is to consist of:

(a) the mayors of each of the member councils, who are each entitled to 1 vote at a meeting of the board, and

(b) any additional voting representatives of the member councils appointed under this section, who are each entitled to 1 vote at a meeting of the board, and

(c) other non-voting representatives, who may attend but are not entitled to vote at a meeting of the board.

(2) The following persons are the non-voting representatives on the board of a joint organisation:

(a) an employee of the Public Service nominated by the Secretary of the Department of Premier and Cabinet,

(b) any other person invited by the board to be a non-voting representative on the board,

(c) any other person, or a member of a class of persons, prescribed by the regulations.

(3) The general manager of each member council may attend meetings of the board.

(4) The chairperson (or, in the absence of the chairperson, a person elected by the voting representatives who are present at a meeting of the board) is to preside at a meeting of the board.

(5) The board may, by resolution, determine to expand the voting representatives on the board to include 1 additional representative nominated by each member council.

(6) Each additional voting representative must be a councillor of the member council. A nomination of a councillor as an additional voting representative may be revoked by the member council at any time without notice and for no stated or any reason.

(7) The quorum for a meeting of the board is a majority of the voting representatives for the time being.

(8) A decision of the board supported by a majority at which a quorum is present is a decision of the joint organisation. The chairperson or person presiding at a meeting of the board does not have, in the event of an equality of votes, a second or casting vote.

(9) The board is required to meet at least 4 times each year, each time in a different quarter of the year.

(10) The regulations may:

(a) prescribe a mechanism for resolving decisions of a board in the event of an equality of votes, and

(b) provide for the operation of the board during a period when councillors or mayors cease to hold office because of pending council elections.

400U Role of board

(1) The role of the board of a joint organisation is to direct and control the affairs of the joint organisation in accordance with this Act.

(2) The board is to consult with the executive officer in directing and controlling the affairs of the joint organisation.

(3) The board is to prepare and adopt a charter for the joint organisation containing (but not limited to) the following:

(a) operational principles for the joint organisation,

(b) governance principles for the joint organisation.

(4) A charter may adopt requirements for a joint organisation that are additional or supplementary to, or more stringent than, requirements made by or under this Act but cannot adopt requirements that:

(a) are less stringent than requirements made by or under this Act, or

(b) are inconsistent with or contravene regulations under this Act relating to charters.

(5) The regulations may:

(a) make provision for or with respect to requirements for the form and content of a charter, and

(b) require a charter to be made publicly available.

400V Chairperson

(1) The chairperson of a joint organisation is the person elected to the office of chairperson by the voting representatives on the board from among the voting representatives who are mayors.

(2) The chairperson holds office for 2 years and may, if otherwise qualified, be re-elected as chairperson.

(3) Despite subsection (2), the term of office of a person elected as chairperson on the occurrence of a casual vacancy is the remaining period of the term of office of the previous chairperson.

(4) The office of chairperson:

(a) commences on the day the person elected to the office is declared to be so elected, and

(b) becomes vacant when the person's successor is declared to be elected to the office, or on the occurrence of a casual vacancy in the office.

Note. Section 400X (1) sets out when a casual vacancy occurs.

(5) The joint organisation may determine that the chairperson is to be a non-voting chairperson and, if that occurs, the relevant member council is to nominate a councillor to be the voting representative for the council concerned instead of the person appointed as a non-voting chairperson for the period for which the chairperson holds office.

(6) The councillor nominated is to be the deputy mayor of the relevant member council or another councillor if there is no deputy mayor or if the deputy mayor is already a voting representative.

400W Alternates for voting representatives

(1) The regulations may make provision for or with respect to the appointment, and functions, of alternates for voting representatives on the boards of joint organisations.

(2) The regulations may impose limitations on the use and appointment of alternates.

400X Vacancy in office of representatives or non-voting chairperson

(1) A voting representative on or a non-voting chairperson of a joint organisation ceases to hold office as a voting representative or chairperson if the person:

(a) ceases to be the mayor or a councillor of a member council, or

(b) is a voting representative (other than a mayor) and resigns the office by writing addressed to the chairperson, or

(c) is a voting representative (other than a mayor) and the person's nomination as a voting representative is revoked, or

(d) is removed from office by the Minister.

Note. See section 275 for the circumstances in which a person is disqualified from holding civic office.

(2) A voting representative who is suspended from office as a mayor or councillor of a member council (other than as a result of the suspension of a council and the appointment of an administrator) is suspended from office as a voting representative for the duration of the suspension.

(3) A member council may make a written request to the Minister that the mayor of the council be removed by the Minister as a voting representative on the board of a joint organisation on the ground of exceptional circumstances. The request may, but need not, be supported by the mayor.

(4) The Minister may remove a person from office as a voting representative on the board of a joint organisation at any time without notice and for no stated or any reason.

(5) However, the Minister must provide a written statement setting out the reasons for any such removal and make those reasons publicly available.

(6) If a person ceases to be a voting representative on the board of a joint organisation because the person is removed from office under this section, the relevant member council must appoint a councillor of the council to be a voting representative instead of the former representative for the remainder of the former representative's term of office.

400Y Executive officer

(1) The executive officer of a joint organisation is:

(a) to conduct the day-to-day management of the joint organisation in accordance with the strategic regional priorities and other plans, programs, strategies and policies of the organisation, and

(b) to implement, without delay, lawful decisions of the joint organisation.

(2) The executive officer may also, if the joint organisation determines an organisation structure requiring other staff:

(a) appoint staff in accordance with the organisation structure and the resources approved by the joint organisation, and

(b) direct and dismiss staff.

(3) The executive officer is to be the public officer of the joint organisation or is to designate another member of staff as the public officer.

400Z Exercise of functions

A function of a joint organisation may, subject to this Part, be exercised:

(a) by the joint organisation by means of the voting representatives or employees, by its agents or contractors, by financial provision, by the provision of goods, equipment, services, amenities or facilities or by any other means, or

(b) by a committee of the board, or

(c) partly or jointly by the joint organisation and another person or persons, or

(d) jointly by the joint organisation and a member council or councils or another joint organisation, or

(e) by a delegate of the joint organisation (which may, for example, be a member council or a committee of the board).

400ZA Decisions and powers of joint organisations

(1) A council cannot be required, by a decision of a joint organisation, to delegate any of its functions to the joint organisation.

(2) A decision made, in good faith, by a voting representative on the board of a joint organisation is taken for the purposes of provisions of this Act relating to the functions and conduct of councillors not to have been taken by the representative in his or her capacity as the mayor or a councillor of a council.

400ZB Effect of appointment of administrator for member council

(1) If an administrator is appointed for a member council, the administrator who exercises the functions of the mayor of the council has:

(a) the functions of the mayor of a member council under this Part, other than the functions of chairperson if the mayor was the chairperson, and

(b) the functions of any additional voting representative from the member council on the board of the joint organisation immediately before the appointment of the administrator.

(2) An administrator who is exercising the functions of the mayor of a council under this section is, while exercising those functions, eligible for election as chairperson in any election for the chairperson (whether or not occurring as a result of a casual vacancy arising because of the administrator's appointment).

Note. The removal of the mayor on an administrator being appointed creates a casual vacancy in the office of chairperson (see sections 400V and 400X).

(3) A voting representative is taken not to be absent from a meeting of the board if an administrator exercising the representative's functions under this Part is present.

(4) An administrator who is exercising the functions of a mayor or other voting representative of a member council that has 2 voting representatives on the board may cast a vote at a meeting of the board for each representative of the member council.

400ZC Amendment and dissolution of joint organisations

(1) The Governor may, by proclamation, amend or revoke a proclamation in force under this Part for the purpose of amending the constitution of, or of dissolving, a joint organisation.

(2) A proclamation for the purpose of amending the constitution of a joint organisation:

(a) may change the name of the joint organisation, or

(b) may vary the joint organisation area by adding or removing council areas and may specify the name of each council whose area is included in or removed from the joint organisation area.

400ZD Facilitating provisions of proclamations

A proclamation of the Governor for the purposes of this Part may include provisions of the kind referred to in section 213.

400ZE Delegations

(1) A joint organisation may delegate to the executive officer, a committee of the board of the joint organisation or any other person or body (not including another employee of the joint organisation) any of the functions of the joint organisation, other than a function prescribed by the regulations for the purposes of this section.

(2) A joint organisation may sub-delegate to the executive officer, a committee of the board of the joint organisation or any other person or body (not including another employee of the joint organisation) any function delegated to the joint organisation by the Departmental Chief Executive or a council, except as provided by the regulations or the instrument of delegation to the joint organisation.

(3) The executive officer may delegate any of the functions of the executive officer, other than this power of delegation.

(4) The executive officer may sub-delegate a function delegated to the executive officer by the joint organisation to any person or body (including another employee of the joint organisation).

(5) Subsection (4) extends to a function sub-delegated to the executive officer under subsection (2).

400ZF Financial matters

(1) The regulations may make provision for or with respect to the making of financial contributions to a joint organisation by the member councils, including the following:

(a) the purposes for which contributions may be made,

(b) the circumstances in which contributions may be required,

(c) the assessment of contributions,

(d) the payment of contributions,

(e) the recovery of contributions.

(2) For the purposes of this section, a financial contribution by a member council may include making employees of the member council available for the purposes of the joint organisation.

(3) A joint organisation may obtain income from charges, fees, grants, borrowings and investments. This subsection does not prevent a joint organisation exercising the functions of a council from obtaining income from other sources that may be used by the council.

400ZG Staff

(1) Despite any other provision of this Act, a joint organisation (including an executive officer) may only appoint staff if the joint organisation is not a national system employer for the purposes of the *Fair Work Act 2009* of the Commonwealth.

(2) This section does not apply to the appointment of an executive officer.

400ZH Application of Act to joint organisations

(1) Except as provided by subsection (3), this Act applies:

(a) to a joint organisation in the same way as it applies to a council, and

(b) to the representatives on the board of a joint organisation in the same way as it applies to the councillors of councils, and

(c) to the executive officer of a joint organisation in the same way as it applies to the general manager of a council.

(2) In the application of this Act to a joint organisation and to a representative on the board of a joint organisation:

(a) a reference to the mayor of a council includes a reference to the chairperson of a joint organisation, and

(b) a reference to mayoral office includes a reference to the office of the chairperson of a joint organisation, and

(c) a reference to a councillor includes a reference to a voting representative on or a non-voting chairperson of the board of a joint organisation, and

(d) a reference to the holding of civic office includes a reference to holding office as a voting representative on or a non-voting chairperson of the board of a joint organisation, and

(e) a reference to the general manager of a council includes a reference to the executive officer of a joint organisation, and

(f) a reference to the area of a council includes a reference to the joint organisation area of a joint organisation, and

(g) a reference to a proclamation under Chapter 9 includes a reference to a proclamation under this Part.

(3) The following provisions (the ***excluded provisions***) of this Act do not apply to or in respect of a joint organisation:

(a) Chapter 3,

(b) Part 3 of Chapter 4,

(c) Chapter 6 (other than Part 3),

(d) Chapter 7,

(e) Chapter 9,

(f) Chapter 10,

(g) sections 335 and 342,

(h) sections 355, 365, 370, 371, 375A and 377–380 and Part 5 of Chapter 12,

(i) Parts 2 and 4 of Chapter 13 and sections 438T, 438ZA and 438ZB,

(j) Chapter 15 (other than Parts 10, 12 and 13 and section 620),

(k) Division 4 of Part 2 of Chapter 17,

(l) section 736 (2),

(m) Schedules 1–5,

(n) any other provisions prescribed by the regulations for the purposes of this section.

(4) Despite subsection (3), an excluded provision applies to or in respect of a joint organisation if:

(a) the joint organisation is exercising a function of a council conferred on the joint organisation by or under this Act and the excluded provision is applicable to or in respect of the function, or

(b) the regulations provide that the provision is not an excluded provision in relation to the specified joint organisation, a class of joint organisations (that includes that organisation) or all joint organisations, or

(c) the provision applies expressly to a joint organisation or applies expressly or impliedly to all bodies constituted under this Act.

(5) The regulations may:

(a) modify the application of any provision of this Act that applies to or in respect of a council for the purpose of its application to a joint organisation, or

(b) exclude a provision of this Act from applying to or in respect of a joint organisation.

Note. The provisions applied to joint organisations by this section include provisions relating to codes of conduct and protection against personal liability (section 731).

Chapter 13 How are councils made accountable for their actions?

Part 1 Preliminary

401 Application of Chapter

This Chapter applies to the functions conferred or imposed on a council by or under this or any other Act or law.

Note. Examples of functions conferred or imposed on councils by or under other Acts are set out in the Note to section 22.

Part 2 Strategic planning

402 Community strategic plan

(1) Each local government area must have a community strategic plan that has been developed and endorsed by the council. A community strategic plan is a plan that identifies the main priorities and aspirations for the future of the local government area covering a period of at least 10 years from when the plan is endorsed.

(2) A community strategic plan is to establish strategic objectives together with strategies for achieving those objectives.

(3) The council must ensure that the community strategic plan:

(a) addresses civic leadership, social, environmental and economic issues in an integrated manner, and

(b) is based on social justice principles of equity, access, participation and rights, and

(c) is adequately informed by relevant information relating to civic leadership, social, environmental and economic issues, and

(d) is developed having due regard to the State government's State Plan and other relevant State and regional plans of the State government.

(4) The council must establish and implement a strategy (its ***community engagement strategy***), based on social justice principles, for engagement with the local community when developing the community strategic plan.

(5) Following an ordinary election of councillors, the council must review the community strategic plan before 30 June following the election. The council may endorse the existing plan, endorse amendments to the existing plan or develop and endorse a new community strategic plan, as appropriate to ensure that the area has a community strategic plan covering at least the next 10 years.

(6) A draft community strategic plan or amendment of a community strategic plan must be placed on public exhibition for a period of at least 28 days and submissions received by the council must be considered by the council before the plan or amendment is endorsed by the council.

(7) Within 28 days after a community strategic plan is endorsed, the council must post a copy of the plan on the council's website and provide a copy to the Departmental Chief Executive. A copy

of a community strategic plan may be provided to the Departmental Chief Executive by notifying the Minister of the appropriate URL link to access the plan on the council's website.

403 Resourcing strategy

(1) A council must have a long-term strategy (called its ***resourcing strategy***) for the provision of the resources required to implement the strategies established by the community strategic plan that the council is responsible for.

(2) The resourcing strategy is to include long-term financial planning, workforce management planning and asset management planning.

404 Delivery program

(1) A council must have a program (its ***delivery program***) detailing the principal activities to be undertaken by the council to implement the strategies established by the community strategic plan within the resources available under the resourcing strategy.

(2) The delivery program must include a method of assessment to determine the effectiveness of each principal activity detailed in the delivery program in implementing the strategies and achieving the strategic objectives at which the principal activity is directed.

(3) The council must establish a new delivery program after each ordinary election of councillors to cover the principal activities of the council for the 4-year period commencing on 1 July following the election.

(4) A draft delivery program must be placed on public exhibition for a period of at least 28 days and submissions received by the council must be considered by the council before the delivery program is adopted by the council.

(5) The general manager must ensure that regular progress reports are provided to the council reporting as to its progress with respect to the principal activities detailed in its delivery program. Progress reports must be provided at least every 6 months.

405 Operational plan

(1) A council must have a plan (its ***operational plan***) that is adopted before the beginning of each year and details the activities to be engaged in by the council during the year as part of the delivery program covering that year.

(2) An operational plan must include a statement of the council's revenue policy for the year covered by the operational plan. The statement of revenue policy must include the statements and particulars required by the regulations.

(3) A council must prepare a draft operational plan and give public notice of the draft indicating that submissions may be made to the council at any time during the period (not less than 28 days) that the draft is to be on public exhibition. The council must publicly exhibit the draft operational plan in accordance with the notice.

(4) During the period of public exhibition, the council must have for inspection at its office (and at such other places as it may determine) a map that shows those parts of its area to which each

category and sub-category of the ordinary rate and each special rate included in the draft operational plan applies.

(5) In deciding on the final operational plan to be adopted, a council must consider any submissions that have been made concerning the draft plan.

(6) The council must post a copy of its operational plan on the council's website within 28 days after the plan is adopted.

406 Integrated planning and reporting guidelines

(1) The Departmental Chief Executive is to establish integrated planning and reporting guidelines (referred to in this Chapter as ***the guidelines***) for the purposes of this Chapter.

(2) The guidelines can impose requirements in connection with the preparation, development and review of, and the contents of, the community strategic plan, resourcing strategy, delivery program, operational plan, community engagement strategy, annual report and state of the environment report of a council.

(3) In particular (but without limiting subsection (2)), the guidelines can impose requirements in relation to any of the following:

(a) the procedures to be followed in the preparation, development or review of plans, strategies, programs and reports,

(b) the matters to be addressed or provided for by plans, strategies, programs and reports,

(c) requirements for consultation in connection with the preparation, development or review of plans, strategies and programs,

(d) the matters to be taken into account or to which regard is to be had in connection with the preparation, development or review of plans, strategies, programs and reports.

(4) A council must ensure that the requirements of the guidelines are complied with.

(5) The guidelines can include other material for the guidance of councils in connection with the plans, strategies, programs and reports to which this section applies.

(6) The Departmental Chief Executive may review and amend the guidelines from time to time.

(7) The guidelines and any amendment of the guidelines must be posted on the Department's website and notified in writing to each council by the Departmental Chief Executive.

407 (Repealed)

Part 3 Financial management

Division 1 Funds

408 The council's funds

A council must have 2 separate funds:

- a consolidated fund

- a trust fund.

409 The consolidated fund

(1) All money and property received by a council must be held in the council's consolidated fund unless it is required to be held in the council's trust fund.

(2) Money and property held in the council's consolidated fund may be applied towards any purpose allowed by this or any other Act.

(3) However:

(a) money that has been received as a result of the levying of a special rate or charge may not be used otherwise than for the purpose for which the rate or charge was levied, and

(b) money that is subject to the provisions of this or any other Act (being provisions that state that the money may be used only for a specific purpose) may be used only for that purpose, and

(c) money that has been received from the Government or from a public authority by way of a specific purpose advance or grant may not, except with the consent of the Government or public authority, be used otherwise than for that specific purpose.

(d) (Repealed)

(4) Pending its expenditure for the purpose for which it is held, money of the kind referred to in subsection (3) (a), (b) or (c) may not be held otherwise than in an account with a bank, building society or credit union or in an investment in which such money is, by or under this or any other Act, authorised to be invested.

(5) Despite subsections (3) and (4), a council may:

(a) deduct, from the money required by subsection (3) to be used only for the specific purpose of water supply or sewerage services, an amount in the nature of a return on capital invested payment (dividend), and

(b) apply that amount towards any purpose allowed for the expenditure of money by councils by this Act or any other Act.

(6) The Minister for Energy and Utilities, with the concurrence of the Minister administering this Act:

(a) is to cause guidelines to be prepared and published in the Gazette relating to the management of the provision of water supply and sewerage services by councils, and

(b) may, if of the opinion that a council has not substantially complied with the guidelines, direct the council to comply with any particular aspect of the guidelines before making any further deduction under subsection (5).

(7) Before making a deduction under subsection (5), a council must:

(a) comply with the guidelines published under subsection (6) and any direction given under that subsection, and

(b) indicate in an open meeting of the council that the guidelines and any such direction have been complied with in relation to the making of the deduction.

(8) Subsections (5)–(7) extend to a council that is a water supply authority within the meaning of the *Water Management Act 2000*.

(9) This section does not affect the requirements of the *Fire and Emergency Services Levy Act 2017* with respect to the payment of collection instalments to the Treasurer.

410 Alternative use of money raised by special rates or charges

(1) This section applies to money that has been received by a council as a result of the levying of a special rate or a charge.

(2) If the special rate or charge has been discontinued and the purpose for which the money was received has been achieved, or is no longer required to be achieved, any remaining money may be used by the council for any other purpose if, and only if:

(a) a proposal to that effect has been included in a draft operational plan for the current year or for a previous year, and

(b) notice of the fact that the proposal was included in the operational plan adopted by the council for that year has been published in a manner that the council is satisfied is likely to bring the notice to the attention of members of the public in the area.

(3) Money that is not yet required for the purpose for which it was received may be lent (by way of internal loan) for use by the council for any other purpose if, and only if, its use for that other purpose is approved by the Minister.

(4) In granting such an approval, the Minister must impose conditions as to the time within which the internal loan must be repaid and as to any additional amount, in the nature of interest, that is to be paid in connection with that loan.

411 The trust fund

(1) All money and property received by a council in trust must be held in the council's trust fund.

(2) Money or property held in the council's trust fund must be applied for the purposes, or in accordance with the trusts, relating to it.

Division 2 Accounting records, financial reports and auditing

412 Accounting records

(1) A council must keep such accounting records as are necessary to correctly record and explain its financial transactions and its financial position.

(2) In particular, a council must keep its accounting records in a manner and form that facilitate:

(a) the preparation of financial reports that present fairly its financial position and the results of its operations, and

(b) the convenient and proper auditing of those reports.

413 Preparation of financial reports

(1) A council must prepare financial reports for each year, and must refer them for audit as soon as practicable (having regard to the requirements of section 416 (1)) after the end of that year.

Note. Under section 416 (1), a council's financial reports for a year must be prepared and audited within 4 months after the end of the year concerned, and under section 428 (4) (a) the audited financial reports must be included in the council's annual report.

(2) A council's financial reports must include:

(a) a general purpose financial report, and

(b) any other matter prescribed by the regulations, and

(c) a statement in the approved form by the council as to its opinion on the general purpose financial report.

(3) The general purpose financial report must be prepared in accordance with this Act and the regulations and the requirements of:

(a) the publications issued by the Australian Accounting Standards Board, as in force for the time being, subject to the regulations, and

(b) such other standards as may be prescribed by the regulations.

(4) (Repealed)

414 (Repealed)

415 Auditing of financial reports

(1) A council's auditor must audit the council's financial reports as soon as practicable (having regard to the requirements of section 416 (1)) after they are referred for audit.

(2) A council's financial reports must be audited in accordance with the requirements of:

(a) the publications issued by the Australian Accounting Research Foundation, on behalf of the Australian Society of Certified Practising Accountants and the Institute of Chartered Accountants in Australia, under the titles *Statements of Auditing Standards* and *Statements of Auditing Practice*, as in force for the time being, subject to the regulations, and

(b) such other standards as may be prescribed by the regulations.

(3) The regulations may prescribe matters that an auditor must consider and provide comment on in auditing a council's financial reports.

(4) In auditing the financial reports of the council, a council's auditor must also audit the financial reports of any council entity and report on that audit as part of the report on the council by the auditor.

(5) In this Part:

council entity means:

(a) a partnership, trust, corporation, joint venture, syndicate or other body (whether or not incorporated) that a council has formed or participated in forming or has acquired a controlling interest in, other than an entity of a class prescribed by the regulations, or

(b) any other entity of a class prescribed by the regulations.

416 Time for preparation and auditing of financial reports

(1) A council's financial reports for a year must be prepared and audited within the period of 4 months after the end of that year.

(2) A council may from time to time apply to the Departmental Chief Executive for an extension of that period.

(3) A council must make such an application if requested to do so by its auditor.

(4) Before deciding whether or not to grant an extension, the Departmental Chief Executive may require the council to give reasons, additional to those set out in the application, as to why the extension should be granted.

(5) The Departmental Chief Executive may grant an extension of such period as, in the opinion of the Departmental Chief Executive, is necessary in the particular circumstances of the case.

(6) A council must notify its auditor of any application for an extension made under this section and of the outcome of the application.

417 Auditor's reports

(1) A council's auditor must prepare 2 reports:

- a report on the general purpose financial report
- a report on the conduct of the audit.

(2) The report on the council's financial reports must include the following:

(a) a statement as to whether, in the opinion of the auditor, the council's accounting records have been kept in accordance with the requirements of this Division,

(b) a statement as to whether, in the opinion of the auditor, the council's financial reports:

(i) have been prepared in accordance with the requirements of this Division, and

(ii) are consistent with the council's accounting records, and

(iii) present fairly the council's financial position and the results of its operations,

(c) a statement as to whether, in the opinion of the auditor, any information relevant to the conduct of the audit has been unobtainable by the auditor,

(d) a statement setting out particulars of any material deficiency in the accounting records or financial reports that has come to light in the course of the audit.

(3) The report on the conduct of the audit may contain such statements, comments and recommendations as to the conduct of the audit of the council's financial reports as the auditor considers appropriate to include in the report.

(4) As soon as practicable after completing the audit, the auditor must send a copy of the auditor's reports to the Departmental Chief Executive and to the council.

(5) As soon as practicable after receiving the auditor's reports, the council must send a copy of the auditor's report on the council's financial reports, together with a copy of the council's audited financial reports, to the Departmental Chief Executive and to the Australian Bureau of Statistics.

418 Public notice to be given of presentation of financial reports

(1) As soon as practicable after a council receives a copy of the auditor's reports:

(a) it must fix a date for the meeting at which it proposes to present its audited financial reports, together with the auditor's reports, to the public, and

(b) it must give public notice of the date so fixed.

(2) The date fixed for the meeting must be at least 7 days after the date on which the notice is given, but not more than 5 weeks after the auditor's reports are given to the council.

Note. Unless an extension is granted under section 416, the meeting must be held on or before 5 December after the end of the year to which the reports relate.

(3) The public notice must include:

(a) a statement that the business of the meeting will include the presentation of the audited financial reports and the auditor's reports, and

(b) a summary, in the approved form, of the financial reports, and

(c) a statement to the effect that any person may, in accordance with section 420, make submissions (within the time provided by that section and specified in the statement) to the council with respect to the council's audited financial reports or with respect to the auditor's reports.

(4) Copies of the council's audited financial reports, together with the auditor's reports, must be kept available at the office of the council for inspection by members of the public on and from the date on which public notice of the holding of the meeting is given and until the day after the meeting (or any postponement of the meeting).

419 Presentation of council's financial reports

(1) A council must present its audited financial reports, together with the auditor's reports, at a meeting of the council held on the date fixed for the meeting.

(2) The council's auditor may attend the meeting at which the financial reports are presented.

(3) A council's auditor who carries out the functions of the auditor under an appointment by the Auditor-General must attend the meeting at which the financial reports are presented if the council gives not less than 7 days notice in writing that it requires the auditor to do so.

420 Submissions on financial reports and auditor's reports

(1) Any person may make submissions to the council with respect to the council's audited financial reports or with respect to the auditor's reports.

(2) A submission must be in writing and must be lodged with the council within 7 days after the date on which those reports are presented to the public.

(3) The council must ensure that copies of all submissions received by it are referred to the auditor.

(4) The council may take such action as it considers appropriate with respect to any such submission, including the giving of notice to the Departmental Chief Executive of any matter that appears to require amendment of the council's financial reports.

421 Interim reports

(1) A council's auditor may, at any time during the audit of a council's financial reports, report to the Minister on any matter relating to those reports or to the conduct of the audit.

(2) The auditor must give the council a copy of any report made to the Minister under this section.

Division 2A Other audit functions

421A Definitions

In this Division:

audit includes examination and inspection.

performance audit means an audit under section 421B.

421B Performance audits

(1) The Auditor-General may, when the Auditor-General considers it appropriate to do so, conduct an audit of all or any particular activities of 1 or more councils to determine whether the councils are carrying out those activities effectively and doing so economically and efficiently and in compliance with all relevant laws.

(2) A performance audit is separate from, and does not affect, any other audit required by or under this or any other Act.

(3) The Auditor-General is to report to the Departmental Chief Executive, the councils concerned and the Minister as to the following:

(a) the result of a performance audit,

(b) any other matters that the Auditor-General considers call for special notice.

(4) At least 28 days before reporting on a performance audit, the Auditor-General must give to the Departmental Chief Executive, the councils concerned and the Minister a written summary of the Auditor-General's findings and recommendations in relation to the audit.

(5) A report on a performance audit may be given before the expiration of 28 days if the Auditor-General has received any submissions and comments of, or notice that no submission or comment is to be made by, the Departmental Chief Executive and each council concerned.

(6) A report on a performance audit:

(a) is to include any submissions or comments made by the Departmental Chief Executive or by a council in response to the findings of the audit, and

(b) may include any information that the Auditor-General thinks desirable in relation to the activities the subject of the audit, and

(c) may include any recommendations arising out of the audit that the Auditor-General thinks fit to make, and

(d) may be included in any other report of the Auditor-General.

421C Auditor-General may report on local government on sector-wide basis

(1) The Auditor-General is to report annually on any local government sector-wide matters arising from the examination of financial statements of councils and the exercise by the Auditor-General of audit or other functions under this Act.

(2) The Auditor-General is to give a copy of the proposed report to the Departmental Chief Executive and the Minister at least 28 days before the report is made.

(3) The Auditor-General may include in the report any submissions or comments made by the Departmental Chief Executive or a summary, in an agreed form, of any such submissions or comments.

421D Tabling of reports

(1) The Auditor-General is to lay (or cause to be laid) a report under this Division before both Houses of Parliament as soon as practicable after making the report.

(2) If a House of Parliament is not sitting when the Auditor-General seeks to lay a report before it, the Auditor-General may present copies of the report to the Clerk of the House concerned.

(3) The report:

(a) is, on presentation and for all purposes, taken to have been laid before the House, and

(b) may be printed by authority of the Clerk of the House, and

(c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and

(d) is to be recorded:

(i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and

(ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,

on the first sitting day of the House after receipt of the report by the Clerk.

421E Other audit functions

(1) The Auditor-General may provide any audit-related service to a council at the request of the council or at the request of the Minister or the Departmental Chief Executive.

(2) The costs confirmed in writing by the Auditor-General as having been incurred by the Auditor-General in providing an audit-related service to a council at the request of the council must be paid by the council.

Division 3 Auditors

422 Auditor-General to be council auditor

(1) The Auditor-General is to be the auditor for a council.

(2) The Auditor-General may appoint, in writing, a person (whether or not that person is employed in the Public Service) or a firm to be an auditor for the purposes of this Act.

(3) The costs confirmed in writing by the Auditor-General as having been incurred by the Auditor-General in auditing a council's financial reports (including any audit of a council entity) or in any other inspection or audit carried out by the Auditor-General under this Division (or at a council's request) must be paid by the council.

Note. An example of confirmation is an invoice.

(4) Nothing in this Act entitles the Auditor-General to question the merits of policy objectives of a council or the Government, including:

(a) the strategic objectives and policy objectives contained in a plan, strategy, policy or program of the council, and

(b) any policy objective of the Government contained in a record of a policy decision of Cabinet, and

(c) a policy direction of a Minister, and

(d) a policy statement in any Budget Paper or other document evidencing a policy direction of the Cabinet or a Minister.

423 Access to and production of documents

(1) The Auditor-General or a person authorised by the Auditor-General is entitled at all reasonable times to full and free access to the council's accounting records and other records necessary in order to carry out the Auditor-General's functions under this or any other Act.

(2) The Auditor-General or a person authorised by the Auditor-General may exercise the following functions for the purposes of any audit or inspection carried out by the Auditor-General under this Act:

(a) direct a councillor, the general manager or any other member of staff of the council to produce books, records or other documents in the person's custody or under the person's control to the Auditor-General or person within a specified period,

(b) direct a councillor, the general manager or any other member of staff of the council to appear personally before the Auditor-General or person at a specified time and place to produce books, records or other documents in the person's custody or under the person's control,

(c) direct a councillor, the general manager or any other member of staff of the council to answer any question that is relevant to that purpose,

(d) direct a councillor, the general manager or any other member of staff of the council to provide any necessary authorities to gain access to books, records or other documents under the person's control,

(e) make copies of or take extracts from any document to which the Auditor-General or person gains access under this section.

(3) If any document required by a direction to be produced is in electronic form or a form other than writing, the document is required to be produced in writing, unless the direction otherwise provides.

(4) The Auditor-General or a person authorised by the Auditor-General is entitled to exercise functions under this section despite:

(a) any rule of law which, in proceedings in a court of law, might justify an objection to access to books, records, other documents or information on grounds of public interest, or

(b) any privilege of a council that the council might claim in a court of law, other than a claim based on legal professional privilege, or

(c) any duty of secrecy or other restriction on disclosure applying to a council or a member of staff of a council.

(5) Nothing in this section entitles the Auditor-General or any other person to have access to information that is Cabinet information under the *Government Information (Public Access) Act 2009*.

(6) In this section, a reference to a council includes a reference to a council entity.

424 Access to records of authorised deposit-taking institution

(1) If an account for the banking of money of a council is kept with an authorised deposit-taking institution, the institution or the person in charge of the account must, if directed to do so by the Auditor-General or a person authorised by the Auditor-General:

(a) give to the Auditor-General or person, in accordance with the direction, a statement of the account or a certificate as to the balance of the account, and

(b) produce to the Auditor-General or person any book, record or other document relating to the council and under the custody or control of the institution or the person in charge.

(2) If any document required by a direction to be produced is in electronic form or a form other than writing, the document is required to be produced in writing, unless the direction otherwise provides.

(3) In this section, a reference to a council includes a reference to a council entity.

425 Secrecy

(1) The Auditor-General or any person exercising the functions of the Auditor-General is to preserve and aid in preserving secrecy with respect to all matters and things that come to the knowledge of the Auditor-General or person in the exercise of the functions of the Auditor-General under this Act and is not to communicate to any person any such matter or thing.

(2) Nothing in subsection (1) applies to or in respect of:

(a) the conduct of any matter necessary for the proper administration of this Act, or

(b) proceedings for an offence relating to public money, other money, public property or other property or for the recovery of public money, other money, public property or other property, or

(c) disciplinary proceedings brought against a councillor or a member of staff of a council, or

(d) a report or communication authorised or required to be made by or under this Act, or

(e) a report or communication that the Minister authorises the Auditor-General to make to a person for the purposes of a due diligence or similar process relating to the sale of any council undertaking.

426 Auditor-General is to communicate with Minister

(1) The Auditor-General is to communicate with the Minister on all matters arising under this Act or the regulations and which, in the opinion of the Auditor-General, are sufficiently significant to be brought to the Minister's attention.

(2) The Auditor-General is to provide to the Minister the name of any person failing to comply with any of the provisions of this Act or the regulations.

427 (Repealed)

Part 4 Annual reports

428 Annual reports

(1) Within 5 months after the end of each year, a council must prepare a report (its ***annual report***) for that year reporting as to its achievements in implementing its delivery program and the effectiveness of the principal activities undertaken in achieving the objectives at which those principal activities are directed.

(2) The annual report in the year in which an ordinary election of councillors is to be held must also report as to the council's achievements in implementing the community strategic plan over the previous 4 years.

(3) An annual report must be prepared in accordance with the guidelines under section 406.

(4) An annual report must contain the following:

(a) a copy of the council's audited financial reports prepared in accordance with the *Local Government Code of Accounting Practice and Financial Reporting* published by the Department, as in force from time to time,

(b) such other information or material as the regulations or the guidelines under section 406 may require.

(5) A copy of the council's annual report must be posted on the council's website and provided to the Minister and such other persons and bodies as the regulations may require. A copy of a council's annual report may be provided to the Minister by notifying the Minister of the appropriate URL link to access the report on the council's website.

428A State of the environment reports

(1) The annual report of a council in the year in which an ordinary election of councillors is to be held must include a report (a ***state of the environment report***) as to the state of the environment in the local government area in relation to such environmental issues as may be relevant to the objectives for the environment established by the community strategic plan (the ***environmental objectives***).

(2) A state of the environment report must be prepared in accordance with the guidelines under section 406.

(3) The state of the environment report is to:

(a) establish relevant environmental indicators for each environmental objective, and

(b) report on, and update trends in, each such environmental indicator, and

(c) identify all major environmental impacts (being events and activities that have a major impact on environmental objectives).

(4) A state of the environment report for a council's area may be prepared as part of and for the purposes of a state of the environment report for a larger area (such as a region or a catchment management area) and a report for the larger area that includes the required information in respect of the council's area may be included in the council's annual report as the council's state of the environment report.

Part 5 Inquiries, reviews and surcharging

Division 1 Inquiries and reviews

429 Provision of documents or information about council

(1) The Minister or Departmental Chief Executive may at any time, by order, direct a council, a councillor or the general manager of a council to provide such documents or information concerning the council, its operations or its activities as the Minister or Departmental Chief Executive specifies in the order.

(2) A copy of the order must be served on the council or person required to provide the documents or information.

Note. Failure to comply with a direction is an offence under section 661.

429A Complaints about councils, councillors, delegates and staff

(1) A public official within the meaning of the *Public Interest Disclosures Act 1994* may complain to the Departmental Chief Executive about the conduct of any one or more of the following:

(a) a council,

(b) a delegate of a council,

(c) a councillor,

(d) a member of staff of a council.

(2) A complaint may be made orally or in writing.

(3) The Departmental Chief Executive may deal with a complaint made under this section:

(a) by means of an investigation under this Division, or

(b) in such other manner as the Departmental Chief Executive considers appropriate.

430 Departmental Chief Executive may investigate councils

The Departmental Chief Executive may, at the request of the Minister or on the Departmental Chief Executive's own initiative, conduct an investigation into any aspect of a council or of its work and activities.

431 Powers in connection with investigation

(1) For the purpose of conducting an investigation under this Division, the Departmental Chief Executive may direct a person to do any one or more of the following:

(a) to appear personally before the Departmental Chief Executive at a time and place specified in the direction,

(b) to give evidence (including evidence on oath),

(c) to produce to the Departmental Chief Executive any document that is in that person's custody or under that person's control,

(d) to grant to the Departmental Chief Executive such authorities as may be necessary to enable the Departmental Chief Executive to gain access to any document that is in the custody or under the control of any bank, building society, credit union or other person.

Note. Failure to comply with a direction is an offence under section 661.

(2) For the purposes of this section, the Departmental Chief Executive may administer an oath.

(3) The Departmental Chief Executive may take copies of or extracts from any document to which the Departmental Chief Executive gains access under this section.

432 Entry on to premises

Part 2 of Chapter 8 applies to the Departmental Chief Executive when exercising functions in respect of an investigation under this Division in the same way as it applies to a council and a council employee (or other person) authorised by the council.

433 Report of investigation

(1) The Departmental Chief Executive must report to the Minister on the results of an investigation under this Division and must send a copy of the report to the council concerned.

(2) The report may comment on any matter that, in the Departmental Chief Executive's opinion, warrants special mention and may contain such recommendations as the Departmental Chief Executive considers appropriate.

(3) A report furnished to the council under this section must be presented at the next meeting of the council after the report is received.

(4) Section 14B of the *Royal Commissions Act 1923* applies in relation to any report that the Minister wishes to lay before both Houses of Parliament in the same way as it applies to a report made by a commission under that Act.

434 Council's response to report

(1) A council must, within 28 days after presentation to it of a report made by the Departmental Chief Executive following an investigation under this Division, give written notice to the Minister of the things done or proposed to be done to give effect to any recommendations contained in the report.

(2) The Minister may:

(a) after receiving the council's notice, or

(b) after the 28-day period,

whichever is the earlier, order the council to do such things or to refrain from doing such things arising from the recommendations contained in the report as are specified in the order.

(3) A council must comply with the Minister's order.

(4) An order under this section may state that a failure to comply with the order may lead to legal proceedings being taken to enforce compliance.

434A Council's response to Ombudsman's report

(1) The Minister may order a council to present a copy of a report made by the Ombudsman under section 26 of the *Ombudsman Act 1974* concerning the conduct of the council (together with a copy of the Minister's order) at the next meeting of the council occurring after the order is made.

(2) The council must, within 40 days after the presentation of the Ombudsman's report and the Minister's order, give written notice to the Minister of the things done or proposed to be done to give effect to any recommendations contained in the report.

(3) At any time after receiving the council's notice or the expiration of the 40-day period (whichever is the earlier) the Minister may order the council to do such things or to refrain from doing such things arising from the recommendations contained in the Ombudsman's report as are specified in the order.

(4) The council must comply with any order made by the Minister under this section.

(5) An order under this section may state that a failure to comply with the order may lead to legal proceedings being taken to enforce compliance.

(6) Nothing in this section affects any other obligation of the council in respect of the Ombudsman's report under the *Ombudsman Act 1974*.

434B Expenses of investigation to be borne by council

(1) The Departmental Chief Executive may recover the reasonable expenses incurred by the Departmental Chief Executive in respect of an investigation under this Division if the investigation relates to:

(a) the administration of an election by a general manager, or

(b) a recurring problem with the administration of a council.

(1A) A recurring problem with the administration of a council means any facts or circumstances with respect to the council, its work or its activities that have been the subject of previous Ministerial intervention, and that have continued to exist or have recurred, despite that Ministerial intervention.

(1B) In this section, ***Ministerial intervention*** means:

(a) the issue of a performance improvement order, or

(b) the temporary suspension of a council under Part 7.

(2) The Departmental Chief Executive may make a determination of the amount of the expenses referred to in subsection (1) and serve a notice on the council requiring the amount so determined be paid in recovery of the expenses.

(3) An amount equal to the expenses as so determined is payable to the Departmental Chief Executive as a debt by the council concerned, except as determined by the Departmental Chief Executive.

(4) The council may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of whether any part of the expenses so determined are not reasonable expenses.

(5) The Departmental Chief Executive must give effect to any decision of the Tribunal on an administrative review of the determination of the amount of the expenses.

(6) In this section, expenses incurred in respect of an investigation under this Division include:

(a) investigation expenses of the Departmental Chief Executive or departmental staff, and

(b) remuneration paid to departmental staff assisting with the investigation, and

(c) expenses associated with the preparation of a report in respect of the investigation.

(7) The Departmental Chief Executive may certify that an investigation under this Division relates to a recurring problem with the administration of a council and that certificate is sufficient evidence, unless the contrary is proved, that the investigation relates to a recurring problem with the administration of the council.

434C Self-incrimination

(1) A person is not excused from a requirement under this Division to provide records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.

(2) However, any information provided or answer given by a natural person in compliance or in purported compliance with a requirement under this Division is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence of failing to comply with the requirement or of providing information that is false or misleading) if the person objected at the time to doing so on the ground that it might incriminate the person.

(3) Despite any such objection, any answer or information may be used in connection with a public inquiry or an investigation under this Division, or an investigation or the taking of disciplinary action against the person under Division 3 of Part 1 of Chapter 14, and is admissible in proceedings under this Act relating to misconduct.

(4) Any record provided by a person in compliance with a requirement under this Division is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.

Division 2 Surcharging

435 Surcharging by Departmental Chief Executive

(1) If satisfied that any expenditure or transfer, or any entry in a council's accounts, has been incurred or made in contravention of this or any other Act or of any regulation in force under this or any other Act, the Departmental Chief Executive may:

(a) disallow the expenditure, transfer or entry, and

(b) surcharge the amount of the disallowance on the councillor, the general manager or any other member of staff of the council by whom the expenditure, transfer or entry was incurred or made or ordered to be incurred or made.

(2) The Departmental Chief Executive may also surcharge on a councillor, the general manager or any other member of staff of the council the amount of:

(a) any deficiency or loss incurred by the council as a consequence of the negligence or misconduct of the councillor, general manager or member of staff, or

(b) any money which ought to have been, but has not been, brought into account by the councillor, general manager or member of staff.

(3) (Repealed)

436 Procedure for surcharging

(1) Before surcharging a person, the Departmental Chief Executive:

(a) must cause notice of the proposed surcharge, and of the reasons for the proposed surcharge, to be given to the person, and

(b) must allow the person a reasonable opportunity to make submissions to the Departmental Chief Executive with respect to the proposed surcharge, and

(c) must take into consideration any submissions duly made by the person with respect to the proposed surcharge.

(2) The Departmental Chief Executive must certify in the council's accounts the amount by which the Departmental Chief Executive has surcharged any person.

(3) Immediately on surcharging an amount on any person, the Departmental Chief Executive must give notice of that fact to the person.

437 Applications for administrative review by NCAT

(1) A person who is surcharged under this Division may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision to surcharge.

(2) The council must give effect to any decision of the Tribunal on an administrative review of the decision to surcharge.

438 Recovery of amount surcharged

(1) The amount of a surcharge becomes payable to the council as a debt when the time within which an appeal may be made against the surcharge expires or, if such an appeal is made and the surcharge is not annulled, when that appeal is finally determined.

(2) Any money recovered in connection with a surcharge relating to a particular account is to be paid into the fund in which money in that account is held.

Part 6 Performance management

438A Performance improvement order

(1) The Minister may issue an order in respect of a council if the Minister reasonably considers that action must be taken to improve the performance of the council.

(2) An order issued under this section is a ***performance improvement order***.

(3) A performance improvement order is to specify:

(a) the reasons why the Minister has decided to issue the order, and

(b) the actions that the Minister requires to be taken to improve the performance of the council.

(4) Actions to improve the performance of a council include any actions the Minister considers necessary to improve or restore the proper or effective functioning of the council.

(5) The order may require action to be taken by the council, by individual councillors, or both.

(6) A performance improvement order may require the quorum for a meeting of the council to be determined as specified by the Minister in the performance improvement order.

(6A) The Minister may vary a performance improvement order (and, if an order is varied, a reference in this Act to the order is a reference to the order as varied).

(7) A copy of the performance improvement order, or the variation of a performance improvement order, is to be served on the council.

(7A) The making of a performance improvement order, or the fact that such an order is in force, does not derogate from a power of the Minister or any other person to make any other order or take any other action under this Act.

(8) In relation to a performance improvement order, a reference to an action, or the taking of any action, includes a reference to doing any thing or refraining from doing any thing.

438B Criteria to be considered by Minister

(1) The regulations may make provision for or with respect to the criteria to be considered by the Minister in issuing performance improvement orders (***performance improvement criteria***).

(2) A performance improvement order may be issued only after consideration of the performance improvement criteria.

438C Minister to give notice of intention to issue or vary performance improvement order

(1) The Minister is to give a council notice in writing of his or her intention to issue or vary a performance improvement order in respect of the council.

(2) If it is proposed to issue a performance improvement order, the notice is to specify the following:

(a) the terms of the proposed performance improvement order, including the period for compliance with the order and any proposed appointment of a financial controller,

(b) the reasons why it is proposed to issue the performance improvement order (including any evidence supporting the Minister's opinion that improvement is required),

(c) the actions that may be taken by the Minister if the performance improvement order is not complied with.

(2A) If it is proposed to vary a performance improvement order, the notice is to specify the following:

(a) the terms of the proposed variation,

(b) the reasons why it is proposed to vary the order.

(3) The notice must invite the council to make submissions in respect of the proposed performance improvement order or variation within a consultation period specified in the notice.

(4) The notice is to specify a consultation period of not less than 7 days from the date the notice is served on the council.

(5) The Minister is to have regard to any submissions made by the council during the consultation period in deciding:

(a) whether to issue the proposed performance improvement order or proposed variation, and

(b) whether any changes should be made to the terms of the proposed performance improvement order or proposed variation.

(6) The Minister is not required to give notice to a council of his or her intention to issue or vary a performance improvement order in respect of the council if:

(a) the council is suspended under Part 7, or

(b) the order is issued or varied in response to the results of a public inquiry in relation to a council.

438D Performance improvement order to be made public

(1) The Departmental Chief Executive is to cause any performance improvement order issued by the Minister to be published on the Department's website.

(2) A council is to cause any performance improvement order issued in respect of the council to be published on the council's website.

438E Compliance with performance improvement order

(1) The governing body of a council is responsible for ensuring the council's compliance with a performance improvement order.

(2) A council complies with a performance improvement order only if the actions required by the performance improvement order (including any actions required to be taken by individual councillors) are taken to the satisfaction of the Minister.

438F Compliance report

(1) A council must provide the Minister with written reports on its compliance with a performance improvement order as required by the order.

(2) Such a report is referred to in this Part as a ***compliance report***.

(3) A compliance report must specify any actions taken that demonstrate compliance with the performance improvement order.

(4) A compliance report must comply with any requirements specified in the performance improvement order.

438G Appointment of temporary adviser

(1) If the Minister issues a performance improvement order in respect of a council, the Minister may appoint one or more persons as a temporary adviser to the council.

(2) A temporary adviser may be appointed in the performance improvement order or by subsequent order of the Minister served on the council.

(2A) The regulations may make provision for or with respect to the criteria to be considered by the Minister in deciding whether to appoint a temporary adviser.

(3) A temporary adviser may be appointed on the recommendation of the council or on the Minister's own initiative, but only after the Minister has considered any criteria prescribed by the regulations.

(4) The principal functions of a temporary adviser are:

(a) to provide advice and assistance to the council for the purpose of ensuring that it complies with the performance improvement order, and

(b) to monitor the council's compliance with the performance improvement order.

(4A) If a council fails to give a temporary adviser an opportunity to comment on a compliance report as required by section 438H, the temporary adviser is to inform the Minister of that fact and give the Minister a report on the council's compliance with the performance improvement order.

(4B) If a council fails to give the Minister a compliance report as required by section 438F, the temporary adviser is to give the Minister a report on the council's compliance with the performance improvement order.

(5) A temporary adviser has such other functions as are specified in the instrument by which he or she is appointed.

(6) A temporary adviser is appointed for the term specified in the instrument by which he or she is appointed. The term must not exceed the period for compliance with the performance improvement order.

(7) A temporary adviser must be paid a salary from the council's funds determined by the council (in the case of an adviser appointed on the recommendation of the council) or by the Minister (in any other case).

(8) The Minister may terminate a temporary adviser's appointment at any time.

438H Co-operation with temporary adviser

(1) If a temporary adviser is appointed to a council, the council, councillors and members of the staff of the council are required to co-operate with the temporary adviser and to provide any information or assistance the temporary adviser reasonably requires to exercise his or her functions.

(2) In particular, the council is to give the temporary adviser an opportunity to review any proposed compliance report at least 14 days before it is given to the Minister and is to give the Minister a copy of the temporary adviser's comments (if any) on the compliance report.

(3) A contravention of this section is a failure to comply with a performance improvement order.

438HA Enforcement of performance improvement order against councillor

(1) The Departmental Chief Executive may (and must at the request of the Minister) arrange for a departmental report to be prepared as to whether a councillor has failed to take action as required by a performance improvement order.

(2) The Minister may, on receipt of a departmental report finding that a councillor has failed to take action as required by a performance improvement order, issue a compliance order to the councillor.

(3) A compliance order:

(a) must identify the action that the councillor is required to take by a performance improvement order but has failed to take, and

(b) must, if the councillor is to be allowed to use council facilities, or be paid any amount, for the purposes of the councillor taking that action, specify the extent to which the councillor may use council facilities or the amount that may be paid (as the case requires), and

(c) must specify the period (not exceeding 3 months) for which it is to remain in force.

(4) The Minister may, by written notice to the councillor, extend the period for which a compliance order remains in force, but not so that the order remains in force for a total period of more than 6 months.

(5) Before issuing a compliance order to a councillor, the Minister is to:

(a) give the councillor written notice:

(i) specifying the action that the councillor has failed to take as required by a performance improvement order, and

(ii) specifying that the Minister proposes to issue a compliance order to the councillor, and

(iii) inviting the councillor to make submissions within a specified period (of not less than 7 days) about why the order should not be made, and

(b) consider any submissions made by the councillor in accordance with the notice.

(6) The Minister is to withdraw a compliance order if satisfied that the councillor has taken the action specified in the compliance order.

(7) While a compliance order is in force against a councillor, the councillor:

(a) is not entitled to exercise any of the functions of the councillor other than as necessary to take the action specified in the compliance order, and

(b) is not entitled to any fee or other remuneration, or to the payment of expenses or to the use of council facilities, to which he or she would otherwise be entitled as a councillor, except as specified in the compliance order.

(8) The Minister may:

(a) instead of taking action under this section against a councillor, or

(b) after taking action under this section against a councillor, or

(c) while a compliance order is in force against a councillor,

request the Departmental Chief Executive to refer the matter to the Civil and Administrative Tribunal for consideration.

(9) A matter is referred to the Tribunal under this section by means of a report presented to the Tribunal by the Departmental Chief Executive and containing or accompanied by such material and observations as the Departmental Chief Executive thinks fit.

(10) The Departmental Chief Executive is to notify the councillor concerned of any request to refer the matter to the Tribunal.

(11) For the purposes of this section and Part 3 of Chapter 14, failure by a councillor to take action as required by a performance improvement order is to be taken to be misconduct.

(12) The regulations may make provision for or with respect to the reference of matters to the Tribunal under this section.

438HB Appointment of financial controller

(1) If the Minister issues a performance improvement order in respect of a council, the Minister may appoint a person as a financial controller to the council.

(2) A financial controller may be appointed in the performance improvement order or by subsequent order of the Minister served on the council.

(3) The regulations may make provision for or with respect to the criteria to be considered by the Minister in deciding whether to appoint a financial controller.

(4) If a financial controller is proposed to be appointed in a subsequent order and notice of the appointment was not given when notice of the performance improvement order was given, section 438C (other than section 438C (2)) applies to the proposed appointment as if it were a proposed performance improvement order.

(5) A financial controller may be appointed on the recommendation of the council or on the Minister's own initiative, but only after the Minister has considered any criteria prescribed by the regulations.

(6) The principal functions of a financial controller are as follows:

(a) to implement financial controls, and other functions relating to council finances, as specified by a performance improvement order or a subsequent order appointing the financial controller,

(b) any other related or ancillary functions specified in the order appointing the financial controller.

(7) A financial controller is appointed for the term specified in the instrument by which he or she is appointed. The term must not exceed the period for compliance with the performance improvement order.

(8) A financial controller must be paid a salary determined by the Minister from the council's funds.

(9) The Minister may terminate a financial controller's appointment at any time.

(10) A person may be appointed as both a financial controller and a temporary adviser.

438HC Operations of financial controller

(1) If a financial controller is appointed to a council, a payment may not be made from any funds of the council unless payment is authorised by the financial controller.

(2) A financial controller may refuse to authorise a payment from the funds of the council if the financial controller reasonably believes that the payment:

(a) may cause the council to become insolvent, or

(b) is unlawful, or

(c) is related to activities not identified in the council's integrated planning and reporting framework, or

(d) is from grant moneys and is not for a purpose for which the grant was given.

(3) If a financial controller is appointed to a council, the council, councillors and members of the staff of the council are required to co-operate with the financial controller and to provide any information or assistance the financial controller reasonably requires to exercise his or her functions.

(4) In particular, the council is to give the financial controller an opportunity to review any proposed compliance report at least 14 days before it is given to the Minister and is to give the Minister a copy of the financial controller's comments (if any) on the compliance report.

(5) A contravention of this section by a council is a failure to comply with a performance improvement order.

(6) A financial controller is to report to the Minister on a council's compliance with a performance improvement order if the council fails to give the financial controller an opportunity to review a proposed compliance report in accordance with this section.

Part 7 Temporary suspension of council

438I Power of Minister to suspend council

(1) The Minister may, by order published in the Gazette, suspend a council for a period specified in the order if the Minister reasonably believes that the appointment of an interim administrator is necessary to restore the proper or effective functioning of the council.

(2) An order under this section is referred to in this Part as a ***suspension order***.

438J Criteria to be considered by Minister

(1) The regulations may make provision for or with respect to the criteria to be considered by the Minister in suspending councils under this Part (***suspension criteria***).

(2) A council may be suspended under this Part only after consideration of the suspension criteria.

438K Minister to give notice of intention to suspend council

(1) The Minister is to give a council notice in writing of his or her intention to suspend the council.

(2) The notice is to specify:

(a) the reasons why it is proposed to suspend the council, and

(b) the duration of the proposed suspension.

(3) The notice must invite the council to make submissions in respect of the proposed suspension within a consultation period specified in the notice.

(4) The notice is to specify a consultation period of:

(a) not less than 14 days from the date the notice is served on the council, unless paragraph (b) applies, or

(b) not less than 7 days from the date the notice is served on the council, if the Minister considers that the suspension is required as a matter of urgency.

(5) The Minister is to have regard to any submissions made by the council during the consultation period in deciding whether to suspend the council.

438L Effect of suspension on councillors

(1) During the period in which a council is suspended under this Part, any persons holding civic office in relation to the council are taken also to be suspended from office.

(2) A person, while suspended from civic office under this section:

(a) is not entitled to exercise any of the functions of the civic office, and

(b) is not entitled to any fee or other remuneration, or to the payment of expenses or to the use of any council facilities, to which the person would otherwise be entitled as the holder of the civic office.

438M Appointment of interim administrator

(1) The Minister must, in a suspension order or by subsequent order published in the Gazette, appoint an administrator of a council that is suspended.

(2) The order is to specify the period for which the administrator is appointed, not exceeding the period during which the council is suspended.

(3) An administrator appointed under this section is an ***interim administrator***.

(4) More than one interim administrator may be appointed for a council (with the same or different functions).

(5) An interim administrator of a council has, during the period of appointment as administrator, all the functions of the council (including all the functions of a councillor and the mayor), or, if

more than one interim administrator is appointed, the functions of the council specified in the instrument of appointment.

(5A) If more than one interim administrator is appointed, one of the interim administrators is to be specified in the instrument of appointment as the person who is to exercise the functions of the mayor of the council.

(6) If more than one interim administrator is appointed for a council, the Minister may give directions for the purpose of resolving any issues that arise as a result of there being more than one interim administrator.

(7) An interim administrator must be paid a salary from the council's funds determined by the Minister.

(8) The Minister may, by order published in the Gazette, extend the period for which an interim administrator is appointed if the period during which the council is suspended is extended.

(9) The Minister may terminate an interim administrator's appointment at any time.

(10) A reference in this or any other Act, or any statutory instrument, to an administrator of a council includes, unless the context otherwise requires, a reference to an interim administrator.

438N Report by interim administrator

(1) An interim administrator is to give the Minister a written report about his or her administration of the council.

(2) The report is to include any recommendations of the interim administrator in relation to improving or restoring the proper and effective functioning of the council.

(3) The interim administrator is to provide the report to the Minister no less than 14 days before the end of the initial suspension period of the council.

(4) The initial suspension period of the council is the suspension period as initially specified in the suspension order, before any extension of the period by further order.

(5) If the Minister amends a suspension order to extend the suspension period of a council, the interim administrator is to prepare a further report under this section in respect of that extended period and give that report to the Minister no less than 14 days before the end of the extended suspension period.

438O Suspension period

(1) The maximum period for which a council can initially be suspended by a suspension order is 3 months.

(2) However, the Minister may, by order published in the Gazette on or before the end of the period during which the council is suspended, amend the suspension order to extend or further extend the period during which the council is suspended.

(3) A suspension may be extended only if the Minister reasonably believes that an extension is necessary to restore the proper or effective functioning of the council.

(4) The maximum total period for which a council can be suspended by a suspension order, as amended under this section, is 6 months.

(5) The Minister is required to give a council notice in writing of his or her intention to extend the suspension of the council at least 7 days before the order extending the suspension is made.

(6) The notice is to specify:

(a) the reasons why it is proposed to extend the suspension, and

(b) the duration of the proposed extension.

(7) Submissions in respect of the proposed extension are not to be invited.

438P Performance improvement orders during suspension period

(1) A performance improvement order may be issued in respect of a council even if it is suspended under this Part.

(2) An order issued in such a case may require action to be taken by individual councillors, even though they are suspended by the suspension order.

438Q Maximum number of suspensions

(1) The Minister cannot, during the term of a council, make a suspension order in respect of the council more than twice on the basis of the same facts or circumstances.

(2) This section does not limit the power of the Minister under this Part to extend the period during which a council is suspended by a suspension order.

438R Ordinary election during suspension period

If an ordinary election of councillors of a council is held during the period in which the council is suspended under this Part, a suspension under this Part:

(a) is taken to continue after that election, even if it would otherwise have ended, and

(b) is taken to end immediately before the first meeting of the council after the election.

438S Election of mayor during suspension period

(1) An election of the mayor by councillors is not required to be held during a period in which the council is suspended under this Part.

(2) However, any election that would, but for this section, be required to be held during a period in which the council is suspended must instead be held within 14 days after the end of the suspension period.

(3) Subsection (2) does not apply if the council is dismissed, or an ordinary election of councillors is held, before the end of the suspension period.

438T No amalgamations or alterations to area during suspension

(1) A proclamation under section 218A or 218B is not to be made in relation to the area of a council while the council is suspended under this Part.

(2) A proposal that a function be exercised under section 218A or 218B in relation to the area of a council cannot be made by or to the Minister while the council is suspended under this Part.

Part 8 Public inquiries

438U Public inquiries

(1) The Governor or the Minister may appoint a person as commissioner, or two or more persons as commissioners, to hold a public inquiry and to report to the Governor or the Minister with respect to:

(a) any matter relating to the carrying out of the provisions of this Act or any other Act conferring or imposing functions on a council, and

(b) any act or omission of a member of a council, any employee of a council or any person elected or appointed to any office or position under this or any other Act conferring or imposing functions on a council, being an act or omission relating to the carrying out of the provisions of the Act concerned, or to the office or position held by the member, employee or person under the Act concerned, or to the functions of that office or position.

(2) For the purposes of any inquiry under this section, any person appointed to hold the inquiry has the powers, authorities, protections and immunities conferred on a commissioner, as well as the powers, authorities, protections and immunities conferred by Division 1 of Part 2 of the *Royal Commissions Act 1923*:

(a) on a sole commissioner (if the person is the only person appointed to hold the inquiry), or

(b) on a chairperson of a commission (if the person is one of two or more persons appointed to hold the inquiry and has been appointed as chairperson of the inquiry).

(3) The provisions of section 24 of the *Local Court Act 2007* apply to any witness or person summoned by or appearing before the person so appointed in the same way as it applies to witnesses and persons in proceedings under that Act.

(4) The provisions of the *Royal Commissions Act 1923* (section 13 and Division 2 of Part 2 excepted) apply, with any necessary adaptations, to and in respect of any inquiry under this section and to and in respect of any witness or person summoned by or appearing before the person or persons holding the inquiry.

(5) The Minister is to cause the report of the person or persons who have held an inquiry under this section to be laid before both Houses of Parliament. If neither House of Parliament is sitting, section 14B of the *Royal Commissions Act 1923* applies.

438V Expenses of public inquiry to be borne by council in certain circumstances

(1) The Departmental Chief Executive, on behalf of the State, may recover the reasonable expenses incurred by the State in holding a public inquiry if the inquiry relates to a recurring problem with the administration of a council.

(2) A recurring problem with the administration of a council means any facts or circumstances with respect to the council, its work or its activities that have been the subject of previous Ministerial intervention, and that have continued to exist or have recurred, despite that Ministerial intervention.

(3) In this section, ***Ministerial intervention*** means:

(a) the issue of a performance improvement order, or

(b) the temporary suspension of a council under Part 7.

(4) The Departmental Chief Executive may make a determination of the amount of the expenses referred to in subsection (1) and serve a notice on the council requiring the amount so determined be paid in recovery of the expenses.

(5) An amount equal to the expenses as so determined, unless the Departmental Chief Executive otherwise decides, is payable to the Departmental Chief Executive as a debt by the council concerned.

(6) The council may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of whether any part of the expenses so determined are not reasonable expenses.

(7) The Departmental Chief Executive must give effect to any decision of the Tribunal on an administrative review of the determination of the amount of the expenses.

(8) In this section, expenses incurred in holding a public inquiry include:

(a) remuneration paid to the commissioner or commissioners who hold the public inquiry, and

(b) remuneration paid to staff assisting with the inquiry, and

(c) expenses associated with the attendance of witnesses or other persons at the inquiry.

(9) The Departmental Chief Executive may certify that a public inquiry relates to a recurring problem with the administration of a council and that certificate is sufficient evidence, unless the contrary is proved, that the public inquiry relates to a recurring problem with the administration of the council.

438W Suspension of council during public inquiry

(1) The Minister may, by order published in the Gazette, suspend a council if a public inquiry relating to the council is held or to be held and the Minister considers it in the public interest to suspend the council.

(2) The suspension:

(a) starts on the date appointed by the Minister in the order as the start date for the suspension (being a date no earlier than the date the appointment of one or more commissioners to hold the inquiry takes effect), and

(b) ends when the suspension is terminated or if the council is dismissed.

438X Effect of suspension

(1) During the period in which a council is suspended under this Part, any persons holding civic office in relation to the council are taken also to be suspended from office.

(2) A person, while suspended from civic office under this section:

(a) is not entitled to exercise any of the functions of the civic office, and

(b) is not entitled to any fee or other remuneration, or to the payment of expenses or to the use of any council facilities, to which the person would otherwise be entitled as the holder of the civic office.

438Y Appointment of interim administrator

(1) The Minister must, in an order suspending a council under this Part or by subsequent order published in the Gazette, appoint an administrator of a council that is suspended.

(2) The order is to specify the period for which the administrator is appointed, not exceeding the period during which the council is suspended.

(3) An administrator appointed under this section is an ***interim administrator***.

(4) More than one interim administrator may be appointed under this section (with the same or different functions).

(5) An interim administrator of a council has, during the period of appointment as administrator, all the functions of the council (including all the functions of a councillor and the mayor), or, if more than one interim administrator is appointed, the functions of the council specified in the instrument of appointment.

(5A) If more than one interim administrator is appointed, one of the interim administrators is to be specified in the instrument of appointment as the person who is to exercise the functions of the mayor of the council.

(6) If more than one interim administrator is appointed for a council, the Minister may give directions for the purpose of resolving any issues that arise as a result of there being more than one interim administrator.

(7) An interim administrator must be paid a salary from the council's funds determined by the Minister.

(8) The Minister may terminate an interim administrator's appointment at any time.

(9) A reference in this or any other Act, or any statutory instrument, to an administrator of a council includes, unless the context otherwise requires, a reference to an interim administrator.

438Z Termination of suspension

(1) The Minister may, by order published in the Gazette, terminate the suspension of a council under this Part.

(2) The Minister is to terminate the suspension of a council under this Part no later than 30 days after the inquiry report date, unless the council is dismissed on or before that date.

(3) However, a failure to terminate the suspension within that 30-day period does not affect the validity of an order terminating the suspension that is made after that 30-day period.

(4) For the purposes of this section, the ***inquiry report date*** is the date the report of the person or persons who held the public inquiry is provided to the Governor or the Minister, as the case requires.

438ZA Ordinary election during suspension period

If an ordinary election of councillors of a council is held during the period in which the council is suspended under this Part, a suspension under this Part:

(a) is taken to continue after that election, even if it would otherwise have ended, and

(b) is taken to end immediately before the first meeting of the council after the election.

438ZB Election of mayor during suspension period

(1) An election of the mayor by councillors is not required to be held during a period in which the council is suspended under this Part.

(2) However, any election that would, but for this section, be required to be held during a period in which the council is suspended must instead be held within 14 days after the suspension ends.

(3) Subsection (2) does not apply if the suspension ends because the council is dismissed or if an ordinary election of councillors is held before the suspension ends.

438ZC Issue of performance improvement orders in response to public inquiry

(1) A performance improvement order may be issued in response to the results of a public inquiry in relation to a council.

(2) For the purposes of this Act, a performance improvement order is taken to be issued in response to the results of a public inquiry if:

(a) a public inquiry in relation to a council is held, and

(b) the performance improvement order specifies, in the reasons why the Minister has decided to issue the order, that it has been issued in response to the results of the public inquiry.

Note. Under section 255, the Minister may, after considering whether the council has complied with the performance improvement order, recommend that the council be dismissed.

Part 9 General

438ZD Service of Ministerial and departmental documents

(1) Any order, notice or other document that the Minister or Departmental Chief Executive is required to serve on or give to a council or a person under this Chapter may be served on or given to the council or person by electronic means if the council or person has given the Department an email address for the service of documents.

(2) Service is effected when a copy of the order, notice or other document is sent to that email address.

(3) This section does not prevent service by post or by any other method permitted by or under this Act.

Chapter 14 Honesty and disclosure of interests

Part 1 Conduct

Division 1 Conduct generally

439AA Interpretation

(1) **Definitions**

In this Chapter:

code of conduct means a code of conduct adopted under section 440.

model code means the model code of conduct prescribed by the regulations under this Part.

pecuniary interest means an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person.

pecuniary interests duty means an obligation imposed on a person by the provisions of a code of conduct that relate to the disclosure of pecuniary interests.

(2) **Other persons' pecuniary interests included as pecuniary interests**

For the purposes of this Chapter, a person has a pecuniary interest in a matter if the pecuniary interest is the interest of:

(a) the person, or

(b) the person's spouse or de facto partner or a relative of the person, or a partner or employer of the person, or

(c) a company or other body of which the person, or a nominee, partner or employer of the person, is a shareholder or member.

Note. "De facto partner" is defined in section 21C of the *Interpretation Act 1987*.

(3) However, a person is not taken to have a pecuniary interest in a matter as referred to in subsection (2) (b) or (c):

(a) if the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or

(b) just because the person is a member of, or is employed by, a council or a statutory body or is employed by the Crown, or

(c) just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

(4) **Other exclusions**

A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter or if the interest is of a kind specified in a code of conduct as not being required to be disclosed.

439 Conduct of councillors, staff, delegates and administrators

(1) Every councillor, member of staff of a council and delegate of a council must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions under this or any other Act.

(2) (Repealed)

(3) This section applies to an administrator of a council (other than an administrator appointed by the Minister for Primary Industries under section 66) in the same way as it applies to a councillor.

440 Codes of conduct

(1) The regulations may prescribe a model code of conduct (the ***model code***) applicable to councillors, members of staff of councils and delegates of councils.

(2) The regulations may provide that the provisions of the model code relating to the disclosure of pecuniary interests are also to apply to the following persons:

(a) a member of a committee of a council (including the Audit, Risk and Improvement Committee),

(b) an adviser to a council.

(3) A council must adopt a code of conduct (the ***adopted code***) that incorporates the provisions of the model code. The adopted code may include provisions that supplement the model code.

(4) A council's adopted code has no effect to the extent that it is inconsistent with the model code as in force for the time being.

(5) Councillors, members of staff and delegates of a council must comply with the applicable provisions of:

(a) the council's adopted code, except to the extent of any inconsistency with the model code as in force for the time being, and

(b) the model code as in force for the time being, to the extent that:

(i) the council has not adopted a code of conduct, or

(ii) the adopted code is inconsistent with the model code, or

(iii) the model code contains provisions or requirements not included in the adopted code.

(6) A provision of a council's adopted code is not inconsistent with the model code merely because the provision makes a requirement of the model code more onerous for persons required to observe the requirement.

(7) A council must, within 12 months after each ordinary election, review its adopted code and make such adjustments as it considers appropriate and as are consistent with this section.

(8) (Repealed)

(9) This section applies to an administrator of a council (other than an administrator appointed by the Minister for Primary Industries under section 66) in the same way as it applies to a councillor.

440AAA Content of model code

(1) A model code of conduct prescribed by the regulations under section 440 may relate to any conduct (whether by way of act or omission) of a person to whom the code applies in carrying out his or her functions that is likely to bring a council or holders of civic office into disrepute.

(2) In particular, a model code may contain provisions for or with respect to the following conduct:

(a) conduct that contravenes all or specified provisions of this Act or the regulations in all or specified circumstances,

(b) conduct that is detrimental to the pursuit of the guiding principles and functions of a council,

(c) improper or unethical conduct,

(d) abuse of power and other misconduct,

(e) action causing, comprising or involving any of the following:

(i) intimidation, harassment or verbal abuse,

(ii) discrimination, disadvantage or adverse treatment in relation to employment,

(iii) prejudice in the provision of a service to the community,

(f) conduct of a councillor causing, comprising or involving any of the following:

(i) directing or influencing, or attempting to direct or influence, a member of the staff of the council or a delegate of the council in the exercise of the functions of the member or delegate,

(ii) an act of disorder committed by the councillor at a meeting of the council or a committee of the council,

(g) disclosure of pecuniary interests.

(3) The model code provisions relating to disclosure of pecuniary interests are to make provision for or with respect to the following:

(a) the manner and form of disclosures of pecuniary interests,

(b) the pecuniary interests that must, or that are not required to be, disclosed,

(c) returns listing pecuniary interests, the form of returns and lodging of returns,

(d) disclosures of pecuniary interests at council or committee meetings,

(e) presence and participation at council meetings by persons who have relevant pecuniary interests,

(f) conduct of meetings and other actions if a disclosure of a pecuniary interest is made,

(g) prohibiting disclosing, or including in a return, false or misleading information relating to pecuniary interests,

(h) records of disclosures of pecuniary interests.

(4) Nothing in this section limits the matters that may be included in a model code of conduct.

440AAB Register and tabling of returns

(1) The general manager must keep a register of returns disclosing interests that are required to be lodged with the general manager under a code of conduct.

(2) Returns required to be lodged with the general manager must be tabled at a meeting of the council, being the first meeting held after the last day specified by the code for lodgment, or if the code does not specify a day, as soon as practicable after the return is lodged.

440AA Administration of code of conduct

(1) The regulations may prescribe a procedure (the ***model procedure***) for administering the model code.

(2) The model procedure is to set out the procedures for dealing with alleged contraventions of the model code.

(3) A council must adopt a procedure (the ***adopted procedure***) that incorporates the provisions of the model procedure. The adopted procedure may include provisions that supplement the model procedure.

(4) A council's adopted procedure has no effect to the extent that it is inconsistent with the model procedure as in force for the time being.

(5) Councillors, members of staff and delegates of a council must comply with the applicable provisions of:

(a) the council's adopted procedure, except to the extent of any inconsistency with the model procedure as in force for the time being, and

(b) the model procedure as in force for the time being, to the extent that:

(i) the council has not adopted the model procedure, or

(ii) the adopted procedure is inconsistent with the model procedure, or

(iii) the model procedure contains provisions or requirements not included in the adopted procedure.

(6) This section applies to an administrator of a council (other than an administrator appointed by the Minister for Primary Industries under section 66) in the same way as it applies to a councillor.

Division 2 Serious corrupt conduct

440A Definition of "serious corrupt conduct"

In this Division:

serious corrupt conduct means corrupt conduct (within the meaning of the *Independent Commission Against Corruption Act 1988*) that may constitute a serious indictable offence, being:

(a) in the case of conduct of the holder of a civic office—conduct in connection with the exercise or purported exercise of the functions of the civic office, or

(b) in the case of conduct of a member of staff of a council—conduct in connection with exercise or purported exercise of the duties of the member of staff.

440B Dismissal and disqualification from civic office for serious corrupt conduct

(1) The Governor may dismiss a person from civic office and disqualify the person from holding civic office for a period not exceeding 5 years if:

(a) the Independent Commission Against Corruption, in a report referred to in section 74C of the *Independent Commission Against Corruption Act 1988*, recommends that consideration be given to the suspension of the person from office with a view to his or her dismissal for serious corrupt conduct, and

(b) the person is suspended from the civic office by the Minister under this Division, and

(c) the Minister advises the Governor that the dismissal of the person is necessary in order to protect the public standing of the council concerned and the proper exercise of its functions.

(1A) If:

(a) a recommendation has been made as referred to in subsection (1) (a) about a person, and

(b) the person has since ceased to hold civic office, and

(c) the Minister advises the Governor that disqualification of the person from holding civic office is necessary in order to protect the public standing of councils and the proper exercise of their functions,

the Governor may disqualify the person from holding civic office for a period not exceeding 5 years.

(2) Before advising the Governor on a dismissal or disqualification, the Minister is to give the person a reasonable opportunity to show cause why he or she should not be dismissed or disqualified from civic office.

440C Temporary suspension from civic office for serious corrupt conduct

(1) The Minister may, without notice or inquiry, suspend a person from civic office:

(a) if the Independent Commission Against Corruption, in a report referred to in section 74C of the *Independent Commission Against Corruption Act 1988*, recommends that consideration

be given to the suspension of the person from office with a view to his or her dismissal for serious corrupt conduct, or

(b) if criminal proceedings for serious corrupt conduct are instituted against the person, or

(c) if the person makes an admission of serious corrupt conduct.

(2) A person, while suspended from civic office under this section:

(a) is not entitled to exercise any of the functions of the civic office, and

(b) is not entitled to any fee or other remuneration, or to the payment of expenses or to the use of council facilities, to which the person would otherwise be entitled as the holder of the civic office.

(3) A suspension under this section may be removed by the Minister at any time.

(4) A suspension under this section is removed in the following circumstances:

(a) if the person is not dismissed from civic office, or criminal proceedings in connection with the serious corrupt conduct are not instituted, within 6 months after the suspension,

(b) in the case of a person against whom criminal proceedings are instituted in connection with the serious corrupt conduct—if the proceedings are withdrawn or dismissed.

(4A) However, if the suspension is based on a recommendation made by the Independent Commission Against Corruption or an admission made by the person and the person commences proceedings relating to the recommendation or admission:

(a) the suspension remains in effect while those proceedings and any related proceedings for review or appeal are dealt with, and

(b) subsection (4) (a) applies as if the reference to 6 months after the suspension were a reference to 6 months after those proceedings and any related proceedings for review or appeal are finally dealt with or withdrawn.

(5) If a suspension is removed, any fee or other remuneration withheld may (if the Minister so directs) be subsequently paid to the person concerned.

440D Temporary suspension of staff in connection with serious corrupt conduct

(1) The general manager may suspend a member of staff of a council from duty:

(a) if the Independent Commission Against Corruption, in a report referred to in section 74C of the *Independent Commission Against Corruption Act 1988*, recommends that consideration be given to the suspension of the member of staff from duty with a view to the institution of disciplinary or other proceedings against the member of staff for serious corrupt conduct, or

(b) if criminal proceedings for serious corrupt conduct are instituted against the member of staff, or

(c) if the member of staff makes an admission of serious corrupt conduct.

(2) If the general manager so directs, a member of staff, while suspended from duty under this section, is not entitled to any salary or other remuneration to which the person would otherwise be entitled as a member of staff.

(3) A suspension under this section may be removed by the general manager at any time.

(4) A suspension under this section is removed in the following circumstances:

(a) if disciplinary or criminal proceedings in connection with the serious corrupt conduct are not instituted within 6 months after the suspension,

(b) in the case of a member of staff against whom disciplinary or criminal proceedings are instituted in connection with the serious corrupt conduct—if the proceedings are withdrawn or dismissed.

(4A) However, if the suspension is based on a recommendation made by the Independent Commission Against Corruption or an admission made by the person and the person commences proceedings relating to the recommendation or admission:

(a) the suspension remains in effect while those proceedings and any related proceedings for review or appeal are dealt with, and

(b) subsection (4) (a) applies as if the reference to 6 months after the suspension were a reference to 6 months after those proceedings and any related proceedings for review or appeal are finally dealt with or withdrawn.

(5) If a suspension is removed, any salary or other remuneration withheld may (if the general manager so directs) be subsequently paid to the member of staff.

(6) The Minister may exercise the functions of the general manager under this section in connection with:

(a) conduct of a general manager, or

(b) conduct of any other member of staff (but only if the Minister is satisfied that the general manager has failed to act under this section without reasonable cause).

(7) This section does not limit any other power to suspend a member of staff from duty.

440E Application of Division

This Division applies to serious corrupt conduct, and to criminal proceedings instituted or admissions made in respect of serious corrupt conduct, before or after the commencement of this Division.

Division 3 Misconduct

440F Definitions

(1) In this Chapter:

misconduct of a councillor means any of the following:

(a) a contravention by the councillor of this Act or the regulations,

(b) a failure by the councillor to comply with an applicable requirement of a code of conduct,

(c) a failure by a councillor to comply with an order issued by the Departmental Chief Executive under this Division,

(d) an act of disorder committed by the councillor at a meeting of the council or a committee of the council,

(e) an act or omission of the councillor intended by the councillor to prevent the proper or effective functioning of the council or a committee of the council.

(2) For the purposes of determining whether a person has engaged in misconduct, the person does not breach a provision of a code of conduct that requires the disclosure of a pecuniary interest if the person did not know and could not reasonably be expected to have known that the matter under consideration at a meeting was a matter in which the person had a pecuniary interest.

(3) A reference in this Division to misconduct includes a reference to misconduct that consists of an omission or failure to do something.

440G Formal censure of councillor for misconduct

(1) A council may by resolution at a meeting formally censure a councillor for misconduct.

(2) (Repealed)

(3) A council may pass a formal censure resolution only if it is satisfied that the councillor has engaged in misconduct on one or more occasions.

(4) The council must specify in the formal censure resolution the grounds on which it is satisfied that the councillor should be censured.

(5) A motion for a formal censure resolution may, without limitation, be moved on the report of a committee of the council and any such report must be recorded in the minutes of the meeting of the council.

440H Departmental Chief Executive may investigate or seek report on misconduct of councillor

(1) The Departmental Chief Executive may conduct an investigation for the purpose of determining whether a councillor has engaged in misconduct.

(2) The Departmental Chief Executive may conduct such an investigation:

(a) on his or her own initiative, or

(b) if the general manager of a council refers an allegation of misconduct by a councillor to the Departmental Chief Executive, or

(c) if a council, by resolution, refers an allegation of misconduct by a councillor to the Departmental Chief Executive, or

(d) if the Ombudsman states in a report that the Ombudsman is satisfied that a councillor has or may have engaged in misconduct, or

(e) if the Independent Commission Against Corruption states in a report that the Commission is satisfied that a councillor has or may have engaged in misconduct.

(3) For the purpose of an investigation, the Departmental Chief Executive may, by order in writing served on any person, direct the person to do any one or more of the following:

(a) provide written information, by the date specified in the order, and to verify the information by statutory declaration,

(b) produce, at a time and place specified in the order, any document specified in the order that is in the person's custody or control.

Note. Failure to comply with the direction is an offence under section 661.

(3A) However, the Departmental Chief Executive is to withdraw the direction if it appears to the Departmental Chief Executive that:

(a) the person does not consent to compliance with the direction, and

(b) the person would not, in court proceedings, be required to comply with a similar direction on grounds of privilege against self-incrimination or legal professional privilege, and

(c) the privilege is not a privilege in favour of a public authority or former public authority,

(and, if the direction is required to be withdrawn, the person is not guilty of an offence against section 661).

(4) The Departmental Chief Executive may take copies of or extracts from any document to which the Departmental Chief Executive gains access under this section.

(5) The Departmental Chief Executive may arrange for a departmental report to be prepared in relation to an investigation conducted under this section.

(5A) The Departmental Chief Executive may arrange for a departmental report to be prepared about whether a councillor has engaged in misconduct without an investigation being carried out under this section if:

(a) the matter has been referred to the Departmental Chief Executive by the council and the Departmental Chief Executive is of the opinion that the report may be based on the findings of an investigation conducted by or on behalf of the council, or

(b) the Departmental Chief Executive is of the opinion that the alleged misconduct, if proven, would be minor in nature and, were it to warrant disciplinary action, the disciplinary action would be comprised only of counselling or reprimanding the councillor, or

(c) the Departmental Chief Executive otherwise considers it appropriate to do so.

(6) The preparation of a departmental report is a prerequisite to a decision by the Departmental Chief Executive to take disciplinary action against a councillor, unless the disciplinary action is taken on the basis of a report by the Ombudsman or Independent Commission Against Corruption.

(7) This section authorises reports relating to misconduct to be made by the Ombudsman or Independent Commission Against Corruption and a reference to a report of the Ombudsman or Independent Commission Against Corruption is a reference to a report made to the Departmental Chief Executive under the authority of this subsection or under any other provision of this or any other Act.

(8) The powers conferred on the Departmental Chief Executive by this section may also be exercised for the purposes of determining if an administrator has engaged in conduct that would be misconduct if the administrator were a councillor.

(9) In this section:

administrator means an administrator of a council (other than an administrator appointed by the Minister for Primary Industries under section 66).

440I Departmental Chief Executive may take disciplinary action for misconduct

(1) The Departmental Chief Executive may take disciplinary action against a councillor if the Departmental Chief Executive is satisfied that:

(a) the councillor has engaged in misconduct (whether on the basis of a departmental report or a report by the Ombudsman or Independent Commission Against Corruption), and

(b) disciplinary action is warranted.

(2) The Departmental Chief Executive may take one or more of the following actions (and any such action is disciplinary action):

(a) counsel the councillor,

(b) reprimand the councillor,

(c) by order, direct the councillor to cease engaging in the misconduct,

(d) by order, direct the councillor to apologise for the misconduct in the manner specified in the order,

(e) by order, direct the councillor to undertake training,

(f) by order, direct the councillor to participate in mediation,

(g) by order, suspend the councillor from civic office for a period not exceeding 3 months,

(h) by order, suspend the councillor's right to be paid any fee or other remuneration, to which the councillor would otherwise be entitled as the holder of the civic office, in respect of a period not exceeding 3 months (without suspending the councillor from civic office for that period).

(3) In determining which disciplinary action, if any, to take against a councillor who has engaged in misconduct, the Departmental Chief Executive may take into account any previous incidents of misconduct by the councillor, any disciplinary action previously taken against the councillor and any other relevant matters.

(3A) Before taking disciplinary action against a councillor, the Departmental Chief Executive is to:

(a) give the councillor written notice:

(i) specifying the grounds on which it is proposed to take disciplinary action against the councillor, and

(ii) specifying the disciplinary action that the Departmental Chief Executive proposes to take against the councillor, and

(iii) inviting the councillor to make submissions within a specified period (of not less than 14 days) about the proposal, and

(b) consider any submissions made by the councillor in accordance with the notice.

(4) The Departmental Chief Executive is to notify the councillor of any decision to take disciplinary action under this section and the reasons for the decision.

(5) A copy of the decision and the statement of reasons for the decision are to be provided to the council.

(6) The Departmental Chief Executive is to make any decision to suspend a councillor from civic office or to suspend a councillor's right to be paid any fee or other remuneration under this section, and the statement of reasons for the decision, publicly available.

(7) The Departmental Chief Executive may make any other decision to take disciplinary action against a councillor, and the statement of reasons for the decision, publicly available.

(8) No liability (including liability in defamation) is incurred for making a decision publicly available as permitted or required by this section or for publishing in good faith a fair report or summary of such a decision.

440J Alternatives to disciplinary action by the Departmental Chief Executive

(1) The Departmental Chief Executive may before, during or after an investigation into an allegation of misconduct by a councillor decide to take no further action against the councillor, if satisfied that no further action is warranted.

(2) The Departmental Chief Executive may, instead of taking disciplinary action against a councillor:

(a) refer the matter to the council concerned with recommendations as to how the council might resolve the matter, by alternative dispute resolution or otherwise, or

(b) refer the matter to the Civil and Administrative Tribunal for consideration.

(3) A matter is referred to the Tribunal under this section by means of a report presented to the Tribunal by the Departmental Chief Executive. A report may contain or be accompanied by such material and observations as the Departmental Chief Executive thinks fit.

(4) The Departmental Chief Executive is to notify the councillor concerned of any decision to refer the matter to the Tribunal.

(5) The regulations may make provision for or with respect to the reference of matters to the Tribunal under this section.

440K Suspension of a councillor

(1) A councillor, while suspended from office under this Division:

(a) is not entitled to exercise any of the functions of the civic office, and

(b) is not entitled to any fee or other remuneration, or to the payment of expenses or to the use of council facilities, to which he or she would otherwise be entitled as the holder of the civic office.

(2) The period of suspension under an order made by the Departmental Chief Executive commences on the date 7 days after the service of the order on the councillor or the date specified in the order for the commencement of the period of suspension, whichever is the later.

440L Appeals against disciplinary action

(1) A councillor against whom disciplinary action (other than disciplinary action comprised only of counselling or reprimanding) is taken by the Departmental Chief Executive may appeal to the Civil and Administrative Tribunal against the decision of the Departmental Chief Executive to take disciplinary action.

Note. An appeal under this section is an external appeal to the Tribunal for the purposes of the *Civil and Administrative Tribunal Act 2013*.

(2) An appeal must be made within 28 days after the day on which the councillor is notified of the Departmental Chief Executive's decision to take disciplinary action against the councillor.

(3) The Tribunal may stay any decision made by the Departmental Chief Executive until such time as the Tribunal determines the appeal.

(3A) If the Tribunal stays a decision for suspension of a councillor for misconduct that has resulted or will result in disqualification from civic office under section 275 (1A), the disqualification ceases to have effect or does not take effect (as the case requires) until such time as the appeal is finally determined or withdrawn.

(4) On hearing the appeal, the Tribunal may:

(a) confirm the decision, or

(b) amend the decision, or

(c) set aside the decision and substitute a new decision.

(5) If a decision is amended or substituted, the decision as amended or substituted has effect as if it had been made in that form by the Departmental Chief Executive.

(6) If the Tribunal sets aside a decision to suspend a councillor, any fee or other remuneration, or expenses, withheld under the suspension is payable to the councillor and any disqualification that resulted from the suspension ceases to have effect.

(7) (Repealed)

440M Expenses to be borne by council

(1) The Departmental Chief Executive may recover from a council the reasonable expenses incurred by or in respect of the Department in the conduct of an investigation into a councillor of the council under this Division.

(2) The Departmental Chief Executive may make a determination of the amount of the expenses referred to in subsection (1) and serve a notice on the council requiring the amount so determined be paid in recovery of the Department's expenses.

(3) An amount equal to the expenses as so determined is payable to the Department as a debt by the council concerned, except as determined by the Departmental Chief Executive.

(4) The council may apply to the Civil and Administrative Tribunal for an administrative review of whether any part of the expenses so determined are not reasonable expenses.

(5) The Departmental Chief Executive must give effect to any decision of the Tribunal on an administrative review of the determination of the amount of the expenses.

(6) A reference in this section to expenses incurred includes a reference to remuneration paid to departmental staff.

440N Investigation of former councillors

(1) The Departmental Chief Executive may conduct an investigation for the purpose of determining whether a former councillor engaged in misconduct during the period in which the former councillor was a councillor.

(2) For that purpose, sections 440H and 440M apply as if a reference in those sections to a councillor includes a reference to a former councillor.

(3) The Departmental Chief Executive may before, during or after an investigation into an allegation of misconduct by a former councillor decide to refer the matter to the Civil and Administrative Tribunal for consideration.

(4) Section 440J applies to the referral of the matter to the Tribunal in the same way as it applies to a referral of a matter relating to a councillor to the Tribunal.

440O Self-incrimination

(1) This section applies where, under section 440H, the Departmental Chief Executive directs a natural person to provide any information or produce any document for the purposes of an investigation.

(2) A person is not excused from complying with the direction on the ground that the information or document might incriminate the person or make the person liable to a penalty.

(3) If the information or document tends to incriminate the person and the person objects to providing the information or producing the document at the time, the fact of the direction or the information or document itself (if produced) may not be used in any criminal proceedings against the person (except in proceedings for an offence relating to the failure to produce a document or information or the production of a document or information that is false or misleading).

(4) Despite any such objection, the information or document may be used in connection with an investigation and the taking of disciplinary action against the person under this Division and is admissible in proceedings under this Act relating to misconduct.

440P Service of departmental documents

(1) Any order, notice or other document that the Departmental Chief Executive is required to serve on or give to a person under this Division may be served on or given to the person by electronic means if the person has given the Department an email address for the service of documents.

(2) Service is effected when a copy of the order, notice or other document is sent to that email address.

(3) This section does not prevent service by post or by any other method permitted by or under this Act.

440Q (Repealed)

Part 2

441–459 (Repealed)

Part 3 Complaints concerning non-disclosure and proceedings before NCAT

Division 1 Making and investigation of complaints

460 Complaints concerning failure to disclose pecuniary interests

(1) A person may make a complaint to the Departmental Chief Executive, or the Departmental Chief Executive may make a complaint, that a person (other than a councillor, former councillor, administrator or former administrator) has or may have contravened a pecuniary interests duty.

(2) A complaint:

(a) must be in writing, and

(b) must identify the complainant and the person against whom the complaint is made, and

(c) must give particulars of the grounds of the complaint, and

(d) (Repealed)

(e) must be lodged with the Departmental Chief Executive.

(3) The provisions of subsection (2) (b), in so far as they require a complaint to identify the complainant, and (e) do not apply to a complaint made by the Departmental Chief Executive.

461 Departmental Chief Executive may require further information

The Departmental Chief Executive may require the complainant to provide further particulars of the complaint within the time specified by the Departmental Chief Executive.

462 Investigation of complaints

(1) The Departmental Chief Executive may investigate a complaint.

(2) The Departmental Chief Executive may refer a complaint for investigation to an authority, being the Ombudsman, the Independent Commission Against Corruption, the Commissioner of Police or the Director of Public Prosecutions, if the authority agrees to the referral. Such a referral may be made whether or not the Departmental Chief Executive has begun to investigate the complaint.

(3) The Departmental Chief Executive may decide not to investigate a complaint but to authorise an investigation under section 430 in respect of a matter to which the complaint relates.

463 Decision not to investigate a complaint

(1) The Departmental Chief Executive may decide to take no action concerning a complaint (including a complaint referred to in section 464 (2)) if the Departmental Chief Executive considers that the complaint falls into any of the following categories:

(a) the complaint is frivolous, vexatious or not made in good faith,

(b) the subject-matter of the complaint is trivial or does not warrant investigation,

(c) the subject-matter of the complaint has been or is under investigation by some other competent person or body or has been or is the subject of legal proceedings,

(d) the complaint raises issues that require investigation by another person or body,

(e) there is or was, in relation to the matter complained of, a satisfactory alternative means of dealing with the matter by the complainant,

(f) the complaint relates to a matter that occurred more than 2 years before the complaint was made and the complainant does not have a sufficient reason for having delayed the making of the complaint,

(g) the complainant has failed to provide further particulars of the complaint within the time specified by the Departmental Chief Executive.

(2) If the Departmental Chief Executive decides to take no action concerning a complaint (including a complaint referred to in section 464 (2)), the Departmental Chief Executive must notify the complainant and give the reasons for the decision.

464 Referral and investigation of complaints by other authorities

(1) An authority who receives a matter (otherwise than from the Departmental Chief Executive) for the purpose of investigation is authorised by this Act to refer the matter to the Departmental Chief Executive if the matter involves a possible contravention of pecuniary interests duties by a person (other than a councillor, former councillor, administrator or former administrator).

(2) A matter referred to the Departmental Chief Executive under this section is taken to be a complaint made by the Departmental Chief Executive.

465 NCAT to be notified of investigations

The Departmental Chief Executive must notify the Civil and Administrative Tribunal of a decision to investigate a complaint or to refer a complaint for investigation to an authority.

466 Persons to be notified of complaint

(1) The Departmental Chief Executive must, within 3 months after receiving a complaint, making a complaint or having a matter referred to the Departmental Chief Executive under section 464, give the person against whom the complaint is made notice of the nature of the complaint and whether any action has been, or is intended to be, taken concerning the complaint.

(2) At the same time as notice is given to the person against whom the complaint is made, the Departmental Chief Executive must notify the complainant whether any action has been, or is intended to be, taken concerning the complaint. However, at the time the notice is given to the person against whom the complaint is made, the Departmental Chief Executive is not obliged to notify the complainant of the decision not to investigate a complaint if notice of that decision has already been given under section 463 (2).

467 Reports of investigation of complaints by authorities

An authority who has investigated an allegation that a person has or may have contravened a pecuniary interests duty (whether or not the allegation was referred for investigation by the Departmental Chief Executive), is authorised by this Act to send any report prepared by the authority concerning the investigation to the Departmental Chief Executive.

468 Presentation of reports to NCAT

(1) The Departmental Chief Executive must present a report to the Civil and Administrative Tribunal of an investigation into a complaint carried out by the Departmental Chief Executive.

(2) The Departmental Chief Executive must present to the Civil and Administrative Tribunal any report received under section 467 from an authority.

Division 2 Proceedings before NCAT—pecuniary interests matters not involving councillors or administrators

469 NCAT to decide whether or not to conduct proceedings into a complaint

(1) After considering a report presented to it in relation to a complaint, the Civil and Administrative Tribunal may decide to conduct proceedings into the complaint.

(2) If the Civil and Administrative Tribunal decides not to conduct proceedings into a complaint, it must provide a written statement of its decision, and the reasons for its decision:

(a) to the person against whom the complaint was made, and

(b) to the person who made the complaint, and

(c) to the Departmental Chief Executive.

(3) (Repealed)

470 Circumstances in which NCAT may dispense with hearing

(1) After considering the report of the Departmental Chief Executive and any other document or other material lodged with or provided to the Tribunal, the Civil and Administrative Tribunal may determine the proceedings without a hearing if:

(a) the person who made the complaint and the person against whom the complaint is made have agreed that the proceedings may be determined without a hearing, and

(b) there are no material facts in dispute between the person who made the complaint and the person against whom the complaint is made, and

(c) in the opinion of the Tribunal, public interest considerations do not require a hearing.

(2) (Repealed)

Division 3 Proceedings before NCAT—misconduct matters

470A NCAT to decide whether or not to conduct proceedings into a referred matter relating to misconduct

(1) After considering a report presented to it under section 438HA or 440J in relation to a referred matter, the Civil and Administrative Tribunal may decide to conduct proceedings into the matter.

(2) If the Civil and Administrative Tribunal decides not to conduct proceedings into a referred matter, it must provide a written statement of its decision, and the reasons for its decision:

(a) to the councillor to whom the report relates, and

(b) to the council concerned, and

(c) to the Departmental Chief Executive.

(3) (Repealed)

470B Circumstances in which NCAT may dispense with hearing

(1) After considering a report presented to it under section 438HA or 440J and any other document or other material lodged with or provided to the Tribunal in relation to the report, the Civil and Administrative Tribunal may determine the proceedings without a hearing if:

(a) the Departmental Chief Executive and the councillor to whom the report relates have agreed that the proceedings may be determined without a hearing, and

(b) there are no material facts in dispute between the Departmental Chief Executive and the councillor, and

(c) in the opinion of the Tribunal, public interest considerations do not require a hearing.

(2) (Repealed)

Division 4 Proceedings before NCAT—general provisions

471–477 (Repealed)

478 Additional complaints

(1) The Civil and Administrative Tribunal may in proceedings before it deal with one or more complaints about a person.

(2) If, during any such proceedings, it appears to the Civil and Administrative Tribunal that, having regard to any matters that have arisen, another complaint could have been made against the person concerned:

(a) whether instead of or in addition to the complaint which was made, and

(b) whether or not by the same complainant,

the Civil and Administrative Tribunal may take that other complaint to have been referred to it and may deal with it in the same proceedings.

(3) If another complaint is taken to have been referred to the Civil and Administrative Tribunal under subsection (2), the complaint may be dealt with after such an adjournment (if any) as is, in the opinion of the Civil and Administrative Tribunal, just and equitable in the circumstances.

(4) If another complaint is taken to have been referred to the Civil and Administrative Tribunal under subsection (2), the Tribunal may do either or both of the following:

(a) reconsider any decision under section 470 to determine proceedings on the original complaint without a hearing and, if appropriate, recommence proceedings in relation to that complaint, or that complaint and any additional complaint, by way of hearing,

(b) decide, in accordance with section 470, to determine proceedings, in relation to the original complaint, any additional complaint or all complaints, without a hearing.

(5) This section does not apply to proceedings in relation to a matter referred to the Civil and Administrative Tribunal under section 440J.

479–481 (Repealed)

482 Decision of NCAT—pecuniary interests matters not involving councillors or administrators

(1) This section applies to complaints relating to breaches of pecuniary interests duties by persons other than councillors, former councillors, administrators or former administrators.

(2) If it finds a complaint against an employee of the council is proved, the Civil and Administrative Tribunal may:

(a) counsel the employee, or

(b) reprimand the employee, or

(c) recommend that the council take specified disciplinary action against the employee (including counselling or reprimanding the employee), or

(d) recommend dismissal of the employee.

(3) The Civil and Administrative Tribunal may, if it finds a complaint against a member of a council committee is proved:

(a) counsel the member, or

(b) reprimand the member, or

(c) suspend the member from office as member of the committee for a period not exceeding 6 months, or

(d) disqualify the member from holding office as a member of any committee of that council for a period not exceeding 5 years.

(4) The Civil and Administrative Tribunal may, if it finds a complaint against an adviser to a council is proved:

(a) counsel the adviser, or

(b) reprimand the adviser, or

(c) suspend the adviser from office as adviser for a period not exceeding 6 months, or

(d) disqualify the adviser from holding office as an adviser to that council for a period not exceeding 5 years.

(4A) The Civil and Administrative Tribunal may, if it finds a complaint against a delegate of a council (other than the general manager of a council) is proved:

(a) counsel the delegate, or

(b) reprimand the delegate, or

(c) suspend the delegate from acting as a delegate for a period not exceeding 6 months, or

(d) disqualify the delegate from being a delegate of that council for a period not exceeding 5 years.

(5) In determining which action, if any, to take against a person under this section, the Tribunal may take into account any previous complaints proved against the person, any action previously taken against the person and any other relevant matters.

(6) (Repealed)

482A Decision of NCAT—misconduct matters

(1) This section applies where a matter has been referred to the Civil and Administrative Tribunal under section 438HA or 440J.

(2) The Tribunal may, if it finds that the behaviour concerned warrants action under this section:

(a) counsel the councillor, or

(b) reprimand the councillor, or

(c) suspend the councillor from civic office for a period not exceeding 6 months, or

(c1) disqualify the councillor from holding civic office for a period not exceeding 5 years, or

(d) suspend the councillor's right to be paid any fee or other remuneration, to which the councillor would otherwise be entitled as the holder of the civic office, in respect of a period not exceeding 6 months (without suspending the councillor from civic office for that period).

(3) In determining which action, if any, to take against a councillor, the Tribunal may take into account any previous incidents of misconduct by the councillor, any disciplinary action previously taken against the councillor and any other relevant matters.

(4) In this section, ***councillor*** includes a former councillor.

483–485 (Repealed)

486 Referral of matters by NCAT

Despite section 489 (1) and (1A), the Civil and Administrative Tribunal may refer a matter before it under this Act to an authority if it considers that it is more appropriate that the authority deal with the matter and if the authority agrees to the referral.

486A Exclusive jurisdiction of NCAT over pecuniary interests contraventions (other than by councillors and administrators)

(1) The Civil and Administrative Tribunal has exclusive jurisdiction at first instance to decide allegations of contraventions of a pecuniary interests duty by a person other than a councillor, a former councillor, an administrator or a former administrator.

(2) Accordingly, proceedings at first instance to decide allegations of contraventions of a pecuniary interests duty by a person other than a councillor, a former councillor, an administrator or a former administrator may not be brought before, or entertained by, any other tribunal or any court.

Part 4

487–490 (Repealed)

Part 5 Miscellaneous

490A Acts of disorder

For the purposes of this Chapter and the code of conduct, a councillor commits an ***act of disorder*** if the councillor, at a meeting of the council or a committee of the council, does anything that is prescribed by the regulations as an act of disorder for the purposes of this Chapter and the code of conduct.

490B Certain regulations not affected

Nothing in this Chapter affects any regulations made, or the power to make regulations, with respect to the conduct of meetings of a council or a committee of a council, and in particular with respect to:

(a) the keeping of order at any such meetings, or

(b) censuring a councillor in connection with a breach of a council's code of meeting practice.

490C Supreme Court order for recovery of monetary benefits as a result of non-disclosure by councillors (as inserted by the Local Government and Elections Legislation Amendment (Integrity) Act 2016)

(1) The Departmental Chief Executive may apply to the Supreme Court for an order under this section against a councillor who has been found by the Civil and Administrative Tribunal under this Chapter to have contravened a pecuniary interests duty.

(2) The Supreme Court may, if satisfied on the balance of probabilities that the councillor obtained a monetary benefit as a result of a decision made by the council relating to a matter in which the councillor had a pecuniary interest and in respect of which the councillor contravened a pecuniary interests duty:

(a) order the councillor to pay the council an amount that the Court is satisfied represents the amount of the monetary benefit acquired by the councillor, or accrued to the councillor, as a result of the decision, or

(b) order the councillor to grant the council security over any property of the councillor to secure the payment required by an order under paragraph (a).

(3) If proceedings are pending in the Civil and Administrative Tribunal that may give rise to a finding in respect of which the Departmental Chief Executive may make application to the Supreme Court for an order under this section, the Supreme Court may, on application by the Departmental Chief Executive, restrain the councillor the subject of the proceedings from disposing or dealing with property of the councillor pending the making and determination of an application for an order under this section.

(4) In this section:

monetary benefit means any monetary, financial or economic benefit (including an extension of the permitted use of land or the removal of prohibitions or restrictions on the development of land).

Chapter 15 How are councils financed?

Part 1 An overview of rates and charges

491 Some sources of a council's income

A council may, in accordance with this Chapter, obtain income from:

- rates
- charges
- fees
- grants
- borrowings

- investments.

492 What are the types of rates?

The types of rates that can be made by a council are:

- ordinary rates
- special rates.

493 Categories of ordinary rates and categories of land

(1) There are 4 categories of an ordinary rate and 4 categories of rateable land:

- farmland
- residential
- mining
- business.

(2) These categories may, at a council's discretion, be divided into sub-categories in accordance with section 529.

494 Ordinary rates must be made and levied annually

(1) A council must make and levy an ordinary rate for each year on all rateable land in its area.

(2) Each category or subcategory of ordinary rate is to apply only to land of the same category or subcategory.

495 Making and levying of special rates

(1) A council may make a special rate for or towards meeting the cost of any works, services, facilities or activities provided or undertaken, or proposed to be provided or undertaken, by the council within the whole or any part of the council's area, other than domestic waste management services.

(2) The special rate is to be levied on such rateable land in the council's area as, in the council's opinion:

(a) benefits or will benefit from the works, services, facilities or activities, or

(b) contributes or will contribute to the need for the works, services, facilities or activities, or

(c) has or will have access to the works, services, facilities or activities.

Note. Under section 495, a council could, for example make and levy:

- different special rates for different kinds of works, services, facilities or activities
- different special rates for the same kind of work, service, facility or activity in different parts of its area
- different special rates for the same work in different parts of its area.

The amount of special rate will be determined according to the council's assessment of the relationship between the cost or estimated cost of the work, service, facility or activity and the degree of benefit afforded to the ratepayer by providing or undertaking the work, service, facility or activity.

495A Strata lots and company titles taken to be separate parcels of land for annual charges

For the purposes of making or levying an annual charge under section 496, 496A or 501:

(a) each lot in a strata plan that is registered under the *Strata Schemes Development Act 2015*, and

(b) each dwelling or portion of the kind referred to in section 547 (1),

is taken to be a separate parcel of rateable land.

496 Making and levying of annual charges for domestic waste management services

(1) A council must make and levy an annual charge for the provision of domestic waste management services for each parcel of rateable land for which the service is available.

(2) A council may make an annual charge for the provision of a domestic waste management service for a parcel of land that is exempt from rating if:

(a) the service is available for that land, and

(b) the owner of that land requests or agrees to the provision of the service to that land, and

(c) the amount of the annual charge is limited to recovering the cost of providing the service to that land.

496A Making and levying of annual charges for stormwater management services

(1) A council may, in accordance with the regulations, make and levy an annual charge for the provision of stormwater management services for each parcel of rateable land for which the service is available.

(2) Subsection (1) does not authorise or permit a council to make or levy an annual charge for the provision of stormwater management services for rateable land that is:

(a) owned by the Crown, and

(b) held under a lease for private purposes granted under the *Housing Act 2001* or the *Aboriginal Housing Act 1998*.

Note. Section 555 (1) (a) provides that land owned by the Crown is not rateable land unless it is held under a lease for a private purpose.

496B Making and levying of annual charges for coastal protection services

(1) A council may, in accordance with this Act and the regulations, make and levy an annual charge for the provision by the council of coastal protection services for a parcel of rateable land that benefits from the services, being services that relate to coastal protection works constructed:

(a) by or on behalf of the owner or occupier (or a previous owner or occupier) of the parcel of land, or

(b) jointly by or on behalf of:

(i) the owner or occupier (or a previous owner or occupier) of the parcel of land, and

(ii) a public authority or a council.

(2) An annual charge for the provision of coastal protection services must be calculated so as to not exceed the reasonable cost to the council of providing those services (including any legal, insurance, engineering, surveying, project management, financing and similar costs associated with providing those services).

Note. The coastal protection services for which an annual charge may be made and levied are services:

(a) to maintain and repair coastal protection works, or

(b) to manage the impacts of such works (such as changed or increased beach erosion elsewhere).

See the definition of ***coastal protection service*** in the Dictionary.

(3) If a person is aggrieved by the amount of the annual charge, the person may appeal to the Land and Environment Court and that Court may determine the amount.

(4) The fact that an appeal is pending does not in the meantime affect the levying of the annual charge to which the appeal relates and the charge may be recovered as if no appeal were pending.

(5) If a person's appeal is, in whole or in part, successful, the council must refund any amount paid in excess of a requirement for payment under this Act.

(6) If the Land and Environment Court, in the course of determining an appeal under subsection (3), determines the reasonable cost to the council of providing coastal protection services in relation to particular coastal protection works, that determination is binding in relation to the calculation of the annual charge for all other parcels of land that benefit from those same services.

(7) For the avoidance of doubt, a parcel of land benefits from the provision of coastal protection services even if:

(a) the services relate to private coastal protection works (such as a seawall) wholly on the parcel or on a neighbouring parcel of private land, or

(b) the services are carried out on land that is outside the council's area.

(8) Subsection (1) does not authorise or permit a council to make or levy an annual charge for the provision of coastal protection services for rateable land that is held under a lease for private purposes granted under the *Aboriginal Housing Act 1998* or the *Housing Act 2001*.

(9) The Minister administering the *Coastal Management Act 2016* is to issue guidelines relating to the making and levying of charges under this section. A council is to have regard to any such guidelines when making and levying such charges.

497 What is the structure of a rate?

A rate, whether an ordinary rate or a special rate, may, at a council's discretion, consist of:

(a) an ad valorem amount (which may, in accordance with section 548, be subject to a minimum amount of the rate), or

(b) a base amount to which an ad valorem amount is added.

498 The ad valorem amount

(1) The ad valorem amount of a rate is an amount in the dollar determined for a specified year by the council and expressed to apply:

(a) in the case of an ordinary rate—to the land value of all rateable land in the council's area within the category or sub-category of the ordinary rate, or

(b) in the case of a special rate—to the land value of all rateable land in the council's area or such of that rateable land as is specified by the council in accordance with section 538.

(2) The ad valorem amount of a rate is to be levied on the land value of rateable land, except as provided by this or any other Act.

(3) An ad valorem amount specified for a parcel of land may not differ from an ad valorem amount specified for any other parcel of land within the same category or subcategory unless:

(a) the land values of the parcels were last determined by reference to different base dates, and

(b) the Minister approves the different ad valorem amounts.

Note. ***Land value*** is defined in the Dictionary for this Act. Generally, it is a value determined specially for rating purposes by the Valuer-General under the *Valuation of Land Act 1916*.

A value other than land value may be used, for example, under section 127 of the *Heritage Act 1977*.

499 The base amount

(1) A council may, in a resolution making a rate, specify a base amount of the rate, or a base amount for a category or sub-category of an ordinary rate.

(2) The base amounts so specified may be the same or different amounts.

(3) The appropriate base amount so specified is to form part of the rate levied on each separate parcel of rateable land subject to the rate.

(4) A base amount specified for a parcel of land may not differ from a base amount specified for any other parcel of land within the same category or subcategory unless:

(a) the land values of the parcels were last determined by reference to different base dates, and

(b) the Minister approves the different base amounts.

500 Limit on revenue that can be raised from base amount

The amount specified as the base amount of a rate (or the base amount of the rate for a category or sub-category of an ordinary rate) must not be such as to produce more than 50 per cent of the total amount payable by the levying of the rate (or of the rate for the category or sub-category concerned) on all rateable land subject to the rate (or the rate for the category or sub-category concerned).

501 For what services can a council impose an annual charge?

(1) A council may make an annual charge for any of the following services provided, or proposed to be provided, on an annual basis by the council:

- water supply services
- sewerage services
- drainage services
- waste management services (other than domestic waste management services)
- any services prescribed by the regulations.

(2) A council may make a single charge for two or more such services.

(3) An annual charge may be levied on each parcel of rateable land for which the service is provided or proposed to be provided.

502 Charges for actual use

A council may make a charge for a service referred to in section 496 or 501 according to the actual use of the service.

503 What is the relationship between rates and charges?

(1) A charge may be made:

(a) in addition to an ordinary rate, and

(b) in addition to or instead of a special rate.

(2) If land is not rateable to a special rate for a particular service, a council may not levy a charge in respect of that land relating to the same service, unless the charge is limited to recovering the cost of providing the service to that land.

504 Domestic waste management services

(1) A council must not apply income from an ordinary rate towards the cost of providing domestic waste management services.

(1A) Subsection (1) does not prevent income from an ordinary rate from being lent (by way of internal loan) for use by the council in meeting the cost of providing domestic waste management services.

(2) Income to be applied by a council towards the cost of providing domestic waste management services must be obtained from the making and levying of annual charges or the imposition of charges for the actual use of the service, or both.

(3) Income obtained from charges for domestic waste management must be calculated so as to not exceed the reasonable cost to the council of providing those services.

Part 2 Limit of annual income from rates and charges

505 Application of Part

This Part applies to:

(a) ***general income***, that is, income from ordinary rates, special rates and annual charges, other than:

(i) water supply special rates and sewerage special rates, and

(ii) charges for water supply services and sewerage services, and

(iii) annual charges for waste management services, including annual charges for domestic waste management services, and

(iv) annual charges referred to in section 611, and

(v) annual charges for stormwater management services, and

(vi) annual charges for coastal protection services, and

(b) annual charges made and levied towards the cost of providing domestic waste management services, and

(c) annual charges made and levied towards the cost of providing stormwater management services.

506 Variation of general income

The Minister may, by order published in the Gazette specify the percentage by which councils' general income for a specified year may be varied.

507 Variation of annual charges for domestic waste management services

The Minister may, by order published in the Gazette:

(a) specify the percentage by which the amounts of annual charges made by councils for domestic waste management services for a specified year may be varied, and

(b) impose conditions with respect to the variation of those charges.

508 Orders under secs 506 and 507

(1) The year specified in an order under section 506 or 507 may be the year in which the order is published in the Gazette or a later year.

(2) The Minister may, by instrument in writing given to a council:

(a) specify the percentage by which the council's general income or the amount of an annual charge for domestic waste management services, or both, for a specified year (being the year in which the instrument is given or a later year) may be varied, and

(b) impose conditions with respect to the variation of that percentage.

(3) An instrument made under subsection (2) takes effect on the day it is signed by the Minister.

(4) Subject to subsection (5), a percentage specified in an order under section 506 or 507 applies to all councils uniformly, but does not apply to a council specified (in the order by which the percentage is specified) as being a council to which the percentage does not apply.

(5) A percentage specified in an order under section 506 or 507 for a year does not apply, and (if relevant) is taken never to have applied, to a council to which a percentage specified under subsection (2) for that year applies, whether the order specifying the percentage was made before, on or after the day on which the instrument specifying the percentage under subsection (2) was made.

(5A) Subject to section 508A (6), a percentage specified in an order under section 506 or 507 for a year does not apply, and (if relevant) is taken never to have applied, to a council to which a determination under section 508A applies for that year, whether the order specifying the percentage was made before, on or after the day on which the determination was made.

(6) The Minister may specify a percentage by way of increase or decrease or a nil percentage for the purposes of section 506 or 507 or this section.

(7) The Minister may, by order published in the Gazette, specify that no limitation is to apply for the purposes of section 506 or 507 or this section for a specified year.

508A Special variation over a period of years

(1) The Minister may, by instrument in writing given to a council, determine that the council's general income, or the amount of an annual charge for domestic waste management services provided by the council, or both, for a specified period consisting of two or more years, may be varied by a specified percentage over the whole period.

(2) The specified period must not exceed 7 years, but this subsection does not prevent a further determination being made that takes effect after that period.

(3) The determination may be made only on the application of the council made in accordance with any applicable guidelines issued by the Departmental Chief Executive under this Act.

(4) The determination may include conditions with respect to the variation.

(5) Without limiting subsection (4), the conditions of the determination may specify the percentage by which the council's general income, or the amount of the annual charge for domestic waste management services provided by the council, may be varied for a specified year to which the determination applies.

(6) If, for a year to which the determination applies in respect of:

(a) the council's general income—the percentage specified under section 506 for that year is greater than the percentage specified in the conditions of the determination, the percentage

specified under that section in respect of the council's general income is taken to be substituted for that specified in the conditions, or

(b) the amount of the annual charge for domestic waste management services provided by the council—the percentage specified under section 507 for that year is greater than the percentage specified in the conditions of the determination, the percentage specified under that section in respect of the annual charge is taken to be substituted for that specified in the conditions.

(7) Subject to any later variations made to the determination, if the percentage (the ***general percentage***) specified under section 506 or 507 is substituted under subsection (6) for a year:

(a) the percentage specified under this section for the whole period is taken to be increased by the amount necessary to take into account the increase due to the substitution of the general percentage for that year, and

(b) the appropriate percentage for the remaining years is to be applied to the amount of the council's general income, or of the annual charge for domestic waste management services provided by the council, taking into account the increase due to that substitution.

(8) The Minister may, by instrument in writing served on the council:

(a) vary the determination, including, for example, by varying or revoking any conditions of the determination or by including new conditions, or

(b) revoke the determination.

(9) The determination may be varied or revoked only:

(a) on the application of the council made in accordance with any applicable guidelines issued by the Departmental Chief Executive under this Act, or

(b) on the Minister's own initiative if the Minister is satisfied that the council has contravened any conditions of the determination or any applicable guidelines issued by the Departmental Chief Executive under this Act.

509 Maximum general income for a year

(1) A council must not make rates and charges for a year so as to produce general income of an amount that exceeds the notional general income of the council for the previous year as varied by the percentage (if any) applicable to the council under section 506, 508 (2) or 508A for the year for which the rates and charges are made, except as provided by section 511 or 511A.

(2) The ***notional general income of a council for the previous year*** is the amount that would have been derived if the same rates and charges as were made to produce the general income for that previous year had been so made but, in the case of rates, had been made in respect of:

(a) the valuations of rateable land in the council's valuation record applicable as at 1 July in that previous year and required under this Act to be used in that previous year for the making and levying of rates (not including valuations of those parcels of rateable land for which supplementary valuations referred to in paragraph (b) have been furnished), and

(b) supplementary valuations of rateable land having the same base date as those valuations and furnished to the council under the *Valuation of Land Act 1916* during that previous year, and

(c) any estimates of increase in value of rateable land that are provided to the council under section 513 in respect of that previous year.

510 Maximum annual charge for domestic waste management services

(1) A council must not make an annual charge for domestic waste management services for a parcel of rateable land that exceeds the annual charge for the parcel for the previous year as varied by the percentage (if any) applicable to the council under section 507, 508 (2) or 508A for the year for which the charge is made.

(2) The annual charge for a parcel of land for a previous year:

(a) in the case of a parcel for which a charge has been made for part of the year only, is taken to be the charge that was actually made, multiplied by 365 and divided by the number of days in respect of which the charge was made, and

(b) in the case of a parcel for which no charge was actually made for the previous year, is taken to be the charge that was actually made for that year in relation to a comparable parcel of land (that is, a parcel of land of the same classification, of a similar size and in the same general locality).

510A Maximum annual charge for stormwater management services

(1) The regulations are to prescribe the maximum annual charge that a council may levy for the provision of stormwater management services for parcels of land in respect of which such a charge may be levied.

(2) The annual charge for the provision of stormwater management services for a parcel of land in respect of which such a charge may be levied must not exceed the maximum annual charge prescribed by the regulations under subsection (1).

511 Catching up of shortfall in general income

(1) If the rates and charges made by a council for a year that produce its general income produce an amount of general income that is less than the maximum amount permissible under section 509 for that year because the council did not apply a full percentage increase applicable to it under section 506, 508 (2) or 508A for the year for which the rates and charges were made, the council may make rates and charges for either or both of the next 2 years after the year for which the shortfall occurred so as to produce the maximum amount so permissible of the general income plus the whole or any part of the shortfall.

(2) An amount of a shortfall caught up in accordance with this section may be caught up once only.

511A Catching up of income lost due to reductions in valuation

(1) This section applies to a council that cannot recover or retain a part of the maximum permissible general income determined under this Part for a year because, after the determination is made, a valuation used in making a rate is reduced (whether because of an objection under the *Valuation of Land Act 1916*, an appeal under that Act or for any other reason). The part of the maximum

permissible general income that cannot be recovered or retained is referred to in this section as the ***unrecovered amount***.

(2) The council may increase the maximum permissible general income determined under this Part for a year by any unrecovered amount for a previous year.

512 Effect of contravening section 509, 510, 510A, 511 or 511A

(1) If a council contravenes section 509, 510, 510A, 511 or 511A in making a rate or charge for a year:

(a) the contravention does not affect the validity of the rate or charge, but

(b) rates and charges made for the following year by the council are invalid for all purposes unless:

(i) before the rates and charges were made the council submitted to the Minister such information respecting the rates and charges proposed to be made for that following year as the Minister may require and the Minister, by order published in the Gazette, approved of their being made, and

(ii) the rates and charges conform with the Minister's approval.

(iii) (Repealed)

(2) The Minister may, by order published in the Gazette, exempt a specified council from the operation of subsection (1) (b) for a specified year.

(3) Section 712 does not prevent a person's liability for a rate or charge that is invalid because of subsection (1) (b) from being disputed at any time on the ground of that invalidity.

513 Estimates of increases and decreases in value for purposes of notional rate income

(1) A council may, at any time after 31 January in any year but before 31 May in that year, request the Valuer-General to provide:

(a) estimates of increases and decreases in values for parcels of rateable land for which supplementary valuations are required to be furnished under the *Valuation of Land Act 1916* but which, before the date of the request, have not been so furnished, and

(b) estimates of increases and decreases in values for parcels of rateable land for which supplementary valuations have been or are required to be furnished under the *Valuation of Land Act 1916* but which have or will have a different base date from those used for rating purposes for that year because of a general valuation furnished in that year for the council's area.

(2) The Valuer-General must provide the estimates within 1 month after the date of the request.

(3) An estimate must be made with respect to the same base date as the valuations used for rating purposes for the year in which the request is made.

(4) An estimate may relate to all parcels of rateable land of the class for which a kind of ordinary rate was made for the relevant year by the council.

Rates and Charges

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Part 3 Ordinary rates

514 Categorisation of land for purposes of ordinary rates

Before making an ordinary rate, the council must have declared each parcel of rateable land in its area to be within one or other of the following categories:

- farmland
- residential
- mining
- business.

Note. Land falls within the "business" category if it cannot be categorised as farmland, residential or mining. The main land uses that will fall within the "business" category are commercial and industrial.

515 Categorisation as farmland

(1) Land is to be categorised as ***farmland*** if it is a parcel of rateable land valued as one assessment and its dominant use is for farming (that is, the business or industry of grazing, animal feedlots, dairying, pig-farming, poultry farming, viticulture, orcharding, bee-keeping, horticulture, vegetable growing, the growing of crops of any kind, forestry or aquaculture within the meaning of the *Fisheries Management Act 1994*, or any combination of those businesses or industries) which:

(a) has a significant and substantial commercial purpose or character, and

(b) is engaged in for the purpose of profit on a continuous or repetitive basis (whether or not a profit is actually made).

(2) Land is not to be categorised as farmland if it is rural residential land.

(3) The regulations may prescribe circumstances in which land is or is not to be categorised as farmland.

516 Categorisation as residential

(1) Land is to be categorised as ***residential*** if it is a parcel of rateable land valued as one assessment and:

(a) its dominant use is for residential accommodation (otherwise than as a hotel, motel, guest-house, backpacker hostel or nursing home or any other form of residential accommodation (not being a boarding house or a lodging house) prescribed by the regulations), or

(b) in the case of vacant land, it is zoned or otherwise designated for use under an environmental planning instrument (with or without development consent) for residential purposes, or

(c) it is rural residential land.

(1A) For the purposes of this section, a ***boarding house*** or a ***lodging house*** means a building wholly or partly let as lodging in which each letting provides the tariff-paying occupant with a principal place of residence and in which:

(a) each tariff charged does not exceed the maximum tariff for boarding houses or lodging houses for the time being determined by the Minister by order published in the Gazette for the purposes of this subsection, and

(b) there are at least 3 tariff-paying occupants who have resided there for the last 3 consecutive months, or any period totalling 3 months during the last year,

and includes a vacant building that was so let immediately before becoming vacant, but does not include a residential flat building, licensed premises, a private hotel, a building containing serviced apartments or a backpacker hostel or other tourist establishment.

(2) The regulations may prescribe circumstances in which land is or is not to be categorised as residential.

517 Categorisation as mining

(1) Land is to be categorised as ***mining*** if it is a parcel of rateable land valued as one assessment and its dominant use is for a coal mine or metalliferous mine.

(2) The regulations may prescribe circumstances in which land is or is not to be categorised as mining.

518 Categorisation as business

Land is to be categorised as ***business*** if it cannot be categorised as farmland, residential or mining.

518A Strata lots and company titles taken to be separate parcels of land for categorisation

For the purposes of this Part:

(a) each lot in a strata plan that is registered under the *Strata Schemes Development Act 2015*, and

(b) each dwelling or portion of the kind referred to in section 547 (1),

is taken to be a separate parcel for the purposes of categorisation.

518B Mixed development land

(1) **Definitions**

In this section, ***mixed development land*** and ***non-residential land*** have the same meanings as in section 14BB of the *Valuation of Land Act 1916*.

(2) **Categorisation of parts of mixed development land**

If a valuation is furnished under the *Valuation of Land Act 1916* for mixed development land:

(a) the part of the land that is non-residential land is taken to have been categorised as business, and

(b) the part of the land that is not non-residential land is taken to have been categorised as residential,

despite sections 515–518.

(3) **Sub-categories**

The council may determine a sub-category for a part of land to which subsection (2) applies according to the category determined by that subsection for the part.

(4) **Apportionment of rates and charges**

A rate, the base amount of a rate, or the minimum amount of a rate or of a charge, that is made and levied according to categories or sub-categories of land is to apply to a parcel of mixed development land according to the percentages represented by the apportionment factor for the parcel ascertained under section 14X of the *Valuation of Land Act 1916*.

519 How is vacant land to be categorised?

If vacant land is unable to be categorised under section 515, 516 or 517, the land is to be categorised:

(a) if the land is zoned or otherwise designated for use under an environmental planning instrument—according to any purpose for which the land may be used after taking into account the nature of any improvements on the land and the nature of surrounding development, or

(b) if the land is not so zoned or designated—according to the predominant categorisation of surrounding land.

520 Notice of declaration of category

(1) A council must give notice to each rateable person of the category declared for each parcel of land for which the person is rateable.

(2) The notice must be in the approved form and must:

(a) state that the person has the right to apply to the council for a review of the declaration that the land is within the category stated in the notice, and

(b) state that the person has the right to appeal to the Land and Environment Court if dissatisfied with the council's review, and

(c) refer to sections 525 and 526.

521 When does the declaration of a category take effect?

A declaration that a parcel of land is within a particular category takes effect from the date specified for the purpose in the declaration.

522 When does the declaration of a category cease?

A declaration that a parcel of land is within a particular category ceases when a subsequent declaration concerning the land takes effect.

523 When are the declarations of categories reviewed?

(1) A council need not annually review a declaration that a parcel of land is within a particular category, but may review a declaration:

(a) as part of a general review of the categorisation of all or a number of parcels of land, or

(b) because it has reason to believe that a parcel of land should be differently categorised.

(2) A council must review a declaration if required to do so in accordance with section 525 by a person who is rateable in respect of a parcel of land to which the declaration applies.

524 Notice of change of category

A rateable person (or the person's agent) must notify the council within 30 days after the person's rateable land changes from one category to another.

525 Application for change of category

(1) A rateable person (or the person's agent) may apply to the council at any time:

(a) for a review of a declaration that the person's rateable land is within a particular category for the purposes of section 514, or

(b) to have the person's rateable land declared to be within a particular category for the purposes of that section.

(2) An application must be in the approved form, must include a description of the land concerned and must nominate the category the applicant considers the land should be within.

(3) The council must declare the land to be within the category nominated in the application unless it has reasonable grounds for believing that the land is not within that category.

(4) If the council has reasonable grounds for believing that the land is not within the nominated category, it may notify the applicant of any further information it requires in order to be satisfied

that the land is within that category. After considering any such information, the council must declare the category for the land.

(5) The council must notify the applicant of its decision. The council must include the reasons for its decision if it declares that the land is not within the category nominated in the application.

(6) If the council has not notified the applicant of its decision within 40 days after the application is made to it, the council is taken, at the end of the 40-day period, to have declared the land to be within its existing category.

526 Appeal against declaration of category

(1) A rateable person who is dissatisfied with:

(a) the date on which a declaration is specified, under section 521, to take effect, or

(b) a declaration of a council under section 525,

may appeal to the Land and Environment Court.

(2) An appeal must be made within 30 days after the declaration is made.

(3) The Court, on an appeal, may declare the date on which a declaration is to take effect or the category for the land, or both, as the case requires.

527 Adjustment of rates following change in category

A council must make an appropriate adjustment of rates paid or payable by a rateable person following a change in category of land.

528 Rate may be the same or different for different categories

(1) The ad valorem amount (the amount in the dollar) of the ordinary rate may be the same for all categories of land or it may be different for different categories.

(2) The regulations may provide that the ad valorem amount of the ordinary rate for land categorised as mining is to be not more or less than a specified percentage of the ad valorem amount of the ordinary rate for land categorised as business. The regulations may apply to all councils or one or more councils specified in the regulations.

529 Rate may be the same or different within a category

(1) Before making an ordinary rate, a council may determine a sub-category or sub-categories for one or more categories of rateable land in its area.

(2) A sub-category may be determined:

(a) for the category "farmland"—according to the intensity of land use, the irrigability of the land or economic factors affecting the land, or

(b) for the category "residential"—according to whether the land is rural residential land or is within a centre of population, or

(c) for the category "mining"—according to the kind of mining involved, or

(d) for the category "business"—according to a centre of activity.

Note. In relation to the category "business", a centre of activity might comprise a business centre, an industrial estate or some other concentration of like activities.

(3) The ad valorem amount (the amount in the dollar) of the ordinary rate may be the same for all land within a category or it may be different for different sub-categories.

(4) Land may be taken to be irrigable for the purposes of subsection (2) (a) if, and only if, it is the subject of a water right within the meaning of the *Valuation of Land Act 1916*.

530 (Repealed)

531 What provisions of this Part apply to the determination of sub-categories?

(1) Sections 519–527 apply to the determination of sub-categories for a category of rateable land in the same way as those sections apply to the declaration of a category.

(2) Notice of determination of a sub-category may be given in the same notice as the notice of declaration of a category.

Part 3A Charges

531A Adjustment of charges following change in category

If the amount of a charge paid or payable by a person is determined by reference (or partly by reference) to a category or sub-category of land declared by the council under Part 3, the council must make an appropriate adjustment of the charge following a change in category or sub-category of the land.

531B Aggregation of certain parcels subject to a charge

(1) If the council is of the opinion that the levying of a charge:

(a) would apply unfairly, and

(b) could cause hardship to a person who is liable to the charge in respect of two or more separate parcels of land,

it may treat the parcels as being a single parcel and levy the charge accordingly.

(2) Separate parcels may be treated as being a single parcel under this section only if each separate parcel is subject to the same category or sub-category declared by the council under Part 3.

(3) A council must not treat separate parcels as being a single parcel under this section:

(a) if each parcel is a parcel on which a dwelling is erected or a parcel that comprises (or substantially comprises) a dwelling in a residential flat building, or

(b) if the parcels are a combination of parcels referred to in paragraph (a).

Part 4 Making of rates and charges

532 Publication of draft operational plan

A council must not make a rate or charge until it has given public notice (in accordance with section 405) of its draft operational plan for the year for which the rate or charge is to be made and has considered any matters concerning the draft operational plan (in accordance with that section).

533 Date by which a rate or charge must be made

A rate or charge must be made before 1 August in the year for which the rate or charge is made or before such later date in that year as the Minister may, if the Minister is of the opinion that there are special circumstances, allow.

534 Rate or charge to be made for a specified year

Each rate or charge is to be made for a specified year, being the year in which the rate or charge is made or the next year.

535 Rate or charge to be made by resolution

A rate or charge is made by resolution of the council.

536 What criteria are relevant in determining the base amount?

(1) In determining a base amount of a rate, the council must have regard to (but is not limited to) the following:

- its general administration and overhead costs
- the extent to which projected ad valorem rates on individual properties do not reflect the cost of providing necessary services and facilities
- the level of grant or similar income available to provide necessary services and facilities
- the degree of congruity and homogeneity between the values of properties subject to the rate and their spread throughout the area
- whether a rate that is wholly an ad valorem rate would result in an uneven distribution of the rate burden because a comparatively high proportion of assessments would bear a comparatively low share of the total rate burden
- in the case of a special rate—the cost of providing the works, services, facilities or activities to the parcels of land subject to the rate (ignoring the rateable value of those parcels).

(2) The council, in having regard to its general administration and overhead costs, must use net costs, with income being included in the calculation of standard costs for all community service functions, library services, recreational and cultural facilities and amenities and the like.

537 Form of resolution specifying base amounts of rates

In the resolution that specifies a base amount of a rate, or the base amount of a rate for a category or sub-category of an ordinary rate, the council must state:

(a) the amount in dollars of the base amount, and

(b) the percentage, in conformity with section 500, of the total amount payable by the levying of the rate, or the rate for the category or sub-category concerned of the ordinary rate, that the levying of the base amount will produce.

538 Form of resolution for special rate

(1) In the resolution that makes a special rate, the council must state whether the special rate is to be levied on all rateable land in the council's area or on only a part of that land.

(2) If the special rate is to be levied on only a part of that land, the council must specify in the resolution the part on which it is to be levied.

539 What criteria are relevant in determining the amount of a charge?

(1) In determining the amount of a charge for a service, the council may have regard to (but is not limited to) the following:

- the purpose for which the service is provided
- the nature, extent and frequency of the service
- the cost of providing the service
- the categorisation for rating purposes of the land to which the service is provided
- the nature and use of premises to which the service is provided
- the area of land to which the service is provided
- in the case of water supply services—the quantity of water supplied.

(2) The amount of a charge need not be limited to recovering the cost of providing the service for which the charge is made, except as provided by sections 503 (2) and 504 (3).

540 Form of charge

The amount of a charge may be expressed as a single amount or as a rate per unit or as any combination of them.

Note. For example, the amount of a charge for a water supply service could be a fixed amount, a rate per kilolitre, or a combination of them.

541 Differing amounts of a charge

A council may determine differing amounts for the same charge.

542 Minimum amounts of charges

A council may, in a resolution making a charge, specify a minimum amount of the charge or, if the council has determined differing amounts for the same charge, minimum amounts for each such differing amount.

543 Each form of rate and each charge to have its own name

(1) A council must, when making an ordinary rate, give a short separate name for each amount of the ordinary rate.

(2) A council must, when making a special rate, give the special rate a short name.

(3) A council must, when making a charge, give a short separate name for each amount of the charge.

Note. The names given to the ordinary rate could include names like:

Farmland—Ordinary

Farmland—Poultry farms

Residential—A

Residential—B

The names given to special rates could include names like:

Upper Smithtown water rate

Lower Smithtown water rate

Leisure centre—primary rate

Leisure centre—secondary rate

The names given to charges could include names like:

Waste management services—domestic

Waste management services—commercial

544 Inclusion of names in rates and charges notices

A council must include the name of each rate and charge, in full or in an abbreviated form, in the rates and charges notice by which the rate or charge is levied.

545 Curing of irregularities

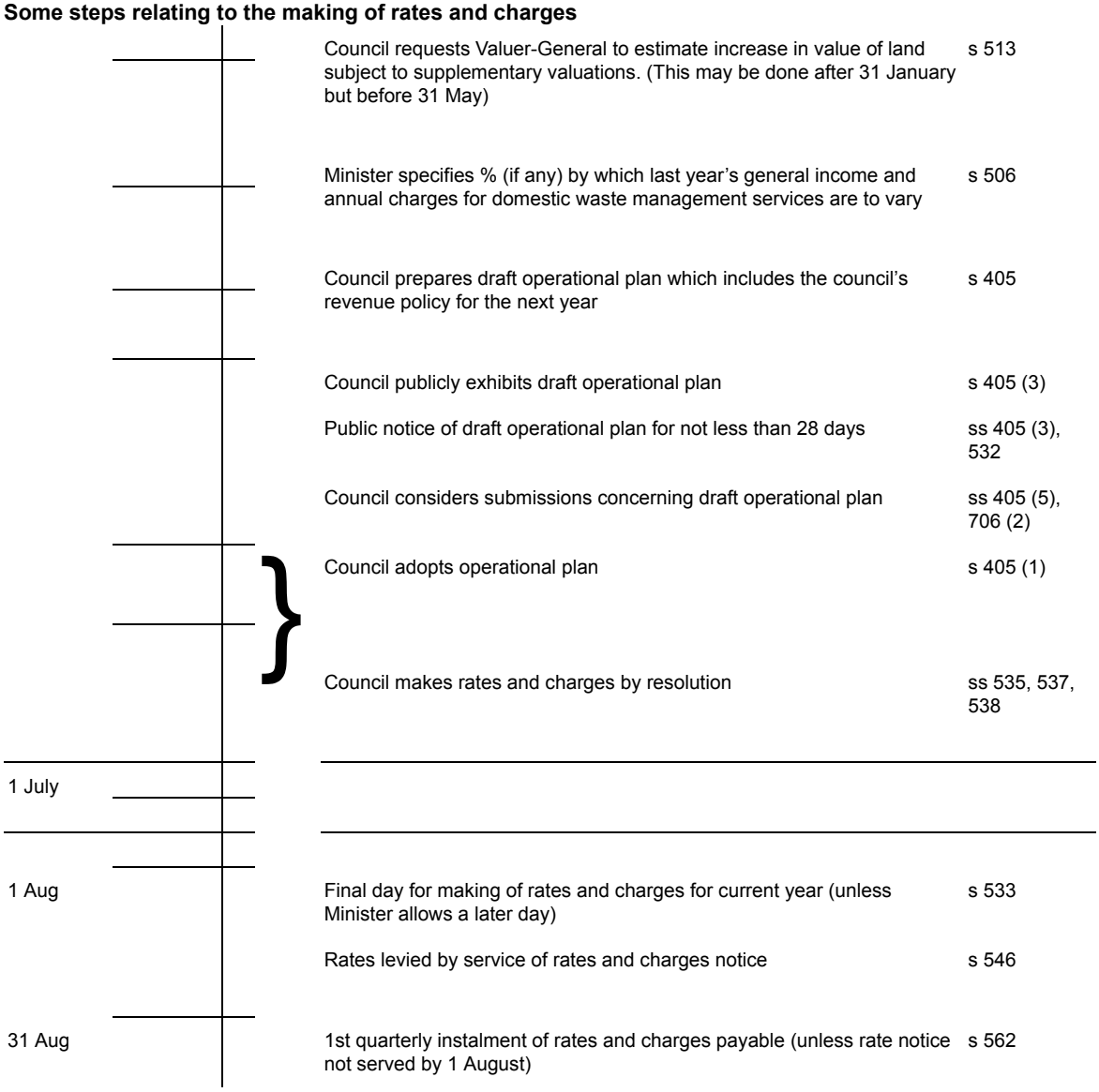
(1) The Minister may authorise a council to do such things as may be necessary to cure an irregularity in the making or levying of a rate or charge.

(2) The Minister may declare, by order published in the Gazette, that a rate or charge that would otherwise be invalid because of a provision of this Part is taken to have been validly made from the time it purported to have been made. Such an order has effect according to its tenor.

(3) The Minister may not make such an order unless, in the Minister's opinion, the rate or charge concerned is invalid only because of a minor and technical breach of one or more of the provisions of this Part.

(4) The Minister may make such an order even though proceedings in relation to the validity have commenced.

Some steps relating to the making of rates and charges



Part 5 Levying of rates and charges

Division 1 General

546 How is a rate or charge levied?

(1) A rate or charge is levied on the land specified in a rates and charges notice by the service of the notice.

(2) The notice may be served at any time after 1 July in the year for which the rate or charge is made or in a subsequent year.

(3) A notice that is required to effect an adjustment of rates or charges may be served in the year for which the rate or charge is made or a subsequent year.

(4) The notice may include more than one rate, more than one charge and more than one parcel of land.

(5) It is not necessary to specify the name of the rateable person or the person liable to pay the charge in the notice if the council does not know the person's name.

547 Method of rating dwellings under company title

(1) For the purposes of this Act:

(a) a person who, because of the ownership of shares in a company, is entitled to occupy a dwelling in, or a portion of, a building containing two or more such dwellings or portions is taken to be the owner of land (or two or more persons who, because of the ownership of the shares in a company, are entitled to occupy the same dwelling in or portion of, such a building are taken together to be the owners of land), and

(b) the land value of the land of which the person is (or the persons are) taken to be the owner (or owners) is that proportion of the land value of the land on which the building is erected as the number of shares in the company owned by the person (or persons) bears to the total number of shares issued by the company.

(2) The secretary of such a company must notify the council of:

(a) the names and addresses of owners of shares in the company and of the number of shares issued to each owner, and

(b) changes in ownership of any shares in the company.

(3) A rate or charge, to the extent to which it is payable by the owners of shares in accordance with this section, is not also payable by the company in which those shares are held.

Note. The rating of land under strata title is provided for under the *Strata Schemes Development Act 2015*.

548 Minimum amounts

(1) A council, in a resolution making a rate consisting of an ad valorem amount:

(a) may specify a minimum amount of the rate which must be levied in respect of each separate parcel, or

(b) may specify:

(i) a minimum amount of the rate which must be levied in respect of each separate parcel, other than a separate parcel consisting of vacant land, and

(ii) a minimum amount of the rate, being less than the minimum amount of rate specified under subparagraph (i), which must be levied in respect of each separate parcel consisting of vacant land, or

(c) may specify:

(i) a minimum amount of the rate which must be levied in respect of each separate parcel, other than a separate parcel consisting of vacant land, and

(ii) a minimum amount of the rate, being less than the minimum amount of the rate specified under subparagraph (i), which must be levied in respect of each separate parcel consisting of vacant land, other than a separate parcel consisting of vacant flood liable land or vacant coastal hazard liable land, and

(iii) a minimum amount of the rate, being less than the minimum amount of the rate specified under subparagraph (ii), which must be levied in respect of each separate parcel of vacant flood liable land or vacant coastal hazard liable land.

(2) If a council makes an ordinary rate for different categories or sub-categories of land, it may specify a different minimum amount for each category or sub-category of land.

(3) Except as provided by subsection (4), the minimum amount of a rate is to be:

(a) in respect of an ordinary rate, such amount as is determined by the council, not exceeding $259 or such greater amount as may be prescribed by the regulations or, in the case of a rate for which a particular council may, under subsection (1) or (2), specify a minimum amount, such greater amount as the Minister may determine by instrument in writing, or

(b) in respect of any other rate (not being a water supply special rate or a sewerage special rate), such amount as is determined by the council, not exceeding $2 or such greater amount as the Minister may determine by instrument in writing given to the council.

(4) If the minimum amount of an ordinary rate for the previous year exceeded the amount prescribed or determined in respect of such a rate under subsection (3) (a), the council may determine the minimum amount of the ordinary rate in accordance with subsection (5).

(5) The minimum amount of the ordinary rate must be of such amount as is determined by the council, not exceeding the amount of the minimum ordinary rate for the previous year increased by the percentage (if any) specified in respect of the council under this Act.

(6) A minimum amount of a rate is not invalid because:

(a) the minimum amount is levied on the whole or any part of the land subject to the rate, or

(b) of the size of the minimum amount.

(7) A council may not specify a minimum amount of a rate consisting of a base amount to which an ad valorem amount is added.

(8) A minimum amount of a rate specified for a parcel of land may not differ from a minimum amount specified for any other parcel of land within the same category or sub-category unless:

(a) the land values of the parcels were last determined by reference to different base dates, and

(b) the Minister approves the different minimum amounts.

548A Aggregation of values of certain parcels subject to rates containing base amounts

(1) If the council is of the opinion that the levying of a minimum rate or of a rate containing a base amount:

(a) would apply unfairly, and

(b) could cause hardship to a rateable person who is rateable in respect of two or more separate parcels of land subject to the rate,

it may aggregate the land values of such of the parcels as it determines and levy the rate on the aggregated land values.

(2) Land values may be aggregated under this section for separate parcels of land only if each separate parcel is subject to:

(a) the same category or subcategory of the same ordinary rate, or

(b) the same special rate.

(3) A council must not aggregate the land values of two or more separate parcels of land:

(a) if each parcel is a parcel on which a dwelling is erected or a parcel that comprises (or substantially comprises) a dwelling in a residential flat building, or

(b) if the parcels are a combination of parcels referred to in paragraph (a).

549 Reduction of rates containing base amounts if levied on vacant land

(1) A council may determine that a rate (whether an ordinary rate or a special rate) consisting of a base amount to which an ad valorem amount is added is to be levied on:

(a) vacant land, or

(b) vacant land that has suffered physical damage (such as flood liable or coastal hazard affected land), or

(c) land prescribed by the regulations for the purposes of this section,

in accordance with this section.

(2) If:

(a) the rate were to be levied on land on the basis that the rate consisted of only the ad valorem amount, and

(b) the amount payable as a consequence of levying the ad valorem amount on the land would be less than $250 (or such other amount as may be prescribed by the regulations),

the rate payable in respect of the land is $250 (or such other amount as may be prescribed by the regulations) or the base amount of the rate, whichever is the lesser.

550 Charge of rates and charges on land

(1) A rate or charge levied under this Act on land (including any interest accrued on the rate or charge as referred to in section 566) and any costs awarded to the council by a court in proceedings to recover the rate or charge are a charge on the land.

(2) The charge ranks on an equal footing with a charge on the land under any other Act but takes priority over any other charge or encumbrance.

(3) The charge does not affect:

(a) the estate of the Crown in land owned by the Crown, or

(b) the estate of a Crown lessee if the lease is granted after the rate or charge was levied (whether or not the land was previously held under a lease from the Crown).

(4) The charge does not affect a bona fide purchaser for value who made due inquiry at the time of purchase but had no notice of the liability. A purchaser who has obtained a certificate under section 603 is taken to have made due inquiry.

(5) The provisions of this section have effect despite anything contained in section 42 of the *Real Property Act 1900*.

Division 2 Special rates and charges relating to water supply, sewerage and drainage

551 Application of Division 2

This Division applies to a special rate or charge that is made in connection with water supply, sewerage or drainage services that are actually being provided by the council.

552 What land may be subject to a water supply special rate or charge?

(1) A special rate or charge relating to water supply may be levied on:

(a) land that is supplied with water from a water pipe of the council, and

(b) land that is situated within 225 metres of a water pipe of the council whether the land has a frontage or not to the public road (if any) in which the water pipe is laid, and although the land is not actually supplied with water from any water pipe of the council.

(2) A special rate or charge relating to water supply may not be levied on land unless water could be supplied to some part of the land from a standpipe at least 1 metre in height from the ground level, if such a pipe were laid and connected to the council's mains.

(3) A special rate or charge relating to sewerage may be levied on all land except:

(a) land which is more than 75 metres from a sewer of the council and is not connected to the sewer, and

(b) land from which sewage could not be discharged into any sewer of the council.

(4) A special rate or charge relating to drainage may be levied on rateable land that is within the basin served by the drainage works.

553 Time at which land becomes subject to special rate or charge

Land does not become subject to a special rate or charge to which this Division applies by virtue of the extension by a council of a water pipe, sewer or drain:

(a) in the case of a special rate or charge relating to water supply—until 21 days after notice is given by the council in the Gazette of the extension of the water pipe or until the date on which the land is connected to the council's mains, whichever is the earlier, or

(b) in the case of a special rate or charge relating to sewerage—until 60 days after notice is given by the council in the Gazette of the extension of the sewer or until the date on which the land is connected to the sewer, whichever is the earlier, or

(c) in the case of a special rate or charge relating to drainage—until notice is given by the council in the Gazette of the extension of the drain.

553A Special rates and charges not payable in relation to land provided with private water supply or sewerage

(1) A special rate or charge is not payable in relation to any land in respect of the supply of water, or the provision of a sewerage service, during the term of any contract in that regard entered into between the owner of the land and a licensed retail supplier within the meaning of the *Water Industry Competition Act 2006*.

(2) If:

(a) the council is a retailer of last resort within the meaning of the *Water Industry Competition Act 2006* in relation to any water supply or sewerage service, and

(b) a direction in relation to that service is given to the council under section 56 of that Act,

the council and the owner are taken to have entered into a special circumstances contract in such terms as are prescribed by the regulations for the purposes of this subsection.

Division 3 Coastal protection service charges

553B Restriction on levying coastal protection service charges

(1) An annual charge for coastal protection services may not be levied on a parcel of rateable land in relation to existing coastal protection works unless the owner (or any previous owner) of that land has consented in writing to the land being subject to such charges.

(2) Despite subsection (1), the council may make and levy an annual charge on a parcel of rateable land for coastal protection services that relate to existing coastal protection works if the owner or occupier (or any previous owner or occupier) of the parcel of rateable land contributed, after the commencement of this section, to the upgrade or expansion of the existing coastal protection works. However, any such annual charge must be calculated so as to enable the council only to recover that portion of the reasonable cost to the council of providing those services that exceeds the reasonable cost to the council of providing such services had the existing coastal protection works not been upgraded or expanded.

(3) An annual charge for coastal protection services may not be levied on a parcel of rateable land in relation to any coastal protection works if:

(a) the maintenance of the works or the management of the impacts of the works (as appropriate) is a condition of an approval or consent under the *Environmental Planning and Assessment Act 1979* relating to the works, and

(b) that maintenance or management work is not being carried out by or on behalf of the council.

(4) In this section, ***existing coastal protection works*** means coastal protection works that existed before the commencement of this section.

Part 6 What land is rateable?

554 What land is rateable?

All land in an area is rateable unless it is exempt from rating.

555 What land is exempt from all rates?

(1) The following land is exempt from all rates:

(a) land owned by the Crown, not being land held under a lease for private purposes,

(b) land within a national park, historic site, nature reserve, state game reserve or karst conservation reserve (within the meaning of the *National Parks and Wildlife Act 1974*), whether or not the land is affected by a lease, licence, occupancy or use,

(b1) subject to subsection (3), land that is the subject of a conservation agreement (within the meaning of the *National Parks and Wildlife Act 1974*),

(b2) land that is vested in, owned by, held on trust by or leased by the Nature Conservation Trust of New South Wales constituted by the *Nature Conservation Trust Act 2001*,

(c) land that is within a special area or controlled area (within the meaning of the *Water Board (Corporatisation) Act 1994*) for Sydney Water Corporation referred to in that Act and is Crown land or land vested in the Corporation,

(c1) land that is within a special area (within the meaning of the *Hunter Water Board (Corporatisation) Act 1991*) for the Hunter Water Corporation and is Crown land or land vested in that company,

(c2) land that is vested in or owned by Water NSW and in, on or over which water supply works (within the meaning of the *Water Management Act 2000*) are installed,

(d) land that is within a special area (as declared by an order under section 302 of the *Water Management Act 2000*) for a water supply authority and is Crown land or land vested in the authority,

(e) land that belongs to a religious body and is occupied and used in connection with:

(i) a church or other building used or occupied for public worship, or

(ii) a building used or occupied solely as the residence of a minister of religion in connection with any such church or building, or

(iii) a building used or occupied for the purpose of religious teaching or training, or

(iv) a building used or occupied solely as the residence of the official head or the assistant official head (or both) of any religious body in the State or in any diocese within the State,

(f) land that belongs to and is occupied and used in connection with a school (being a government school or non-government school within the meaning of the *Education Act 1990* or a school in respect of which a certificate of exemption under section 78 of that Act is in force), including:

(i) a playground that belongs to and is used in connection with the school, and

(ii) a building occupied as a residence by a teacher, employee or caretaker of the school that belongs to and is used in connection with the school,

(g) land that is vested in the New South Wales Aboriginal Land Council or a Local Aboriginal Land Council and is declared under Division 5 of Part 2 of the *Aboriginal Land Rights Act 1983* to be exempt from payment of rates,

(g1) land that is vested in or owned by Residual Transport Corporation of New South Wales or a public transport agency (within the meaning of the *Transport Administration Act 1988*) and in, on or over which rail infrastructure facilities (within the meaning of that Act) are installed,

(g3) land that is vested in or owned by Sydney Metro and in, on or over which rail infrastructure facilities (within the meaning of the *Transport Administration Act 1988*) are installed,

(h) land that is below high water mark and is used for any aquaculture (within the meaning of the *Fisheries Management Act 1994*) relating to the cultivation of oysters.

(2) Land is not rateable under subsection (1) (a) only because the land is leased by the Crown to a caretaker at a nominal rent.

(3) If part of a single parcel of land is the subject of a conservation agreement within the meaning of the *National Parks and Wildlife Act 1974* (as referred to in subsection (1) (b1)), any rate levied on that whole parcel (for any period on or after 1 July 2008) is to be reduced by the following percentage:

$$\frac{A_{ca}}{A_{whole}} \times \frac{100}{1}$$

where:

A_{ca} is the area of that part of the parcel that is the subject of the conservation agreement, and

A_{whole} is the area of the whole parcel.

Note. For example, if a parcel of land would normally be subject to a rate of $1,000, but 40% of the area of the land is subject to a conservation agreement, that rate is to be reduced by 40% to $600.

(4) Land that is a lot in a strata plan registered under the *Strata Schemes Development Act 2015* for a leasehold strata scheme is taken, for the purposes of subsection (1) (e), (f), (g) and (g1), to belong to or be vested in the owner (within the meaning of that Act) of the lot and not the lessor (within the meaning of that Act), unless the lessor is the owner for the purposes of that Act.

(5) A parcel of rateable land belonging to a religious body that is partly occupied and used in a manner described in subsection (1) (e), and partly in a manner that would result in part of the parcel not being exempt from rates under this section, is to be valued in accordance with section

28A of the *Valuation of Land Act 1916* to enable those rates to be levied on the part that is not exempt.

(6) Any such valuation is to be made at the request of the council that proposes to levy rates on the parcel concerned.

(7) For the avoidance of doubt, sections 7B and 28A of the *Valuation of Land Act 1916* extend to a stratum for the purpose of carrying out a valuation in accordance with subsection (5) and so extend whether or not the stratum is a lot in a strata plan that is registered under the *Strata Schemes Development Act 2015*.

556 What land is exempt from all rates, other than water supply special rates and sewerage special rates?

(1) The following land is exempt from all rates, other than water supply special rates and sewerage special rates:

(a) land that is a public place,

(b) land used for a public reserve and vested in the Crown, a public body or trustees,

(c) land used for a common and vested in the Crown, a public body or trustees,

(d) land used for a public cemetery and vested in the Crown, a public body or trustees,

(e) land used solely for a free public library and vested in the Crown, a public body or trustees,

(f) land acquired under an environmental planning instrument for the public purpose specified in the instrument and not leased for private purposes,

(g) land that is held under a lease from the Crown for private purposes and is the subject of a mineral claim granted under Division 4 of Part 9 of the *Mining Act 1992* and that the council has declared is not rateable,

(h) land that belongs to a public benevolent institution or public charity and is used or occupied by the institution or charity for the purposes of the institution or charity,

(i) land that belongs to a public hospital,

(j) land that is vested in the Minister for Health, the Health Administration Corporation or the New South Wales Health Foundation,

(k) land that is vested in a local health district constituted under the *Health Services Act 1997*,

(l) land that is vested in a university, or a university college, and is used or occupied by the university or college solely for its purposes,

(m) land that is vested in the Crown or the Sydney Cricket and Sports Ground Trust and is used or occupied for the purposes of or in accordance with the *Sydney Cricket and Sports Ground Act 1978*,

(n) land that is vested in the Crown or the Zoological Parks Board and is used or occupied by the Board for its purposes,

(o) land that:

(i) is vested in the mines rescue company, within the meaning of the *Coal Industry Act 2001*, and

(ii) is used for the purposes of a mine rescue station controlled by that company,

(p) land that is managed by the Teacher Housing Authority and on which a house is erected,

(q) land that is leased to the Crown for the purpose of cattle dipping,

(r) land that is specified or described in the regulations as being exempt from all rates, other than water supply special rates and sewerage special rates,

(s) land that is vested in an Aboriginal Land Council and that is reserved under Part 4A of the *National Parks and Wildlife Act 1974*.

(2) Land that is a lot in a strata plan registered under the *Strata Schemes Development Act 2015* for a leasehold strata scheme is taken, for the purposes of subsection (1) (h)–(o), to belong to or be vested in the owner (within the meaning of that Act) of the lot and not the lessor (within the meaning of that Act), unless the lessor is the owner for the purposes of that Act.

(3) A parcel of rateable land belonging to a public benevolent institution or public charity that is partly used or occupied by the institution or charity for its own purposes, and partly for a purpose that would result in part of the parcel not being exempt from rates under this section, is to be valued in accordance with section 28A of the *Valuation of Land Act 1916* to enable those rates to be levied on the part that is not exempt.

(4) Any such valuation is to be made at the request of the council that proposes to levy rates on the parcel concerned.

(5) For the avoidance of doubt, sections 7B and 28A of the *Valuation of Land Act 1916* extend to a stratum for the purpose of carrying out a valuation in accordance with subsection (3) and so extend whether or not the stratum is a lot in a strata plan that is registered under the *Strata Schemes Development Act 2015*.

557 What land is exempt from water supply special rates and sewerage special rates?

(1) In addition to the land specified in section 555, water supply special rates may not be levied on land to which the council has resolved not to supply water.

(2) In addition to the land specified in section 555, sewerage special rates may not be levied on land which the council has resolved not to connect to the council's sewers.

558 What land and bodies may be exempted from water supply special rates and sewerage special rates?

(1) A council may exempt the following from payment of water supply special rates and sewerage special rates:

(a) a public reserve,

(b) a public hospital,

(c) a public charity,

(d) land:

(i) that is unoccupied, and

(ii) that is not supplied with water from a council water pipe and is not connected to a council sewer, and

(iii) that the council has determined is unsuitable for the erection of a building because it is liable to flooding or tidal inundation or liable to be affected by a coastal hazard,

(e) land that, in the opinion of the council, it is impracticable, having regard to the physical features of the land or any unusual cost that may be incurred, to supply with water or connect to the sewer.

(2) A council may exempt from payment of water supply special rates land that is within 225 metres of a gravitation or rising water main and that is not connected to the main.

(3) A council may exempt from payment of sewerage special rates land that for the time being is not rateable in respect of the water supply special rate.

(4) A public hospital that is exempt from payment of water supply special rates is to be supplied with water, and a public charity that is so exempt may be supplied with water, on the following conditions:

(a) there is to be supplied free of charge:

(i) in the case of a public hospital—300 litres per day (or such greater quantity as the council may determine) for each person resident in the hospital, and

(ii) in the case of a public charity—140 litres per day (or such greater quantity as the council may determine) for each person resident in an institution conducted by the public charity,

(b) for the purposes of this provision:

(i) an inmate is taken to be resident, and

(ii) the number of persons resident is the average number of persons resident during the year preceding the period in respect of which charges would be payable, and

(iii) the general manager may, at any reasonable time, require the production of the records of the public hospital or public charity to verify the average number,

(c) the supply is to be through a meter,

(d) any quantity of water in excess of that which may be supplied free of charge is to be paid for at the charge fixed by the council for excess water.

(5) The council may revoke or alter an exemption.

559 Determination as to whether a body is a public benevolent institution or public charity

The provisions of the *Charitable Fundraising Act 1991* are irrelevant in determining whether a body is a public benevolent institution or public charity for the purposes of section 556 or 558.

Part 7 Payment of rates and charges

560 Who is liable to pay rates?

(1) The owner for the time being of land on which a rate is levied is liable to pay the rate to the council, except as provided by this section.

(2) If land owned by the Crown is leased, the lessee is liable to pay the rate, except as provided by subsection (4).

(3) If there are two or more owners, or two or more lessees from the Crown, of the land, they are jointly and severally liable to pay the rate.

(4) The Crown is liable to pay the rate for land owned by the Crown which is subject to the *Housing Act 2001* or the *Aboriginal Housing Act 1998*.

561 Who is liable to pay charges?

The person liable to pay a charge is:

(a) the person who, if the charge were a rate and if the land on which the charge is levied were rateable in respect of that rate, would be liable under section 560 to pay the rate, or

(b) the Crown in respect of land owned by the Crown, not being land held under a lease for private purposes.

562 Payment of rates and annual charges

(1) Annual rates and charges may be paid in a single instalment or by quarterly instalments.

(2) If payment is made by quarterly instalments, each instalment is to be a quarter of the rates or charges, disregarding any remainder, together, in the case of the first instalment, with the remainder. However, if the amount of an instalment, other than the first instalment, is not a multiple of 10 cents, the amount of each instalment in excess of a multiple of 10 cents is to be subtracted from that instalment and added to the first instalment.

(3) Except as provided by subsection (4):

(a) if payment is made in a single instalment, the instalment is payable by 31 August, and

(b) if payment is made by quarterly instalments, the instalments are payable by 31 August, 30 November, 28 February and 31 May.

(4) If the rates and charges notice is not served by 1 August:

(a) the single instalment (if payment is made in a single instalment), or

(b) the first 2 instalments (if payment is made by quarterly instalments),

is or are payable by 30 November, or by the day that is 30 days after service of the notice, whichever is the later.

(5) On or before 31 October, 31 January and 30 April, a council must send reminder notices (to be sent separately from the rates and charges notice) to each person whose rates and charges are being paid by quarterly instalments.

563 Discount for prompt payment in full

A council may discount the amount of a rate or charge to such extent as it determines if the whole of the discounted amount of the rate or charge is paid by a date nominated by the council.

564 Agreement as to periodical payment of rates and charges

(1) A council may accept payment of rates and charges due and payable by a person in accordance with an agreement made with the person.

(2) The council may write off or reduce interest accrued on rates or charges if the person complies with the agreement.

565 Capital contributions instead of payment of special rates or charges

A council may waive payment by a rateable person of the whole or part of a special rate or charge for one or more years as specified by the council if the person pays, or enters into a written agreement to pay, a lump sum towards the capital cost of any works, services or facilities for which the special rate or charge is made.

566 Accrual of interest on overdue rates and charges

(1) Interest accrues on rates and charges that remain unpaid after they become due and payable.

(2) Interest accrues on a daily basis.

(3) The rate of interest is that set by the council but must not exceed the rate specified for the time being by the Minister by notice published in the Gazette.

(4) Accrued interest is, for the purpose of its recovery, taken to be a rate or charge which is due and payable.

(5) Interest continues to accrue on unpaid rates or charges even though judgment for payment of the rates or charges may have been obtained in a court. Interest is not payable on the judgment debt, despite any other Act.

(6) If an unpaid rate or charge is referred to the Chief Commissioner of State Revenue for debt recovery action in accordance with the *State Debt Recovery Act 2018*, interest ceases to accrue on the unpaid amount under this section on and from the referral date. However, interest may be charged under that Act.

(7) If the council revokes the referral of the amount under the *State Debt Recovery Act 2018*:

(a) interest starts to accrue again under this section on and from the date the referral is revoked, unless the council otherwise directs, and

(b) any interest or debt recovery costs charged by the Chief Commissioner under that Act are not recoverable by the council.

(8) In this section:

referral date means the date on which the unpaid amount is referred by the council to the Chief Commissioner of State Revenue for the making of a debt recovery order under the *State Debt Recovery Act 2018*.

567 Writing off of accrued interest

The council may write off accrued interest on rates or charges payable by a person if, in its opinion:

(a) the person was unable to pay the rates or charges when they became due and payable for reasons beyond the person's control, or

(b) the person is unable to pay the accrued interest for reasons beyond the person's control, or

(c) payment of the accrued interest would cause the person hardship.

568 Application of payments

Money paid to a council in respect of rates or charges levied on land is to be applied towards payment of those rates or charges in the order in which they became due.

569 Liability of the occupier

(1) A council may serve on an occupier of land a notice of the amount of any rate or charge unpaid in respect of the land or of the amount of any judgment given against a person for any rate or charge unpaid in respect of the land, if the person liable to pay the rate or charge:

(a) is resident outside New South Wales, or

(b) is unknown to the council, or

(c) has not been served in any legal proceedings for the recovery of the rate or charge after reasonable efforts have been made by or on behalf of the council to effect service, or

(d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or

(e) dies, or

(f) has had judgment given against him or her for the amount of the rate or charge.

(2) The notice may demand that any rent in respect of the land is to be paid by the occupier to the council as it falls due in satisfaction of the rate, charge or judgment.

(3) The council may recover the amount of the rate, charge or judgment outstanding as a debt from the occupier if rent is not paid to the council in accordance with the demand.

(4) A payment under this section to the council discharges the payer from any liability to any person to pay the rent.

570 Transfer of land in payment of rates or charges

A council may accept a transfer of the land in respect of which rates or charges are or accrued interest is due and payable in full satisfaction of the rates, charges or accrued interest.

571 What happens if land is transferred?

(1) A person who disposes of an estate in land continues to be liable to pay a rate or charge levied in respect of the land if the rate or charge was levied:

(a) before the estate was disposed of, or

(b) after the estate was disposed of but before notice of the transfer was given as required by this Act.

(2) A person who, as the holder of a licence, permit, permissive occupancy or authority under the *Crown Land Management Act 2016*, was liable for rates or charges continues to be liable to pay a rate or charge levied in respect of the land subject to the licence, permit, permissive occupancy or authority if the rate or charge was levied before the licence, permit, permissive occupancy or authority was terminated or expired.

(3) A person who becomes liable for rates and charges levied on land is liable to the council for a rate or charge owing in respect of the land even though the person was not so liable when the rate or charge was levied.

572 What happens if the rateability of land changes?

(1) A rate is proportionate to the portion of the year for which land is rateable and to the portion of the land which is rateable.

(2) A charge, other than a charge limited under section 503 (2) to the cost of providing a particular service to land, is proportionate to the portion of the year for which land is rateable.

573 What happens if land is subdivided?

If land is subdivided, and a part is sold or let, any unpaid rates or charges may be apportioned by the council on the recommendation of the Valuer-General.

574 Appeal on question of whether land is rateable or subject to a charge

(1) A person who has an estate in land, or who is the holder of a licence or permit for land under the *Crown Land Management Act 2016*, in respect of which a rates and charges notice is served may appeal to the Land and Environment Court:

(a) in the case of a rate—against the levying of the rate on the ground that the land or part of it is not rateable or is not rateable to a particular ordinary rate or a particular special rate, or

(b) in the case of a charge—against the levying of the charge on the ground that the land is not subject to any charge (excluding a charge limited under section 503 (2)) or is not subject to the particular charge.

(2) An appeal may not be made under this section on the ground that land has been wrongly categorised under Part 3.

(3) An appeal must be made within 30 days after service of the rates and charges notice.

(4) If the Land and Environment Court determines that only a part of land is rateable, it is required to determine the value of that part.

Note. While the grounds of appeal concerning rates are limited to those specified in section 574, opportunity is given at different points in the rate-making process for objections, submissions (including submissions by way of objection) and applications to be made to a council concerning rates. These include:

- public notice of the draft operational plan
- application for change of category for purposes of ordinary rate
- deferral and reduction of rates.

Part 8 Concessions

Division 1 Concessions for pensioners

575 Reductions for eligible pensioners

(1) If an eligible pensioner is the person solely liable, or a person jointly liable with one or more other persons, for a rate or charge levied on land on which a dwelling is situated, the rate or charge is, on application to the council and on production to the council of evidence sufficient to enable it to calculate the amount of the reduction, to be reduced in accordance with this section.

(2) Subject to subsection (3), the amount by which a rate or charge is required to be reduced is:

(a) if the person making the application is, on the date on which the rate or charge is levied, an eligible pensioner who is solely liable or jointly liable with one or more jointly eligible occupiers but with no other person for the rate or charge—one-half of the rate or charge, or

(b) if the person making the application is, on the date on which the rate or charge is levied, an eligible pensioner who is jointly liable with one other person who is not a jointly eligible occupier, or with two or more other persons, any of whom is not a jointly eligible occupier for the rate or charge—an amount that bears to one-half of the rate or charge the same proportion as the part of that rate or charge for which, as between all persons liable to pay the rate or charge, the applicant and any jointly eligible occupier are liable bears to the whole of that rate or charge.

(3) The total amount by which:

(a) all ordinary rates and charges for domestic waste management services levied on any land for the same year are reduced is not to exceed $250, and

(b) all water supply special rates or charges so levied are reduced is not to exceed $87.50, and

(c) all sewerage special rates or charges so levied are reduced is not to exceed $87.50.

However, if subsection (2) (b) applies, the maximum amounts specified in this subsection are to be proportionately reduced in line with the proportion applicable under subsection (2) (b).

(4) If a person becomes an eligible pensioner after the day on which a rate or charge is made and levied, the person is entitled to a reduction under this section of the rate or charge proportionate

to the number of full quarters remaining after the day on which the person becomes an eligible pensioner in the year for which the rate or charge is made.

(5) A person who is an eligible pensioner or a jointly eligible occupier is, to the extent to which any rate or charge that, but for this section, would be payable by the person is reduced under this section, discharged from liability as between that person and any other person jointly liable to pay the rate or charge.

576 Application of this Division to postponed rates

If the payment of part of a rate which is required to be reduced by section 575 is postponed under Division 2, the amount of the rate for the purposes of this Division is taken to be the amount of that part of the rate that is not postponed under Division 2.

577 Extension of concession to avoid hardship

(1) If a council considers it proper to do so to avoid hardship, the council may, by order, direct that:

(a) a person specified in the order:

(i) who occupies a dwelling as his or her sole or principal place of living, which dwelling is the sole or principal place of living of an eligible pensioner, and

(ii) who is jointly liable with that eligible pensioner or with that eligible pensioner and one or more other persons in respect of the land on which that dwelling is situated, and

(iii) in respect of whom a reduction of rates or charges would not, if that person were solely liable in respect of that land, be required to be made under this Division, or

(b) any person belonging to a class of persons specified in the order, being persons referred to in paragraph (a),

is, on and from the effective date of the order, taken, for the purposes of this Division, to be or to have been an eligible pensioner.

(2) If a council considers it proper to do so to avoid hardship, the council may, by order, direct that:

(a) an eligible pensioner specified in the order who, although not liable, or although liable jointly with one or more other persons, to do so, has, for such period as, in the opinion of the council, warrants the making of an order under this section in respect of that person, paid the whole of the rates or charges for the land on which that dwelling is situated or is, in the opinion of the council, likely to pay the whole of the rates or charges in circumstances that in the opinion of the council warrant the making of an order under this subsection, or

(b) any person belonging to a class of persons specified in the order being persons referred to in paragraph (a),

is, on and from the effective date of the order, taken, for the purposes of this Division, to be or to have been the person solely liable in respect of the land on which the dwelling is situated.

(3) An order under this section has effect according to its tenor.

578 When does an order under sec 577 take effect?

(1) An order under section 577 takes effect (or is taken to take effect) on such date as is specified in the order (the ***effective date***), being a date in the year commencing on 1 July during which the order is made, whether or not that date is before or after the date on which the order is made.

(2) If a council makes an order under section 577 that is taken to take effect on a date that is before the date of the making of the order, the council may, in that order or in a subsequent order, give such directions as to refunding any rates or charges that have been paid and the charging of interest on overdue rates or charges and as to such other matters as the council thinks fit.

(3) An order under subsection (2) has effect according to its tenor.

579 When and how is an application made for the purposes of this Division?

(1) An application under this Division is to be made within the time and in the manner prescribed by the regulations.

(2) If no such regulations are in force, the application is to be made within the time and in the manner fixed by resolution of the council and, if an application is made for an order referred to in section 577, as the council may require.

(3) If, pursuant to an application made under this Division, a reduced rate or charge applies, the council may, if the eligibility of the applicant for a reduction in a subsequent rate or charge is verified by the council as prescribed by the regulations, reduce the subsequent rate or charge without requiring a further application under this Division.

580 Variation by regulation of amounts of reductions

The amount by which a rate or charge is to be reduced in accordance with this Division may be varied from time to time by the regulations.

581 Reimbursement of councils by Parliament

The Minister is required, out of money provided by Parliament, to pay to the council an amount equal to half that written off by the council under this Division because of section 575.

582 Abandonment of pensioners rates and charges

A council may waive or reduce rates, charges and interest due by any person prescribed by the regulations who is in receipt of a pension, benefit or allowance under the *Social Security Act 1991* of the Commonwealth.

583 Writing off of pensioners rates and charges

(1) A council is to write off amounts of rates, charges and interest which are reduced or waived under this Division.

(2) A council may not take proceedings to recover an amount so written off unless the amount has been written off because of a wilfully false statement in an application under this Division or except as provided by section 584.

584 Ending of concession

(1) If circumstances occur that cause a person's entitlement to a reduction, under this Division, of rates or charges to cease, the entitlement is taken to cease on the last day of the quarterly instalment period during which those circumstances occur.

(2) If, at the time the entitlement is taken to cease, the rates or charges for the whole year, reduced under this Division, have been paid in full, the portion of the payment that is proportionate to the quarterly instalment periods remaining after that time is to be credited to the rates or charges payable in respect of that part of the year remaining after that time.

Division 2 Other concessions

Note. This Division enables a ratepayer to apply for a postponement of part of rates on land which is used only as the site of a house or rural land but, because of its zoning or permitted use, is valued for rating purposes in a way that reflects its permitted use rather than its actual use.

This Division also entitles the Maritime Services Board, the State Rail Authority Residual Holding Corporation and the State Transit Authority to a 25% rebate for ordinary rates payable for certain land.

Other rating concessions may be provided under other Acts. For example, section 127 of the *Heritage Act 1977* provides for rates to be levied on heritage valuations determined in accordance with that Act instead of on other valuations.

585 Who may apply for postponement of rates?

The rateable person for land described in any of the following paragraphs may apply to the council for a postponement of rates payable for the land in the current or following rating year (or in both years):

(a) a parcel of land on which there is a single dwelling-house used or occupied as such and which is zoned or otherwise designated for use under an environmental planning instrument for the purposes of industry, commerce or the erection of residential flat buildings, not being land referred to in paragraph (b) or (c),

(b) a parcel of land (which may comprise one or more lots or portions in a current plan) on which there is a single dwelling-house used or occupied as such and which is zoned or otherwise designated under an environmental planning instrument so as to permit its subdivision for residential purposes, not being land referred to in paragraph (c),

(c) a parcel of rural land (which may comprise one or more lots or portions in a current plan) which is zoned or otherwise designated under an environmental planning instrument so as to permit its use otherwise than as rural land, or its subdivision into two or more lots or portions, one or more of which has an area of less than 40 hectares.

586 Applications to be referred to Valuer-General

(1) The council must refer the application to the Valuer-General to determine the attributable part of the land value of the land if the council is satisfied that the land is described in section 585 (a), (b) or (c).

(2) The Valuer-General must determine the attributable part of the land value and notify the council of the determination.

587 Attributable part of land value of land

(1) The attributable part of the land value of land described in section 585 (a) or (b) is determined by deducting from the land value the value that the land would have if the land could be used only as the site of a single dwelling-house.

(2) The attributable part of the land value of land described in section 585 (c) that may be used otherwise than as rural land is determined by deducting from the land value the value that the land would have if the land could be used only as rural land.

(3) The attributable part of the land value of land described in section 585 (c) that may be subdivided into one or more lots having an area of less than 40 hectares is determined by deducting from the land value the value that the land would have if the land could only be subdivided into lots having an area of 40 hectares or more.

588 Determination of attributable part of land value by Valuer-General

The Valuer-General must not, in determining the attributable part of the land value of land described in section 585 (a) or (b), take into account any portion of the land which the Valuer-General considers to be in excess of that which is reasonably necessary to be occupied or used in conjunction with the single dwelling-house.

589 Redetermination of attributable part of land value

(1) If a valuation for which the attributable part of the land value of land was determined is altered on objection or for the correction of a clerical error or misdescription, the council must require the Valuer-General to redetermine the attributable part of the land value of the land.

(2) The Valuer-General must, on redetermination of the attributable part of the land value of land, notify the council of the redetermination.

590 Use of determination of attributable part of land value

The attributable part of the land value of land determined, or redetermined, by the Valuer-General may be used by a council for the purpose of postponing rates only while the circumstances that made the land eligible for a postponement of rates under this Division continue to exist and the valuation of the land value for which the determination was made remains in use for rating purposes.

591 Postponement of rates

(1) A council must, in accordance with this section, postpone the payment of rates for land in any rating year for which a determination or redetermination of the attributable part of the land value is in force.

(2) For land for which no base amount of a rate is specified, the amount of the rate postponed is to be the same proportion of the rate as the attributable part of the land value bears to the land value.

(3) For land for which a base amount of a rate is specified, the amount of the rate postponed is to be the same proportion of the ad valorem amount of the rate as the attributable part of the land value bears to the land value.

592 Interest on postponed rates

Interest accrues on parts of rates postponed under this Division as if the rates were overdue rates and, for this purpose, the due dates for payment are taken to be the respective dates on which the parts of the rates which were payable became due.

593 Paid rates to be refunded

The council must refund to a rateable person any amount of rates paid by the person which exceeds the amount of the rates remaining after part of the rates is postponed.

594 Adjustment of rates

On a redetermination of the attributable part of the land value of land, a council must adjust amounts payable for rates or to be postponed as appropriate. Any amounts paid in excess are to be refunded and amounts short-paid are recoverable as arrears of rates.

595 Rates to be written off after 5 years

(1) If 5 years have elapsed since the commencement of a rating year for which part of the rates levied on land have been postponed under this Division, the part postponed and any interest accrued on that part must be written off by the council.

(2) Nothing in this section affects the right of the council to recover rates and interest, even though they have been written off under this section, if it subsequently appears to the council that they should not have been written off.

596 Change of circumstances

A rateable person for land for which an application has been made under this Division but not determined, or for which a determination or redetermination of the attributable part of the land value is in force, must inform the council (within 1 month) if land used or occupied solely as a site for a single dwelling-house, or as rural land, ceases to be so used or occupied.

597 Entitlement to postponement ceases

A person ceases to be entitled to a postponement of rates under this Division if the whole of a parcel of land used or occupied solely as a site for a single dwelling-house, or as rural land, ceases to be so used or occupied.

598 Redetermination on partial change of circumstances

(1) If part only of a parcel of land used or occupied solely as the site of a single dwelling-house or as rural land ceases to be so used or occupied, the council must require the Valuer-General to determine the amount of the attributable part of the land value of the land (if any) in relation to that part of the land and each other part of the land.

(2) The council must, in accordance with the Valuer-General's redetermination, make a due adjustment to the rates payable, or apply the provisions postponing rates, as it considers equitable in the circumstances.

599 When and how is an application made for the purposes of this Division?

(1) An application under this Division is to be made within the time and in the manner prescribed by the regulations.

(2) If no such regulations are in force, the application is to be made within the time and in the manner fixed by resolution of the council.

(3) If, pursuant to an application made under this Division, a reduced rate applies, the council may, if the eligibility of the rateable person for a reduction in a subsequent rate is verified by the council as prescribed by the regulations, reduce the subsequent rate without requiring a further application under this Division.

600 Rebates in respect of certain land vested in public bodies

(1) The rateable person in respect of a parcel of land vested in a public body is entitled to a rebate of 25 per cent of the ordinary rate made and leviable on the land or, if on objection by the council the Minister determines a lesser rebate, the lesser rebate.

(2) The amount of the rebate is to be written off and abandoned by the council.

(3) The rebate is to be allowed only if:

(a) access to the parcel is wholly or substantially over other lands for which the public body provides at its own cost such services as materially benefit the parcel, and

(b) the parcel is included in the then current list referred to in subsection (5), and

(c) the council has not objected to the inclusion of the parcel in the list or its objection has been dismissed.

(4) The rate notice must state the amount of the rebate, and, if an objection has been lodged under this section, must not be served unless and until the objection has been determined.

(5) A public body in which is vested any parcel of land in respect of which the rateable person is entitled to a rebate under this section must furnish to the council not later than 30 April before the commencement of the year for which the rate is made a list setting out the parcels of land of the nature referred to in subsection (3) (a), giving particulars of each parcel, the means of access to them and the material services provided by the public body in respect of those parcels as at 31 March in the year in which the list is furnished.

(6) If the council objects to the inclusion of any parcel in the list, it must serve notice of objection on the public body and on the Minister within 2 months after the list is furnished.

(7) The Minister may allow or dismiss an objection, but, before determining an objection, the Minister must, if either the public body or the council so desires, afford them an opportunity of appearing before and being heard by a person appointed by the Minister for that purpose.

(8) The decision of the Minister on an objection is final.

(9) In this section:

access and ***means of access*** include lifts, stairways, escalators and passageways in or on a building, structure, work or excavation.

public body means the Maritime Authority of NSW, a Port Corporation within the meaning of the *Ports and Maritime Administration Act 1995*, the State Rail Authority Residual Holding Corporation, Rail Corporation New South Wales, Sydney Trains, NSW Trains, Residual Transport Corporation of New South Wales, Transport Infrastructure Development Corporation, Rail Infrastructure Corporation, Sydney Metro, Sydney Ferries and the State Transit Authority.

services means cleaning, lighting, repairs and maintenance of any access and means of access.

601 Hardship resulting from certain valuation changes

(1) A ratepayer who, as a consequence of the making and levying of a rate on a valuation having a later base date than any valuation previously used by a council for the making and levying of a rate, suffers substantial hardship, may apply to the council for relief under this section.

(2) The council has a discretion to waive, reduce or defer the payment of the whole or any part of the increase in the amount of the rate payable by the ratepayer in such circumstances, for such period and subject to such conditions as it thinks fit.

(3) An applicant who is dissatisfied with a council's decision under this section may request the council to review its decision and the council, at its discretion, may do so.

Part 9 Miscellaneous matters concerning rates and charges

602 Record of rates and charges

(1) A council is required to keep a record of:

(a) each rate and charge made by it, and

(b) in relation to each separate parcel of land within its area:

- the land value of the parcel
- whether the parcel is rateable, exempt from all rates or exempt from particular kinds of rates
- the category declared under Part 3 for the parcel of land, and

(c) the owner or lessee of each such parcel.

(2) The council may amend the record as the occasion requires.

603 Certificate as to rates and charges

(1) A person may apply to the council for a certificate as to the amount (if any) due or payable to the council, by way of rates, charges or otherwise, in respect of a parcel of land.

(2) The application must be in the approved form and be accompanied by the approved fee.

(3) The council is to issue a certificate to the applicant stating:

(a) the rates, charges or other amounts due or payable to the council in respect of the land and when they became due or payable, or that no such rates, charges or other amounts are due or payable, and

(b) the balance of any special rate waived, under section 565, and the period for which it is waived, and

(c) the work carried out on the land by the council and the cost that may be recovered from the owner or occupier for the work, or that no such work has been carried out, and

(d) the name of the person shown in the council's records at the date of the certificate as the owner of the land, if the person acquired the land under Division 5 of Part 2 of Chapter 17.

(4) The production of the certificate is taken for all purposes to be conclusive proof in favour of a bona fide purchaser for value of the matters certified.

(5) For the purposes of this section, rates, charges and other amounts are taken to be due or payable even though the requisite period after service of any notice may not have expired.

(6) If an unpaid rate, charge or other amount is referred to the Chief Commissioner of State Revenue for debt recovery action under the *State Debt Recovery Act 2018*:

(a) a reference in this section to the rates, charges or other amounts due or payable to the council includes a reference to an amount payable to the Chief Commissioner under that Act as a consequence of the making of a debt recovery order in respect of the rates, charges or other amounts, and

(b) the Chief Commissioner must, on request by a council, provide the council with any information about the amount payable to the Chief Commissioner that the council requires to issue a certificate under this section.

604 Notice of transfer of land

(1) Notice is required to be given to the council of the following events by the person specified in relation to the event:

(a) the transfer of the estate of a rateable person in rateable land—by the transferee,

(b) the entry into possession of rateable land under a mortgage—by the mortgagee,

(c) the grant of probate or letters of administration in respect of the estate of a deceased person which includes an estate in rateable land—by the trustee, executor or administrator.

(2) The notice must be given within 1 month after the event occurs.

(3) It is not necessary to give notice of a mortgage or the discharge of a mortgage, except as provided by subsection (1) (b).

(4) A person is taken to have satisfied the requirements of this section in relation to an event if notice of the event is lodged with the Registrar-General in accordance with the *Conveyancing Act 1919* or the *Real Property Act 1900* within 1 month after the event occurs.

605 Expenses of tracing persons

(1) A council may add to the amount of a rate or charge any reasonable out-of-pocket expenses incurred in tracing the person liable to pay the rate or charge.

(2) Those expenses may be recovered as rates or charges, at the same time as any rates or charges and without the need to give any notice concerning them.

606 Notice of granting of certain Crown leases

(1) The statutory body or head of a Public Service agency who grants or takes the action necessary for the grant of a lease to any person for private purposes of Crown lands or land within a State forest must give particulars of the lease to the council of the area concerned within 60 days after the lease is granted.

(2) The particulars do not have to be given if they are notified in the Gazette within the 60-day period.

606A Estimates of coastal protection service charges

(1) A council must, on request, provide a person who would be liable to pay an annual charge for coastal protection services in relation to proposed coastal protection works with an estimate of the person's liability for that annual charge (if the council were to make such a charge) for each of the following 5 years.

(2) A request for an estimate under subsection (1) must include any information required by the council in order to make the estimate, including but not limited to, information relating to proposed coastal protection works such as the location and type of works and their expected on-site and off-site impacts.

(3) A request for an estimate under subsection (1) is to be accompanied by a fee determined by the council to cover the council's reasonable costs in providing the estimate.

(4) A council must provide the estimate within 30 days of the submission of the request (including the required information) and fee.

(5) An estimate provided by the council does not bind or limit the council in the making or levying of a charge for coastal protection services under this Act.

606B Review of cost of coastal protection service charges on request of ratepayer

(1) A council must, on request, provide a person who is liable to pay an annual charge for coastal protection services with a report prepared by an independent person on the cost to the council of providing those services.

(2) A request for a report under subsection (1) is to be accompanied by a fee determined by the council to cover the council's reasonable costs in providing the report.

(3) If a council provides a report to a person under subsection (1) the council is to make the report available to all other persons liable to pay an annual charge in relation to the same services.

(4) A council is not required to provide a report under subsection (1) to a person if the council has in the previous 3 years provided or made available to the person such a report in relation to the same coastal protection services.

(5) Despite subsection (2), a fee is not required to accompany the following requests:

(a) a request made during the first year that an annual charge is made and levied on the relevant parcel of land,

(b) a request made during the year following an increase in the annual charge by a percentage that is greater than the percentage specified in an order under section 506 for the year concerned.

606C Review of cost of coastal protection service charges on direction of Minister administering Coastal Management Act 2016

(1) The Minister administering the *Coastal Management Act 2016* (***the Coastal Management Minister***) may direct a council to provide the Coastal Management Minister with a report prepared by an independent person on the cost to the council of providing coastal protection services.

(2) A council directed to provide a report under subsection (1) must submit the report to the Coastal Management Minister:

(a) within 90 days of the direction, or

(b) within such longer period as may be agreed to by the Coastal Management Minister.

(3) If a council fails to comply with this section, the Coastal Management Minister may:

(a) commission an independent person to prepare the report, and

(b) recover the cost of preparing the report from the council.

The council is to co-operate with the independent person in the preparation of the report.

(4) The council is to have regard to any report of an independent person referred to in this section in determining an annual charge for the coastal protection services concerned.

607 Writing off of rates, charges and accrued interest

The regulations may specify circumstances, in addition to those for which provision is made in this Chapter, in which a council may write off rates and charges and interest accrued on unpaid rates and charges.

Part 10 Fees

Division 1 Council fees—general

607A Interpretation

In Division 2 of this Part, a reference to a fee is a reference to a fee to which Division 2 applies and, in Division 3 of this Part, a reference to a fee is a reference to a fee to which Division 3 applies.

608 Council fees for services

(1) A council may charge and recover an approved fee for any service it provides, other than a service provided, or proposed to be provided, on an annual basis for which it is authorised or required to make an annual charge under section 496 or 501.

(2) The services for which an approved fee may be charged include the following services provided under this Act or any other Act or the regulations by the council:

- supplying a service, product or commodity
- giving information
- providing a service in connection with the exercise of the council's regulatory functions—including receiving an application for approval, granting an approval, making an inspection and issuing a certificate
- allowing admission to any building or enclosure.

(3) In particular, a council may charge an approved fee for inspecting premises that are reasonably required to be inspected in the exercise of the council's functions, whether or not the inspection is requested or agreed to by the owner or occupier of the premises.

(4) However, a council may not charge an approved fee for the inspection of premises that are not used for a commercial activity, except where it is necessary to inspect the premises in connection with an application for an approval concerning the premises or in connection with any inspection that is reasonably necessary to determine if an approval has been complied with.

(5) (Repealed)

(6) If inspections of premises are reasonably necessary to determine if an approval has been complied with:

(a) an approved fee may be charged for such an inspection only if the charging of the fee has been included as a condition of the approval, and

(b) an approved fee may not be charged for such an inspection before the approval is granted, and

(c) an approved fee may not be charged for the inspection of any thing for which the council relies on a certificate under section 93 that the thing has been done in compliance with the approval.

(7) An approved fee charged for inspecting premises must be repaid to the person who paid it if the inspection is not carried out.

(8) An approved fee charged in connection with a service provided at an airport established and maintained by the council may be recovered from the holder of the certificate of registration issued under the *Civil Aviation Regulations* of the Commonwealth for the aircraft in respect of which the service was provided. This subsection applies whether or not the holder is the person to whom the service is actually provided.

609 (Repealed)

610 Effect of other Acts

(1) If the amount of a fee for a service is determined under another Act:

(a) a council may not determine an amount that is inconsistent with the amount determined under the other Act, and

(b) a council may not charge a fee in addition to the amount determined under the other Act.

(2) If the charging of a fee for a service is prohibited under another Act, a council must not charge a fee for the service under this Act.

Division 2 Council fees for business activities

610A Application of Division

(1) This Division applies to a fee charged by a council for any service relating to the following activities:

(a) the operation of an abattoir,

(b) the operation of a gas production or reticulation service,

(c) the carrying out of a water supply or sewerage service (other than a service provided, or proposed to be provided, on an annual basis for which the council is authorised or required to make an annual charge under section 501),

(d) the carrying out of work under section 67,

(e) the carrying out of graffiti removal work under section 11 of the *Graffiti Control Act 2008*,

(f) any other activity prescribed by the regulations for the purposes of this subsection.

(2) This Division does not apply to a fee charged by a council for a service relating to the following activities:

(a) the issuing of a certificate under Part 4A of the *Environmental Planning and Assessment Act 1979*,

(b) an activity prescribed by the regulations for the purposes of this subsection.

610B Fees to be determined in accordance with pricing methodologies

(1) A council may determine a fee to which this Division applies only in accordance with a pricing methodology adopted by the council in its operational plan prepared under Part 2 of Chapter 13.

(2) However, a council may at any time determine a fee otherwise than in accordance with a pricing methodology adopted by the council in its operational plan, but only if the determination is made by a resolution at an open meeting of the council.

Division 3 Council fees for non-business activities

610C Application of Division

This Division applies to a fee for a service other than a fee to which Division 2 applies.

610D How does a council determine the amount of a fee for a service?

(1) A council, if it determines the amount of a fee for a service, must take into consideration the following factors:

(a) the cost to the council of providing the service,

(b) the price suggested for that service by any relevant industry body or in any schedule of charges published, from time to time, by the Department,

(c) the importance of the service to the community,

(d) any factors specified in the regulations.

(2) The cost to the council of providing a service in connection with the exercise of a regulatory function need not be the only basis for determining the approved fee for that service.

(3) A higher fee or an additional fee may be charged for an expedited service provided, for example, in a case of urgency.

610E Council may waive or reduce fees

(1) A council may waive payment of, or reduce, a fee (whether expressed as an actual or a maximum amount) in a particular case if the council is satisfied that the case falls within a category of hardship or any other category in respect of which the council has determined payment should be so waived or reduced.

(2) However, a council must not determine a category of cases under this section until it has given public notice of the proposed category in the same way as it is required to give public notice of the amount of a proposed fee under section 610F (2) or (3).

610F Public notice of fees

(1) A council must not determine the amount of a fee until it has given public notice of the fee in accordance with this section and has considered any submissions duly made to it during the period of public notice.

(2) Public notice of the amount of a proposed fee must be given (in accordance with section 405) in the draft operational plan for the year in which the fee is to be made.

(3) However, if, after the date on which the operational plan commences:

(a) a new service is provided, or the nature or extent of an existing service is changed, or

(b) the regulations in accordance with which the fee is determined are amended,

the council must give public notice (in accordance with section 705) for at least 28 days of the fee proposed for the new or changed service or the fee determined in accordance with the amended regulations.

(4) This section does not apply to a fee determined by a council for an application made in a filming proposal, if that fee is consistent with a scale or structure of fees set out in an applicable filming protocol.

Division 4 Certain annual charges

611 Annual charge on rails, pipes etc

(1) A council may make an annual charge on the person for the time being in possession, occupation or enjoyment of a rail, pipe, wire, pole, cable, tunnel or structure laid, erected, suspended, constructed or placed on, under or over a public place.

(2) The annual charge may be made, levied and recovered in accordance with this Act as if it were a rate but is not to be regarded as a rate for the purposes of calculating a council's general income under Part 2.

(3) The annual charge is to be based on the nature and extent of the benefit enjoyed by the person concerned.

(4) If a person is aggrieved by the amount of the annual charge, the person may appeal to the Land and Environment Court and that Court may determine the amount.

(5) A person dissatisfied with the decision of the Court as being erroneous in law may appeal to the Supreme Court in the manner provided for appeals from the Land and Environment Court.

(6) This section does not apply to:

(a) the Crown, or

(b) the Sydney Water Corporation, the Hunter Water Corporation, Water NSW or a water supply authority, or

(c) Rail Infrastructure Corporation, or

(d) the owner or operator of a light rail system (within the meaning of the *Transport Administration Act 1988*), but only if the matter relates to the development or operation of that system and is not excluded by the regulations from the exemption conferred by this paragraph.

612 (Renumbered as sec 610F)

Part 11 Grants

613 Constitution of the Local Government Grants Commission

There is constituted by this Act a body corporate with the name of Local Government Grants Commission.

614 Membership of Grants Commission

(1) The Grants Commission is to consist of 4 commissioners appointed by the Governor.

(2) Of the commissioners:

(a) 3 are to be persons nominated by the Minister, and

(b) the other is to be a person employed in the Department.

(3) At least 2 of the commissioners must be persons who are or have been associated with local government in New South Wales, either as members of a council or in some other way.

(4) One of the persons referred to in subsection (2) (a) is to be appointed as the chairperson of the Grants Commission.

(5) The commissioner referred to in subsection (2) (b) is to be the deputy chairperson of the Grants Commission.

(6) Schedule 5 has effect with respect to the commissioners and the procedure of the Grants Commission.

615 What are the functions of the Grants Commission and the Minister under this Part?

(1) The Grants Commission is required to make recommendations to the Minister with respect to the allocation among councils of the total amount proposed to be paid to the State under the *Local Government (Financial Assistance) Act 1995* of the Commonwealth in respect of each financial year.

(2) The Grants Commission must make its recommendations in accordance with the requirements of the Commonwealth Act and any relevant principles of allocation approved under that Act.

(3) The Minister may either adopt the recommendations made by the Grants Commission or request the Grants Commission to reconsider its recommendations.

(4) The Grants Commission must, as soon as practicable after receiving a request from the Minister to reconsider its recommendation on a matter, make a further recommendation on the matter.

(5) The Minister must, having regard to or having adopted the recommendations of the Grants Commission, allocate among councils the total amount proposed to be paid to the State under the Commonwealth Act in respect of the financial year concerned.

(6) A council is entitled to receive from the Local Government Financial Assistance Fund, without delay, an unconditional payment of the amount allocated to it.

616 How does the Grants Commission decide on its recommendations?

(1) Before making a recommendation under section 615, the Grants Commission:

(a) must hold such hearings and make such inspections, investigations and inquiries as it thinks necessary, and

(b) may require a council to provide any information which may, in the opinion of the Grants Commission, assist it.

(2) A requirement to provide information may specify the form in which, the period within which and the person to whom the information is to be provided.

(3) A council, or an association of councils, may make submissions to the Grants Commission with respect to any matter likely to affect a recommendation under section 615 concerning the council or the association.

617 What information does the Minister have to provide?

The Minister is required, as soon as practicable after the end of each financial year, to provide to the Treasurer of the Commonwealth:

(a) a statement, in accordance with a form approved by that Treasurer, specifying the payments to councils made under this Part during that financial year in accordance with the Commonwealth Act and the dates of those payments, and

(b) a certificate by the Auditor-General that, in the Auditor-General's opinion, the contents of the statement are correct.

618 What other functions does the Grants Commission have?

(1) The Minister may, from time to time, request the Grants Commission to report on any matter that the Minister specifies.

(2) The Grants Commission must comply with such a request as soon as practicable after it is made.

(3) The Grants Commission may require a council to provide any information which may, in the opinion of the Commission, assist it in complying with such a request.

(4) A requirement to provide information may specify the form in which, the period within which and the person to whom the information is to be provided.

(5) A council must comply with such a requirement to the extent that it is able to do so.

619 What happens to the money paid to the State under the Commonwealth Act?

(1) There is to be deposited into the Local Government Financial Assistance Fund established in the Special Deposits Account in the Treasury all money paid to the State under the Commonwealth Act.

(2) There is to be paid from that Fund the amounts that the Minister decides to allocate to councils under this Division.

620 Making of grants by the Minister

The Minister may, out of money appropriated by Parliament for the purpose, make grants to councils and other bodies constituted under this Act.

Part 12 Loans

621 When and for what may a council borrow?

A council may borrow at any time for any purpose allowed under this Act.

622 What form may a council borrowing take?

A council may borrow by way of overdraft or loan or by any other means approved by the Minister.

623 Security for borrowings

(1) A council may give security for any borrowing in such manner as may be prescribed by the regulations.

(2) All such securities rank on an equal footing, despite any other Act.

624 Are there any restrictions on a council borrowing?

The Minister may, from time to time, impose limitations or restrictions on borrowings by a particular council or councils generally despite the other provisions of this Part.

Part 13 Investments

625 How may councils invest?

(1) A council may invest money that is not, for the time being, required by the council for any other purpose.

(2) Money may be invested only in a form of investment notified by order of the Minister published in the Gazette.

Editorial note. See Gazettes No 152 of 24.11.2000, p 12041; No 94 of 29.7.2005, p 3977; No 97 of 15.8.2008, p 7638 and No 160 of 24.12.2008, p 13140.

(3) An order of the Minister notifying a form of investment for the purposes of this section must not be made without the approval of the Treasurer.

(4) The acquisition, in accordance with section 358, of a controlling interest in a corporation or an entity within the meaning of that section is not an investment for the purposes of this section.

Chapter 16 Offences

Part 1 General offences

626 Failure to obtain approval

(1) A person who carries out an activity specified in Part A of the Table to section 68 without having obtained a prior approval of the council under Part 1 of Chapter 7 required for the carrying out of that activity is guilty of an offence, subject to subsection (2).

Maximum penalty: 50 penalty units (in the case of an individual) or 100 penalty units (in the case of a corporation).

(2) (Repealed)

(3) A person who carries out an activity specified in Parts B–F of the Table to section 68 without having obtained a prior approval of the council under Part 1 of Chapter 7 required for the carrying out of that activity is guilty of an offence.

Maximum penalty: 20 penalty units.

(4) A person:

(a) who carries out an activity without having obtained a prior approval of the council under Part 1 of Chapter 7 required for the carrying out of that activity, and

(b) who so carries out the activity on the basis of an exemption granted by or under this Act, being an exemption that is subject to conditions, and

(c) who carries out the activity otherwise than in accordance with the conditions to which the exemption is subject,

is guilty of an offence under subsection (1) or (3) as if the exemption did not apply.

627 Failure to comply with approval

(1) A person who has obtained the approval of the council under Part 1 of Chapter 7 to the carrying out of an activity specified in Part A of the Table to section 68 and who carries out that activity otherwise than in accordance with the terms of that approval is guilty of an offence, subject to subsection (2).

Maximum penalty: 50 penalty units (in the case of an individual) or 100 penalty units (in the case of a corporation).

(2) (Repealed)

(3) A person who has obtained the approval of the council under Part 1 of Chapter 7 to the carrying out of an activity specified in Parts B–F of the Table to section 68 and who carries out that activity otherwise than in accordance with the terms of that approval is guilty of an offence.

Maximum penalty: 20 penalty units.

628 Failure to comply with order

(1) A person who fails to comply with an order given to the person under Part 2 of Chapter 7 that is an order in the terms of any of orders Nos 1, 3, 5 and 7–12 in the Table to section 124 is guilty of an offence.

Maximum penalty: 50 penalty units (in the case of an individual) or 100 penalty units (in the case of a corporation).

(1A) A person who fails to comply with an order given to the person under Part 2 of Chapter 7 that is an order in the terms of any of orders Nos 15, 16 or 17 in the Table to section 124 is guilty of an offence.

Maximum penalty: 100 penalty units (in the case of an individual) or 200 penalty units (in the case of a corporation).

(2) A person who fails to comply with an order given to the person under Part 2 of Chapter 7 that is an order in the terms of any of orders Nos 18–25 or 27–29 of the Table to section 124 is guilty of an offence.

Maximum penalty: 20 penalty units.

(3) A person who fails to comply with an order given to the person under Part 2 of Chapter 7 that is an order in the terms of order No 30 in the Table to section 124 is guilty of an offence.

Maximum penalty: The same penalty as the penalty imposed for carrying out the activity the subject of the approval otherwise than in accordance with the approval.

(4) A person who fails to comply with an order given to the person under section 125 to abate a public nuisance is guilty of an offence.

Maximum penalty: 20 penalty units.

(5) It is a sufficient defence to a prosecution for an offence to which this section applies if the defendant satisfies the court that the defendant was unaware of the fact that the activity in respect of which the offence arose was the subject of an order under Part 2 of Chapter 7.

Part 2 Public places

629 Injuring or removing plants, animals, rocks and soil in or from public place

(1) A person who, without lawful excuse, wilfully or negligently injures, damages or unnecessarily disturbs any plant, animal, rock or soil in a public place is guilty of an offence.

Maximum penalty: 20 penalty units.

(2) A person who, without lawful excuse, removes any plant, animal, rock or soil from a public place is guilty of an offence.

Maximum penalty: 20 penalty units.

630 Breaking glass and other matter

(1) A person who, without lawful excuse, wilfully breaks a bottle, glass, glass receptacle or syringe in a public place is guilty of an offence.

Maximum penalty: 10 penalty units.

(2) A person who, in a public place, throws, places or leaves any bottle, glass, glass receptacle, syringe, broken glass or other matter or thing likely to endanger the safety of or cause injury to any person or animal or damage to any vehicle or property is guilty of an offence.

Maximum penalty: 10 penalty units.

(3) A person who:

(a) breaks a bottle, glass, syringe or glass receptacle in a public bathing place under the control of the council, and

(b) does not collect and remove all portions of the bottle, glass, syringe or glass receptacle either to a receptacle (if any) provided by the council for that purpose, or to a place beyond the public bathing place,

is guilty of an offence.

Maximum penalty: 10 penalty units.

631 Damaging, defacing or polluting public bathing place

A person who, in a public bathing place under the control of the council does any act which damages, defaces or pollutes the public bathing place or which is likely to damage, deface or pollute the public bathing place or anything relating to the public bathing place is guilty of an offence.

Maximum penalty: 10 penalty units.

632 Acting contrary to notices erected by councils

(1) A person who, in a public place within the area of a council, fails to comply with the terms of a notice erected by the council is guilty of an offence.

Maximum penalty: 10 penalty units.

(2) The terms of any such notice may relate to any one or more of the following:

(a) the payment of a fee for entry to or the use of the place,

(b) the taking of a vehicle into the place,

(b1) the driving, parking or use of a vehicle in the place,

(c) the taking of any animal or thing into the place,

(d) the use of any animal or thing in the place,

(e) the doing of any thing in the place,

(f) the use of the place or any part of the place.

(2A) However, a notice:

(a) must not prohibit the drinking of alcohol in any public place, including any public road or car park, and accordingly a sign under section 632A or 644C is not a notice under this section, and

(b) must not, except as provided by subsection (2B), prohibit or regulate the taking of a vehicle into, or the driving, parking or use of any vehicle in, any public place that is a road or road related area within the meaning of section 4 (1) of the *Road Transport Act 2013*.

Note. A council may establish alcohol prohibited areas under section 632A (relating to public places such as parks and beaches) and alcohol-free zones under Part 4 of this Chapter (relating to street drinking).

(2B) A notice may prohibit the parking of a vehicle, for the purpose of offering the vehicle for sale, in a public place that is:

(a) a road or road related area within the meaning of section 4 (1) of the *Road Transport Act 2013*, and

(b) in the City of Sydney area or other area (or part of an area) prescribed by the regulations.

(3) The terms of a notice referred to in this section may:

(a) apply generally or be limited in their application by reference to specified exceptions or factors, or

(b) apply differently according to different factors of a specified kind,

or may do any combination of those things.

632A Confiscation of alcohol in certain public and other places

(1) A police officer or an enforcement officer may seize any alcohol (and the bottle, can, receptacle or package in which it is contained) that is in the immediate possession of a person in an alcohol prohibited area if the officer has reasonable cause to believe that the person:

(a) is drinking, or

(b) is about to drink, or

(c) has recently been drinking,

alcohol in the alcohol prohibited area.

(2) Any alcohol or thing seized under this section is, by virtue of the seizure, forfeited:

(a) if seized by a police officer—to the State, or

(b) if seized by an enforcement officer—to the council that employs the officer.

(3) Any alcohol seized under this section may:

(a) be disposed of immediately by tipping it out of the bottle, can, receptacle or package in which it is contained, or

(b) be otherwise disposed of in accordance with directions given by the Commissioner of Police or the council (as the case requires).

(4) A council may declare any public place (or any part of a public place) in the council's area to be an ***alcohol prohibited area*** for the purposes of this section. However, an alcohol prohibited area cannot be established in relation to a public place that is a public road (or part of a public road) or car park.

Note. Alcohol-free zones can be established under Part 4 of this Chapter in relation to public roads or car parks.

(5) For the purposes of subsection (4), a ***public place*** includes any land comprising open space on public housing land. However, an alcohol prohibited area can only be established in relation to any such land if:

(a) the open space is adjacent to an existing alcohol prohibited area (other than an alcohol prohibited area situated on public housing land) or alcohol-free zone, and

(b) the open space is a common area (other than a common area within the curtilage of any building) that is available to the public housing tenants, and

(c) people can readily gain access to the open space from the adjacent alcohol prohibited area or alcohol-free zone, and

(d) the New South Wales Land and Housing Corporation has approved of the open space being established as an alcohol prohibited area.

(6) An alcohol prohibited area operates, in accordance with the terms of the declaration establishing the area, during such times or events as are specified in the declaration.

(7) An alcohol prohibited area operates only so long as there are erected at the outer limits of the area, and at suitable intervals within the area, conspicuous signs:

(a) stating that the drinking of alcohol is prohibited in the area, and

(b) specifying the times or events, as specified in the declaration by which the area was established, during which it is to operate.

(8) An alcohol prohibited area cannot be established without the approval of the Police Area Commander or Police District Commander for the area or district in which the proposed alcohol prohibited area is situated.

(9) If a council is required by the guidelines in force under section 646 to provide the Anti-Discrimination Board with a copy of the council's proposal to establish an alcohol-free zone, the council cannot establish an alcohol prohibited area unless the council has complied with the consultation requirements set out in those guidelines.

(10) For the purposes of subsection (9), the guidelines in force under section 646 apply, with such modifications as are necessary, in relation to a proposed alcohol prohibited area in the same way as they apply in relation to a proposed alcohol-free zone.

(11) An alcohol prohibited area is taken to have been established for the public place to which an existing alcohol prohibition notice applies. An ***existing alcohol prohibition notice*** is a notice erected under section 632, and in force immediately before the commencement of the *Local Government Amendment (Confiscation of Alcohol) Act 2010*, prohibiting the drinking of alcohol in a public place.

(12) In this section:

enforcement officer means an employee of a council authorised in writing by the Commissioner of Police to be an enforcement officer for the purposes of this section.

public housing land means any land on which public housing within the meaning of the *Housing Act 2001* is situated.

633 Bathing (including nude bathing) and other water-based recreational activities

(1) A person who, in a place being:

(a) a public bathing place under the control of a council, or

(b) a river, watercourse or tidal or non-tidal water, or

(c) the sea adjacent to (although outside) an area, or

(d) a public place adjacent to any of those places,

fails to comply with the terms of a notice erected by the council is guilty of an offence.

Maximum penalty: 10 penalty units.

(2) A person who is in public view in the nude in any place (other than a designated beach) referred to in subsection (1) is guilty of an offence unless a notice erected by the council at the place allows the use of the place (or part of the place) for the purposes of nude bathing.

Maximum penalty: 10 penalty units.

(3) A council may erect a notice:

(a) on land vested in or under the control of a council, or

(b) on any other land, with the consent of the person who owns or controls the land.

(4) The terms of a notice referred to in this section may relate to one or more of the following:

(a) the conduct and costume of the bathers in the place,

(b) the use of the place (or any part of the place open to public view) for the purposes of nude bathing,

(c) the use of water-based recreational equipment in the place.

(4A) However, a notice referred to in this section cannot prohibit:

(a) the use of a designated beach for the purposes of nude bathing, or

(b) a person from otherwise being in the nude at a designated beach.

(4B) Accordingly, any such notice (whether erected before or after the commencement of the *Local Government Amendment (Nude Bathing) Act 1996*) that purports to prohibit the use of a designated beach for the purposes of nude bathing, or that purports to prohibit a person from otherwise being in the nude at a designated beach, has no effect on or after that commencement.

(4C) A notice referred to in this section cannot prohibit or regulate the use of any waters by a vessel (within the meaning of the *Ports and Maritime Administration Act 1995*):

(a) in the case of a notice erected after the commencement of this subsection—unless the Minister administering that Act has consented to the erection of that notice, or

(b) in the case of a notice erected before that commencement—if the Minister administering that Act has directed the council to remove the notice.

(5) The terms of a notice referred to in this section may:

(a) apply generally or be limited in their application by reference to specified exceptions or factors, or

(b) apply differently according to different factors of a specified kind,

or may do any combination of those things.

(6) In this section:

designated beach means any of the following beaches, or any part of the following beaches (including the sea adjacent to any such beach):

Lady Bay (Lady Jane) Beach

Cobblers Beach

Obelisk Beach

Werrong Beach

Samurai Beach

633A Use of skateboards, roller blades and roller skates

A person who, in a public place, uses skating equipment so as to obstruct, annoy, inconvenience or cause danger to any other person in that place is guilty of an offence.

Maximum penalty: 10 penalty units.

633B Part not to apply to National Park reserves or State forests

This Part (section 633 excepted) does not apply to land within a National Parks and Wildlife reserve or land within a State forest or flora reserve within the meaning of the *Forestry Act 2012*.

633C Part not to affect roads and traffic functions under other Acts

The provisions of this Part:

(a) do not limit or restrict the operation of the road transport legislation with respect to roads or road related areas within the meaning of section 4 (1) of the *Road Transport Act 2013* or the *Roads Act 1993* with respect to public roads, and

(b) do not authorise the erection of any device if the erection of any such device is inconsistent with a function exercisable under the *Road Transport Act 2013* with respect to roads or road related areas within the meaning of section 4 (1) of that Act or under the *Roads Act 1993* with respect to public roads.

Part 3 Water, sewerage and stormwater drainage offences

634 Water, sewerage and stormwater drainage offences

(1) A person must not do any water supply work, sewerage work or stormwater drainage work unless the person:

(a) is the holder of an endorsed licence or supervisor certificate in force under the *Home Building Act 1989* authorising the holder to do (and to supervise) work of the kind concerned, or

(b) is the holder of a tradesperson certificate in force under the *Home Building Act 1989* authorising the holder to do that kind of work under supervision and does that work under the general supervision of the holder of a licence or certificate referred to in paragraph (a), or

(c) does the work under the immediate supervision of a person referred to in paragraph (a).

Maximum penalty: 100 penalty units.

(2) A person who employs (or uses the services of) another person to do any water supply work, sewerage work or stormwater drainage work is guilty of an offence if the person knows that the other person, in doing the work, contravenes subsection (1).

Maximum penalty: 100 penalty units.

(3) Subsections (1) and (2) do not apply to or in respect of:

(a) anything done in a part of an area that is not provided, or is not in the course of being provided, with a public water supply scheme or sewerage scheme, or

(b) a council employee who, in the normal course of his or her duties, taps a water main, extends a water main, connects a service pipe to a water main, taps a sewer, attaches a house drain to a sewer, extends a sewer or fixes, alters or removes a council meter.

(4) A person who, in doing any water supply work, sewerage work or stormwater drainage work, uses, connects or installs a pipe, fitting, fixture or other thing in contravention of any requirement or specification contained in the regulations or other prescribed standard for water supply works, sewerage works or stormwater drainage works is guilty of an offence.

Maximum penalty (subsection (4)): 20 penalty units.

(5) Subsection (4) does not apply in respect of work that is plumbing and drainage work within the meaning of the *Plumbing and Drainage Act 2011*.

Note. The *Plumbing and Drainage Act 2011* sets out standards and other requirements for plumbing and drainage work within the meaning of that Act.

635 Damage to council property

A person who wilfully or negligently removes, damages, destroys or otherwise interferes with a pipe, lock, tap, valve, engine or other thing belonging to the council in connection with the supply of water or the provision of sewerage services or drainage is guilty of an offence.

Maximum penalty: 20 penalty units.

636 Tampering with meters and fittings

(1) A person who wilfully or fraudulently, or by culpable negligence:

(a) damages a meter, fitting, fixture or other thing belonging to a council in connection with the supply of water, or

(b) alters the index of such a meter, or

(c) prevents such a meter from duly registering the quantity of water supplied,

is guilty of an offence.

Maximum penalty: 20 penalty units.

(2) The existence of any means for altering the index of such a meter or preventing such a meter from duly registering the quantity of water supplied is prima facie evidence that the person supplied with water through the meter has wilfully or fraudulently altered the index of the meter or prevented the meter from duly registering the quantity of water supplied.

637 Waste or misuse of water

(1) A person who wilfully or negligently wastes or misuses water from a public water supply, or causes any such water to be wasted, is guilty of an offence.

Maximum penalty: 20 penalty units.

(2) If an offence against this section is committed, the occupier of the premises on which the offence was committed is guilty of the offence as if the occupier were the actual offender unless the occupier proves that the waste or misuse constituting the offence:

(a) was not reasonably within the occupier's knowledge, and

(b) was caused by the act of the person other than a member of the occupier's household or other than a person employed on the premises by the occupier.

(3) Subsection (2) does not affect the liability of the actual offender, but, if a penalty has been imposed on or recovered from any person in relation to the offence, no further penalty in respect of the offence may be imposed on or recovered from any other person.

638 Discharge of prohibited matter into sewer or drain

A person who discharges any prohibited matter (being matter prescribed by the regulations for the purposes of this section) into:

(a) a public sewer, or

(b) a fitting connected to a public sewer, or

(c) a public drain, or

(d) a gutter of a council,

is guilty of an offence.

Maximum penalty: 20 penalty units.

639 Pollution of public water supply

(1) A person who wilfully or negligently does any act which damages or pollutes (or is likely to damage or pollute) a public water supply, or a source of that supply, is guilty of an offence.

Maximum penalty: 20 penalty units.

(2) The occupier of premises on which a pipe or fitting supplied with water from a public water supply is directly connected to a device or fitting:

(a) that is designed for use for the dispensing of any chemical compound capable of contaminating the water supply, and

(b) that is a device or fitting of a type other than a type approved for such connection by the Secretary of the Department of Finance, Services and Innovation or by a person authorised by that Secretary to grant such an approval,

is guilty of an offence as if the occupier were the person who actually made the connection.

(3) Subsection (2) does not affect the liability of the person who actually made the connection, but, if a penalty has been imposed on or recovered from any person in relation to the offence, no further penalty in respect of the offence may be imposed on or recovered from any other person.

640 Offences in catchment districts

A person who wilfully or negligently does any act in contravention of a prohibition or restriction in a notice erected in a catchment district by a council is guilty of an offence.

Maximum penalty: 20 penalty units.

641 (Repealed)

Part 4 Street drinking

642 Confiscation of alcohol in alcohol-free zones

(1) A police officer or an enforcement officer may seize any alcohol (and the bottle, can, receptacle or package in which it is contained) that is in the immediate possession of a person in an alcohol-free zone if:

(a) the person is drinking alcohol in the alcohol-free zone, or

(b) the officer has reasonable cause to believe that the person is about to drink, or has recently been drinking, alcohol in the alcohol-free zone.

(2) Any alcohol or thing seized under this section is, by virtue of the seizure, forfeited:

(a) if seized by a police officer—to the State, or

(b) if seized by an enforcement officer—to the council that employs the officer.

(3) Any alcohol seized under this section may:

(a) be disposed of immediately by tipping it out of the bottle, can, receptacle or package in which it is contained, or

(b) be otherwise disposed of in accordance with directions given by the Commissioner of Police or the council (as the case requires).

(4) In this section:

enforcement officer means an employee of a council authorised in writing by the Commissioner of Police to be an enforcement officer for the purposes of this section.

643 (Repealed)

644 Proposal for establishment of alcohol-free zone

(1) A council may prepare a proposal for the establishment of an alcohol-free zone, either on its own motion or on the application of one or more of the following people:

(a) a person who the council is satisfied is a representative of a bona fide community group active in the area,

(b) a police officer,

(c) a person who the council is satisfied lives or works in the area.

(2) The application must be in the form set out in the guidelines in force under section 646 or, if there are no such guidelines, in the approved form.

(3) The proposal must comply with the guidelines (if any) in force under section 646.

(4) The proposed alcohol-free zone may comprise either or both of the following:

(a) a public road or part of a public road,

(b) a public place that is a car park or part of a car park.

(5) The proposal may provide for an alcohol-free zone to be established for a period not exceeding 4 years and for the zone to operate for the whole of that period or just for days on which particular special events occur.

644A Public consultation on proposal to establish alcohol-free zone

(1) After preparing a proposal under section 644, the council may, by notice published in a manner that the council is satisfied is likely to bring the notice to the attention of members of the public in the area as a whole or in a part of the area that includes the zone concerned:

(a) declare that it proposes to establish an alcohol-free zone, indicating the location of the zone and the proposed period or special events for which it will operate, and

(b) state the place at which, the dates on which and the times during which a copy of the proposal may be inspected, and

(c) invite representations and objections from persons and groups within the area, indicating that any representations or objections by them must be made within 14 days after the date on which the notice is published.

(2) The council must give a copy of its proposal to each of the following persons, indicating that any representations or objections by the person must be made within 30 days after the date on which the copy is given:

(a) the officer in charge of the police station within or nearest to the proposed alcohol-free zone,

(b) each holder of a licence in force under the *Liquor Act 2007* for premises that border on, or adjoin or are adjacent to, the proposed alcohol-free zone.

(c) (Repealed)

(3) If required to do so by the guidelines in force under section 646, the council must also give a copy of its proposal to the Anti-Discrimination Board, indicating that any representations or objections by the Board must be made within 40 days after the date on which the copy is given.

(4) The council must consider all representations and submissions that are duly made to it under this section.

644B Establishment of alcohol-free zones

(1) After complying with the procedures set out in sections 644 and 644A, the council may, by resolution, adopt a proposal (with or without modifications) to establish an alcohol-free zone.

(2) The resolution has the effect of establishing the alcohol-free zone in accordance with the terms of the resolution.

(3) After making the resolution, the council must, by notice published in a manner that the council is satisfied is likely to bring the notice to the attention of members of the public in the area as a whole or in a part of the area that includes the zone concerned:

(a) declare that an alcohol-free zone has been established, and

(b) specify the period (or, in the case of a zone established for one or more special events, the day or days) for which the alcohol-free zone is to operate.

(4) An alcohol-free zone may be re-established from time to time, in accordance with this Part, for further periods each not exceeding 4 years.

644C Operation of alcohol-free zones

(1) An alcohol-free zone operates, in accordance with the terms of the resolution establishing the zone, for the whole of the period specified in the resolution or just for specified days on which particular special events occur.

(2) However, an alcohol-free zone cannot operate earlier than 7 days after the first publication of the relevant notice under section 644B.

(3) An alcohol-free zone operates only so long as there are erected at the outer limits of the zone, and at suitable intervals within the zone, conspicuous signs:

(a) stating that the drinking of alcohol is prohibited in the zone, and

(b) specifying the period (or, in the case of a zone established for one or more special events, the day or days) for which the alcohol-free zone is to operate, as specified in the resolution by which it was established.

(4) The signs must comply with the requirements of the guidelines (if any) in force under section 646.

645 Suspension or cancellation

(1) The council may, at the request of any person or body or of its own motion, suspend the operation of an alcohol-free zone by publishing notice of the suspension in a manner that the

council is satisfied is likely to bring the notice to the attention of members of the public in the area as a whole or in a part of the area that includes the zone concerned.

(2) During the period indicated in such a notice as the period of suspension, the zone does not operate as an alcohol-free zone.

(3) In like manner the council may at any time cancel the operation of an alcohol-free zone.

646 Guidelines for alcohol-free zones

(1) For the purposes of this Part, the Minister may from time to time prepare, adopt or vary guidelines that must be followed by councils for the establishment of an alcohol-free zone or the cancellation or suspension of the operation of an alcohol-free zone.

(2) The guidelines for the time being in force are to be made available to councils on request and, on payment of such fee (if any) as the Minister may determine, to any interested person.

(3) The guidelines are to include a list of the names of the councils that are required to advise the Anti-Discrimination Board under section 644A (3). The list is to be prepared after consultation with the Board.

(4) However, the guidelines are to make it clear that other councils may also advise the Anti-Discrimination Board under section 644A (3).

647 (Repealed)

648 Other laws not affected

This Part is to be read as supplementing, and not as derogating from, the provisions of the *Summary Offences Act 1988* or any other Act or law.

649 (Repealed)

Part 5 Parking

650 Free parking areas

(1) The driver of a vehicle parked in a free parking area otherwise than as permitted by a notice or sign erected by the council is guilty of an offence.

Maximum penalty: 10 penalty units.

(2) The terms of any such notice or sign may relate to any one or more of the following:

(a) the time during which the public may use the free parking area,

(b) the maximum period for which a vehicle may be parked in the free parking area (or in any part of the free parking area),

(c) the designation of a parking space within the free parking area as a space for the sole use of persons with disabilities.

(3) For the purposes of this section, a vehicle parked otherwise than as permitted by such a notice or sign includes a vehicle parked in a parking space designated as a space for the sole use of persons with disabilities, unless:

(a) a parking authority for a person with disabilities is displayed on the vehicle in the manner specified in the authority, and

(b) the conditions specified in the authority are being observed, and

(c) the authority is in force.

(4) If spaces in which a vehicle may be parked in a free parking area are marked by the council (for example, by means of painted lines or by studs, pads or plates), a person must not cause a vehicle to be parked in a free parking area:

(a) otherwise than in such a parking space, or

(b) in a parking space in which another vehicle is parked, or

(c) so that any part of the vehicle is on or across (or partly on or across) any line, stud, pad, plate or other mark defining the space or so that the vehicle is not wholly within the space.

Maximum penalty: 5 penalty units.

(5) The driver of a vehicle in a free parking area must at all times observe and comply with any reasonable direction of any authorised person regarding the parking or movement of the vehicle within the area.

Maximum penalty: 5 penalty units.

(6) The owner of any private land may enter into an agreement with the council under which the land, or any part of the land, is set aside for use as a free parking area.

(7) It is the duty of the Departmental Chief Executive to establish guidelines to be followed by councils in relation to agreements of the kind referred to in subsection (6), including guidelines as to:

(a) the circumstances in which a council may enter into such an agreement, and

(b) the matters for which such an agreement must or must not make provision, and

(c) the exercise by a council of any functions conferred on it by such an agreement.

650A Strata parking areas and community scheme parking areas

(1) The driver of a vehicle parked in a strata parking area or a community scheme parking area established under this section otherwise than as permitted by a notice or sign erected by the council is guilty of an offence.

Maximum penalty: 10 penalty units.

(2) The terms of the notice or sign may relate to any one or more of the following:

(a) the time during which residents or visitors may use the parking area,

(b) the maximum period for which a vehicle may be parked in the parking area (or in any part of the parking area),

(c) the designation of a parking space within the parking area as a space for the sole use of persons with disabilities.

(3) For the purposes of this section, a vehicle parked otherwise than as permitted by any such notice or sign includes a vehicle parked in a parking space designated as a space for the sole use of persons with disabilities, unless:

(a) a parking authority for a person with disabilities is displayed on the vehicle in the manner specified in the authority, and

(b) the conditions specified in the authority are being observed, and

(c) the authority is in force.

(4) If spaces in which a vehicle may be parked in a strata parking area or community scheme parking area are marked by the council or the owners corporation or association (for example, by means of painted lines or by studs, pads or plates), a person must not cause a vehicle to be parked in the parking area:

(a) otherwise than in such a parking space, or

(b) in a parking space in which another vehicle is parked, or

(c) so that any part of the vehicle is on or across (or partly on or across) any line, stud, pad, plate or other mark defining the space or so that the vehicle is not wholly within the space.

Maximum penalty: 5 penalty units.

(5) The driver of a vehicle in a strata parking area or community scheme parking area must at all times observe and comply with any reasonable direction of any authorised person regarding the parking or movement of the vehicle within the parking area.

Maximum penalty: 5 penalty units.

(6) The owners corporation of a strata scheme under the *Strata Schemes Management Act 2015* may enter into an agreement with the council under which part of the common property of the scheme is set aside for use as a strata parking area and the council exercises functions under this section, including the erection of notices and signs.

(7) The association of a community, precinct or neighbourhood scheme under the *Community Land Management Act 1989* may enter into an agreement with the council under which part of the land within the scheme is set aside for use as a community scheme parking area and the council exercises functions under this section, including the erection of notices and signs.

(8) It is the duty of the Director-General to establish guidelines to be followed by councils in relation to agreements of the kind referred to in subsection (6) or (7), including guidelines as to:

(a) the circumstances in which a council may enter into an agreement, and

(b) the matters for which an agreement must or must not make provision, and

(c) the exercise by a council of any functions conferred on it by an agreement.

(9) An agreement for a strata parking area, and any other agreement conferring functions on a council in relation to a strata parking area, must be approved by special resolution of the owners corporation and must comply with any requirements for such schemes prescribed by regulations under the *Strata Schemes Management Act 2015*.

(10) An agreement for a community scheme parking area, and any other agreement conferring functions on a council in relation to a community scheme parking area, must be approved by special resolution of the association and must comply with any requirements for such schemes prescribed by regulations under the *Community Land Management Act 1989*.

651 Liability of vehicle owner for certain offences

(1) This section applies to any offence against section 632 (1), 650 (1) or (4) or 650A (1) or (4) that arises from the parking of a vehicle, in this section referred to as a ***parking offence***.

(2) The owner of a vehicle with respect to which a parking offence is committed is, by virtue of this section, guilty of the offence as if the person were the actual offender, unless:

(a) if the offence is dealt with by penalty notice, the owner satisfies a prescribed officer that the vehicle was, at the relevant time, a stolen vehicle or a vehicle illegally taken or used, or

(b) in any other case, the court is satisfied that the vehicle was, at the relevant time, a stolen vehicle or a vehicle illegally taken or used.

(3) Nothing in this section affects the liability of the actual offender but, if a penalty has been imposed on, or recovered from, any person in relation to a parking offence, no further penalty can be imposed on or recovered from any other person in relation to the offence.

(4) The owner of a vehicle is not, by virtue of this section, guilty of an offence if, where the offence is dealt with by penalty notice:

(a) within 21 days after service on the owner of the penalty notice in respect of the offence, the owner gives the prescribed officer a relevant nomination document containing the name and address of the person who was at all relevant times in charge of the vehicle, or

(b) the owner satisfies the prescribed officer that the owner did not know, and could not with reasonable diligence have ascertained, that name and address.

(5) The owner of a vehicle is not, by virtue of this section, guilty of an offence if, in any other case:

(a) within 21 days after service on the owner of a court attendance notice in respect of the offence, the owner gives the informant a relevant nomination document containing the name and address of the person who was at all relevant times in charge of the vehicle, or

(b) the owner satisfies the court that the owner did not know, and could not with reasonable diligence have ascertained, that name and address.

(5A) Despite any other provision of this Act, a relevant nomination document may be provided by an owner of a vehicle served with a penalty notice within 90 days of the notice being served on the owner if the relevant nomination document is provided in the circumstances specified in section 23AA or 23AB of the *Fines Act 1996*.

(5B) If the owner of a vehicle gives a relevant nomination document to a prescribed officer or an informant for the purposes of this section, a prescribed officer or an informant may, by written notice served on the owner, require the owner to supply a statutory declaration for use in court proceedings that verifies the nomination contained in the relevant nomination document.

(6) If a statutory declaration supplying the name and address of a person for the purposes of this section is produced in any proceedings against the person in respect of the parking offence to which the declaration relates, the declaration is evidence that the person was, at all relevant times relating to that offence, in charge of the vehicle involved in the offence.

(7) A relevant nomination document or statutory declaration that relates to more than one parking offence is taken not to be a relevant nomination document or statutory declaration supplying a name and address for the purposes of this section.

(8) This section does not limit any other provision of this Act, any provision of any other Act or any provision of any instrument in force under this or any other Act.

(9) In this section:

(a) a reference to a penalty notice is a reference to a penalty notice under Division 3 of Part 7.3 of the *Road Transport Act 2013*, and

(b) a reference to an owner of a vehicle is a reference to the responsible person for the vehicle within the meaning of the *Road Transport Act 2013*, and

(c) a reference to a prescribed officer is a reference to an authorised officer within the meaning of the *Road Transport Act 2013*, or

(d) a reference to a relevant nomination document is a reference to a relevant nomination document within the meaning of Part 7.3 of the *Road Transport Act 2013*.

Part 5A Immobilisation and detention of vehicles

651A Application of Part

This Part applies to the whole of the State.

651B Immobilisation of vehicles

(1) A person must not immobilise a vehicle owned by any other person by means of wheel clamps, or by means of any other device prescribed by the regulations, except with the consent of that other person.

Maximum penalty: 20 penalty units.

(2) This section does not affect any right to immobilise a vehicle that a person may have:

(a) as the driver or person in charge of the vehicle, or

(b) under the terms of a court order, or

(c) under the terms of a credit contract (within the meaning of the *National Credit Code* as set out in Schedule 1 to the *National Consumer Credit Protection Act 2009* of the Commonwealth) in force with respect to the vehicle, or

(d) under Part 7.6 of the "*Road Transport Act 2013*.

(3) For the purposes of this section, an owner or occupier of premises is not in charge of a vehicle merely because the vehicle has been left on those premises.

651C Unlawful detention of vehicles

(1) A person who takes possession of a vehicle that has been left on premises must not:

(a) fail to release the vehicle on demand to any person having a lawful right to the possession or control of the vehicle, or

(b) demand any payment for or in relation to the release of the vehicle.

Maximum penalty: 20 penalty units.

(2) This section does not give any person a right to take possession of a vehicle if the person does not have that right apart from this section, but does not affect any right to detain a vehicle that a person may have:

(a) under the *Impounding Act 1993* or any other Act, or

(b) under a lien, or

(c) under the terms of a court order, or

(d) under the terms of an agreement or arrangement in force with respect to the vehicle.

(3) The remedy at common law of distress damage feasant is abolished to the extent to which it would otherwise be available in relation to a vehicle left on premises.

Part 6 Offence relating to civic office

652 Acting in civic office while subject to disqualification

(1) A person who acts in a civic office while disqualified from holding the office is guilty of an offence.

Maximum penalty: 20 penalty units.

(2) If the court is satisfied that an offence under this section was of a trifling character comprising acts done in good faith while in ignorance of the fact that the result would be disqualification, the court may:

(a) dismiss the case, or

(b) proceed to conviction and declare that section 276 (3) does not apply to the conviction or applies only to a specified extent.

(3) A declaration by a court under this section as to the application of section 276 (3) has effect according to its tenor.

Part 7

653–658 (Repealed)

Part 8 Miscellaneous

659 Production of certificate of authority to enter premises

A person authorised under this Act to enter premises who does not, on demand by the owner or occupier of the premises, produce the written authority to enter given to the person by the Departmental Chief Executive or the council is guilty of an offence.

Maximum penalty: 5 penalty units.

660 Obstruction

A person who wilfully obstructs any of the following in the exercise of any function under this Act, or any other Act or any regulation conferring functions on a council is guilty of an offence:

- the Minister
- the Departmental Chief Executive
- a person authorised under section 746
- an auditor appointed under Part 3 of Chapter 13
- a council
- a councillor
- an administrator of a council appointed under this Act
- an employee of a council
- a police officer
- a person duly authorised to perform the function for the purposes of the Act or regulation concerned.

Maximum penalty: 20 penalty units.

661 Failure to comply with certain directions

A person who fails, without lawful excuse, to comply with a direction given to the person under Part 3 or 5 of Chapter 13 or section 440H by a person authorised to give the direction is guilty of an offence.

Maximum penalty: 20 penalty units.

662 Occupier, manager or agent refusing to give name of owner

An occupier or manager of any premises or an agent of the owner of the premises who, on the request of a council or an authorised person, refuses or wilfully omits to disclose or wilfully misstates the name and address of the owner of the premises or of the person receiving or authorised to receive the rents of the premises is guilty of an offence.

Maximum penalty: 5 penalty units.

663 Owner refusing to give name of manager or occupier

An owner of premises who, on the request of a council or an authorised person, refuses or wilfully omits to disclose or wilfully misstates the name and address of the manager or occupier of the premises is guilty of an offence.

Maximum penalty: 5 penalty units.

664 Disclosure and misuse of information

(1) A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:

(a) with the consent of the person from whom the information was obtained, or

(b) in connection with the administration or execution of this Act, or

(c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or

(d) in accordance with a requirement imposed under the *Ombudsman Act 1974* or the *Government Information (Public Access) Act 2009*, or

(e) with other lawful excuse.

(1A) In particular, if part of a meeting of a council or a committee of a council is closed to the public in accordance with section 10A (1), a person must not, without the authority of the council or the committee, disclose (otherwise than to the council or a councillor of the council) information with respect to the discussion at, or the business of, the meeting.

(1B) Subsection (1A) does not apply to:

(a) the report of a committee of a council after it has been presented to the council, or

(b) disclosure made in any of the circumstances referred to in subsection (1) (a)–(e), or

(c) disclosure made in circumstances prescribed by the regulations, or

(d) any agenda, resolution or recommendation of a meeting that a person is entitled to inspect in accordance with section 12.

(2) A person acting in the administration or execution of this Act must not use, either directly or indirectly, information acquired by the person in that capacity, being information that is not generally known, for the purpose of gaining either directly or indirectly a financial advantage for the person, the person's spouse or de facto partner or a relative of the person.

(3) A person acting in the administration or execution of this Act, and being in a position to do so, must not, for the purpose of gaining either directly or indirectly an advantage for the person, the person's spouse or de facto partner or a relative of the person, influence:

(a) the determination of an application for an approval, or

(b) the giving of an order.

Maximum penalty: 50 penalty units.

665 False or misleading information

(1) A person who, in or in connection with an application under this Act, makes any statement that the person knows to be false or misleading in a material particular is guilty of an offence.

Maximum penalty: 20 penalty units.

(2) (Repealed)

666 Wilful destruction of documents

(1) Any person who, without reasonable excuse, wilfully destroys any document belonging to a council is guilty of an offence.

Maximum penalty: 20 penalty units.

(2) Any person who, without lawful authority, destroys, defaces or alters a council record is guilty of an offence.

Maximum penalty: 20 penalty units.

667 Wilful destruction of notices and signs

A person who wilfully removes, destroys, defaces, damages or otherwise interferes with a notice or sign erected by a council is guilty of an offence.

Maximum penalty: 20 penalty units.

668 Attempts

A person who attempts to commit an offence against this Act or the regulations is guilty in the same degree and liable to the same penalty as a person who commits the offence.

669 Penalties extended to persons causing offence

A person:

(a) who causes the commission of an offence against this Act or the regulations, or

(b) by whose order or direction such an offence is committed, or

(c) who aids, abets, counsels or procures or by act or omission is directly or indirectly concerned in the commission of such an offence,

is guilty in the same degree and liable to the same penalty as the principal offender.

670 Notices and signs

(1) A person who fails to comply with the terms of a notice or sign referred to in this Chapter is not guilty of an offence unless the notice or sign:

(a) is clearly legible, and

(b) where it relates to:

(i) the whole of a parcel of public land, is exhibited at each entrance to the parcel of public land or in a conspicuous place in or in the vicinity of the parcel of public land, or

(ii) part only of a parcel of public land, is exhibited at each entrance to that part or in a conspicuous place in or in the vicinity of that part, or

(iii) a building, is exhibited (as may be appropriate) either inside or at or near the entrance to the building.

(2) The council has the onus of proving that the notice or sign complies with this section.

671 Proof of lawful or reasonable excuse

Where, by this Act, the doing of a particular act without lawful or reasonable excuse is made an offence, proof of the lawful or reasonable excuse lies on the accused.

Chapter 17 Enforcement

Part 1 General

Division 1 Legal proceedings

672 What constitutes a breach of this Act for the purposes of this Part?

In this Part:

(a) ***a breach of this Act*** means:

(i) a contravention of or failure to comply with this Act,

(ii) a threatened or an apprehended contravention of or a threatened or apprehended failure to comply with this Act, and

(b) ***this Act*** includes:

(i) an approval under Part 1 of Chapter 7, and

(ii) an order under Part 2 of Chapter 7, and

(iii) the regulations.

673 Remedy or restraint of breaches of this Act—the Minister, the Departmental Chief Executive and councils

(1) The Minister, the Departmental Chief Executive or a council may bring proceedings in the Land and Environment Court or such other court as may be specified in this Act for the purpose of the proceedings for an order to remedy or restrain a breach of this Act.

(2) Subsection (1) does not apply in relation to an alleged contravention of a pecuniary interests duty imposed under Chapter 14 (Honesty and disclosure of interests).

Note. Section 486A confers exclusive jurisdiction on the Civil and Administrative Tribunal to deal with such a matter at first instance.

674 Remedy or restraint of breaches of this Act—other persons

(1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act.

(2) The proceedings may be brought by a person on the person's own behalf or on behalf of the person and on behalf of other persons (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.

(3) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

(4) (Repealed)

(5) Subsection (1) does not apply in relation to anything done or omitted to be done under Division 3 of Part 1 of Chapter 14.

674A Provisions of Act that do not give rise to or affect legal proceedings

(1) For the purposes of this section, the following are relevant provisions of this Act:

(a) a provision of Chapter 3,

(b) section 223,

(c) section 226,

(d) section 232,

(e) section 439,

(f) section 440.

(1A) A provision is also a relevant provision to the extent that it applies a provision referred to in subsection (1).

(2) The relevant provisions do not give rise to, and cannot be taken into account in, any civil cause of action and do not affect any rights or liabilities arising apart from the relevant provisions.

(3) Without limiting subsection (2), a contravention of the relevant provisions is not a breach of this Act for which a remedy may be sought (whether under this Act or otherwise).

675 Time limit on proceedings questioning the validity of approvals

Proceedings questioning the validity of an approval under Part 1 of Chapter 7 may not, if the council has given public notice of the granting of the approval in the manner and form prescribed by the regulations, be commenced more than 3 months after the date on which the notice was given.

676 Functions of the Land and Environment Court

(1) If the Land and Environment Court is satisfied that a breach of this Act has been committed or that a breach of this Act will, unless restrained by order of the Court, be committed, it may make such order as it thinks fit to remedy or restrain the breach.

(2) If a breach of this Act would not have been committed but for the failure to obtain an approval under Part 1 of Chapter 7, the Court on application being made by the defendant, may:

(a) adjourn the proceedings to enable an application to be made under Part 1 of Chapter 7 to obtain that approval, and

(b) in its discretion, by interlocutory order, restrain the continuance of the commission of the breach while the proceedings are adjourned.

(3) The functions of the Court under this section are in addition to and not in derogation of any other functions of the Court.

677 Compensation may be awarded against vexatious litigants

(1) The Land and Environment Court, on the hearing of proceedings brought under section 674, has a discretion to award compensation to the person against whom such proceedings are taken if the Court considers that:

(a) the proceedings against the person are frivolous or vexatious, and

(b) the person has incurred expense as a consequence of any delay to an activity that has occurred as a result of the proceedings, and

(c) the activity is authorised by an approval held by the person.

(2) A claim for compensation may not be made more than 28 days after the date on which the Court gives its decision in the proceedings.

(3) Compensation under this section is to be awarded against the person by whom the proceedings under section 674 were taken.

678 Failure to comply with order—carrying out of work by the council

(1) If a person fails to comply with the terms of an order given to the person under Part 2 of Chapter 7, the council may do all such things as are necessary or convenient to give effect to the terms of the order, including the carrying out of any work required by the order.

(2) If the council gives effect to an order by demolishing a building, the council:

(a) may remove any materials concerned, and

(b) may sell the materials, unless the expenses of the council in giving effect to the terms of the order are paid to it within 14 days after removal of the materials.

(3) If the proceeds of such a sale exceed the expenses incurred by the council in relation to the demolition and the sale, the council:

(a) may deduct out of the proceeds of the sale an amount equal to those expenses, and

(b) must pay the surplus to the owner on demand.

(4) If the proceeds of sale do not exceed those expenses, the council:

(a) may retain the proceeds, and

(b) may recover the deficiency (if any) together with its costs of recovery from the owner as a debt.

(5) Materials removed that are not saleable may be destroyed or otherwise disposed of.

(6) Any expenses incurred by the council under this section (less the proceeds, if any, of any sale under this section) together with all its associated costs may be recovered by the council in any court of competent jurisdiction as a debt due to the council by the person concerned.

(7) Nothing in subsection (3), (4) or (6) affects the owner's right to recover any amount from any lessee or other person liable for the expenses of repairs.

(8) A reference in subsection (4) or (6) to costs is a reference to costs incurred by the council in seeking to recover the deficiency or expenses otherwise than by proceedings in a court, but nothing in this section prevents the council from receiving costs as between party and party in respect of those proceedings.

(9) A council may exercise its functions under this section irrespective of whether the person concerned has been prosecuted for an offence under section 628.

(10) In any proceedings before the Land and Environment Court that are brought by a council against a person as a result of the person's failure to comply with an order under Part 2 of Chapter 7, the Court may, at any stage of the proceedings, order the council to exercise the council's functions under this section. Having made such an order, the Court may continue to hear and determine the proceedings or may dismiss the proceedings.

Note. Section 193 requires the council to give the owner or occupier of premises written notice before a person authorised to enter premises under Part 2 of Chapter 8 of the Act does so.

679 Penalty notices for certain offences

(1) An authorised person may serve a penalty notice on a person if it appears to the authorised person that the person has committed an offence under this Act (other than an offence under section 312, 650 or 651), being an offence prescribed by the regulations.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in

the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.

(3) A penalty notice:

(a) may be served personally or by post, or

(b) if it relates to an offence involving the use of a vehicle, may be addressed to the owner (without naming the owner or stating the owner's address) and may be served by leaving it on or attaching it to the vehicle.

(4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

(5) Payment under this section is not regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

(6) The regulations may:

(a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and

(b) prescribe the amount of penalty payable for the offence if dealt with under this section, and

(c) prescribe different amounts of penalties for different offences or classes of offences.

(7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court.

(8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.

Division 2 Other remedies

680 Demanding name of offender

(1) An authorised person who finds a person whom the authorised person reasonably suspects of committing an offence under this Act in a public place, or an offence in respect of which the authorised person may issue a penalty notice under section 224 of the *Protection of the Environment Operations Act 1997*, may:

(a) demand from the person his or her name and residential address, and

(b) report the offence and the name and residential address of the person to the council as soon as practicable.

(2) The provisions of subsection (1) (b) do not apply to any police officer in respect of an offence under section 650 (use of council's free parking areas).

(3) A person who on demand made as referred to in this section:

(a) refuses to state his or her name or residential address, or

(b) states a name or residential address which in the opinion of the authorised person is false,

may without any other warrant than this Act be apprehended by the authorised person and taken before a Magistrate or authorised officer to be dealt with according to law.

(4) A Magistrate or authorised officer before whom a person is taken under subsection (3) may make a bail decision under the *Bail Act 2013* in respect of the person.

(4A) If the person has not been charged with an offence, the *Bail Act 2013* applies to the person as if the person were accused of an offence.

(5) A person who on demand made as referred to in this section:

(a) refuses to state his or her name or residential address, or

(b) states a false name or residential address,

is guilty of an offence.

Maximum penalty: 5 penalty units.

(6) For the purpose of applying the *Bail Act 2013*, an authorised officer has the same functions as an authorised justice under that Act.

(7) In this section:

authorised officer means an authorised officer under the *Criminal Procedure Act 1986*.

680A Authorised person may give directions relating to public places

(1) A council employee who is authorised in writing by the Commissioner of Police for the purposes of this section (***enforcement officer***) may give a direction to a person in a public place if the enforcement officer believes, on reasonable grounds, that the person's behaviour or presence in the place is obstructing another person or persons or traffic.

(2) A direction given by an enforcement officer under this section must be reasonable in the circumstances for the purpose of reducing or eliminating the obstruction.

(3) A person must not, without reasonable excuse, refuse or fail to comply with a direction given in accordance with this section.

Maximum penalty: 2 penalty units.

(4) A person is not guilty of an offence under this section unless it is established that the person persisted, after the direction concerned was given, to engage in the relevant conduct.

(5) The other person or persons referred to in subsection (1) need not be in the public place but must be near that place at the time the relevant conduct is being engaged in.

(6) Part 15 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (Safeguards relating to powers) applies to the exercise of a power under this section by an enforcement officer in the same way as that Part applies to a police officer.

(7) This section does not authorise an enforcement officer to give directions in relation to:

(a) an industrial dispute, or

(b) an apparently genuine demonstration or protest, or

(c) a procession, or

(d) an organised assembly.

681 Removal of offenders from community land

(1) A person committing an offence against this Act on community land may be removed from the land by an authorised person.

(2) Reasonable force may be used to effect the person's removal.

(3) The removal of the person does not affect the person's liability to be prosecuted for an offence.

681A Confiscation of recreational equipment

(1) This section applies to:

(a) any item of skating equipment that is being used in contravention of the provisions of a notice referred to in section 632 or of the provisions of section 633A, or

(b) any item of water-based recreational equipment that is being used in contravention of the provisions of a notice referred to in section 633.

(2) An authorised person may take possession of equipment to which this section applies:

(a) if the authorised person has directed the person using the equipment to stop using it in contravention of the provisions referred to in subsection (1), and

(b) if, despite the direction, the person has continued to use the equipment in contravention of those provisions,

but may not use force to do so.

(3) Equipment that an authorised person takes possession of under this section is referred to in this section as ***confiscated equipment***.

(4) On taking possession of confiscated equipment, the authorised person must give a receipt to the person from whom it has been taken, indicating the nature of the equipment and the date and time when the authorised person took possession of it.

(5) The confiscated equipment:

(a) must be returned to the person from whom it was taken, or be delivered to a public pound within the meaning of the *Impounding Act 1993*, within 24 hours after possession of it is taken, and

(b) if it is delivered to a public pound, the person from whom it was taken must be notified in writing of the address of the pound.

(6) The *Impounding Act 1993* (sections 20 and 23 (2) (b) and (c) excepted) applies to confiscated equipment that is delivered to a public pound as if the equipment had been impounded under that Act. Accordingly, it will become returnable on demand.

(7) The deadline for release for confiscated equipment, as referred to in section 24 of the *Impounding Act 1993*, is taken to be 28 days from the day on which possession of it was taken.

(8) In this section, a reference to an authorised person extends to a member of a surf life saving organisation who is authorised by the council concerned to exercise the functions conferred on an authorised person by this section, but so extends only with respect to an item of water-based recreational equipment that is being used in contravention of the provisions of a notice referred to in section 633.

(9) A council is liable for the acts and omissions of a member of a surf life saving organisation who is an authorised person by virtue of subsection (8) as if the member were an employee of the council.

Part 2 Proceedings by the council or its employees

Division 1 General

682 (Repealed)

683 Authentication of documents

A document requiring authentication by the council may be sufficiently authenticated without the seal of the council if signed by the general manager or public officer.

684 Laying of informations

In any proceedings for an offence, the information may be laid:

(a) in the name of the council, if not required to be made on oath, or

(b) in any case by the general manager or by any other employee of the council appointed generally or in respect of any special proceedings or by any police officer, or

(c) in any case by a person appointed by the Departmental Chief Executive, generally or in respect of any special proceedings, or

(d) in any case by a person employed in the Ministry of Health appointed by the Secretary of the Ministry of Health, generally or in respect of any special proceedings, or

(e) by any other person.

685 Certain allegations in informations

An allegation, in an information in respect of an offence against this Act or the regulations:

(a) that the defendant has not obtained a relevant approval under this Act of the council, or

(b) that a standard, sign, notice or device was erected or displayed with the authority of the council,

is sufficient proof of the matter so alleged, unless the defendant proves to the contrary.

686 Ownership of council property

In any proceedings (whether for the enforcement of a penalty or criminal proceedings) in relation to any property of or under the control and management of the council, it is sufficient to state generally that the property is the property of the council.

687 Appearance in Local Court

In proceedings in the Local Court, the general manager or any other employee of the council appointed in writing by the general manager may:

(a) represent the council in all respects as though the general manager or other employee were the party concerned, and

(b) institute and carry on any proceedings which the council is authorised to institute and carry on under this or any other Act.

688 Bankruptcy

(1) If any person against whom a council has any claim or demand takes the benefit of any Act relating to bankruptcy or for the relief of insolvent debtors, the general manager may, in all proceedings:

(a) against the estate of that bankrupt or insolvent person, or

(b) under any adjudication, sequestration or act of bankruptcy or insolvency against or of that insolvent or bankrupt person,

represent the council and act in its behalf in all respects as if the claim or demand were the claim or demand of the general manager.

(2) If any company against which a council has any claim or demand is being or is wound up, the general manager may represent the council in all proceedings relating to the winding up and act on its behalf as if the claim or demand were the claim or demand of the general manager.

689 Payment of expenses of employee

Any damages, costs, charges or expenses that an employee of a council incurs or is liable to pay because of any proceedings which the employee is authorised by or under this or any other Act to take are to be paid by the council out of its consolidated fund.

690 Other remedies

(1) Whether any penalty imposed on a person by or under this Act has been recovered or not, the council may recover from the person:

(a) any sum for damage sustained by it through the person's act or default, and

(b) the costs and expenses incurred by it in remedying that damage, and

(c) the value of anything wasted, misused or unlawfully consumed, diverted or taken by the person.

(2) The penalty may be recovered even if the council has not exercised any other right of recovery.

(3) A prosecution or conviction for an offence against this Act or the regulations does not affect any right of action of any person for any damage sustained by the person.

691 Proceedings for offences

(1) Proceedings for an offence against this Act or the regulations may be dealt with summarily by the Local Court.

(2) Proceedings for an offence against section 626 (1), 627 (1) or 628 (1) may be dealt with:

(a) summarily by the Local Court, or

(b) summarily before the Land and Environment Court in its summary jurisdiction.

(3) Proceedings for an offence dealt with summarily before the Land and Environment Court in its summary jurisdiction may be instituted at any time within 6 months after the offence is alleged to have been committed.

691A, 692 (Repealed)

693 Time for bringing proceedings concerning electoral offences

Proceedings for an offence concerning an election or poll under this Act may be instituted at any time within 3 years after the offence is alleged to have been committed.

694 Application of penalties

(1) Any penalty, fine or forfeiture imposed under any Act, or imposed for a contempt of a court order to remedy or restrain a breach of this Act or any other Act, and recovered in proceedings instituted by the council is:

(a) to be paid to the council, and

(b) to be allocated by the council to the council's consolidated fund.

(1A) In subsection (1):

breach of this Act or any other Act means:

(a) a contravention of or failure to comply with this Act or any other Act, or

(b) a threatened or an apprehended contravention of or a threatened or apprehended failure to comply with this Act or any other Act.

this Act or any other Act includes a regulation or other instrument made under this Act or any other Act.

(2) Any penalty, fine or forfeiture under this Act or the regulations recovered in proceedings instituted by a police officer or by a person employed in the Ministry of Health is to be paid to the Consolidated Fund referred to in section 39 of the *Constitution Act 1902*.

(3) The Treasurer may enter into an arrangement with the council of Sydney, North Sydney or South Sydney with respect to the allocation of any money paid or payable to the council from penalties and fines for parking and related offences recovered in proceedings instituted by the council.

(4) Any money to which such an arrangement applies is to be apportioned between the council and the State in accordance with the arrangement and:

(a) as to the council's portion, is to be retained in the council's consolidated fund for use by the council, and

(b) as to the State's portion, is to be paid to the Consolidated Fund referred to in section 39 of the *Constitution Act 1902*.

(5) In this section:

(a) a reference to proceedings instituted by the council includes:

(i) a reference to proceedings instituted under the direction or on behalf or for the benefit of the council, and

(ii) a reference to penalty notices issued by or under the direction or on behalf or for the benefit of the council, and

(b) a reference to a parking or related offence is a reference to an offence that is declared by the regulations to be a parking or related offence for the purposes of this section.

695 Suing for debts

A rate, charge, fee or other money due to the council under this Act or the regulations may be recovered by the council as a debt in a court of competent jurisdiction, except as provided by this Act.

695A Referral of unpaid amounts for debt recovery action

(1) Despite anything to the contrary in this Act, a council cannot exercise the following functions in respect of an unpaid rate, charge, fee or other amount (an ***unpaid amount***), if the unpaid amount is referred to the Chief Commissioner of State Revenue for debt recovery action in accordance with the *State Debt Recovery Act 2018*:

(a) take proceedings to recover the unpaid amount,

(b) accept an amount or a transfer of land in or towards payment of the unpaid amount,

(c) enter into any agreement with a ratepayer regarding payment of the unpaid amount,

(d) write off, waive payment of or reduce the unpaid amount or any accrued interest,

(e) serve on an occupier of land a notice under section 569 in respect of the unpaid amount.

(2) Subsection (1) applies on and from the referral date (within the meaning of the *State Debt Recovery Act 2018*).

(3) Subsection (1) does not affect the validity of anything done by the council before the referral date.

(4) Subsection (1) ceases to apply if the council revokes the referral of the unpaid amount to the Chief Commissioner of State Revenue under the *State Debt Recovery Act 2018*.

(5) This section is subject to the provisions of any debt recovery agreement (within the meaning of the *State Debt Recovery Act 2018*) between the council and the Chief Commissioner of State Revenue.

Note. Under the *State Debt Recovery Act 2018* the Chief Commissioner of State Revenue assumes responsibility for the recovery of the debt and can take debt recovery action as authorised under that Act. Applications for time to pay, and hardship applications, can be made under that Act.

696 Apportionment of expenses

If because of this Act or the regulations:

(a) two or more persons are or may be directed by the council to do or join in doing any act or to pay or join in paying any sum of money, costs or expenses, or

(b) the council permits two or more persons to join together in doing any act or paying any sum of money, costs or expenses,

the council may apportion the matter to be done or the sum of money, costs or expenses to be paid between those persons in whatever manner the council thinks just and reasonable, and the act is to be done or the money, costs or expenses are to be paid accordingly.

Division 2 Evidence

697 Formal matters

In any prosecution or other legal proceeding under this Act or any other Act instituted by or under the direction or on behalf or for the benefit of the council, proof is not, until evidence is given to the contrary, to be required of any of the following:

- the incorporation of the council
- the persons comprising the governing body of the council
- the election or appointment of the mayor or any other councillor
- the extent or boundaries of the area or of any ward
- the fact that any particular place is within the area or within a ward
- the appointment of the general manager or of any other employee of the council
- any order to prosecute or the authority of the general manager or any employee of the council to prosecute
- the presence of a quorum of the council at the passing of any resolution or the making of any decision or determination or the doing of any act
- the fact that the defendant is or at any relevant time was the owner or occupier of any land in question
- the fact that the defendant is or at any relevant time was the owner or in possession, control or charge of any animal or thing in question.

698 Judicial notice of certain documents

(1) Judicial notice is to be taken of any document purporting to be issued or written by or under the direction of the council and purporting to be signed by the mayor, the general manager or the public officer.

(2) Judicial notice is to be taken of every notice made or given under this Act:

(a) that has been published in the Gazette, or

(b) that has been published in a newspaper, or

(c) a copy of which has been certified by the mayor, general manager or the public officer as a true copy,

and of the date on which the notice was made or given.

(3) It is to be presumed, until the contrary is proved, that any such notice has been duly made or given.

(4) A copy of any such notice is to be delivered to any person who demands a copy on payment to the council of the approved fee.

699 Service of notices

If any employee of the council or other person:

(a) serves any notice required to be given by the council in the manner directed by or under this Act, and

(b) endorses on or annexes to a true copy of the notice a statutory declaration stating the place, the time and the manner in which it has been served,

the statutory declaration purporting to have been so made is, until the contrary is proved, evidence of the service of the notice.

700 Proof of ownership of, or leasehold estate in, land

(1) In any legal proceedings under this Act, in addition to any other method of proof available:

(a) evidence that the person proceeded against is rated in respect of any land to any rate under this Act is, until the contrary is proved, evidence that the person is the owner or lessee of the land, or

(b) a certificate furnished by the Registrar-General under subsection (2) with respect to any land is, until the contrary is proved, evidence:

(i) that the person described in the certificate as the proprietor or owner of the land was the owner of that land, and

(ii) that the person, if any, so described as the lessee of the land was the lessee of that land,

at the time or during the period specified in the certificate pursuant to subsection (3) (b) (i) or (ii).

(2) If:

(a) written application with respect to any land is made to the Registrar-General under this subsection by the general manager of a council, and

(b) the Registrar-General has been paid the prescribed fee,

the Registrar-General is to furnish to the council a certificate setting out such of the particulars specified in subsection (3) as are recorded in the Register kept under the *Real Property Act 1900* or in the General Register of Deeds maintained under Division 1 of Part 23 of the *Conveyancing Act 1919* and as the Registrar-General is able to ascertain from the information about the land furnished in the application.

(3) The particulars are:

(a) the situation and a description of the land, and

(b) in the case of:

(i) land subject to the provisions of the *Real Property Act 1900*—the names and addresses of the person registered under that Act as the proprietor of, and any person so registered as a lessee of, the land at the time or during the period in respect of which the application is made and the date of registration of the instruments under which they became so registered, or

(ii) land not subject to those provisions—the names and addresses of the owner and of any lessee of the land at the time or during the period in respect of which the application is made and the dates, and dates of registration under Division 1 of Part 23 of the *Conveyancing Act 1919*, of the instruments kept in the General Register of Deeds maintained under that Division under which the owner or lessee became the owner or lessee of the land.

(4) Judicial notice is to be taken for the purposes of this Act of the signature of the Registrar-General and of a Deputy Registrar-General.

(5) In subsection (2) (b), the reference to the prescribed fee is, in relation to an application made under that paragraph:

(a) in the case of land subject to the provisions of the *Real Property Act 1900*—a reference to the fee prescribed under that Act for the purposes of that paragraph, or

(b) in the case of land not subject to those provisions—a reference to the fee prescribed under the *Conveyancing Act 1919* for the purposes of that paragraph.

701 Evidence as to whether a place is a public road

(1) Evidence that a place is or forms part of a thoroughfare in the nature of a road, and is so used by the public, is admissible in any legal proceedings and is evidence that the place is or forms part of a public road.

(2) This section is subject to section 178 of the *Conveyancing Act 1919* (No way by user against Crown, etc).

702 Offences on boundaries of areas

(1) In proceedings for an offence alleged to have been committed on any part of a public road or on or in any part of a river, watercourse or tidal or non-tidal water, any part of which forms the boundary of the area, it is not necessary to prove that the place where the offence is alleged to have been committed was on either side of the boundary, but it is sufficient to prove that the place where the offence is alleged to have been committed is part of the road, river, watercourse or water.

(2) The council of the area or the council of any adjoining area may take proceedings for any such offence.

703 Minutes

Every entry in the minutes of the business transacted at a meeting of the council and purporting to be signed by the person presiding at a subsequent meeting of the council is, until the contrary is proved, evidence:

(a) that the business as recorded in the minutes was transacted at the meeting, and

(b) that the meeting was duly convened and held.

704 Delineation of local government boundaries by reference to maps

(1) In any proclamation, regulation or notice made or given or purporting to be made or given under this Act with respect to the boundaries of any area or with respect to any proposal relating to those boundaries, the boundaries of the land affected:

(a) may be defined by metes and bounds, or

(b) may be defined or indicated by reference to recorded plans kept in the central plan register established under the *Survey Co-ordination Act 1949*.

(2) If the Minister certifies in writing to the Governor that it is desirable that the existing boundaries of any area be described by reference:

(a) to different surveys or definitions of land boundaries, or

(b) to different recorded plans kept in the central plan register established under the *Survey Co-ordination Act 1949*,

the Governor may, by proclamation, redescribe those boundaries accordingly.

(3) On and from the publication in the Gazette of the proclamation, the boundaries of the area are to be as so redefined.

(4) Recorded plans referred to in this section are taken to be public documents for the purposes of sections 152 (Documents produced from proper custody) and 156 (Public documents) of the *Evidence Act 1995*.

Division 3 Notices by the council

705 What is public notice?

(1) If the council or another person is required to give public notice under this Act, the notice must state the place at which, the dates on which, and the times during which the matter publicly notified may be inspected by the public.

(2) The notice is to be in the approved form.

(3) The notice is to be given in a manner determined by the council with the object of bringing the matter notified to the attention of as many people in its area as possible.

706 What happens after a council gives public notice?

(1) If public notice is given by the council, anyone may make a written submission to the council during the period of public notice (or any longer period allowed by this Act for the making of submissions) concerning the matter notified.

(2) Before determining the matter notified, the council must consider all submissions duly made to it.

707 Publication of notices in Gazette and elsewhere

(1) If the regulations direct the publication of any advertisement or notice both in the Gazette and in another manner, it is sufficient compliance with the direction if, in addition to publication in the Gazette, there is also published in that other manner either a summary of the advertisement or notice, or a statement only that such advertisement or notice has been published in the Gazette.

(2) The date of the Gazette in which the advertisement or notice has been published is to be specified in the summary or statement.

708 The Crown

(1) A notice required to be served on the Crown may be served as provided by this section.

(2) If a Public Service agency is concerned, the service may be on the head of the agency.

(3) If a statutory body representing the Crown is concerned, the service may be:

(a) on the chief executive officer of the statutory body, or

(b) on such person as may be prescribed by the regulations.

709 Corporations

A notice required to be served on a corporation may be served on the secretary or public officer of the corporation.

710 Service of notices on persons

(1) A notice required by or under this Act to be served on a person may be served as provided by this section.

(2) The service may be:

(a) personal, or

(b) by delivering the notice at or on the premises at which the person to be served lives or carries on business, and leaving it with any person apparently above the age of 14 years resident or employed at the premises, or

(c) by posting the notice by prepaid letter addressed to the last known place of residence or business or post office box of the person to be served, or

(d) by transmitting the notice by facsimile transmission to a number specified by the person (on correspondence or otherwise) as a number to which facsimile transmissions to that person may be sent, or

(d1) by transmitting the notice by electronic mail to an email address specified by the person (on correspondence or otherwise) as an address to which electronic mail to that person may be transmitted, or

(e) by fixing the notice on any conspicuous part of the land, building or premises owned or occupied by the person, or

(f) in the case of an offence involving a vehicle, by attaching the notice to the vehicle, or

(g) if the person to be served maintains a box at a document exchange established in New South Wales, by depositing the notice in that box or leaving it at another such exchange for transmission to the firstmentioned exchange for deposit in that box.

(2A) Subsection (2) (d1) does not authorise a notice to be transmitted to a person by electronic mail unless the person has requested the council, in writing, that notices of that kind be transmitted to the person by electronic mail, and has not subsequently withdrawn the request.

(2B) A person's request under subsection (2A) is taken to have been withdrawn in relation to a particular kind of notice only if the person has informed the council, in writing, that notices of that kind are no longer to be transmitted to the person by electronic mail.

(2C) While a person's request under subsection (2A) has effect in relation to a particular kind of notice, the address to which notices of that kind are to be transmitted is:

(a) the email address indicated in the request, or

(b) if the person subsequently directs the council, in writing, to transmit notices of that kind to a different email address, that different address.

(3) If a notice is deposited in a box, or left at a document exchange, service of the notice is, until the contrary is proved, taken to be effected 2 days after the day on which the notice is so deposited or left.

(4) In addition to the means of service prescribed by subsection (2):

(a) in any case where the person to be served is, or after inquiry appears to be, absent from New South Wales, the service may be on the agent of that person by any of the means prescribed by subsection (2) (a), (b), (c) or (d), and

(b) in any case where the land, building or premises are unoccupied and the owner or the owner's address or place of residence is not known to the council, service by the council may be by advertisement in the approved form published in:

(i) a newspaper circulating in the area or part of the area in which the land, building or premises are situated that is published in print form at intervals not exceeding 26 days, or

(ii) a manner determined by the council having regard to the object of bringing notices to the attention of owners in cases of that kind, and

(c) in the case of the service of a rates and charges notice, the service may be effected by delivering the notice to the premises at which the person to be served lives or carries on business and depositing it in a box or receptacle at, on or in the proximity of those premises that is provided, used or designed for the reception of letters addressed to that person.

(5) The notice may be addressed by the description of "rateable person" or "owner" or "occupier" of the land, building or premises (naming or otherwise sufficiently indicating the same) in respect of which the notice is served, and without further name or description.

(6) The notice may be wholly printed, wholly written or partly printed and partly written.

(7) If a notice has been served by any of the means prescribed by this section, all inquiries required under this section are taken to have been made, and the service is conclusive evidence of them.

(8) Proof by affidavit or orally that a notice has been posted, or its transmission by electronic mail has been initiated, in accordance with this section is conclusive evidence of service.

(9) For the purposes of this section, a justice of the peace is authorised to take and receive an affidavit, whether any matter to which the affidavit relates is or is not pending in any court.

711 Effect of service on successors in title

A notice duly served on a person binds any person claiming through or under or in trust for or in succession to the person or who is a subsequent owner or occupier to the person, as if the notice had been served on that person.

Division 4 Legal proceedings for the recovery of rates and charges

712 Special provisions with respect to the recovery of unpaid rates and charges

(1) Proceedings for the recovery of a rate or charge may be commenced at any time within 20 years from the date when the rate or charge became due and payable.

(2) All rates and charges payable by the same person, whether in respect of the same or of different land, may be recovered in a single action.

(3) In any proceedings for the recovery of a rate or charge, a court may decide any matter that is called into question and that is relevant to the determination of the proceedings, even though the matter would otherwise be beyond the court's jurisdiction.

(4) A court's decision on any matter that would, but for this section, be beyond its jurisdiction is relevant only to the determination of the proceedings in which it is called into question and is of no effect in relation to any other proceedings.

(5) No matter in respect of which a right of appeal is given under section 574 may be called into question in any proceedings for the recovery of a rate or charge so as to prevent its recovery if the time within which the right of appeal may be exercised has expired.

(6) Service of a rates and charges notice or notice of a charge may not be called into question more than 10 years after the date of alleged service of the notice.

(7) Proceedings for the recovery of any rate or charge by the enforcement of the charge it comprises on the land are not to be taken in any court, except proceedings for the purposes of Division 5.

Division 5 Sale of land for unpaid rates and charges

713 Sale of land for unpaid rates and charges

(1) For the purposes of this Division, a rate or charge is overdue if:

(a) in the case of vacant land, it has remained unpaid for more than one year, or

(b) in the case of any other land, it has remained unpaid for more than 5 years,

from the date on which it became payable.

(2) A council may, in accordance with this Division:

(a) sell any land (including vacant land) on which any rate or charge has remained unpaid for more than 5 years from the date on which it became payable, and

(b) sell any vacant land on which any rate or charge has remained unpaid for more than one year but not more than 5 years from the date on which it became payable, but only if:

(i) the council obtains a valuation of the land from the Valuer-General, and

(ii) the total amount of unpaid rates or charges on the land exceeds the valuation, and

(iii) the council sells the land within 6 months after the date when the council received the valuation.

(3) The council must not sell any such land unless the general manager or the public officer certifies in writing:

(a) what rates and charges (including overdue rates and charges) are payable on the land, and

(b) when each of those rates and charges was made and how it was levied, and

(c) when each of those rates and charges became payable, and

(d) what amounts are payable by way of overdue rates and charges on the land, and

(e) what amounts are payable by way of rates and charges (other than overdue rates and charges) on the land.

(4) The council may, in the case of adjoining parcels of land (whether in the same or different ownerships) each of which may be sold under this Division:

(a) sell them separately or as a single parcel and under whatever conditions of sale it considers proper, and

(b) do such things as it considers appropriate for the purpose of selling the land at its full value.

714 Estates and interests of the Crown in land

This Division does not enable the sale of:

(a) any estate or interest of the Crown in land, or

(b) any interest in land owned by the Crown that may not be transferred at law.

715 Notice of proposal to sell land

(1) Before selling land under this Division, the council must:

(a) fix a time and place for the sale, and

(b) give notice of the proposed sale by means of an advertisement published in the Gazette and in:

(i) a newspaper circulating in the area or part of the area in which the land is situated that is published in print form at intervals not exceeding 26 days, or

(ii) a manner that the council is satisfied is likely to bring the notice to the attention of persons who may be interested in purchasing the land, and

(c) take reasonable steps to ascertain the identity of any person who has an interest in the land, and

(d) take reasonable steps to notify each such person (and the Crown, if the land concerned is owned by the Crown) of the council's intention to sell the land under this Division.

(1A) The time fixed for the sale must be no earlier than 3 months and no later than 6 months after the date on which an advertisement is first published in the manner determined by the council in accordance with this section.

(2) If, before the time fixed for the sale:

(a) all rates and charges payable (including overdue rates and charges) are paid to the council, or

(b) an arrangement satisfactory to the council for payment of all such rates and charges is entered into by the rateable person,

the council must not proceed with the sale.

716 Sale of land by public auction

(1) Any sale of land under this Division must be by way of public auction, except as provided by this section.

(2) Land that fails to sell at public auction may be sold by private treaty.

(3) Land may be sold under this Division to the council, a councillor, a relative of a councillor, a member of staff of the council or any relative of a member of staff of the council in the case of sale by public auction, but may not be so sold in the case of sale by private treaty.

717 Payment of purchase money

(1) The purchase money for land sold under this Division must be paid to the council, and the council's receipt is a discharge to the purchaser in respect of all expenses, rates, charges and debts referred to in section 718.

(2) The purchase money for land purchased by the council must be paid by way of a transfer between the appropriate funds kept by the council.

(3) Any such transfer is taken to be:

(a) payment to the council of the purchase price of the land, for the purposes of section 722, and

(b) purchase money received by the council on the sale of land for unpaid rates and charges, for the purposes of section 718.

718 Application of purchase money

The council must apply any purchase money received by it on the sale of land for unpaid rates and charges in or towards payment of the following purposes and in the following order:

(a) firstly, the expenses of the council incurred in connection with the sale,

(b) secondly, any rate or charge in respect of the land due to the council, or any other rating authority, and any debt in respect of the land (being a debt of which the council has notice) due to the Crown as a consequence of the sale on an equal footing.

719 What if the purchase money is less than the amounts owing?

If the purchase money is insufficient to satisfy all rates, charges and debts referred to in section 718 (b):

(a) the amount available is to be divided between the rates, charges and debts in proportion to the amounts owing on each, and

(b) the rates, charges and debts are taken to have been fully satisfied.

720 What if the purchase money is more than the amounts owing?

(1) Any balance of the purchase money must be paid into the council's trust fund and held by the council in trust for the persons having estates or interests in the land immediately before the sale according to their respective estates and interests.

(2) The council may pay the balance of the purchase money or any part of the balance to or among the persons who are, in its opinion, clearly entitled to it, and the receipt of the person to whom any payment is so made is an effectual discharge to the council for it.

(3) (Repealed)

721 Apportionment of rates on subdivided land

(1) This section applies to any land on which a rate or charge is levied and which is subsequently subdivided.

(2) If part only of any such land is sold under this Division, any unpaid rates and charges in respect of the land may be apportioned by the council on the recommendation of the Valuer-General.

722 Conveyance or transfer of the land

The council, on payment to it of the purchase money, may convey or transfer the land to the purchaser without any other authority than that conferred by this section.

723 Land is conveyed free of certain interests

(1) A conveyance or transfer under this Division vests the land in the purchaser for an estate in fee simple freed and discharged from all trusts, obligations, estates, interests, contracts and charges, and rates and charges under this Act or any other Act, but subject to:

(a) any reservations or conditions for the benefit of the Crown affecting the land, and

(b) any easements, restrictive covenants, positive public covenants created in accordance with section 88D or 88E of the *Conveyancing Act 1919* and public rights of way affecting the land.

(2) This section does not apply to a leasehold estate under a lease that may be transferred at law in land owned by the Crown.

724 Special provisions concerning leases of land owned by the Crown

(1) This section applies to a leasehold estate under a lease that may be transferred at law in land owned by the Crown.

(2) A conveyance or transfer under this Division of a leasehold estate to which this section applies vests the leasehold estate in the purchaser freed and discharged from all trusts, obligations, estates, interests, contracts and charges, and rates and charges under this or any other Act, but subject to:

(a) any debt payable to the Crown, and

(b) any liability for any breach before the conveyance or transfer of the lease, and

(c) the provisions of the *Crown Land Management Act 2016* applicable to the leasehold estate.

725 Transfers not invalid because of procedural irregularities

A transfer or conveyance issued by a council under this Division is not invalid merely because the council has failed to comply with a requirement of this Division with respect to the sale of the land to which the transfer or conveyance relates.

726 Registration of transfer of land under the Real Property Act 1900

(1) On lodgment of a transfer of land under the *Real Property Act 1900*, the Registrar-General is to make such recordings in the Register kept under that Act as are necessary to give effect to this Division.

(2) The transfer does not operate at law until it is registered under the *Real Property Act 1900*.

Part 3 Proceedings against councils, councillors and staff

Division 1 General

727 Service of documents

A document required to be served on a council may be served by being given personally to the general manager or the public officer.

728 Suing for penalty

A penalty or surcharge recoverable against the council or a councillor or employee of the council may be sued for without notice by any person.

729 Proceedings alleging non-compliance with a procedural requirement

The validity or effectiveness of a decision of a council may not be questioned in any legal proceedings on the ground that, in making or purporting to make the decision, the council failed to comply with a procedural requirement of this Act or the regulations (including a requirement as to the giving of notice) unless the proceedings are commenced within 3 months after the date of the decision.

730 Compensation

(1) A claim for compensation under section 12 (5) of the *Graffiti Control Act 2008* or section 128 or 198 of this Act, in case of dispute, may by agreement between the council and the person claiming the compensation be referred to arbitration under the *Commercial Arbitration Act 2010*.

(2) Failing agreement within 28 days after notice of the claim is served on the council, either party may refer the claim to the Land and Environment Court for determination.

(3) The Land and Environment Court may hear and determine the matter and make any order with respect to the claim and the costs of the case as having regard to the circumstances of the case and to the public interest the Court thinks just.

Division 2 Liability

731 Liability of councillors, employees and other persons

A matter or thing done by the Minister, the Departmental Chief Executive, a council, a councillor, a member of a committee of the council or an employee of the council or any person acting under the direction of the Minister, the Departmental Chief Executive, the council or a committee of the council does not, if the matter or thing was done in good faith for the purpose of executing this or any other Act, and for and on behalf of the Minister, the Departmental Chief Executive, the council

or a committee of the council, subject a councillor, a member, an employee or a person so acting personally to any action, liability, claim or demand.

732 Exemption from liability—accreditation and certification

A council, a councillor and an employee of a council do not incur any liability as a consequence of:

(a) the council's acting in accordance with section 92 (Approval where an accreditation is in force), or

(b) the council's satisfying itself as to a matter referred to in section 93 (Certification by qualified persons) by relying on a certificate referred to in that section, or

(c) (Repealed)

733 Exemption from liability—flood liable land, land subject to risk of bush fire and land in coastal zone

(1) A council does not incur any liability in respect of:

(a) any advice furnished in good faith by the council relating to the likelihood of any land being flooded or the nature or extent of any such flooding, or

(b) anything done or omitted to be done in good faith by the council in so far as it relates to the likelihood of land being flooded or the nature or extent of any such flooding.

(2) A council does not incur any liability in respect of:

(a) any advice furnished in good faith by the council relating to the likelihood of any land in the coastal zone being affected by a coastline hazard (as described in the coastal management manual under the *Coastal Management Act 2016*) or the nature or extent of any such hazard, or

(b) anything done or omitted to be done in good faith by the council in so far as it relates to the likelihood of land being so affected.

(2A) A council does not incur any liability in respect of:

(a) any advice furnished in good faith by the council relating to the likelihood of any land being subject to the risk of bush fire or the nature or extent of any such risk, or

(b) anything done or omitted to be done in good faith by the council in so far as it relates to the likelihood of land being subject to the risk of bush fire.

(3) Without limiting subsections (1), (2) and (2A), those subsections apply to:

(a) the preparation or making of an environmental planning instrument, including a planning proposal for the proposed environmental planning instrument, or a development control plan, or the granting or refusal of consent to a development application, or the determination of an application for a complying development certificate, under the *Environmental Planning and Assessment Act 1979*, and

(b) the preparation and adoption of a coastal management program under the *Coastal Management Act 2016* (and the preparation and making of a coastal zone management plan

under the *Coastal Protection Act 1979* that is continued in effect by operation of clause 4 of Schedule 3 to the *Coastal Management Act 2016*), and

(c) the imposition of any condition in relation to an application referred to in paragraph (a), and

(d) advice furnished in a certificate under section 149 of the *Environmental Planning and Assessment Act 1979*, and

(e) the carrying out of flood mitigation works, and

(f) the carrying out of coastal protection works, and

(f1) the carrying out of bush fire hazard reduction works, and

(f2) anything done or omitted to be done regarding beach erosion or shoreline recession on Crown land (including Crown managed land) or land owned or controlled by a council or a public authority, and

(f3) the failure to upgrade flood mitigation works or coastal protection works in response to projected or actual impacts of climate change, and

(f4) the failure to undertake action to enforce the removal of illegal or unauthorised structures that results in erosion of a beach or land adjacent to a beach, and

(f5) the provision of information relating to climate change or sea level rise, and

(f6) (Repealed)

(g) any other thing done or omitted to be done in the exercise of a council's functions under this or any other Act.

(4) Without limiting any other circumstances in which a council may have acted in good faith, a council is, unless the contrary is proved, taken to have acted in good faith for the purposes of this section if the advice was furnished, or the thing was done or omitted to be done:

(a) substantially in accordance with the principles contained in the relevant manual most recently notified under subsection (5) at that time, or

(b) substantially in accordance with the principles and mandatory requirements set out in the current coastal management manual under the *Coastal Management Act 2016*, or

(c) in accordance with a direction under section 14 (2) of the *Coastal Management Act 2016*.

(5) For the purposes of this section, the Minister for Planning may, from time to time, give notification in the Gazette of the publication of:

(a) a manual relating to the management of flood liable land, or

(b) (Repealed)

(c) a manual relating to the management of land subject to the risk of bush fire.

The notification must specify where and when copies of the manual may be inspected.

(6) A copy of the manual must be available for public inspection, free of charge, at the office of the council during ordinary office hours.

(7) This section applies to and in respect of:

(a) the Crown, a statutory body representing the Crown and a public or local authority constituted by or under any Act, and

(b) a councillor or employee of a council or any such body or authority, and

(c) a Public Service employee, and

(d) a person acting under the direction of a council or of the Crown or any such body or authority, and

(e) Water NSW, but only with respect to the exercise of its functions in the Sydney catchment area (within the meaning of the *Water NSW Act 2014*) or the exercise of its functions in any part of the State in connection with the granting of flood work approvals under the *Water Management Act 2000*,

in the same way as it applies to and in respect of a council.

(8) In this section:

coastal zone has the same meaning as in the *Coastal Management Act 2016*.

manual includes guidelines.

Chapter 18 Miscellaneous

Part 1 General

734 Public hearings by a council

(1) This section applies to a public hearing that by this Act (section 29 (1) excepted) is required to be arranged by a council with respect to any matter.

(2) The public hearing is to be conducted in such manner as is determined by the council, subject to this Act and the regulations.

(3) A report of the public hearing must be furnished to the council and the council must make the report public.

(4) The council must consider the report before making any decision with respect to the matter to which it relates.

734A Preliminary enquiries by Departmental Chief Executive

(1) The Departmental Chief Executive may make preliminary enquiries for the purpose of deciding whether to exercise any of his or her powers of investigation under this Act or powers to authorise an investigation under this Act.

(2) The enquiries may be made whether or not a complaint has been made under this Act in connection with any matter to which the enquiries relate.

735 Notices to be given in writing

Every notice under this Act must be by instrument in writing, except where this Act expressly authorises another means of giving notice.

735A Certificate as to notices

(1) A person may apply to a council for a certificate as to whether there are any outstanding notices issued by the council under this Act in respect of any land within the council's area.

(2) The application must be in the approved form and be accompanied by the approved fee.

(3) The council is to issue a certificate to the applicant stating:

(a) whether or not a notice is outstanding in respect of the land as at the date of the certificate and, if so, the terms of the notice, and

(b) any action proposed to be taken or that may be taken by the council in relation to the notice.

(4) The production of the certificate is taken for all purposes to be conclusive proof of the existence or otherwise of any outstanding notices.

Note. ***Notice*** is defined in the Dictionary for this Act as including a notification, order, direction and demand.

736 Proclamations

(1) The Governor may, by proclamation, rescind, revoke, amend or vary any order, proclamation or notification under the *Local Government Act 1919* or this Act, other than an order or notification given or made by a council.

(2) Except with the consent of any council the interests of which may be concerned, this section or any proclamation under it is not to affect anything done before the publication of the proclamation.

737 Correcting errors

An error in a proclamation may be corrected by a subsequent proclamation which may be expressed to take effect at the same time as the earlier proclamation took effect or at a later time.

738 Validity of proclamations

(1) A proclamation or notification of the Governor purporting to be made under this Act and being within the powers conferred on the Governor is not invalid because of any non-compliance with any matter required by this Act as a preliminary to the making of the proclamation or notification.

(2) A misnomer or inaccurate description or omission of description in any proclamation or notification under this Act does not affect the operation of the proclamation or notification.

739 Protection of privacy

(1) A person may request that any material that is available (or is to be made available) for public inspection by or under this Act be prepared or amended so as to omit or remove any matter that would disclose or discloses the person's place of living if the person considers that the

disclosure would place or places the personal safety of the person or of members of the person's family at risk.

(2) A person who may make a request under this section includes a person who is entitled to be enrolled as an elector.

(3) The request is to be made to the general manager or, in the case of the residential roll for an area, the Electoral Commissioner.

(4) The request is to be in the form prescribed by the regulations, to give particulars of the relevant risk and to be verified by statutory declaration by the person making the request or by some other person.

(5) The person to whom the request is made may grant the request if satisfied that disclosing or continuing to disclose the matter would place or places the personal safety of the person or of members of the person's family at risk.

(6) The person to whom the request is made must notify the person concerned of the decision to grant or refuse the request.

(7) The Electoral Commissioner must not include in the residential roll for an area the address of an elector whose request under this section is granted by the Electoral Commissioner.

(8) The general manager, in relation to:

(a) the non-residential roll and the roll of occupiers and ratepaying lessees for the area, and

(b) any other material that is available (or is to be made available) for public inspection by or under this Act,

must not include in the roll or other material the address of a person whose request under this section is granted by the general manager. However, in the case of material other than a roll, the general manager may include the address of a person if the name of the person is excluded from the material.

739A Retention, preservation and destruction of records

The council must retain, preserve and destroy its records in accordance with any approved standards.

740 (Repealed)

740A Ministerial committees

(1) The Minister may establish committees in addition to those established by this Act.

(2) The functions of a committee established under this section are to be as determined by the Minister.

(3) The regulations may make provision for or with respect to the constitution and procedure of a committee established under this section.

741 Exemption from taxes

(1) Unless the contrary is expressly provided by any Act, taxes and stamp duties are not chargeable or payable under any Act on any of the following:

(a) any land vested in or under the management and control of the council,

(b) any property or income of the council,

(c) any receipt or release from debt given by one employee of a council to another in the course of the internal administration of the council's business,

(d) any receipt for any money, or for the return of any money deposited by any person with the council in relation to any contract entered into by the person with the council, or in relation to any tender made by the person for any contract with the council.

(2) This section does not extend to any rate, charge or assessment made or levied by the following:

(a) another council,

(b) the Sydney Water Corporation,

(c) the Hunter Water Corporation,

(d) Water NSW,

(e) a water supply authority,

(f) the Commissioner of Fire and Rescue NSW,

(g) a person prescribed by the regulations.

742 Dispute resolution

(1) If any difference, whether arising out of the construction of this Act or not, arises between the councils of any two or more areas, or between two or more county councils or between one or more councils and one or more county councils, or between any of them and one or more Departments of the Government, with respect to:

(a) the carrying out of the provisions of this Act, or

(b) the fulfilment and exercise of the functions of councils under any Act,

and if after diligent efforts to resolve the difference it remains unresolved, either or any of the parties to the dispute may submit the matter to the Minister.

(2) The Minister may inquire into the matter or may refer the matter for inquiry to some person appointed by the Minister.

(3) Before making such an inquiry into any matter relating to the carrying out by a council of a provision of this or any other Act that is administered by another Minister, the Minister must consult the other Minister.

(4) For the purposes of or after the inquiry, the Minister may make any order that in the public interest and in the circumstances of the case seems just and equitable.

(5) Such an order may direct the payment of any costs and expenses incidental to the conduct of the inquiry.

(6) An order may, on the application of the Minister or of either or any party, by leave of the Supreme Court, be enforced in the same manner as a judgment or order of the Court.

(7) In this section, ***Department of the Government*** includes any public authority and any of the following:

- Rail Corporation New South Wales
- Residual Transport Corporation of New South Wales
- Sydney Trains
- NSW Trains
- the Commissioner of Fire and Rescue NSW
- the New South Wales Land and Housing Corporation
- a water supply authority
- the Health Administration Corporation
- the New South Wales Health Foundation
- a public health organisation within the meaning of the *Health Services Act 1997*
- the Ambulance Service of New South Wales
- any trust constituted under the *Water Act 1912* and any union constituted under the *Drainage Act 1939*
- Crown land manager of any public reserve, water reserve, or cemetery, or of any land, appointed by or under the *Crown Land Management Act 2016* or the trustees of any lands or works held, constructed, or used for any public purpose
- a trust established by or under the *Commons Management Act 1989*
- the Forestry Corporation
- the Zoological Parks Board of New South Wales
- the New South Wales Meat Industry Authority
- the Sydney Harbour Foreshore Authority
- Sydney Metro.

(8) This section does not apply to a dispute arising under the *Roads Act 1993*.

Note. Disputes involving councils and public sector bodies may also be resolved by arbitration or other forms of negotiated settlement.

743 Property in waste

All waste removed from any land or premises by or on behalf of the council or received at a depot of the council is the property of the council.

744 Delegation of functions by the Minister

The Minister may delegate to any person any of the Minister's functions under this Act, other than this power of delegation.

745 Delegation of functions by the Departmental Chief Executive

(1) The Departmental Chief Executive may delegate to any person any of the Departmental Chief Executive's functions under this Act, other than this power of delegation.

(2) A delegate may subdelegate to a person employed in the Department any function delegated by the Departmental Chief Executive if the delegate is authorised in writing to do so by the Departmental Chief Executive.

746 Authorised officers

(1) The Departmental Chief Executive may authorise a person who is employed in the Department to enter and inspect any premises to determine whether the provisions of this Act or the regulations are being complied with in relation to those premises.

(2) Part 2 of Chapter 8 applies, in relation to the functions of a person authorised under this section, to the Departmental Chief Executive and a person so authorised in the same way as it applies to a council and a council employee (or other person) authorised by the council.

747 Review of Act

(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Part 2 Regulations

748 Regulations

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to a matter specified in Schedule 6.

(3) The regulations may create offences in connection with elections and polls under this Act by adopting, with such modifications as are necessary, any of the provisions of the *Electoral Act 2017*.

(4) The regulations may create an offence punishable by a penalty not exceeding 10 penalty units or, in the case of an offence created as referred to in subsection (3), not exceeding the penalty provided for the corresponding offence in the *Electoral Act 2017*.

(5) The regulations may incorporate by reference, wholly or in part and with or without modification, any standards, rules, codes, specifications or methods, as in force at a particular time or as in force from time to time, prescribed or published by any authority or body, whether or not it is a New South Wales authority or body.

(6) If any requirement with respect to water, sewerage or drainage works imposed by the regulations is inconsistent with the requirements of the *Plumbing and Drainage Act 2011* or the regulations under that Act with respect to the same work, that Act and any regulations under that Act prevail to the extent of the inconsistency.

Part 3 Savings, transitional and other provisions

749 Savings, transitional and other provisions

Schedules 7 and 8 have effect.

Part 4

750 (Repealed)

Schedule 1 Local Government Remuneration Tribunal and assessors

(Section 237)

1 Appointment of person as Remuneration Tribunal

(1) The Governor may appoint a person to hold office as the Remuneration Tribunal.

(2) A person may not be appointed if the person is:

(a) the holder of a civic office, or

(b) an employee of a council or a county council.

(c), (d) (Repealed)

2 Terms of office

(1) Subject to this Schedule, a person appointed to hold office as the Remuneration Tribunal and an assessor appointed under section 236 (1) (b) hold office for such period, not exceeding 3 years, as is specified in the instrument of appointment.

(2) Such a person is eligible for re-appointment.

3 Appointment of deputy assessor

The assessor appointed under section 236 (1) (a) may appoint a deputy and, in the absence of the assessor, the deputy may act as an assessor.

4 Remuneration

(1) The person holding office as the Remuneration Tribunal and the assessor appointed under section 236 (1) (b) are entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may determine in respect of them.

(2) The remuneration payable to:

(a) the person holding office as the Remuneration Tribunal must be fixed before the person's appointment, and

(b) the assessor appointed under section 236 (1) (b) must be fixed before the assessor's appointment,

and may be varied in respect of any year commencing on 1 April before that day.

5 Application of other Acts

(1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to a person appointed as the Remuneration Tribunal.

(2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also office as the Remuneration Tribunal or from accepting and retaining any remuneration payable to the person under this Act as the Remuneration Tribunal.

(3) Office as the Remuneration Tribunal is not, for the purposes of any Act, an office or place of profit under the Crown.

6 Vacation of office

(1) The person holding office as the Remuneration Tribunal or the assessor appointed under section 236 (1) (b) vacates office if the person or assessor:

(a) dies, or

(b) completes a term of office and is not re-appointed, or

(c) resigns the office by instrument in writing addressed to the Minister, or

(d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or

(e) becomes a mentally incapacitated person, or

(f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or

(g) is removed from office by the Governor under this clause.

(2) The Governor may remove the person holding office as the Remuneration Tribunal or the assessor appointed under section 236 (1) (b) from office at any time.

Schedule 2 Membership and procedure of the Boundaries Commission

(Section 261 (5))

Part 1 The commissioners

1 Term of office

Subject to this Part, each commissioner holds office for 5 years from the date of appointment and (if otherwise qualified) is eligible for re-appointment.

2 Acting commissioners

(1) Whenever a commissioner is absent from his or her office as a commissioner with the leave of the Minister, granted for any particular period or with respect to any particular examination or inquiry, the Minister may appoint as an acting commissioner:

(a) if the absent commissioner is the chairperson—a person nominated by the Minister, or

(b) if the absent commissioner is the commissioner referred to in section 261 (2) (b)—a person employed in the Department nominated by the Departmental Chief Executive, or

(c) if the absent commissioner is a commissioner referred to in section 261 (2) (c), a person selected from the panel constituted under section 262 (1).

(2) A person appointed as an acting commissioner in the absence of the chairperson is, while acting as a commissioner, also required to act as chairperson of the Boundaries Commission.

(3) An appointment under this clause is to be for such period or with respect to such examination or inquiry as may be specified in the instrument of appointment.

(4) A person acting as the chairperson or as a commissioner has the functions of the chairperson or commissioner in whose place the person is acting.

3 Remuneration

A commissioner or acting commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the commissioner.

4 Application of other Acts

(1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to a commissioner or acting commissioner.

(2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of commissioner or acting commissioner or from accepting and retaining any remuneration payable to the person under this Act as such a commissioner or acting commissioner.

(3) The office of commissioner or acting commissioner is not, for the purposes of any Act, an office or place of profit under the Crown.

5 Vacation of office

(1) The office of commissioner or acting commissioner becomes vacant if the commissioner or acting commissioner:

(a) dies, or

(b) completes a term of office and is not re-appointed, or

(c) resigns the office by instrument in writing addressed to the Minister, or

(d) becomes a mentally incapacitated person, or

(e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or

(f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or

(g) having been appointed as a commissioner or an acting commissioner in his or her capacity as a councillor or a person employed in the Department ceases to be such a councillor or employee, or

(h) is removed from office by the Governor under this clause.

(2) The Governor may remove a commissioner or acting commissioner from office at any time.

(3) A person who vacates office as a commissioner or acting commissioner under subclause (1) (g) because the person is no longer a councillor may, nevertheless, continue to act as a commissioner or acting commissioner for the purposes only of:

(a) any examination or inquiry started before the person ceased to be a councillor if, before the person ceased to be a councillor, the person took part as a commissioner or acting commissioner in the proceedings of the Boundaries Commission in respect of the examination or inquiry, and

(b) making any report required to be made in relation to the examination or inquiry.

6 Filling of vacancy

(1) If the office of a commissioner becomes vacant, a person nominated or selected in the same manner as the vacating commissioner is to be appointed by the Governor to fill the vacancy.

(2) A person appointed under this clause is to hold office for the remainder of his or her predecessor's term of office.

Part 2 Procedure at meetings of the Boundaries Commission

7 Procedure for calling meetings of the Boundaries Commission

The procedure for the calling of meetings of the Boundaries Commission and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Commission.

8 Chairperson to preside etc

The chairperson is to preside at all meetings of the Boundaries Commission and is required to perform such executive functions as the Boundaries Commission specifies or approves.

9 Quorum

The quorum for a meeting of the Boundaries Commission is 2 commissioners (including the chairperson).

10 Voting

(1) A decision supported by a majority of the votes cast at a meeting of the Boundaries Commission at which a quorum is present is the decision of the Boundaries Commission.

(2) The person presiding at a meeting of the Boundaries Commission has a deliberative vote and, in the event of an equality of votes, has a casting vote.

11 Disqualification from voting

(1) A commissioner who is a councillor is not entitled to vote on any question relating to the boundaries of the council area for which the commissioner is a councillor.

(2) A commissioner who is a councillor must not take part in any examination or inquiry made in relation to the boundaries of the council area for which the commissioner is a councillor. Such a commissioner is to be treated as being absent with the leave of the Minister under clause 2 (1) for the period of the examination or inquiry.

12 Dissenting reports

A commissioner who has dissented on a question may provide a separate report on the question.

13 Boundaries Commission not bound to follow strict legal procedure

The Boundaries Commission is not required to follow strict legal procedure or to observe the rules of law governing the admission of evidence when exercising its functions.

Schedule 3 Provisions relating to members and procedure of Project Review Committee

(Section 400J (6))

1 Definitions

In this Schedule:

appointed member means a person who is appointed by the Departmental Chief Executive under section 400J (2) (f) as a member of the Project Review Committee.

Chairperson means the Chairperson of the Project Review Committee.

member means any member of the Project Review Committee.

2 Terms of office of appointed members

Subject to this Schedule, an appointed member holds office for such period as is specified in the member's instrument of appointment.

3 Part-time appointments

Appointed members hold office as part-time members.

4 Remuneration

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

5 Removal of appointed members

(1) The Departmental Chief Executive may remove an appointed member from office at any time.

(2) A person is not entitled to any compensation if the person is removed from office under subclause (1).

6 Disclosure of pecuniary interests

(1) If:

(a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Project Review Committee, and

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Committee.

(2) A disclosure by a member at a meeting of the Project Review Committee that the member:

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the Project Review Committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Departmental Chief Executive.

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Project Review Committee otherwise determines:

(a) be present during any deliberation of the Project Review Committee with respect to the matter, or

(b) take part in any decision of the Committee with respect to the matter.

(5) For the purposes of the making of a determination by the Project Review Committee under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

(a) be present during any deliberation of the Committee for the purpose of making the determination, or

(b) take part in the making by the Committee of the determination.

(6) A contravention of this clause does not invalidate any decision of the Project Review Committee.

7 Effect of certain other Acts

(1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to an appointed member.

(2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as a member.

8 Personal liability

A matter or thing done or omitted to be done by the Project Review Committee, a member of the Project Review Committee or a person acting under the direction of the Project Review Committee does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

9 General procedure

The procedure for the calling of meetings of the Project Review Committee and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Chairperson.

10 Quorum

The quorum for a meeting of the Project Review Committee is a majority of the members referred to in section 400J (2) (a)–(e).

11 Presiding member

(1) The Chairperson (or, in the absence of the Chairperson, a person elected by the members of the Project Review Committee who are present at a meeting of the Committee) is to preside at a meeting of the Committee.

(2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

12 Voting

A decision supported by a majority of the votes cast at a meeting of the Project Review Committee at which a quorum is present is the decision of the Committee.

13 Transaction of business outside meetings or by telephone

(1) The Project Review Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Committee.

(2) The Project Review Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, email, closed-circuit television or any other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of:

(a) the approval of a resolution under subclause (1), or

(b) a meeting held in accordance with subclause (2),

the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Project Review Committee.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Project Review Committee.

(5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile, email or other transmission of the information in the papers concerned.

Schedule 4 (Repealed)

Schedule 5 Local Government Grants Commission

(Section 614 (6))

Part 1 The commissioners

1 Term of office

Subject to this Part, each commissioner holds office for such period, not exceeding 5 years, as is specified in the instrument of appointment and (if otherwise qualified) is eligible for re-appointment.

2 Acting commissioner

(1) The Minister may, from time to time, appoint a person to act in the office of a commissioner (other than the deputy chairperson) during the illness or absence of the commissioner (or during a vacancy in that office) and may revoke any such appointment.

(2) A person appointed under this clause to act as a commissioner has the functions of the commissioner in whose place the person is acting and is taken to be a commissioner.

(3) However, a person acting in place of a commissioner who is also the chairperson does not have the commissioner's functions as chairperson.

3 Remuneration

(1) A commissioner or acting commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the commissioner or acting commissioner.

(2) However, a commissioner or acting commissioner who is employed in the Public Service is entitled to be paid only travelling and subsistence allowances.

4 Application of other Acts

(1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to a commissioner or acting commissioner.

(2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a commissioner or from accepting and retaining any remuneration payable to the person under this Act as such a commissioner.

(3) The office of commissioner or acting commissioner is not, for the purposes of any Act, an office or place of profit under the Crown.

5 Vacation of office

(1) The office of a commissioner becomes vacant if the commissioner:

(a) dies, or

(b) completes a term of office and is not re-appointed, or

(c) resigns the office by instrument in writing addressed to the Minister, or

(d) becomes a mentally incapacitated person, or

(e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or

(f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or

(g) is removed from office by the Governor under this clause.

(2) The Governor may remove a commissioner from office at any time.

6 Filling of vacancy

(1) If the office of a commissioner becomes vacant, a person nominated or selected in the same manner as the vacating commissioner is, subject to this Part, to be appointed to fill the vacancy.

(2) A person appointed under this clause is to hold office for the remainder of his or her predecessor's term of office.

Part 2 Procedure at meetings of the Grants Commission

7 Procedure for calling meetings of the Grants Commission

(1) The procedure for the calling of meetings of the Grants Commission and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as the Grants Commission determines.

(2) The Grants Commission is required to meet at least once in each year and at such other times as the Minister specifies or the Commission considers necessary.

8 Presiding commissioner

(1) The chairperson or, in the absence of the chairperson, the deputy chairperson is to preside at a meeting of the Grants Commission.

(2) The person presiding at a meeting of the Grants Commission has a deliberative vote and, in the event of an equality of votes, has a casting vote.

9 Quorum

The quorum for a meeting of the Grants Commission is 3 commissioners.

10 Decision of the Grants Commission

A decision supported by a majority of the votes cast at a meeting of the Grants Commission at which a quorum is present is the decision of the Grants Commission.

Schedule 6 Regulations

(Section 748)

1 The exemption of areas or parts of areas from the operation of specified provisions of this Act

2 Meetings of the council and its committees

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4 Council polls and constitutional referendums

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5A Contracts referred to in section 55 (3) (a) (relating to exemptions from tendering requirements)

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7A Coastal protection services

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Approvals concerning moveable dwellings

The imposition, on the owners or occupiers of land used for the placement of moveable dwellings, of a levy to be applied to specified purposes, including:

(a) expenses in connection with the examination and review, by or on behalf of the Minister, of the terms and conditions of approvals for moveable dwellings generally, and

(b) the undertaking, by or on behalf of the Minister, of research in connection with moveable dwellings.

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Matters for consideration in determining applications for approvals

Standards, including:

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13 The administration of a council

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14 Elections

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The Local Government Register of Political Parties

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Abandonment

The division of categories of rateable land into sub-categories

The form of a rates and charges notice

The exemption of land from rating

The waiver, remission and postponement of rates and charges

The writing off of rates and charges

The reduction of rates and charges for eligible pensioners

21 Miscellaneous

Examples. The functions and procedures of bodies (other than councils and county councils) constituted or established under this Act

The erection and maintenance of notices

The making and consideration of representations and objections to the declaration of alcohol-free zones

The issuing of penalty notices under this Act

The manner and form in which public notices are to be given under this Act

Authorisation of persons under this Act to enter premises

Forms (including the form of notices) for use under this Act

Fees payable under this Act

Safety standards for swimming pools situated on public land, including requirements with respect to:

(a) the staff to be employed in connection with any such pool, and

(b) the safety equipment to be provided at any such pool.

The exercise by authorised persons (including persons who are authorised persons by virtue of section 681A (8)) of the functions conferred on an authorised person by or under this Act.

Schedule 6A (Repealed)

Schedule 7 Savings, transitional and other provisions consequent on the enactment of this Act

(Section 749)

Part 1 Preliminary

1 Definition

In this Schedule:

old Act means the *Local Government Act 1919*.

2 Regulations—general

(1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act and the following Acts:

Impounding Act 1993

Local Government (Consequential Provisions) Act 1993

Roads Act 1993

Traffic (Parking Regulation) Amendment Act 1993

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later day.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

3 General saving

(1) If anything done or commenced under a provision of an instrument repealed by the *Local Government (Consequential Provisions) Act 1993* has effect or is not completed immediately before the repeal of the provision and could have been done or commenced under a provision of an Act specified in clause 2 (1) if the provisions of the Act had been in force when the thing was done or commenced:

(a) the thing done continues to have effect, or

(b) the thing commenced may be completed.

(2) This clause is subject to any express provision of this Act or the regulations on the matter.

4 Construction of references to the old Act and its provisions

(1) Except as provided by this clause, a reference in any instrument to the old Act (or a provision of the old Act) is to be read as a reference to that instrument or the following instruments (or that provision of such an instrument) that, having regard to the reference and the context in which the reference occurs, most nearly corresponds to the old Act (or the provision of the old Act):

- this Act
- the *Impounding Act 1993*
- the *Roads Act 1993*
- the *Traffic Act 1909*
- the regulations made under those Acts.

(2) The regulations may provide that a reference in any instrument or a specified instrument to the old Act (or a specified provision of the old Act) is to be read as a reference to another specified instrument (or a specified provision of such an instrument).

5 Saving of certain proclamations

Any proclamation in force under the old Act immediately before 1 July 1993 is taken to be a proclamation under this Act.

Part 2 Provisions arising out of Chapter 6 (What are the service functions of councils?)

6 Classification of existing public land

(1) This clause applies to all public land within a council's area as at the commencement of Part 2 of Chapter 6 (the ***relevant commencement***).

(2) On the relevant commencement, the following land that is vested in or under the control of a council is taken to have been classified as community land:

(a) land comprising a public reserve,

(b) land subject to a trust for a public purpose,

(c) land dedicated as a condition of a development consent under section 94 of the *Environmental Planning and Assessment Act 1979*,

(d) land reserved, zoned or otherwise designated for use under an environmental planning instrument as open space,

(e) land controlled by a council that is vested in the corporation constituted by section 8 (1) of the *Environmental Planning and Assessment Act 1979*.

(3) Within 1 year after the relevant commencement, a council may, by resolution, classify, as community land or operational land, any public land that is vested in it or under its control and that is not classified by subclause (2).

(4) A resolution under subclause (3) to classify public land that is not owned by the council must not be made without the consent of the owner.

(5) On the making of a resolution under subclause (3) that classifies public land as operational land, the land is discharged from any trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land, subject to the terms of the resolution, but is not discharged from:

(a) any reservations that except land out of a Crown grant relating to the land, and

(b) reservations of minerals (within the meaning of the *Crown Lands Act 1989*).

(6) The classification of public land by resolution under subclause (3) may be changed only by a local environmental plan or, in the case of land that has been classified as operational land, by a resolution under section 33.

(7) Any public land that may be classified by resolution under subclause (3) and that is not classified within 1 year after the relevant commencement is taken to have been classified as community land.

(8) The provisions of this clause are in addition to, and do not limit the operation of, the other provisions of this Act with respect to the classification of land.

7 Land to which sec 32 applies

Section 32 applies to land whether acquired before or after the commencement of Part 2 of Chapter 6.

8–11 (Repealed)

12 Water, sewerage and drainage works

The Minister or the Governor may charge a council with the care and management of any water, sewerage or drainage works constructed or commenced by the Minister or Governor before the commencement of Division 2 of Part 3 of Chapter 6, or vest any such works in a council, as if those works had been constructed after that commencement.

Part 3 Provisions arising out of Chapter 7 (What are the regulatory functions of councils?)

13 (Repealed)

14 Existing approvals

An approval given, or deemed to have been given, under the old Act or an ordinance under the old Act, and in force immediately before the commencement of Division 1 of Part 1 of Chapter 7, if it is an approval, or an approval of a kind, that may be given under this Act, continues in force and is taken to have been given, and may be revoked, modified, extended or renewed under this Act.

14A Existing places of public entertainment

(1) An approval given, or deemed to have been given, under the old Act to use a building as a place of public entertainment, and in force immediately before 1 July 1993, continues in force according to its tenor and may be revoked or modified as if it were an approval given under Division 1 of Part 1 of Chapter 7.

(2) Such an approval lapses, or is taken to have lapsed when the building ceases, or ceased, to be used as a place of public entertainment.

15 Pending applications for approvals

(1) An application for an approval made under the old Act or an ordinance under the old Act to a council, being an application that has not, immediately before the commencement of Division 3 of Part 1 of Chapter 7, been determined by the council, is to be dealt with as if the old Act and any relevant ordinances under the old Act were still in force.

(2) A person may appeal against a decision made about any such application in accordance with this Act.

16 Notice of applications to erect buildings—validation

(1) An approval to erect a building given by a council on or before 12 December 1990 is not invalid merely because written notice of the building application was not given to any one or more affected persons unless a court, in proceedings commenced on or before that date, determines or has determined that the approval is invalid for that reason.

(2) For the purposes of any such proceedings, the council is taken to have given written notice of the building application to an affected person if it is established that the person knew, or could reasonably be expected to have known, of the existence of the building application within a reasonable time before the council gave its approval to the application.

(3) An approval to erect a building given by a council after 12 December 1990 but before the commencement of Division 4 of Part 1 of Chapter 7 is not invalid merely because written notice of the building application was not given to any one or more affected persons, as long as the notice was given to the persons to whom the notice would have been required to be given had the provisions of that Division (section 115 excepted) been in force when the approval was given.

(4) In this clause, ***affected person*** means a person who, when the building application was made, owned land:

(a) that adjoined the land in respect of which the application was made, or

(b) the enjoyment of which might have been detrimentally affected by the erection of a building on the land in respect of which the application was made.

17 (Repealed)

18 Orders

An order made by a council or council officer under the old Act or an ordinance under the old Act, and in force immediately before the commencement of Part 2 of Chapter 7, if it is an order, or an order of a kind, that may be given under this Act, continues in force, and is taken to have been given, and may be revoked, modified or appealed against, under this Act.

19 Catchment districts

A proclaimed Catchment District for the purposes of Part 8 of Ordinance No 45 made under the old Act is taken to be a catchment district proclaimed under section 128.

20 Building certificates

A building certificate, in relation to the whole or a part of a building, issued by a council under Part 11 of the old Act, and in force immediately before the commencement of Part 4 of Chapter 7, continues in force and is taken to have been issued under this Act.

Part 4 Provisions arising out of Chapter 9 (How are councils established?)

Division 1 General

21 Continuation of existing areas

(1) An area constituted as a municipality or shire immediately before the commencement of Division 1 of Part 1 of Chapter 9 continues as an area under this Act and is taken to be constituted under this Act.

(2) An area constituted as a city immediately before the commencement of Division 1 of Part 1 of Chapter 9 continues as that city and is taken to be constituted under this Act.

22 Continuation of existing councils

A council constituted immediately before the commencement of Division 1 of Part 2 of Chapter 9 continues as that council and is taken to be constituted under this Act.

23 (Repealed)

24 References to councils, areas and council members etc

(1) On and from the commencement of the relevant provision of this Act, a reference (however expressed) in any other Act (whether assented to before, on or after that commencement), in any instrument made under an Act or in any other instrument of any kind:

(a) to a municipality or a shire—is to be read as a reference to an area under this Act, or

(b) to the council of a municipality or shire, or a municipal council or shire council, is to be read as a reference to the council of the area concerned, or

(c) to a riding of a shire is to be read as a reference to a ward of an area, or

(d) to the President of a council is to be read as a reference to the mayor of the council, or

(e) to an alderman is to be read as a reference to a councillor, or

(f) to a town clerk or shire clerk of a council is to be read as a reference to the general manager of a council.

(2) Without limiting the operation of clauses 2 and 4, the regulations may contain provisions with respect to the interpretation of references to the old Act or any provision of that Act, councils constituted under that Act or any member or employee of a council.

24A (Repealed)

25 Election of mayors

(1) An area whose mayor or president was, immediately before the commencement of Division 2 of Part 2 of Chapter 9, elected by the electors is, for the purposes of this Act, taken to be an area for which there is a decision in force under this Act that the mayor is to be elected by the electors.

(1A) If, before 1 July 1993:

(a) a poll was taken under section 25A (6) of the old Act in relation to an area, and

(b) the decision of the poll was in favour of applying section 25A of the old Act to the area,

the area is, for the purposes of this Act, taken to be an area for which there is a decision in force under this Act that the mayor is to be elected by the electors.

(2) A decision referred to in this clause has effect, and may be changed by a constitutional referendum, in the same way as if the decision had been made under this Act.

Division 2 Alteration in number of councillors

26–30A (Repealed)

30B Validation

(1) Any thing done before the commencement of an amendment made to this Division by the *Local Government Legislation (Miscellaneous Amendments) Act 1994* that would, had the provision as so amended been in force when the thing was done or purported to be done, have been valid is validated.

(2) Botany Council is taken to have validly prepared a draft resolution under this Division to reduce the number of its councillors to 7 (one of whom is the mayor), the Minister is taken to have approved the draft resolution under this Division without any amendments and no by-election is required to fill a vacancy that occurred before the commencement of this clause.

30C Increase in councillors by certain councils

(1) Despite section 224 (3), any of the following councils may, before the ordinary elections due to be held in September 1995, resolve to increase the number of councillors by one:

Bellingen Shire Council

Canterbury City Council

Liverpool City Council

Newcastle City Council

Shoalhaven City Council.

(2) On the passing of a resolution under subclause (1) by a council, a resolution of the council of the kind referred to in clause 28 (3) ceases to have effect.

(3) On the passing of a resolution under subclause (1) by the Newcastle City Council, the City of Newcastle is divided into wards as described in the proclamation published in Gazette No 102 of 21 August 1992 on pages 5959–5961.

30D Constitution of the Sutherland Shire Council

Despite sections 210 and 224 and any resolution of the kind referred to in clause 28 (3), for the ordinary election due to be held in September 1995:

(a) the Sutherland local government area is to be divided into 5 wards with boundaries as determined by the Sutherland Shire Council that comply with section 211 (4), and

(b) the number of councillors of the Sutherland Shire Council is 15.

Part 5 Provisions arising out of Chapter 10 (How are people elected to civic office?)

31 Disqualification from civic office

The reference in section 275 (1) (d) to an offence under the regulations made for the purposes of section 748 (3) includes a reference to an electoral offence within the meaning of the old Act.

32 Electors under the City of Sydney Act 1988

Part 1 of Chapter 10 does not affect the right of a person to be an elector under the *City of Sydney Act 1988*.

33 Maitland City Council

The number of councillors for the Maitland City Council for the term of office commencing next after the ordinary election in September 1999 is 13 despite:

(a) the result of the constitutional referendum held by that Council in 1995 in relation to the number of councillors, and

(b) sections 17 (1) and 224 (2) and (3).

Part 6 Provisions arising out of Chapter 11 (How are councils staffed?)

34 Definitions

In this Part:

appointed day means the date of commencement of Chapter 11.

organisation structure of a council means its organisation structure determined under Part 1 of Chapter 11.

35 Time within which organisation structure to be determined

(1) A council must determine its organisation structure within 2 years after the appointed day.

(2) The Minister may extend the 2-year period in relation to a council specified by the Minister.

36 Time within which general manager to be appointed

(1) A council must, under section 334, appoint a general manager within 2 years after the appointed day.

(2) The Minister may extend the 2-year period in relation to a council specified by the Minister.

(3) A council is taken to have complied with this clause if:

(a) within 3 years before the appointed day, it appointed a person as general manager (or to a position having functions comparable with those of a general manager), being an appointment that, if this Act had been in force at the time of the appointment, would have complied with the provisions of this Act, and

(b) within 12 months after the appointed day, it confirms that appointment by resolution.

(4) For the purposes of subclause (3) (a), an appointment for a term exceeding 5 years is taken to satisfy section 338 (2), but such a term (if it would, but for this subclause, expire more than 5 years after the appointed day) expires 5 years after the appointed day.

37 Time within which other senior staff to be appointed

(1) If in the organisation structure of a council determined in accordance with clause 35 there are senior staff positions other than that of the general manager, the general manager of the council must make appointments to those positions within 2 years after the appointed day.

(2) The Minister may extend the 2-year period in relation to a council specified by the Minister.

(3) Any such appointment is to be made in accordance with Chapter 11 or this Part.

38 Who exercises the functions of general manager pending an appointment?

Until a council appoints a person to be its general manager, the employee of the council specified by resolution of the council has the functions of the general manager.

39, 40 (Repealed)

41 No contracting out of Part 2 of Chapter 11

The reference in section 338 (2) to any contract is a reference to any contract made before, on or after the appointed day.

42, 43 (Repealed)

Part 7 Provisions arising out of Chapter 12 (How do councils operate?)

44 (Repealed)

45 Continuation of existing county councils

A county council constituted immediately before the commencement of Part 5 of Chapter 12 continues as that county council and is taken to be constituted under this Act.

46 Continuation of existing county districts

Any group of wholes and parts of areas constituted as a county district immediately before the commencement of Part 5 of Chapter 12 continues as the area of operations of a county council and is taken to be constituted under this Act.

47 Construction of references to county districts

On and from the commencement of Part 5 of Chapter 12, a reference (however expressed) in any other Act (whether assented to before, on or after that commencement), in any instrument made under an Act or in any other instrument of any kind to a county district is to be read as a reference to the area of operations of a county council.

48 (Repealed)

Part 8 Provisions arising out of Chapter 13 (How are councils made accountable for their actions?)

49 Auditors

(1) Any person who was the auditor of a council immediately before the commencement of Division 3 of Part 3 of Chapter 13 continues to hold office, subject to the terms of his or her appointment.

(2) If the term of the auditor's appointment would, but for this subclause, expire more than 3 years after the commencement of Division 3 of Part 3 of Chapter 13, it expires 3 years after that commencement, except as provided by subclause (3).

(3) A person appointed as auditor not more than 2 years before the commencement of Division 3 of Part 3 of Chapter 13 on a fixed term contract of not more than 6 years after tendering in accordance with the old Act may, with the Minister's approval, continue as auditor for the balance of the term of the contract.

(4) It does not matter that the auditor may not be qualified for an appointment under this Act.

(5) However, a person does not continue to hold office as auditor if he or she is a disqualified person within the meaning of section 423.

50, 51 (Repealed)

Part 9 Provisions arising out of Chapter 14 (Honesty and disclosure of interests)

52, 53 (Repealed)

Part 10 Provisions arising out of Chapter 15 (How are councils financed?)

54 Initial categorisation of land for rating purposes

(1) Before 1 July 1994, a council must:

(a) declare, in accordance with Part 3 of Chapter 15, all rateable land in its area to be within one of the categories specified in section 514, and

(b) give notice to each rateable person of the category so declared for the land for which the person is rateable.

(2) A rateable person may request the council to review the categorisation.

(3) A request for review must be made within 30 days after service of the notice.

(4) The council must review a categorisation on receiving a request for review and may, after the review, confirm or change the categorisation.

(5) The council must give notice to the rateable person of the decision made as a result of the review. The notice may be given in or with the rates and charges notice levying the ordinary rate for the year commencing on 1 July 1994.

(6) If the council has not made a decision concerning a request for a review within 30 days after the request is made to it, the council is taken to have decided to confirm the categorisation on the date on which the 30-day period expires.

(7) Nothing in subclause (6) prevents the council from making a decision concerning a request for a review after the expiration of the 30-day period.

(8) A rateable person who is dissatisfied with a decision made by a council as a result of a request for a review may appeal to the Land and Environment Court.

(9) An appeal must be made within 30 days after the council's decision.

(10) Such an appeal is to be heard and disposed of within Class 3 of the Land and Environment Court's jurisdiction.

(11) Without limiting the jurisdiction of the Land and Environment Court, the Court may, on an appeal, make any decision that could be made by the council on a request for a review.

(12) The categorisation of rateable land in accordance with this clause has effect on and from 1 July 1994, subject to Part 3 of Chapter 15.

55 Regulations—new rating year

(1) Without limiting clause 2, the Governor may make regulations containing provisions of a savings and transitional nature consequent on the change in the rating year on the commencement of the relevant provisions of this Act.

(2) Any such regulations may provide for the levying of a rate or charge for a period other than the year specified under this Act and may adopt and modify the provisions of this Act, the old Act and the *Valuation of Land Act 1916* for that purpose.

(3) In particular, the regulations may provide that:

(a) there is to be a transition period from 1 January 1994 to 30 June 1994 for the purpose of making and levying rates and annual charges, and

(b) rates and annual charges for the transition period are to be made under the old Act (and the ordinances under the old Act) for the whole of the year commencing on 1 January 1994, and

(c) a rate or annual charge levied for the transition period on a parcel of rateable land subject to the rate or charge is to be one-half of the amount that would otherwise be levied on the parcel under the old Act for the whole of the year, and

(d) appropriate adjustments are to be made for:

(i) the calculation of the maximum annual revenue that may be obtained from rates and charges, and

(ii) the determination of rebates for eligible pensioners, and

(iii) the payment of rates by instalments or otherwise, and

(iv) other matters consequent on rating during the transition period.

(4) Nothing in this clause prevents a regulation that relates to rates or charges or associated matters from being made under clause 2.

55A (Repealed)

56 Existing investments

Section 625 does not affect an investment lawfully made before the commencement of that section by a council.

Part 11 Provisions arising out of Chapter 17 (Enforcement)

57 Exemption from liability—flood liable land and land in coastal zone

Section 733 applies to advice furnished before the commencement of that section as well as to advice furnished after that commencement.

58 Manuals for flood liable land and land in coastal zone

A manual notified under section 582A of the old Act before the commencement of section 733 is taken to be notified for the purposes of section 733.

Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts

(Section 749)

Part 1 Preliminary

1 Regulations

(1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Local Government Legislation (Miscellaneous Amendments) Act 1994

Statute Law Revision (Local Government) Act 1995

Local Government Legislation Amendment Act 1995

Local Government Amendment Act 1996

Local Government Amendment Act 1997

Local Government Amendment (Ecologically Sustainable Development) Act 1997

Environmental Planning and Assessment Amendment Act 1997

Local Government Amendment Act 1998

Darling Harbour Authority Amendment and Repeal Act 1998

Sydney Cove Redevelopment Authority Amendment Act 1998

Local Government Amendment (Meetings) Act 1998

Local Government Amendment (Parking and Wheel Clamping) Act 1998

Local Government Amendment (Community Land Management) Act 1998

Local Government Legislation Amendment (Elections) Act 1998

Local Government Amendment (Amalgamations and Boundary Changes) Act 1999

Strata Schemes (Leasehold Development) Amendment Act 1999

Local Government Amendment Act 2000

Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001

Local Government Amendment (Anti-Corruption) Act 2002

Local Government Amendment (Graffiti) Act 2002

Local Government Amendment (Enforcement of Parking and Related Offences) Act 2002

Local Government Amendment (Miscellaneous) Act 2002

Local Government Amendment (National Competition Policy Review) Act 2003

Local Government Amendment (Elections) Act 2003

Local Government Amendment (Employment Protection) Act 2003

Local Government Amendment (Cudgegong (Abattoir) County Council Dissolution) Act 2003

Local Government Amendment (Council and Employee Security) Act 2004

Local Government Amendment (Discipline) Act 2004

Local Government Amendment (Public-Private Partnerships) Act 2004

Local Government and Valuation of Land Amendment (Water Rights) Act 2005

Local Government Amendment Act 2005

Local Government Amendment (Stormwater) Act 2005

Local Government Amendment (Miscellaneous) Act 2006

Local Government Amendment (Waste Removal Orders) Act 2006

Local Government Amendment Act 2007

Local Government Amendment (Election Date) Act 2008

Threatened Species Conservation Amendment (Special Provisions) Act 2008, to the extent that it amends this Act

Local Government Amendment (Legal Status) Act 2008

Liquor Legislation Amendment Act 2008, to the extent that it amends this Act

Local Government Amendment (Planning and Reporting) Act 2009

Local Government Amendment (General Rate Exemptions) Act 2010

Coastal Protection and Other Legislation Amendment Act 2010

Local Government Amendment (Environmental Upgrade Agreements) Act 2010

Local Government Amendment (Confiscation of Alcohol) Act 2010

Local Government Amendment (Elections) Act 2011

Local Government Amendment Act 2012

Local Government Amendment (Elections) Act 2012

Local Government Amendment (Members of Parliament) Act 2012

Plumbing and Drainage Act 2011

any other Act that amends this Act

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 1A Effect of repeal of certain Acts

1A Repeal of Acts does not affect operation of savings, transitional and other provisions

(1) Despite the repeal of the Acts listed in Column 1 of the Table to this subclause, the provisions listed in Column 2 continue to have effect and are taken to have been transferred to this Act.

Table

Column 1	Column 2
Greater Newcastle (Amendment) Act 1940	Sections 2–4
Local Government (Amendment) Act 1951	Sections 1 (2), 2–5 and 7 and Schedule

Local Government (Further Amendment) Act 1948	Section 6 (2)
Local Government (Further Amendment) Act 1972	Sections 17 and 18

(2) The provisions listed in Column 2 of the Table to subclause (1) are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

Part 2 Provisions consequent on the enactment of the Local Government Legislation (Miscellaneous Amendments) Act 1994

2 Definitions

In this Part:

relevant commencement, in relation to a provision of the 1994 amending Act, means the day appointed under section 2 of that Act in relation to the commencement of that provision.

the 1994 amending Act means the *Local Government Legislation (Miscellaneous Amendments) Act 1994*.

3 Public availability of council and committee minutes and Departmental representatives' reports

The amendments to section 12 made by the 1994 amending Act apply to:

(a) the minutes of meetings that occurred before the relevant commencement, and

(b) Departmental representatives' reports that were presented to a council before the relevant commencement,

in the same way as they apply to the minutes of meetings that occur, and to reports that are presented, after that commencement.

4 Selective tendering

Any contract that was entered into before the commencement of the 1994 amending Act is validated to the extent to which it would have been valid had the amendments to section 55 made by that Act then been in force.

5 Appeals with respect to applications for extension of approvals

Section 176, as amended by the 1994 amending Act, does not apply to an application for extension of an approval, or to an extension of an approval, made or granted before the relevant commencement.

6 Councils may retain "municipality" and "shire" as part of their corporate names

(1) Despite section 221 (1):

(a) the council of an area which, immediately before 1 July 1993, was a municipality may resolve that the corporate name of the council is to be "the Council of the Municipality of X" or "the X Municipal Council", X being the name of the council's area, and

(b) the council of an area which, immediately before 1 July 1993, was a shire may resolve that the corporate name of the council is to be "the Council of the Shire of X" or "the X Shire Council", X being the name of the council's area,

and, in that event, the corporate name of the council is the name so resolved.

(2) A resolution under subclause (1) may not be made after 31 December 1994, but may be revoked at any time.

(3) A resolution under this clause takes effect when it is published in the Gazette.

7 Senior staff positions

The amendment to section 332 made by the 1994 amending Act does not affect the status, as senior staff positions, of positions that were determined to be senior staff positions, in accordance with the Principal Act as then in force, before the relevant commencement.

8 Complaints against committee members and council advisers

The amendments to section 482 made by the 1994 amending Act apply to complaints made before the relevant commencement in the same way as they apply to complaints made after that commencement.

9 General valuations furnished after 1 January 1994

A new general valuation furnished on or after 1 January 1994 and before 1 July 1995 is not to be used for the purpose of making or levying a rate before the year commencing on 1 July 1995.

10 Fees and charges prior to 1 July 1994

Section 612 does not apply to the determination by a council of an approved fee if the determination is made before 1 July 1994.

11 Orders by the Land and Environment Court

The amendment to section 678 made by the 1994 amending Act applies to proceedings commenced before the relevant commencement in the same way as it applies to proceedings commenced after that commencement.

12 Effect of amendment to regulations

The amendments made by the 1994 amending Act to the *Local Government (Approvals) Regulation 1993* and the *Public Health Regulation 1991* do not affect the future amendment or repeal of those Regulations.

Part 3 Provisions consequent on the enactment of the Statute Law Revision (Local Government) Act 1995

13 Definitions

In this Part, ***repealed Act*** means any of the following Acts:

(a) *Local Government (Rates and Charges) Act 1986* No 178,

(b) *Local Government (Rates and Charges) Act 1987* No 233,

(c) *Local Government (Rates and Charges) Amendment Act 1983* No 175,

(d) *Local Government (Rates and Charges) Amendment Act 1984* No 140,

(e) *Local Government (Rates and Charges) Amendment Act 1985* No 169,

(f) *Local Government (Rates and Charges) Amendment Act 1988* No 91,

(g) *Local Government (Rating) Further Amendment Act 1976* No 99,

(h) *Local Government (Rating) Further Amendment Act 1989* No 157.

14 Continuing effect of repealed Acts

(1) A council or county council may continue to do anything that it could have done under a repealed Act as if the Act had not been repealed.

(2) A rate or charge levied or made under a repealed Act or under the power conferred by this clause may be recovered as if it had been levied or made under this Act.

15 Validation of registration of political parties

A political party registered by the Electoral Commissioner before the commencement of the amendment to section 320 (3) (b) made by the *Statute Law Revision (Local Government) Act 1995* is taken to have been, and always to have been, validly registered if it could have been registered had that provision as so amended been in force when it was registered.

Part 4 Provisions consequent on the enactment of the Local Government Amendment (Alcohol-free Zones) Act 1995

16 Existing alcohol-free zones

(1) An alcohol-free zone established under Part 4 of Chapter 16 before its amendment by the *Local Government Amendment (Alcohol-free Zones) Act 1995* is taken to have been established under Part 4, as so amended.

(2) A council may, by resolution, extend the period of operation of such a zone for up to 3 years from the starting date for the zone's operation last notified under Part 4 of Chapter 16.

(3) The resolution is taken to be the resolution establishing the zone for the purposes of section 644C (3).

(4) Sections 644, 644A, 644B and 644C (1) and (2) do not apply to a resolution under this clause or to an alcohol-free zone whose period of operation is extended under this clause.

(5) The period of operation of an alcohol-free zone may be extended once only under this clause.

Part 5 Provisions consequent on enactment of Local Government Amendment Act 1996

17 Extension or renewal of accreditation

Section 123A extends to an accreditation granted under the *Local Government Act 1919* or Division 5 of Part 1 of Chapter 7 before the commencement of that section.

18 Appeals concerning orders

Section 180, as amended by the *Local Government Amendment Act 1996*, extends to orders given before the commencement of the amendment.

19 Writing off of accrued interest

Section 567, as substituted by the *Local Government Amendment Act 1996*, extends to interest accrued before the date of substitution of that section.

20 Appeal on question of whether land is subject to a charge

Section 574 (1), as substituted by the *Local Government Amendment Act 1996*, does not apply to a charge levied before the date of substitution of that subsection.

21 Proceedings for offences before the Land and Environment Court

Section 691 (3) does not apply to proceedings commenced before the commencement of that subsection.

Part 6 Provisions consequent on enactment of Local Government Amendment Act 1997

22 Meaning of "amending Act"

In this Part, ***amending Act*** means the *Local Government Amendment Act 1997*.

23 Crown buildings

The amendments made to section 70 by Schedule 1 [3]–[5] to the amending Act are taken to have commenced on 1 July 1993.

24 Duration of existing approvals

Section 103 (5), as inserted by the amending Act, extends to an approval in force immediately before the commencement of that subsection.

25 Land exempt from rating

Section 496 (2) and section 555 (1) (b1) and (3), as inserted by the amending Act, do not apply to or in respect of a year commencing before 1 July 1997.

26 Catching up of income lost due to valuation reductions

Section 511A, as inserted by the amending Act, does not extend to an unrecovered amount (within the meaning of that section) for a rating year that commenced before 1 July 1996.

Part 7 Provisions consequent on enactment of Local Government Amendment Act 1998

27 Meaning of "amending Act"

In this Part, ***amending Act*** means the *Local Government Amendment Act 1998*.

28 Preparation and auditing of financial reports

Sections 413–416, as in force immediately before the amendments made to those sections by Schedule 1 [4]–[9] to the amending Act, apply in respect of a financial year that ended before the commencement of those amendments (or, if those amendments are commenced on different days, before the commencement of the last of those amendments to be commenced).

29 Persons having pecuniary interests

Section 443 (3), as amended by the amending Act, is taken to have commenced on 1 July 1993.

30 Disclosure of pecuniary interests when dealing with council matters

Section 459 (1A), as inserted by the amending Act, is taken to have commenced on 1 July 1993.

31 Decision of Pecuniary Interest Tribunal

The provisions of section 482 (1), (3) and (4), as in force immediately before the commencement of Schedule 1 [18] to the amending Act, apply in relation to a contravention of Part 2 (Duties of disclosure) of Chapter 14 (Honesty and disclosure of interests) that occurred before the commencement of the amendments made by Schedule 1 [18].

32 Remedy or restraint of breaches of this Act—the Minister, the Director-General and councils

Section 673 (2), as inserted by the amending Act, does not apply in relation to any proceedings concerning an alleged contravention of Part 2 (Duties of disclosure) of Chapter 14 (Honesty and disclosure of interests) that were commenced before the commencement of Schedule 1 [22] to the amending Act.

33 Remedy or restraint of breaches of this Act—other persons

Section 674 (4), as inserted by the amending Act, does not apply in relation to any proceedings concerning an alleged contravention of Part 2 (Duties of disclosure) of Chapter 14 (Honesty and disclosure of interests) that were commenced before the commencement of Schedule 1 [23] to the amending Act.

34 Sale of land for unpaid rates and charges

Section 713, as amended by the amending Act, is taken to have commenced on 18 July 1997.

Part 8 Provisions consequent on enactment of Darling Harbour Authority Amendment and Repeal Act 1998

35 Action taken by Darling Harbour Authority

Anything done by the Darling Harbour Authority under this Act, as applied to land within the Darling Harbour Development Area by the regulations referred to in section 59 of the *Darling Harbour Authority Act 1984*, is taken to have been done by the relevant council under this Act.

Part 9

36 (Repealed)

Part 10 Provisions consequent on enactment of Local Government Amendment (Meetings) Act 1998

37 Saving of right to access and inspect documents

Section 10E continues to apply to, and in respect of, the business papers for, and the minutes of, parts of meetings closed before the commencement of this clause.

Part 11 Provision consequent on enactment of Local Government Amendment (Ombudsman's Recommendations) Act 1998

38 Application of section 434A

Section 434A does not apply to any Ombudsman's report received by the Minister before the commencement of that section.

Part 12 Provisions consequent on enactment of Local Government Amendment (Community Land Management) Act 1998

39 Transitional application of section 30

The amendments made to section 30 (1) and (2) by the *Local Government Amendment (Community Land Management) Act 1998* do not apply in respect of a local environmental plan a draft of which was authorised for public exhibition by a certificate under section 65 of the *Environmental Planning and Assessment Act 1979* issued before those amendments took effect.

40 Provisions made by plans of management applying to just one area of community land

Section 36 (3A) extends to apply to a plan of management in force at its commencement, but so applies as to require compliance with its provisions within a period of 12 months after its commencement or within such longer period as the Minister may by order in writing allow.

41 Transitional application of section 36A

(1) The provisions of subsection (4) of section 36A apply to plans of management:

(a) that had been adopted before the commencement of that section, and

(b) that applied to an area of community land, all or part of which consists of critical habitat within the meaning of that section,

but so apply as though the area or part became such habitat on the commencement of that section.

(2) The provisions of subsection (5) of section 36A apply to plans of management:

(a) that had been adopted before the commencement of that section, and

(b) that applied to two or more areas of community land, all or part of one of which consists of critical habitat within the meaning of that section,

but so apply as though the area or part became such habitat on the commencement of that section.

42 Transitional application of section 36B

(1) The provisions of subsection (5) of section 36B apply to plans of management:

(a) that had been adopted before the commencement of that section, and

(b) that applied to an area of community land, all or part of which is affected by a recovery plan or threat abatement plan within the meaning of that section,

but so apply as though the area or part first became so affected on the commencement of that section.

(2) The provisions of subsection (6) of section 36B apply to plans of management:

(a) that had been adopted before the commencement of that section, and

(b) that applied to two or more areas of community land, all or part of one of which is affected by a recovery plan or threat abatement plan within the meaning of that section,

but so apply as though the area or part first became so affected on the commencement of that section.

43 Leases and licences

(1) This clause applies to:

(a) a lease, licence or other estate, granted by a council in respect of community land:

(i) that was in existence on the date on which section 46 was repealed by the *Local Government Amendment (Community Land Management) Act 1998*, and

(ii) that was granted for a purpose for which it could not lawfully have been granted if section 46, as inserted by the *Local Government Amendment (Community Land Management) Act 1998*, had been in force at the time of its grant, and

(b) a lease, licence or other estate granted under a plan of management that ceases to have effect because of the operation of section 36A (5), 36B (6), 36C (5) or 36D (5), as inserted by the *Local Government Amendment (Community Land Management) Act 1998*.

(2) A lease, licence or other estate to which this clause applies that was granted for a fixed term continues in force, subject to this Act, until the end of the term for which it was granted and may be renewed from time to time in accordance with any option of renewal afforded by its terms.

(3) Unless sooner revoked, a licence to which this clause applies that was granted at the will of the council continues in force, subject to Division 2 of Part 2 of Chapter 6, until a date prescribed by the regulations.

44 Effect of certain environmental planning instruments on permissible uses

(1) This clause applies where an environmental planning instrument contains a provision (the relevant land use provision), in force for the time being, that, immediately before the commencement of Part 2:

(a) applied in relation to an area that has subsequently become (whether by a provision of Schedule 7 or otherwise) classified as community land, and

(b) permitted the carrying out of development on the land (whether with or without development consent) for the purposes (or a specified class of the purposes) specified in Division 2 or 3 of Part 13 of the *Local Government Act 1919*.

(2) Despite clause 4 of Schedule 7 and any other provision of this Act, and until the relevant land use provision is amended, by an environmental planning instrument, so as to remove the reference to the provisions of the *Local Government Act 1919* referred to in subclause (1) (b), nothing in a plan of management under Part 2 operates to permit:

(a) the carrying out of development on the land concerned, whether with or without development consent, for a purpose for which development was, immediately before the commencement of Part 2, prohibited by the relevant land use provision, or

(b) the carrying out of development on any such land, without development consent, for a purpose for which development consent was, immediately before the commencement of Part 2, required by the relevant land use provision.

45 Buildings or structures under existing leases

Section 47B does not apply in respect of a lease granted before the commencement of that section.

46 Subleases of community land

Section 47C does not apply to:

(a) a sublease granted before the commencement of that section, or

(b) any sublease that may be granted pursuant to the exercise of an option in relation to the sublease if the option was granted before the commencement of that section.

47 Occupation of community land otherwise than by lease or licence

Section 47D does not, but only for a maximum period of 12 months from the commencement of that section, prohibit the exclusive occupation or exclusive use by any person of community land that was lawfully in existence or lawfully undertaken immediately before the commencement of that section.

Part 13 Provisions consequent on the enactment of the Local Government Legislation Amendment (Elections) Act 1998

48 Application of amendments

An amendment to this Act made by the *Local Government Legislation Amendment (Elections) Act 1998* does not apply to or in respect of an election which has a closing date before the commencement of the amendment.

Part 14 Provisions consequent on enactment of Local Government Amendment (Amalgamations and Boundary Changes) Act 1999

49 Proposals for boundary changes

(1) Any action that has been commenced before the commencement of this clause under Division 2 of Part 1 of Chapter 9, being action in relation to the alteration of the boundaries of one or more areas, may be continued and completed under that Division as if the amending Act had not been enacted.

(2) A proclamation may be made under section 218B as a consequence of action referred to in subclause (1), whether taken before or after the commencement of this clause, as if that action had been taken under Division 2B of Part 1 of Chapter 9.

(3) In this clause, ***amending Act*** means the *Local Government Amendment (Amalgamations and Boundary Changes) Act 1999*.

Part 15 Provisions consequent on enactment of Strata Schemes (Leasehold Development) Amendment Act 1999

50 Changes to rating provisions

The amendments made to this Act by the *Strata Schemes (Leasehold Development) Amendment Act 1999* do not apply in respect of any year or part of a year occurring before the commencement of those amendments and do not affect any liability for rates in respect of such a year or part of a year.

Part 16 General provisions consequent on enactment of Local Government Amendment Act 2000

51 Definition

In this Division:

amending Act means the *Local Government Amendment Act 2000*.

52 Elections

An amendment made to Part 6 of Chapter 10 by the amending Act does not apply to any election which has a closing date before the commencement of the amendment.

53 Returns disclosing interests of councillors and designated persons

Any return required to be lodged under section 449 within 3 months after the date of commencement of the amendments made to that section by the amending Act may be made:

(a) in the form set out in Part 1 of Schedule 3, as in force immediately before its repeal, or

(b) in the form prescribed by the regulations, as in force on the day the return is lodged.

54 Decision not to conduct proceedings

Section 469, as substituted by the amending Act, does not apply to proceedings that commenced before the commencement of the section.

55 Proceedings conducted without hearings

Section 470, as substituted by the amending Act, does not apply to proceedings that commenced before the commencement of the section.

56 Consequences of breach of disclosure provisions by employees

Section 482 (2), as substituted by the amending Act, applies to findings made after the substitution of the subsection, whether those findings relate to proceedings commenced before or after the substitution of the subsection.

Part 17 Phasing-in of party registration requirements adopted by Local Government Amendment Act 2000

Note. Schedule 1 [7] and [8] to the *Local Government Amendment Act 2000* introduced new membership requirements for the registration of local government parties, with effect from 1 June 2002.

This Part sets out how those new registration requirements apply to:

(a) parties that had applied to be registered before 1 June 2002 and had not had their applications determined, and

(b) parties that were already registered immediately before 1 June 2002, and

(c) parties that apply for registration during a phasing-in period (between 1 June 2002 and 1 June 2003) and who choose to be registered under the old registration requirements existing before the amendments.

This Part also provides for the application of the new requirement that a party that becomes registered after the commencement of the proposed amendments will not be eligible, until 12 months after it is first registered under the new requirements, to have its registered party name or abbreviation placed on ballot-papers or to be treated as a registered party in connection with the nomination of its candidates (see clause 61).

57 Definitions

In this Part:

existing registered party, means a party registered for the purposes of the *Local Government Act 1993* immediately before 1 June 2002 (the commencement of the new registration requirements), and includes any party registered under the old registration requirements under clause 58 during the phasing-in period in pursuance of an application for registration made before 1 June 2002.

new registration requirements means the membership requirements for the qualification of a party as an eligible party for the purposes of registration under the *Local Government Act 1993* in accordance with Part 4A of the *Parliamentary Electorates and Elections Act 1912*, as modified by

section 320 of the *Local Government Act 1993* as in force on and from 1 June 2002 (that is, after the commencement of the amendments to the way Part 4A is modified made by Schedule 1 [7] and [8] to the *Local Government Amendment Act 2000*).

old registration requirements means the membership requirements for the qualification of a party as an eligible party in accordance with Part 4A of the *Parliamentary Electorates and Elections Act 1912*, as modified by section 320 of the *Local Government Act 1993*, as in force immediately before 1 June 2002.

phasing-in period means the period beginning on 1 June 2002 (the date on which the new registration requirements take effect) and ending at the end of 31 May 2003.

58 Applications made before 1 June 2002 but not determined

(1) The new registration requirements do not apply to the determination of an application for registration of a party under the *Local Government Act 1993* that is made before 1 June 2002 but not determined before that date.

(2) However, the applicant is to be given an opportunity to make a request that the new registration requirements should apply, and to amend the application, before the application is determined. If such a request is made, the new registration requirements apply to the application.

(3) The new registration requirements apply to the application if it is not determined (under either the old registration requirements or the new registration requirements) before 1 June 2003, but the applicant is to be given a further opportunity to amend the application before it is determined in accordance with the new registration requirements.

59 Applications made by new parties during phasing-in period may request registration under old registration requirements

(1) An application for registration of a party under the *Local Government Act 1993* that is made during the phasing-in period may include a request that the application should be dealt with in accordance with the old registration requirements.

(2) If such a request is made in an application, the Electoral Commissioner must deal with the application in accordance with the old registration requirements (that is, as if the new registration requirements had not been enacted).

(3) If an application for registration of a party made during the phasing-in period does not include a request that the application be dealt with under the old registration requirements, the application must be dealt with in accordance with the new registration requirements.

60 Transitional and other arrangements for existing local government registered parties and local government parties registered under the old registration requirements during the phasing-in period

(1) This clause applies to:

(a) existing registered parties, and

(b) parties registered under the old registration requirements during the phasing-in period that are not existing registered parties.

(2) The new registration requirements do not, until 21 March 2004, apply to a party to which this clause applies.

(3) A party to which this clause applies is not entitled to continue to be registered, on and after 21 March 2004, unless:

(a) the registered officer of the party has made an application for continued registration of the party before 1 June 2003, and

(b) the Electoral Commissioner is satisfied that the party is an eligible local government party under the new registration requirements and approves the application.

This subclause does not affect the operation of subclauses (6)–(8).

(4) An application for continued registration of a party to which this clause applies is to be made to the Electoral Commissioner (in the form and manner approved by the Electoral Commissioner) and must set out the particulars, and be accompanied by the documents, that are referred to in section 66D (2) (g) and (g1) of the *Parliamentary Electorates and Elections Act 1912* and any additional particulars and documents that are required by the approved form.

(5) Sections 66DA, 66E (2), 66HA (2) and (3), 66J (2) and 66K of the *Parliamentary Electorates and Elections Act 1912* apply (subject to the regulations under that Act) to an application for continued registration under this clause in the same way as they apply to an application for registration.

(6) The Electoral Commissioner is to cancel the registration of a party to which this clause applies that is not entitled to continue to be registered by virtue of this clause. Section 66I (3) of the *Parliamentary Electorates and Elections Act 1912* applies to any such cancellation of registration.

(7) Before the Electoral Commissioner cancels the registration of any such party, the Electoral Commissioner is required to give the registered officer of the party notice of the proposed cancellation and the date of and reasons for the proposed cancellation. If the party has made an application before 1 June 2003, the Electoral Commissioner may accept a modified application for continued registration from the party and may defer a decision on the proposed cancellation until the modified application is dealt with.

(8) If a party to which this clause applies made an application for continued registration in accordance with this clause before 1 June 2003 and:

(a) the Electoral Commissioner did not give the registered officer of the party a notice under subclause (7) before 1 September 2003, or

(b) the Electoral Commissioner gave the registered officer of the party a notice under subclause (7) before 1 September 2003, but the application, or any modified application, had not been determined by the Electoral Commissioner on or before 1 November 2003,

the Electoral Commissioner is not entitled to cancel the registration of the party before 28 March 2004.

(9) The returning officer must not accept an application from a party to which this clause applies in relation to any election to be held on or after 27 March 2004 proposing the name of a candidate

for nomination, proposing that the registered name of the party, or the abbreviation of the name of the party, be printed on ballot papers or proposing the registration of any electoral material if the party:

(a) had not made an application for continued registration in accordance with this clause before 1 June 2003, or

(b) had been given notice of proposed cancellation under subclause (7) before 1 September 2003 and had not made a modified application before 1 November 2003, or

(c) had made a modified application that was rejected by the Electoral Commissioner on or before 1 November 2003.

(10) In the case of a party to which this clause applies, a return is not required to be furnished under section 66HA (1) if the return would otherwise be required to be furnished in 2003 or 2004.

(11) If a form is not prescribed for the time being by the regulations under the *Parliamentary Electorates and Elections Act 1912* for the purposes of section 66D (2) (g1) or 66HA (1) of that Act, the relevant form is to be a form approved by the Electoral Commissioner.

(12) Section 66FA (1) and (3) of the *Parliamentary Electorates and Elections Act 1912* does not apply to an existing registered party while it remains a registered party.

61 New parties must be registered by 27 February 2003 to be eligible to nominate for elections held on 27 March 2004

Despite section 320 of this Act, section 66FA (1) and (3) of the *Parliamentary Electorates and Elections Act 1912*:

(a) does not apply to parties registered under this Act during the phasing-in period (whether under the old registration requirements or the new registration requirements) in relation to the nomination of candidates, party endorsement on ballot papers or registration of electoral material in respect of any election on or before 20 March 2004, and

(b) applies to parties registered under this Act during the phasing-in period (other than existing registered parties) as if the reference to the registration of a party is a reference to the registration of the party (for the first time) under the new registration requirements.

Part 18 Provisions consequent on enactment of Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001

62 Definitions

In this Part:

amending Act means the *Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001*.

63 Order no 5 (c) under section 124

(1) Any order of the kind referred to in paragraph (c) of item 5 of the Table to section 124:

(a) that, immediately before the commencement of this clause, was in force, or

(b) that arises from anything continued or completed as referred to in subclause (2),

in relation to a building or temporary structure used as a place of public entertainment continues to have effect, and may be enforced, as if the amending Act had not been enacted.

(2) Anything done under this Act in connection with the making of an order referred to in subclause (1) may be continued and completed as if the amending Act had not been enacted.

Part 19 Provision consequent on enactment of Local Government Amendment (Graffiti) Act 2002

64 Register of graffiti removal work

(1) In this clause, ***amending Act*** means the *Local Government Amendment (Graffiti) Act 2002*.

(2) A register of graffiti removal work kept in accordance with section 67A of the Act as in force immediately before the commencement of the amending Act is taken to be a register of graffiti removal work kept in accordance with section 67C of the Act as in force after that commencement.

Part 20

65 (Repealed)

Part 21 Provisions consequent on enactment of Local Government Amendment (Miscellaneous) Act 2002

66 No compensation for transfer of ownership of water supply, sewerage and stormwater drainage works

No compensation is payable to any person as a result of the operation of section 59A.

67 Renewal of approvals relating to operation of sewage management systems

Section 107A extends to an approval to operate a system of sewerage management that was granted or renewed before the commencement of that section.

68 Annual fees to be withheld

Section 254A (2) extends to an absence of a councillor from ordinary meetings of the council that commenced before the commencement of that subsection.

Part 22 Provision consequent on enactment of Statute Law (Miscellaneous Provisions) Act (No 2) 2002

69 Preparation of general purpose financial report

Until such time as a publication issued by the Australian Accounting Standards Board supersedes a particular publication that was issued by the Australian Accounting Research Foundation (on behalf of the Australian Society of Certified Practising Accountants and the Institute of Chartered Accountants in Australia) under the title *Australian Accounting Standards*, section 413 (3) (a) is to be

construed as if it referred to the latter publication rather than to the publication issued by the Australian Accounting Standards Board.

Part 23 Provisions consequent on the enactment of the Local Government Amendment (Elections) Act 2003

70 Interpretation

In this Part, if the ordinary election proposed to be held on Saturday 27 March 2004 is, pursuant to an order under section 288, held on a subsequent Saturday, a reference to Saturday 27 March 2004 is taken to be a reference to the subsequent Saturday.

71 Term of office—mayors and deputy mayors

(1) This clause applies to:

(a) a mayor, and

(b) a deputy mayor who, under section 231 (2), is elected for the mayoral term,

who holds office immediately before Saturday 13 September 2003.

(2) In relation to a person to whom this clause applies:

(a) the person's term of office is extended to the day on which the mayor's successor is declared to be elected to the office of mayor following the election to be held on Saturday 27 March 2004, and

(b) the person's office does not become vacant until the expiration of the term, as extended by paragraph (a), unless a casual vacancy occurs in the person's office on or after Saturday 13 September 2003 and before the day referred to in paragraph (a).

72 Term of office—councillors, chairpersons of county councils and deputy chairpersons of county councils

(1) This clause applies to:

(a) a councillor, and

(b) the chairperson of a county council, and

(c) a deputy chairperson of a county council,

who holds office immediately before Saturday 13 September 2003.

(2) In relation to a person to whom this clause applies:

(a) the person's term of office is extended until Saturday 27 March 2004, and

(b) the person's office does not become vacant until Saturday 27 March 2004, unless a casual vacancy occurs in the office on or after Saturday 13 September 2003 and before Saturday 27 March 2004.

73 Reduction in number of councillors—Hornsby Shire Council

(1) Hornsby Shire Council may, at any time before 31 December 2003, resolve to make an application to the Minister for approval to decrease the number of councillors who would otherwise be required to be elected at the next ordinary election from 11 to 10.

(2) Hornsby Shire Council must give not less than 21 days public notice of its proposed resolution.

(3) After passing the resolution, Hornsby Shire Council must forward to the Minister a copy of the resolution, a summary of any submissions received by it and its comments concerning those submissions.

(4) The Minister may approve the application without amendment or reject the application.

(5) If the Minister approves the application, the number of councillors of the Hornsby Shire Council is reduced to 10 with effect on and from the day appointed for the next ordinary election of councillors after the application is approved.

(6) This clause has effect despite sections 16 and 224.

74 Amalgamation of areas

Nothing in this Part affects Division 2C of Part 1 of Chapter 9.

Part 24 Provisions consequent on enactment of Local Government Amendment (Council and Employee Security) Act 2004

75 Meaning of "amending Act"

In this Part, ***amending Act*** means the *Local Government Amendment (Council and Employee Security) Act 2004*.

76 Postponement of elections

(1) Without affecting the generality of Part 6A of Chapter 10 as inserted by Schedule 2 to the amending Act:

(a) an order may be published under section 318B in relation to a specified council while the election requirements of this Act are in operation with respect to an election for the council, and

(b) the order is effective to postpone those requirements with respect to the election,

even though that Schedule commenced while those requirements were in operation with respect to the election.

(2) Subject to subclause (1):

(a) nothing in Schedule 2 to the amending Act affects anything done or omitted to be done under Division 2C of Part 1 of Chapter 9 before the commencement of that Schedule, and

(b) any order in force under Division 2C of Part 1 of Chapter 9 immediately before the commencement of that Schedule continues in force and may be dealt with in accordance with that Division as if that Schedule had not been enacted, and

(c) any election to be held in accordance with Division 2C of Part 1 of Chapter 9 as in force immediately before the commencement of that Schedule is to be held as if that Schedule had not been enacted.

(3) In this clause, ***election requirements of this Act*** has the meaning given by section 318A.

76A Term of office—mayors elected by councillors after elections held on or after Saturday 27 March 2004 but before September 2004

(1) This clause applies to a mayor elected by councillors at the first election for mayor after an election of councillors held on or after Saturday 27 March 2004 but before September 2004.

(2) Despite sections 230 and 290:

(a) the election of a successor of a mayor to which this clause applies is to be held during the month of September 2005, and

(b) the term of office of a mayor to which this clause applies is extended to the day on which that mayor's successor is declared to be elected to the office of mayor.

77 Employment protection

(1) Part 6 of Chapter 11 as amended by Schedule 3 to the amending Act extends:

(a) in relation to an area change that occurred before the date of assent to the amending Act but on or after 1 January 2004, and

(b) without limiting paragraph (a), to the staff of councils affected by such an area change.

(2) However, the enactment of Schedule 3 to the amending Act does not invalidate or otherwise affect an appointment to a position within the organisational structure of the council that was made on or after 1 January 2004 and before the date of assent to that Act.

(3) Sections 354G and 354H as in force immediately before the commencement of Schedule 3 to the amending Act continue to apply in relation to an area change that occurred before 1 January 2004 as if that Schedule had not been enacted.

(4) In this clause, ***area change*** means:

(a) the constitution of one or more areas, or

(b) an amalgamation of areas, or

(c) an alteration of the boundaries of one or more areas,

by or under a proclamation under Chapter 9.

78 Maintenance of staff numbers in rural centres

Section 218CA as inserted by Schedule 4 [1] to the amending Act extends:

(a) in relation to an amalgamation of areas or an alteration of the boundaries of areas that occurred before the date of assent to the amending Act but on or after 1 January 2004, and

(b) without limiting paragraph (a), to staff of councils affected by such an amalgamation or alteration.

Part 25 Provisions consequent on enactment of Local Government Amendment (Discipline) Act 2004

79 Meaning of "amending Act"

In this Part, ***amending Act*** means the *Local Government Amendment (Discipline) Act 2004*.

80 Surcharging

The amendment made to section 435 (2) by the amending Act applies only to alleged negligence or misconduct occurring or committed after the commencement of the amendment.

81 Local Government Pecuniary Interest and Disciplinary Tribunal

On and from the commencement of the amendment made to section 487 by the amending Act:

(a) the Local Government Pecuniary Interest Tribunal established under section 487 immediately before that commencement continues in existence and is to be known as the Local Government Pecuniary Interest and Disciplinary Tribunal, and

(b) the person holding office as the Local Government Pecuniary Interest Tribunal immediately before that commencement continues in office, subject to Schedule 4, as the Local Government Pecuniary Interest and Disciplinary Tribunal for the balance of the term of office for which he or she was appointed, and

(c) a person holding office as the deputy of the member immediately before that commencement continues in office, subject to Schedule 4, on the same terms and conditions as those applicable immediately before that commencement, and

(d) any matters or proceedings pending before the Local Government Pecuniary Interest Tribunal immediately before that commencement are not affected by the enactment or commencement of the amending Act and are to continue to be dealt with by the Local Government Pecuniary Interest and Disciplinary Tribunal, and

(e) a reference in any other Act, in any instrument made under an Act or in any other document to the Local Government Pecuniary Interest Tribunal is to be read as a reference to the Local Government Pecuniary Interest and Disciplinary Tribunal.

82 Misbehaviour

Division 3 of Part 1 of Chapter 14, as inserted by the amending Act, applies to misbehaviour occurring after but not before the earlier of the commencement of that Division or the commencement of the first provisions of that Division to commence.

Part 26 Provisions consequent on enactment of Local Government and Valuation of Land Amendment (Water Rights) Act 2005

83 Definition

In this Part, ***2005 amending Act*** means the *Local Government and Valuation of Land Amendment (Water Rights) Act 2005*.

84 Maximum rate increases for farmland during first 5 years

(1) This clause applies to ordinary rates levied for the year commencing 1 July 2005 or any of the next 4 years following the commencement of the 2005 amending Act.

(2) Subject to the provisions of any proclamation in force under section 213 or 218C, the amount that may be levied as an ordinary rate for any parcel of land in the category "farmland", or any sub-category of that category, must not be more than 20 per cent above the amount levied as an ordinary rate for that parcel for the previous year.

Part 27 Provisions consequent on enactment of Local Government Amendment (Miscellaneous) Act 2006

85 Definition

In this Part:

the 2006 amending Act means the *Local Government Amendment (Miscellaneous) Act 2006*.

86 Council polls and constitutional referendums

Section 20, as amended by the 2006 amending Act, extends to any council poll or constitutional referendum initiated before that section was so amended.

87 Leave of absence

Section 234, as amended by the 2006 amending Act, extends to any leave of absence granted before that section was so amended.

Part 28 Provisions consequent on enactment of Local Government Amendment Act 2007

88 Definition

In this Part:

amending Act means the *Local Government Amendment Act 2007*.

89 Validation provision

Anything done or omitted to be done by a council that would have been validly done or omitted to be done had section 495A, as inserted by the amending Act, been in force when the thing was done or omitted to be done is validated.

90 Existing public-private partnerships

The substitution of the definition of ***public-private partnership*** in section 400B (1) by the amending Act does not affect the operation of a public-private partnership entered into before the commencement of that substitution.

Part 29 Provisions consequent on enactment of Local Government Amendment (Election Date) Act 2008

91 Effective date of party registration for the purposes of September 2008 elections

(1) This clause applies in relation to the ordinary elections of councillors to be held in 2008 and any other concurrent elections, constitutional referendums or council polls to be held under this Act.

(2) Section 66FA of the *Parliamentary Electorates and Elections Act 1912*, as applied by section 320 of this Act, does not apply to a political party that became registered under Part 7 of Chapter 10 on or before 27 August 2007.

Note. Section 66FA of the *Parliamentary Electorates and Elections Act 1912* (which applies to parties registered under that Act and is applied, with modifications, to parties registered under the *Local Government Act 1993*) provides that the registration of a party does not become effective until the first anniversary of its registration for the purposes of party endorsement on ballot-papers, the nomination of candidates by a party, and the registration of electoral material by a party.

Part 30 Provisions consequent on enactment of Local Government Amendment (Legal Status) Act 2008

92 New legal status of existing councils

(1) The following provisions apply to a council constituted as a body corporate immediately before the commencement of the 2008 Act:

(a) the council ceases to be a body corporate on that commencement and becomes instead a body politic of the State as provided by section 220 or 388 (as substituted by the 2008 Act),

(b) the council is taken for all purposes (including the rules of private international law) to be a continuation of, and the same legal entity as, the council as it existed before the commencement of the 2008 Act (except that the council is no longer a body corporate and is instead a body politic of the State).

(2) The 2008 Act (this clause in particular) does not:

(a) affect existing property, rights or obligations of a council, or

(b) render defective any legal proceedings by or against a council, or

(c) negate any decision made by a council, or

(d) place a council in breach of contract or otherwise make it guilty of a civil wrong, or

(e) make a council in breach of any instrument, including, for example, an instrument prohibiting, restricting or regulating the assignment or transfer of any right or liability, or

(f) fulfil a condition allowing a person to terminate an instrument or liability or modify the operation or effect of an instrument or liability, or requiring any amount to be paid before its stated maturity, or

(g) release a surety or other obligee, in whole or part, from an obligation.

(3) In this clause:

council includes county council.

2008 Act means the *Local Government Amendment (Legal Status) Act 2008*.

93 Existing appointments

Section 351 (2), as substituted by the *Local Government Amendment (Legal Status) Act 2008*, extends to a person holding a position to which the person was appointed temporarily before that substitution.

Part 31 Provisions consequent on enactment of Local Government Amendment (Planning and Reporting) Act 2009

94 Definitions

In this Part:

existing annual report provisions means section 428 as in force immediately before the substitution of that section by the 2009 amending Act.

existing management plan provisions means the provisions of Part 2 of Chapter 13 as in force immediately before the substitution of that Part by the 2009 amending Act.

new annual report provisions means sections 428 and 428A as substituted and inserted by the 2009 amending Act.

new strategic planning provisions means the provisions of Part 2 of Chapter 13 as substituted by the 2009 amending Act.

2009 amending Act means the *Local Government Amendment (Planning and Reporting) Act 2009*.

95 Phasing in of new strategic planning provisions

(1) A council must comply with the new strategic planning provisions in accordance with the following timetable:

(a) a council in group 1 must endorse a community strategic plan and adopt a resourcing strategy, delivery program and first operational plan by 30 June 2010,

(b) a council in group 2 must endorse a community strategic plan and adopt a resourcing strategy, delivery program and first operational plan by 30 June 2011,

(c) a council in group 3 must endorse a community strategic plan and adopt a resourcing strategy, delivery program and first operational plan by 30 June 2012 or a later date determined by the Minister under subclause (3).

(2) The Minister may by order published in the Gazette place a council in group 1, 2 or 3 for the purposes of this clause.

(3) The Minister may by order published in the Gazette determine a later date for the purposes of subclause (1) (c).

96 Continued operation of existing annual report and management plan provisions

(1) The existing annual report provisions continue to apply to a council in respect of any year before the first year covered by a delivery program of the council. The new annual report provisions do not apply to a council in respect of any year that the existing annual report provisions continue to apply in respect of.

(2) The existing management plan provisions continue to apply to a council until the council has endorsed a community strategic plan and adopted a resourcing strategy, delivery program and first operational plan in compliance with the new strategic planning provisions.

(3) The existing management plan provisions (as continued by this clause) do not require a council to prepare a draft management plan (or adopt a management plan) for any year that is covered by a delivery program adopted (or to be adopted) by the council under the new strategic planning provisions.

(4) When the existing annual report provisions or the existing management plan provisions continue to apply to a council under this clause, those provisions apply as if the amendments made by the 2009 amending Act to the other provisions of this Act had not been made.

Part 32 Provisions consequent on enactment of Local Government Amendment (General Rate Exemptions) Act 2010

97 Partial exemptions for certain land belonging to a religious body, public benevolent institution or charity

(1) A part of a parcel of land that belongs to a religious body and is subject to an existing lease that does not provide for any rates payable on that part to be paid by the lessee is taken, for the purposes of section 555, to be land occupied and used in a manner referred to in section 555 (1) (e), but only if some other part of the parcel is actually occupied and used by the religious body.

(2) A part of a parcel of land that belongs to a public benevolent institution or public charity and is subject to an existing lease that does not provide for any rates (other than water supply special rates and sewerage special rates) payable on that part to be paid by the lessee is taken, for the purposes of section 556, to be land used or occupied by the institution or charity for its own purposes, but only if some other part of the parcel is actually used or occupied by the institution or charity for its own purposes.

(3) In this clause:

amending Act means the *Local Government Amendment (General Rate Exemptions) Act 2010*.

existing lease means a lease entered into before the commencement of the amending Act.

Part 33 Provisions consequent on enactment of Local Government Amendment (Environmental Upgrade Agreements) Act 2010

98 Effect of environmental upgrade agreement on existing leases

(1) A term of a lease entered into before the commencement of section 54N, as inserted by the *Local Government Amendment (Environmental Upgrade Agreements) Act 2010*, that requires a lessee to pay to the lessor any charge payable by the lessor to a council under Chapter 15 is taken to also require the lessee to pay to the lessor a contribution towards any environmental upgrade charge payable under any environmental upgrade agreement that relates to the premises that are the subject of the lease.

(2) Section 54N applies in respect of the contribution.

(3) The contribution is to be paid on the date or dates on which a charge under Chapter 15 is payable or as otherwise agreed by the parties to the lease.

(4) This clause does not prevent the parties to a lease agreeing to a variation of the term provided for by this clause, or agreeing that the term does not apply.

99 References to Residential Tenancies Act 2010

A reference in Part 2A of Chapter 6, as inserted by the *Local Government Amendment (Environmental Upgrade Agreements) Act 2010*:

(a) to the *Residential Tenancies Act 2010* includes a reference to the *Residential Tenancies Act 1987*, and

(b) to section 40 of the *Residential Tenancies Act 2010* includes a reference to section 19 of the *Residential Tenancies Act 1987*.

Part 34 Provisions consequent on enactment of Local Government Amendment (Elections) Act 2011

100 Definition

In this Part, ***amending Act*** means the *Local Government Amendment (Elections) Act 2011*.

101 Dispensing with by-elections

Section 294, as amended by the amending Act, extends to a casual vacancy occurring before the commencement of that Act.

102 Council may retain Electoral Commissioner to administer elections, polls and referendums until end of 2012 ordinary election

(1) Despite section 296, a council may resolve, before 31 October 2011 (or such later date as may be prescribed by the regulations), that the Electoral Commissioner is to administer its elections (including the 2012 ordinary election for councillors), council polls and constitutional referendums.

(2) The council must, as soon as possible, notify the following persons of the making of such a resolution:

(a) the Electoral Commissioner,

(b) the Director-General.

(3) The Electoral Commissioner is to administer all the elections, council polls and constitutional referendums of a council that has made such a resolution until the conclusion of the 2012 ordinary election for councillors.

(4) Expenses incurred by the Electoral Commissioner, returning officer, substitute returning officer and electoral officials in connection with any such election, council poll or constitutional referendum are to be met by the council for which it is conducted and are recoverable from the council as a debt owed to the Electoral Commissioner as the holder of that office.

(5) In this clause, ***election*** does not include an election of the mayor or a deputy mayor by the councillors.

102A (Repealed)

Part 35 Provisions consequent on enactment of Local Government Amendment (Conduct) Act 2012

103 Definition

In this Part, ***amending Act*** means the *Local Government Amendment (Conduct) Act 2012*.

104 Application of amendments

(1) Division 3 of Part 1 of Chapter 14, as substituted by the amending Act, (the ***new Division***) extends to misconduct that occurred before the commencement of the new Division if at the time that it occurred it was misbehaviour under Division 3 as in force before that substitution.

(2) However, if the Director-General or the Tribunal decides to take disciplinary action or to impose a penalty in respect of misconduct that occurred before the commencement of the new Division, the disciplinary action or penalty must be a type of disciplinary action or penalty that could have been taken or imposed under this Act at the time the misconduct occurred.

(3) An investigation into an allegation of misbehaviour by a councillor that was validly initiated but not finalised before the commencement of the new Division (an ***ongoing investigation***) is taken to have been validly initiated under the new Division. Accordingly, the new Division applies to the ongoing investigation.

(4) The amendments made to Part 3 of Chapter 14 by the amending Act do not apply to proceedings that were referred to the Tribunal or that were commenced in the Tribunal before the commencement of those amendments. Such proceedings are to be dealt with as if the amendments had not been made.

(5) Section 440I (3) as inserted by the amending Act extends to incidents of misconduct by a councillor and disciplinary action taken against the councillor that occurred before the commencement of that subsection.

(6) Sections 482 (5) and 482A (3) as inserted by the amending Act extend to complaints proved against a person, incidents of misconduct by a councillor and any action taken against a councillor or other person before the commencement of those subsections.

105 Authorised investigators

(1) A member of staff of the Department who is authorised to conduct an investigation under section 440J (2), immediately before its repeal by the amending Act, is taken, on that repeal, to have been delegated the functions of the Director-General with respect to investigations under section 440H.

(2) Nothing in this clause prevents the Director-General from revoking or amending the delegation.

106 References to Minister for Primary Industries in sections 57–66

(1) A reference to the Minister for Primary Industries in sections 57–66, as amended by the amending Act, is to be construed in the same way as a reference to the Minister for Land and Water Conservation in those sections was required to be construed, immediately before 1 March 2013, as a result of any administrative changes order that had effect before those sections were amended by the amending Act.

(2) This clause is taken to have commenced on 1 March 2013.

(3) This clause does not affect the operation of any administrative changes order made after 1 March 2013.

(4) In this clause:

administrative changes order means an order under Part 4.2 of Chapter 4 of the *Public Sector Employment and Management Act 2002*.

Part 36 Provisions consequent on enactment of Local Government Amendment (Conduct of Elections) Act 2013

107 Existing arrangements for elections to be administered by Electoral Commissioner

(1) A contract or arrangement with the Electoral Commissioner in force under section 296 immediately before the commencement of this clause is terminated as follows:

(a) the contract or arrangement is terminated on the commencement of this clause unless paragraph (b) applies,

(b) if an election is pending under the contract or arrangement on the commencement of this clause, the contract or arrangement is terminated on the conclusion of that election.

(2) An election is pending under a contract or arrangement if the contract or arrangement provides for the Electoral Commissioner to administer the election and the Electoral Commissioner has, before the commencement of this clause, commenced preparations for the administration of the election by the Electoral Commissioner.

(3) The termination of a contract or arrangement by this clause does not affect any liability incurred under the contract or arrangement before the contract or arrangement was terminated.

Part 37 Provisions consequent on enactment of Local Government Amendment (Early Intervention) Act 2013

108 Definition

In this Part:

amending Act means the *Local Government Amendment (Early Intervention) Act 2013*.

109 Investigations

(1) Any investigation the Director-General authorised a person to conduct under section 430, before its substitution by the amending Act, that has not been completed, is taken on that substitution to be an investigation by the Director-General under section 430.

(2) A Departmental representative authorised under section 430, before its substitution by the amending Act, to investigate any aspect of a council or of its work and activities and whose authority is in force immediately before that substitution is taken to have been delegated:

(a) the functions of the Director-General under sections 431 and 432 in connection with the investigation, and

(b) the functions of the Director-General under Division 2 of Part 5 of Chapter 13 (Surcharging).

(3) The delegation may be varied or revoked by the Director-General.

110 Public inquiries

(1) The provisions of sections 255 (1A) and 438ZC, as inserted by the amending Act, extend to a public inquiry under section 740 held or commenced before those provisions commenced.

(2) Section 740, as in force before its repeal by the amending Act, continues to apply in respect of any inquiry under that section that commenced before that repeal.

Part 38 Provisions consequent on enactment of Local Government and Elections Legislation Amendment (Integrity) Act 2016

111 Definition

In this Part:

amending Act means the *Local Government and Elections Legislation Amendment (Integrity) Act 2016*.

112 Disqualifications from holding civic office

The amendment made to section 275 of this Act by the amending Act:

(a) does not apply to disqualify a person holding any civic office the person held immediately before the commencement of the amending Act, and

(b) subject to paragraph (a), extends to offences committed before the commencement of the amending Act.

113 Supreme Court orders regarding monetary benefits from non-disclosure

Section 490C, as inserted by the amending Act, does not apply in relation to a contravention of Part 2 of Chapter 14 that occurred before the commencement of the amending Act.

Part 39 Provisions consequent on enactment of Local Government Amendment (Governance and Planning) Act 2016

114 Definitions

In this Part:

amalgamation day means the beginning of the day on which a new council was constituted.

amending Act means the *Local Government Amendment (Governance and Planning) Act 2016*.

new council means the council of an area constituted on or after 12 May 2016 and before the commencement of the amendments made to Part 3 of Chapter 13 by the amending Act.

115 Periods for abolishing wards and changing councillor numbers or meeting times

(1) This clause applies to a council for which an ordinary election is held within 12 months after the commencement of section 224A (8) or 365A (as inserted by the amending Act).

(2) A requirement in any of those provisions that a council do a thing not later than 12 months before the next ordinary election after the commencement of the provision is to be read as a requirement that the thing be done not later than 12 months before the second ordinary election of councillors after that commencement.

116 Terms of existing mayors

The amendment made by the amending Act to section 230 applies to a mayor elected following an election for a council that occurs after the commencement of that amendment.

117 Model meeting codes

(1) A council is not required to adopt a code of meeting practice in accordance with section 360, as substituted by the amending Act, until after the next ordinary election of councillors following that substitution.

(2) If a code containing mandatory provisions is prescribed under that section before a council adopts a code of meeting practice in accordance with that section, any existing code of meeting practice of the council has no effect to the extent that it is inconsistent with any mandatory provision.

118 Strategies and programs

A council is not required to establish and implement a community engagement strategy in accordance with section 402A, as inserted by the amending Act, until 12 months after the next ordinary election of councillors following that amendment.

119 Integrated planning and reporting guidelines

The integrated planning and reporting guidelines, as in force under section 406 immediately before the substitution of that section by the amending Act, continue to apply for the purposes of the Act, pending the making of a regulation under the substituted section that establishes new guidelines.

120 Existing auditing arrangements for councils other than new councils

(1) Part 3 of Chapter 13, as in force before its amendment by the amending Act, continues to apply to a council in respect of any financial year commencing before 1 July 2016.

(2) The Part, as so amended, applies in respect of any financial year commencing on or after 1 July 2016.

(3) Subclause (2) does not prevent a council from entering into an arrangement with the Auditor-General to carry out auditing functions for the council for a previous financial year.

(4) On the commencement of Division 3 of Part 3 of Chapter 13, as substituted by the amending Act, or 31 December 2016, whichever occurs later:

(a) the appointment of a council auditor (other than the Auditor-General or a person appointed by the Auditor-General) ceases to have effect, and

(b) any agreement between a council and any such person to provide auditing services to a council ceases to have effect whether or not it relates to a period after 30 June 2016.

(5) The regulations may modify the provisions made by this clause.

(6) Section 674A, as inserted by the amending Act, applies in relation to this clause as if this clause were a relevant provision.

(7) A council must, on or before 31 December 2016, notify the Auditor-General in writing of any council entities of the council (within the meaning of section 415, as amended by the amending Act) as at 1 July 2016.

(8) This clause does not apply to a new council.

121 Existing auditing arrangements for new councils

(1) Part 3 of Chapter 13, as in force before its amendment by the amending Act, continues to apply to a new council in respect of the period before the day after the amalgamation day, subject to any provisions of the proclamation constituting the council's area.

(2) The Part, as so amended, applies to a new council in respect of any period beginning on the day after the day on which the new council was constituted, except as provided by this Part.

(3) On the commencement of Division 3 of Part 3 of Chapter 13, as substituted by the amending Act:

(a) any agreement between a new council and any person appointed by a new council to provide auditing services to the council (an ***existing auditor***) ceases to have effect insofar as it relates to any period after the day on which the new council was constituted, and

(b) the existing auditor is, if the existing auditor agrees, to be taken to be a person appointed by the Auditor-General to carry out auditing functions for the council for the period ending on 30 June 2017. The terms of the appointment are to be agreed in writing between the Auditor-General and the person.

(4) Nothing in this clause prevents the Auditor-General from being able to revoke an appointment made under subclause (3).

(5) The regulations may modify the provisions made by this clause.

(6) Section 674A, as inserted by the amending Act, applies in relation to this clause as if this clause were a relevant provision.

(7) A new council must, on or before 31 December 2016, notify the Auditor-General in writing of any council entities of the council (within the meaning of section 415, as amended by the amending Act) as at 1 July 2016.

(8) This clause has effect despite any provisions of the proclamation under which a new council is constituted.

122 Annual sector-wide reports

The first report by the Auditor-General under section 421C, as inserted by the amending Act, is not required to be provided before 31 March 2018.

123 Audit, Risk and Improvement Committees

A council is not required to establish an Audit, Risk and Improvement Committee in accordance with Part 4A of Chapter 13, as inserted by the amending Act, until 6 months after the next ordinary election of councillors following the commencement of that Part.

124 Disclosure of pecuniary interests provisions

(1) The following provisions of this Act and the regulations (as in force immediately before the repeal of Part 2 of Chapter 14 by the amending Act) are taken to be included in the model code (as in force immediately before the repeal) and in any adopted code incorporating the provisions of that code (whether made before or after that repeal):

(a) sections 444–447, 448 (other than section 448 (g)), 449, 451–456 and 459,

(b) regulations made under, or for the purposes of, that Part.

(2) The provisions so included apply with any necessary modifications.

(3) The regulations may modify or exclude any of the provisions taken to be included in a code for the purposes of this clause.

(4) The complaint procedures for a model code or an adopted code do not apply to any matter for which a complaint may be made under Part 3 of Chapter 14.

(5) Expressions used in this clause have the same meaning as they have in section 440.

(6) A reference in any instrument to Part 2 of Chapter 14 is taken to be a reference to the provisions of a code of conduct (within the meaning of that Chapter) relating to the disclosure of pecuniary interests.

Part 40 Provision consequent on enactment of Local Government Amendment Act 2019

125 Rate freeze for previously amalgamated councils

Section 218CB (2), as amended by the *Local Government Amendment Act 2019*, extends to a determination made by the Minister before the commencement of that amendment and in force on that commencement.

Schedule 9 Special provisions relating to Cudgegong (Abattoir) County Council

(Section 400AA)

Part 1 Winding up of Cudgegong (Abattoir) County Council

1 Winding up

(1) Cudgegong (Abattoir) County Council may be wound up voluntarily or by a liquidator appointed by the Minister.

(2) Subject to subclause (1), the winding up of Cudgegong (Abattoir) County Council is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Parts 5.5–5.9 of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:

(a) those provisions apply to Cudgegong (Abattoir) County Council as if it were a company,

(b) if the Minister decides that Cudgegong (Abattoir) County Council is to be wound up by a liquidator appointed by the Minister, those provisions apply as if the County Council had resolved by special resolution to be wound up and had appointed the liquidator appointed by the Minister as the liquidator for the purposes of those provisions,

(c) if Cudgegong (Abattoir) County Council is being wound up voluntarily and a vacancy occurs in the office of liquidator that, in the opinion of the Minister, is unlikely to be filled in the manner provided by the *Corporations Act 2001* of the Commonwealth, the functions of winding up Cudgegong (Abattoir) County Council's affairs may be exercised by a person (whether or not the person is a registered liquidator within the meaning of the *Corporations Act 2001* of the Commonwealth) appointed by the Minister to be a liquidator in relation to the winding up of Cudgegong (Abattoir) County Council,

(d) references in those provisions to a corporation or company are, subject to the regulations, to be read as references to Cudgegong (Abattoir) County Council,

(e) references in those provisions to an officer or a director of a company are to be read as including references to a member of Cudgegong (Abattoir) County Council or to any other person prescribed by the regulations,

(f) the provisions of section 589 are to be read as if:

(i) section 589 (1) (d) and (2) were omitted, and

(ii) paragraph (c) were omitted from the definition of ***appropriate officer*** in section 589 (5), and

(iii) paragraph (c) were omitted from the definition of ***relevant day*** in section 589 (5),

(g) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note. Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State to the extent that that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

2 Validation of certain acts of liquidator

(1) This clause applies if the person appointed by the Minister as the liquidator of Cudgegong (Abattoir) County Council under clause 1 (1) is the same person who was appointed administrator of Cudgegong (Abattoir) County Council on 3 September 2003.

(2) Any act done or omitted to be done by that person between 3 September 2003 and the date of assent to the *Local Government Amendment (Cudgegong (Abattoir) County Council Dissolution) Act 2003* is validated but only if it could have been validly done or omitted by that person if, at the time that it was done or omitted, the person had been appointed as liquidator of Cudgegong (Abattoir) County Council under clause 1 (1).

Part 2 Transfer of liabilities of Cudgegong (Abattoir) County Council after winding up

3 Special provision concerning proclamation dissolving Cudgegong (Abattoir) County Council

(1) This clause applies to a proclamation under section 397 for the purpose of dissolving Cudgegong (Abattoir) County Council.

(2) Any such proclamation may include provisions:

(a) transferring the liabilities of Cudgegong (Abattoir) County Council to Mudgee Shire Council or Rylstone Shire Council (or to both) to the extent, or in the proportions, specified in or determined in accordance with the proclamation, and

(b) appointing a person to direct Mudgee Shire Council or Rylstone Shire Council (or both) as to how to deal with any such transferred liabilities.

(3) When any liabilities are transferred by such a proclamation, the following provisions have effect:

(a) the transfer is subject to the terms and conditions of the proclamation,

(b) the liabilities of Cudgegong (Abattoir) County Council become, by virtue of the proclamation, the liabilities of the transferee,

(c) all proceedings relating to the liabilities commenced before the transfer by or against Cudgegong (Abattoir) County Council and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,

(d) any act, matter or thing done or omitted to be done in relation to the liabilities before the transfer by, to or in respect of Cudgegong (Abattoir) County Council is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,

(e) a reference in any instrument made under any Act or in any document of any kind to Cudgegong (Abattoir) County Council is (to the extent to which it relates to those liabilities) taken to include a reference to the transferee,

(f) no compensation is payable to Mudgee Shire Council or Rylstone Shire Council in connection with a transfer effected by the proclamation, except to the extent (if any) to which the proclamation so provides,

(g) the operation of the proclamation is not to be regarded:

(i) as a breach of contract or confidence or otherwise as a civil wrong, or

(ii) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of liabilities, or

(iii) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any liability, or

(iv) as an event of default under any contract or other instrument.

(4) This clause does not limit the matters for which a proclamation to which this clause applies may make provision (namely, matters of the same kind as are referred to in section 213).

(5) Neither the enactment of this Part nor the provisions of this Part are to be construed as affecting the power of the Governor to make a proclamation under section 397 or to make any other proclamation under this Act for the purpose of amending the constitution of, or of dissolving, a county council other than Cudgegong (Abattoir) County Council.

(6) In this clause:

liabilities of Cudgegong (Abattoir) County Council means:

(a) any liability that is proved in the winding up of Cudgegong (Abattoir) County Council, and

(b) any liability to repay the Commonwealth Government any payment made by it under its General Employee Entitlements and Redundancy Scheme in respect of wages or of superannuation contributions, or in respect of leave of absence or termination of employment, under an industrial instrument,

being a liability that was not met in full in the winding up of Cudgegong (Abattoir) County Council.

transferee means a council to which any liabilities are transferred by a proclamation referred to in subclause (2).

Editorial note. For proclamation referred to in this clause, see Gazette No 162 of 15.10.2004, p 8020.

4 Enforcement of certain directions

(1) This clause applies if a proclamation under section 397 appoints any person to direct Mudgee Shire Council or Rylstone Shire Council, or both, as to how to deal with any liability transferred by the proclamation.

(2) Mudgee Shire Council and Rylstone Shire Council must comply with directions given to them by the person appointed by the proclamation.

(3) The person appointed by the proclamation may enforce any such direction as if the relevant liability were owed to the person.

Part 3 Revocation of appointment of administrator and receiver and manager

5 Revocation of appointment of administrator and receiver and manager

The following appointments are revoked on the day that winding up commences in accordance with the provisions referred to in clause 1:

(a) the appointment of an administrator of Cudgegong (Abattoir) County Council on 3 September 2003,

(b) the appointment by the Supreme Court of a person as receiver and manager of Cudgegong (Abattoir) County Council on 11 September 2003.

6 Transfer of records

The administrator or receiver and manager whose appointment is revoked by this Part must transfer all documents relating to the administration, receivership or management of Cudgegong (Abattoir) County Council to the Minister.

Dictionary

(Section 3)

Note. The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

adjoining, in relation to an area, means abutting or separated only by a public reserve, road, river, watercourse, or tidal or non-tidal water, or other like division.

alcohol means ethanol, any liquid containing ethanol and any liquor within the meaning of the *Liquor Act 2007*.

alcohol-free zone means a zone operating under Part 4 of Chapter 16 as an alcohol-free zone.

amusement device means an amusement device that is high risk plant within the meaning of clause 6 of Schedule 1 to the *Work Health and Safety Act 2011*, and includes any other device that is declared by the regulations to be an amusement device for the purposes of this Act.

applicable filming protocol, in relation to a council, is defined in section 119D.

approval means an approval that is in force under this Act.

approved fee means:

(a) in relation to a fee to which Division 2 of Part 10 of Chapter 15 applies, a fee determined by the council in accordance with that Division, or

(b) in relation to a fee to which Division 3 of Part 10 of Chapter 15 applies:

(i) the fee prescribed by the regulations for the purposes of the provision in relation to which the expression is used or determined by the council in accordance with any such regulations, or

(ii) if no such regulations are in force, the fee (if any) determined by the Director-General for the purposes of the provision in relation to which the expression is used, or

(iii) if no such regulations are in force and no fee is determined by the Director-General, the fee (if any) determined by the council for the purposes of the provision in relation to which the expression is used.

approved form means:

(a) the form prescribed by the regulations for the purposes of the provision in relation to which the expression is used, or

(b) if no such form is prescribed, the form (if any) approved by the Director-General for the purposes of the provision in relation to which the expression is used, or

(c) if no such form is prescribed and no form is approved by the Director-General, the form approved by the council for the purposes of the provision in relation to which the expression is used.

approved standards means:

(a) the standards prescribed by the regulations for the purposes of the provision in relation to which the expression is used, or

(b) if no such standards are prescribed, the standards (if any) determined by the Director-General for the purposes of the provision in relation to which the expression is used, or

(c) if no such standards are prescribed or determined by the Director-General, the standards (if any) determined by the council for the purposes of the provision in relation to which the expression is used.

area means an area as constituted under Part 1 of Chapter 9.

associated structure means:

(a) a carport, garage, shed, pergola, verandah or other structure designed to enhance the amenity of a moveable dwelling and attached to or integrated with, or located on the same site as, the dwelling concerned, or

(b) a separating wall between 2 moveable dwellings.

Australian Statistician means the Australian Statistician referred to in section 5 (2) of the *Australian Bureau of Statistics Act 1975* of the Commonwealth.

authorised person means:

(a) an employee of a council generally or specially authorised by the council in respect of or whose duty it is to deal with, or to act in regard to, any acts, matters or things in relation to which the expression is used, or

(b) a police officer.

authority, in Part 3 of Chapter 14, means the Ombudsman, the Independent Commission Against Corruption, the Commissioner of Police or the Director of Public Prosecutions.

base amount of a rate means a base amount specified in a resolution of a council under section 537.

Boundaries Commission means the Local Government Boundaries Commission constituted under this Act.

builder means the person who is employed to build or to execute work on a building, or, where no person is so employed, the owner of the building.

building includes part of a building and any structure or part of a structure, but does not include a moveable dwelling or associated structure or part of a moveable dwelling or associated structure.

bushland means land on which there is vegetation which is either a remainder of the natural vegetation of the land or, if altered, is still representative of the structure and floristics of the natural vegetation.

business day means any day except Saturday or Sunday or any other day the whole or part of which is observed as a public or bank holiday throughout New South Wales.

carry out an activity includes to organise, arrange for or otherwise cause the activity to be carried out.

catchment district means a district proclaimed to be a catchment district under section 128.

city means an area constituted as a city under Division 1 of Part 1 of Chapter 9.

civic office means the office of councillor or mayor or, in the case of a county council, the office of chairperson or member.

closing date, in relation to an election or poll, means the date prescribed by the regulations for the closing of the roll of non-resident owners of rateable land and the roll of occupiers and ratepaying lessees for the election or poll.

coastal hazard has the same meaning it has in the *Coastal Management Act 2016*.

coastal protection service means a service:

(a) to maintain and repair coastal protection works, or

(b) to manage the impacts of such works (such as changed or increased beach erosion elsewhere),

but does not include a service that relates to temporary coastal protection works.

coastal protection works means activities or works to reduce the impact of coastal hazards on land adjacent to tidal waters and includes seawalls, revetments, groynes and beach nourishment.

common has the same meaning as in the *Commons Management Act 1989*.

Note.

common, as defined in the *Commons Management Act 1989*, means:

(a) a parcel of land which, on or before 1 February 1909, had, by any instrument made by the Governor, been set aside as a common for the use of the inhabitants of any specified locality or the cultivators or farmers of any locality in which the parcel of land is situated, or

(b) any parcel of land which, after that date, has been set aside by the Governor or the Minister as a common or for pasturage for the use of the inhabitants of a specified locality,

but does not include such a parcel where the setting aside of the common has been revoked or otherwise terminated.

Commonwealth Act, in Part 11 of Chapter 15, means the *Local Government (Financial Assistance) Act 1986* of the Commonwealth.

community land means land that is classified as community land under Division 1 of Part 2 of Chapter 6.

council:

(a) means the council of an area, and includes an administrator, and

(b) in Part 11 of Chapter 15, includes the Lord Howe Island Board constituted under the *Lord Howe Island Act 1953*.

councillor means a person elected or appointed to civic office, and includes a mayor.

county council means a county council established under Part 5 of Chapter 12.

Crown includes any statutory body representing the Crown.

Crown land has the same meaning as in the *Crown Land Management Act 2016*.

Crown managed land has the same meaning as in the *Crown Land Management Act 2016*.

debt means:

(a) a debt arising from a loan of money, or

(b) a debt arising from the supply of goods or services.

Department or ***Department of Local Government*** means the Office of Local Government.

Departmental Chief Executive means the Chief Executive of the Office of Local Government.

deputy mayor includes Deputy Lord Mayor.

dismissal of a council—see section 255.

domestic waste means waste on domestic premises of a kind and quantity ordinarily generated on domestic premises and includes waste that may be recycled, but does not include sewage.

domestic waste management services means services comprising the periodic collection of domestic waste from individual parcels of rateable land and services that are associated with those services.

drain means a drain for the carrying off of waters other than sewage.

dwelling, in Division 1 of Part 8 of Chapter 15, means a building or part of a building used as a place of dwelling.

effective date, in Division 1 of Part 8 of Chapter 15, has the meaning given to it in section 578.

election means:

(a) the first election for an area after its constitution, or

(b) an ordinary election, or

(c) a by-election to fill a casual vacancy, or

(d) a fresh election ordered under this Act as a consequence of the declaration of all civic offices in relation to a council to be vacant, or

(e) an election authorised under this Act for an area the council of which has been declared to be non-functioning.

elector means a person who is entitled to vote in an election.

Electoral Commissioner means the person for the time being holding or acting in the office of Electoral Commissioner under the *Electoral Act 2017*.

electoral offence means an electoral offence under this Act.

eligible pensioner, in Division 1 of Part 8 of Chapter 15, in relation to a rate or charge levied on land on which a dwelling is situated means a person:

(a) who is a member of a class of persons prescribed by the regulations, and

(b) who occupies that dwelling as his or her sole or principal place of living.

environmental planning instrument has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

Note.

environmental planning instrument, as defined in the *Environmental Planning and Assessment Act 1979*, means a State environmental planning policy, a regional environmental plan, or a local environmental plan, and except where otherwise expressly provided by that Act, includes a deemed environmental planning instrument.

deemed environmental planning instrument, as defined in that Act, means a former planning instrument referred to in clause 2 of Schedule 3 to the *Miscellaneous Acts (Planning) Repeal and Amendment Act 1979* and includes an instrument referred to in clause 3 (2) of that Schedule.

erection, in relation to building, includes any structural work and any alteration, addition or rebuilding.

exercise of a function includes, where the function is a duty, the performance of the duty.

filming means recording images (whether on film or video tape or electronically or by other means) for exhibition or broadcast (such as by cinema, television or the Internet or by other means) and includes such acts or things as may be prescribed by the regulations as being filming, but does not include:

(a) still photography, or

(b) video recording of a wedding ceremony or other private celebration or event principally for the purpose of making a record for the participants in the ceremony, celebration or event, or

(c) recording for the immediate purposes of a television program that provides information by way of current affairs or daily news, or

(d) any act or thing prescribed by the regulations as not being filming.

filming project means a project (such as a film, a documentary, an advertisement, a television program or a specified set of television programs) involving filming.

filming proposal means a proposal under section 115.

fittings, in relation to any premises connected to a water main or sewer, means all apparatus (other than pipes or fixtures) used or intended to be used in connection with the conveyance of water to, or of permitted discharges from, the premises.

fixtures, in relation to water supply, sewerage or drainage, means all apparatus (other than pipes or fittings) used or intended to be used for the collection or retention of water or permitted discharges for ultimate delivery into a sewer.

flooded, in relation to land, means inundated by waters derived from the runoff of rainfall on land.

free parking area means any area of public land (other than a public road) for the accommodation of vehicles without payment of a fee or charge, and includes any area of land the subject of an agreement referred to in section 650 (6).

function includes a power, authority and duty.

Grants Commission means the Local Government Grants Commission constituted under this Act.

group voting square means a square printed on a ballot-paper for an election above the names of the candidates included in a group who have duly requested a group voting square for the purposes of the election, as referred to in section 308A.

human waste means human faeces and urine.

human waste storage facility means a device for holding or disposing of human waste, including a cesspit, septic tank, septic closet, water closet, chemical closet, humus closet and combustion closet.

integrated planning and reporting framework means the plans, programs and strategies required to be prepared by a council under Part 2 of Chapter 13.

interim administrator means an interim administrator of a council appointed under Part 7 or 8 of Chapter 13.

joint, in relation to owning, holding or occupying land, includes owning, holding or occupying in common.

joint organisation means a joint organisation established under Part 7 of Chapter 12.

joint organisation area means the area of a joint organisation established under Part 7 of Chapter 12.

jointly eligible occupier, in Division 1 of Part 8 of Chapter 15, in relation to a rate or charge in respect of which an eligible pensioner is jointly liable, means a person who:

(a) is the spouse or de facto partner of that eligible pensioner, or

(b) is another eligible pensioner, or

(c) if another eligible pensioner and his or her spouse or de facto partner have the same sole or principal place of dwelling, is the spouse or de facto partner of that other eligible pensioner,

and whose sole or principal place of living is the same as that of that firstmentioned eligible pensioner.

land value:

(a) means:

(i) the land value of the land as determined in accordance with the *Valuation of Land Act 1916*, except as provided by paragraph (b), or

(ii) in the case of a stratum, the land value of the stratum as determined in accordance with the *Valuation of Land Act 1916*, and

(b) in Division 2 of Part 8 of Chapter 15, means:

(i) except as provided by subparagraph (ii), the land value of the land after deducting from that land value the amount of any allowance made in respect of the land under Division 3 of Part 1B of the *Valuation of Land Act 1916*, or

(ii) if the land is land to which section 598 applies, the land rating factor of the land determined in accordance with that section after deducting from that land rating factor the amount of any allowance made in respect of the land under Division 3 of Part 1B of the *Valuation of Land Act 1916*.

lease:

(a) includes an original lease, derivative lease or an under-lease or an agreement for any of them, and extends to any case where there is the relation of landlord and tenant, whether there is or is not any instrument in writing, and

(b) in relation to Crown land, land owned by or vested in the Crown or land within a State forest—includes a licence, permit, permissive occupancy or authority (other than a licence under the *Forestry Act 2012* or a forest permit under that Act that authorises grazing for a period of less than 12 months, bee-farming or any other activity that does not involve the occupation of a State forest), and land occupied under a mineral claim under the *Mining Act 1992* is taken for the purposes of this Act to be held under a lease by the person in lawful occupation, under the mineral claim, of the land.

lessee includes:

(a) an original lessee, derivative lessee or under-lessee and any person deriving title under or from a lessee or under-lessee, and

(b) the holder of a mineral claim under the *Mining Act 1992*.

licensed premises means any premises to which a licence under the *Liquor Act 2007* relates.

local environmental plan has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*.

manufactured home means a self-contained dwelling (that is, a dwelling that includes at least one kitchen, bathroom, bedroom and living area and that also includes toilet and laundry facilities), being a dwelling:

(a) that comprises one or more major sections, and

(b) that is not a motor vehicle, trailer or other registrable vehicle within the meaning of the *Road Transport Act 2013*,

and includes any associated structures that form part of the dwelling.

manufactured home estate means land on which manufactured homes are, or are to be, erected.

mayor includes Lord Mayor.

member council of a joint organisation—see section 400O (4).

mine means land, on or below the surface or partly on or partly below the surface, used or held for any mining purpose.

mortgage includes any charge whatever on land or an interest in land, however created, for the securing of money.

mortgagee includes every person entitled at law or in equity to a mortgage or any part of a mortgage.

moveable dwelling means:

(a) any tent, or any caravan or other van or other portable device (whether on wheels or not), used for human habitation, or

(b) a manufactured home, or

(c) any conveyance, structure or thing of a class or description prescribed by the regulations for the purposes of this definition.

multicultural principles means the principles set out in section 3 of the *Multicultural NSW Act 2000*.

National Parks and Wildlife reserve means any land reserved or dedicated under the *National Parks and Wildlife Act 1974* other than a regional park under the care, control and management of a council.

notice includes notification, order, direction and demand.

notify means notify by publication in the Gazette or by such other method as may be prescribed by the regulations.

occupier includes:

(a) a person having the charge, management or control of premises, and

(b) in the case of a building which is let out in separate occupancies or a lodging house which is let out to lodgers, the person receiving the rent payable by the tenants or lodgers, either on his or her own account or as the agent of another person,

and, in the case of a vessel, means the master or other person in charge of the vessel.

operational land means land that is classified as operational land under Division 1 of Part 2 of Chapter 6.

owner:

(a) in relation to Crown land, means the Crown and includes:

  (i) a lessee of land from the Crown, and

  (ii) a person to whom the Crown has lawfully contracted to sell the land but in respect of which the purchase price or other consideration for the sale has not been received by the Crown, and

(b) in relation to land other than Crown land, includes:

  (i) every person who jointly or severally, whether at law or in equity, is entitled to the land for any estate of freehold in possession, and

  (ii) every such person who is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession, or otherwise, and

  (iii) in the case of land that is the subject of a strata scheme under the *Strata Schemes Development Act 2015*, the owners corporation for that scheme constituted under the *Strata Schemes Management Act 2015*, and

  (iv) in the case of land that is a community, precinct or neighbourhood parcel within the meaning of the *Community Land Development Act 1989*, the association for the parcel, and

  (v) every person who by this Act is taken to be the owner, and

(c) in relation to land subject to a mining lease under the *Mining Act 1992*, includes the holder of the lease, and

(d) in Part 2 of Chapter 7, in relation to a building, means the owner of the building or the owner of the land on which the building is erected.

parcel of land, in relation to rateable land, means a portion or parcel of land separately valued under the *Valuation of Land Act 1916*.

park, in relation to land, means an area of open space used for recreation, not being bushland.

park, in relation to a vehicle, includes stand or wait.

parking authority for a person with disabilities means an authority issued by Roads and Maritime Services to a person with disabilities or to a person or organisation in respect of a vehicle used for the conveyance of persons with disabilities.

performance improvement order means an order issued under section 438A.

person with disabilities means a person who is unable to walk or who is able to walk only short distances because of permanent loss of the use of one or both legs or other severe permanent medical or physical handicap.

place of shared accommodation includes a boarding house, a common lodging house, a house let in lodgings and a backpackers hostel.

plan of management means a plan of management adopted by a council under Division 2 of Part 2 of Chapter 6 and in force in relation to an area of public land.

political party means a body or organisation, whether or not incorporated, having as one of its objects or activities the promotion of the election to Parliament or to a council of a candidate or candidates endorsed by it or by a body or organisation of which it forms part.

premises means any of the following:

(a) a building of any description or any part of it and the appurtenances to it,

(b) land, whether built on or not,

(c) a shed or other structure,

(d) a tent,

(e) a swimming pool,

(f) a ship or vessel of any description (including a houseboat),

(g) a van.

principles of ecologically sustainable development means the following statements of principle:

Ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:

(a) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

(i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and

(ii) an assessment of the risk-weighted consequences of various options,

(b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations,

(c) conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,

(d) improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services, such as:

(i) polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,

(ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,

(iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

private land means land the fee-simple of which is not vested in the Crown, and land that the Crown has lawfully contracted to sell.

Project Review Committee means the Local Government Project Review Committee established under section 400J.

public authority means a public authority constituted by or under an Act, a government department or a statutory body representing the Crown, and includes a person exercising any function on behalf of the authority, department or body and any person prescribed by the regulations to be a public authority.

public car park means any premises used for the purpose of accommodating vehicles of members of the public on payment of a fee, but does not include a pay parking space under the *Road Transport Act 2013* prescribed by the regulations.

public inquiry means a public inquiry held under Part 8 of Chapter 13.

public land means any land (including a public reserve) vested in or under the control of the council, but does not include:

(a) a public road, or

(b) land to which the *Crown Land Management Act 2016* applies, or

(c) a common, or

(d) a regional park under the *National Parks and Wildlife Act 1974*.

public meeting means an assembly held for a public purpose to which admission may ordinarily be gained by members of the public (whether or not on payment of money, or other consideration, as the price or condition of admission), but does not include an assembly held for the purpose of religious worship only.

public notice means public notice given as referred to in section 705.

public officer of a council means the public officer appointed under Chapter 11 for that council.

public place means:

(a) a public reserve, public bathing reserve, public baths or public swimming pool, or

(b) a public road, public bridge, public wharf or public road-ferry, or

(c) a Crown reserve comprising land reserved for future public requirements, or

(d) public land or Crown land that is not:

(i) a Crown reserve (other than a Crown reserve that is a public place because of paragraph (a), (b) or (c)), or

(ii) a common, or

(iii) land subject to the *Trustees of Schools of Arts Enabling Act 1902*, or

(iv) land that has been sold or leased or lawfully contracted to be sold or leased, or

(e) land that is declared by the regulations to be a public place for the purposes of this definition.

public-private partnership—see section 400B.

public reserve means:

(a) a public park, or

(b) any land conveyed or transferred to the council under section 340A of the *Local Government Act 1919*, or

(c) any land dedicated or taken to be dedicated as a public reserve under section 340C or 340D of the *Local Government Act 1919*, or

(d) any land dedicated or taken to be dedicated under section 49 or 50, or

(e) any land vested in the council, and declared to be a public reserve, under section 37AAA of the *Crown Lands Consolidation Act 1913*, or

(f) any land vested in the council, and declared to be a public reserve, under section 76 of the *Crown Lands Act 1989*, or

(g) Crown managed land that is dedicated or reserved:

(i) for public recreation or for a public cemetery, or

(ii) for a purpose that is declared to be a purpose that falls within the scope of this definition by means of an order published in the Gazette by the Minister administering the *Crown Land Management Act 2016*,

being Crown managed land in respect of which a council has been appointed as its Crown land manager under that Act or for which no Crown land manager has been appointed, or

(h) land declared to be a public reserve and placed under the control of a council under section 52 of the *State Roads Act 1986*, or

(i) land dedicated as a public reserve and placed under the control of a council under section 159 of the *Roads Act 1993*,

and includes a public reserve of which a council has the control under section 344 of the *Local Government Act 1919* or section 48, but does not include a common.

public road means a road which the public are entitled to use.

public wharf means a wharf, boat ramp, jetty or other structure that is situated in, on or over water and that the public are entitled to use.

quarter means a period of 3 months ending on 30 September, 31 December, 31 March or 30 June.

rateable land means land that is rateable to an ordinary rate or a special rate, or both.

rateable person includes the Crown in respect of rateable land owned by the Crown and means:

(a) an owner in any case where this Act provides that a rate is to be paid to the council by the owner, and

(b) a holder of a lease in any case where this Act provides that a rate is to be paid to the council by the holder of the lease.

relative, in relation to a person, means any of the following:

(a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse or de facto partner,

(b) the spouse or de facto partner of the person or of a person referred to in paragraph (a).

Remuneration Tribunal means the Local Government Remuneration Tribunal established under this Act.

residential flat building means a building containing 2 or more dwellings.

road includes:

(a) highway, street, lane, pathway, footpath, cycleway, thoroughfare, bridge, culvert, causeway, road-ferry, ford, crossing, by-pass and trackway, whether temporary or permanent, and

(b) any part of a road and any part of any thing referred to in paragraph (a), and

(c) any thing forming part of a road or any thing forming part of any thing referred to in paragraph (a).

rural land, in Division 2 of Part 8 of Chapter 15, means:

(a) a parcel of rateable land which is valued as one assessment and exceeds 8,000 square metres in area and which is wholly or mainly used for the time being by the occupier for carrying on one or more of the businesses or industries of grazing, animal feedlots, dairying, pig-farming, poultry farming, viticulture, orcharding, bee-keeping, horticulture, vegetable growing, the growing of crops of any kind or forestry, or

(b) an area which is wholly or mainly used for aquaculture within the meaning of the *Fisheries Management Act 1994*.

rural residential land means land that:

(a) is the site of a dwelling, and

(b) is not less than 2 hectares and not more than 40 hectares in area, and

(c) is either:

(i) not zoned or otherwise designated for use under an environmental planning instrument, or

(ii) zoned or otherwise designated for use under such an instrument for non-urban purposes, and

(d) does not have a significant and substantial commercial purpose or character.

senior staff of a council means the general manager of the council and the holders of all other positions identified in the council's organisation structure as senior staff positions.

sewerage work means the construction, alteration, extension, disconnection, removal, ventilation, flushing, cleansing, maintenance, repair, renewal or clearing of any sewerage service pipes or fittings or fixtures communicating or intended to communicate, directly or indirectly, with:

(a) a septic tank, an effluent or a sullage disposal system, or

(b) any sewer of a council,

and includes work of sanitary plumbing and work of house drainage.

shares includes stock.

shoreline recession means the progressive landward movement of the average long term position of the coastline.

single dwelling-house, in Division 2 of Part 8 of Chapter 15, means a dwelling used or adapted for use solely for habitation by not more than one family and includes a dwelling in a row of 2 or more dwellings attached to each other such as are commonly known as semi-detached or terrace buildings, but does not include a flat.

skating equipment means roller skates, roller blades or skateboards, and includes other like things prescribed by the regulations for the purposes of this definition.

stormwater drainage work means the construction, alteration, extension, disconnection, removal, maintenance, repair, renewal, flushing, cleansing or clearing of any stormwater drain communicating or intended to communicate, directly or indirectly, with any stormwater channel of a council.

stormwater management service means a service to manage the quantity or quality, or both, of stormwater that flows off land, and includes a service to manage the re-use of stormwater for any purpose.

tidal waters includes the waters of the sea or of any lake, estuary, harbour, river, bay or lagoon in which the tide ebbs and flows.

transfer, in relation to the estate or interest of a rateable person, includes conveyance.

trustee, in addition to every person appointed or constituted trustee by act of parties, by order or declaration of a court, or by operation of law, includes:

(a) an executor, administrator, guardian, committee, receiver and liquidator, and

(b) every person having or taking on himself or herself the administration or control of land affected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control or management of the land of a person under any legal or other disability.

waste means:

(a) effluent, being any matter or thing, whether solid or liquid or a combination of solids and liquids, which is of a kind that may be removed from a human waste storage facility, sullage pit or grease trap, or from any holding tank or other container forming part of or used in connection with a human waste storage facility, sullage pit or grease trap, or

(b) trade waste, being any matter or thing, whether solid, gaseous or liquid or a combination of solids, gases and liquids (or any of them), which is of a kind that comprises refuse from any industrial, chemical, trade or business process or operation, including any building or demolition work, or

(c) garbage, being all refuse other than trade waste and effluent,

and includes any other substance defined as waste for the purposes of the *Protection of the Environment Operations Act 1997*, and a substance is not precluded from being waste merely because it is capable of being refined or recycled.

waste depot means a place at which waste may be treated or stored in accordance with an approval under this Act or a place approved as a waste depot or waste facility under any other Act.

water supply authority has the same meaning as it has in the *Water Management Act 2000*.

water supply work means the construction, alteration, extension, disconnection, removal, flushing, cleansing, maintenance, repair, renewal or clearing of any pipes or fittings of any water service communicating or intended to communicate, directly or indirectly, with any water main of a council, but does not include changing a washer.

water-based recreational equipment means surfboards, windsurfers, sailboards, jetskis or rubber floats, and includes other like things prescribed by the regulations for the purposes of this definition.

year means the period from 1 July to the following 30 June.

Note. Words and expressions defined in the *Interpretation Act 1987* include:

affidavit
alien
amend
ASC Law and ASC Regulations
Australia
Australia Acts
British Act
British Parliament
British subject
by-law
calendar month
calendar year
committal proceedings
Commonwealth
Commonwealth Constitution
Consolidated Fund
contravene
Corporations Law and Corporations Regulations
date of assent
definition
document
estate
Executive Council
external Territory
foreign country
Gazette
Government
Government Printer
Governor
High Court
Imperial Act
Imperial Parliament
indictable offence
individual
internal Territory
Jervis Bay Territory
justice
land
Legislative Assembly
Legislative Council
Local Court
Magistrate
make
mentally incapacitated person
midnight
Minister
minor
month
named month
Northern Territory
oath
office
ordinance
Parliament
party
penalty
person
Police Force
police officer
Police Service
prescribed
proclamation
property
Public Service
regulation
repeal
rule
rules of court
sign
State
statutory declaration
summary offence
swear
Territory
the State
United Kingdom
writing

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
Cll	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments

Local Government Act 1993 No 30. Assented to 8.6.1993. Date of commencement, 1.7.1993, sec 2 and GG No 73 of 1.7.1993, p 3341. This Act has been amended as follows:

1994 No 13 *Mines Rescue Act 1994*. Assented to 10.5.1994.
Date of commencement, 8.7.1994, sec 2 and GG No 90 of 8.7.1994, p 3463.

No 34 *Bush Fires (Further Amendment) Act 1994*. Assented to 2.6.1994.
Date of commencement, 10.6.1994, sec 2 and GG No 78 of 10.6.1994, p 2755.

No 38 *Fisheries Management Act 1994*. Assented to 2.6.1994.
Date of commencement, 16.1.1995, sec 2 and GG No 3 of 13.1.1995, p 44.

No 44 *Local Government Legislation (Miscellaneous Amendments) Act 1994*. Assented to 2.6.1994.
Date of commencement, Sch 18 (7) excepted, 1.7.1994, sec 2 and GG No 80 of 17.6.1994, p 2915; Sch 18 (7) was not commenced and was repealed by the *Statute Law (Miscellaneous Provisions) Act (No 2) 1998* No 120.

No 45 *Native Title (New South Wales) Act 1994*. Assented to 2.6.1994.
Date of commencement of the provisions of Sch 1 relating to the *Local Government Act 1993*, 28.11.1994, sec 2 and GG No 156 of 25.11.1994, p 6868.

No 82 *Energy Legislation (Miscellaneous Amendments) Act 1994*. Assented to 12.12.1994.
Date of commencement of Sch 3, 23.1.1995, sec 2 and GG No 5 of 20.1.1995, p 374.

No 87 *Local Government (Boarding and Lodging Houses) Amendment Act 1994*. Assented to 12.12.1994.
Date of commencement, assent, sec 2 (1).

No 88 *Water Board (Corporatisation) Act 1994*. Assented to 12.12.1994.
Date of commencement of Sch 7, 1.1.1995, sec 2 and GG No 170 of 16.12.1994, p 7400.

1995 No 11 *Statute Law Revision (Local Government) Act 1995*. Assented to 9.6.1995.
Date of commencement of Sch 1.5, 23.6.1995, sec 2 (1) and GG No 77 of 23.6.1995, p 3279.

No 12 *Local Government Legislation Amendment Act 1995*. Assented to 14.6.1995.
Date of commencement of Sch 1, item [5] excepted, 23.6.1995, sec 2 and GG No 77 of 23.6.1995, p 3277; date of commencement of item [5] of Sch 1, 21.7.1995, sec 2 and GG No 88 of 21.7.1995, p 3754.

No 13 *Ports Corporatisation and Waterways Management Act 1995*. Assented to 15.6.1995.
Date of commencement, 1.7.1995, sec 2 and GG No 79 of 30.6.1995, p 3435.

No 18 *Electricity Legislation Amendment Act 1995*. Assented to 19.6.1995.
Date of commencement of Sch 5, 30.6.1995, sec 2 and GG No 79 of 30.6.1995, p 3434.

No 27 *Evidence (Consequential and Other Provisions) Act 1995*. Assented to 19.6.1995.
Date of commencement, 1.9.1995, sec 2 and GG No 102 of 25.8.1995, p 4355.

No 63 *Classification (Publications, Films and Computer Games) Enforcement Act 1995*. Assented to 12.12.1995.
Date of commencement, 1.1.1996, sec 2 and GG No 156 of 22.12.1995, p 8682.

No 75 *Unclaimed Money Act 1995*. Assented to 12.12.1995.
Date of commencement, 1.4.1996, sec 2 and GG No 38 of 29.3.1996, p 1291.

No 79 *Local Government Amendment (Alcohol-free Zones) Act 1995*. Assented to 15.12.1995.
Date of commencement, 22.12.1995, sec 2 and GG No 156 of 22.12.1995, p 8684.

No 92 *Timber Plantations (Harvest Guarantee) Act 1995*. Assented to 21.12.1995.
Date of commencement, 14.7.1997, sec 2 and GG No 77 of 11.7.1997, p 5410.

No 94 *Electricity Supply Act 1995*. Assented to 21.12.1995.
Date of commencement of Sch 5.8, 10.5.1996, sec 2 and GG No 57 of 10.5.1996, p 2123.

No 101 *Threatened Species Conservation Act 1995*. Assented to 22.12.1995.
Date of commencement of Sch 6, 1.1.1996, sec 2 (1) and GG No 158 of 22.12.1995, p 8802.

No 102 *Waste Minimisation and Management Act 1995*. Assented to 22.12.1995.
Date of commencement of Sch 6.4, 19.1.1996, sec 2 and GG No 5 of 19.1.1996, p 164.

1996 No 24 *Financial Institutions (Miscellaneous Amendments) Act 1996*. Assented to 21.6.1996.
Date of commencement, 12.7.1996, sec 2 and GG No 84 of 12.7.1996, p 3984.

No 56 *Transport Administration Amendment (Rail Corporatisation and Restructuring) Act 1996*. Assented to 28.6.1996.
Date of commencement, 1.7.1996, sec 2 and GG No 80 of 1.7.1996, p 3795.

No 58 *National Parks and Wildlife Amendment Act 1996*. Assented to 1.7.1996.
Date of commencement, 1.6.1997, sec 2 and GG No 57 of 30.5.1997, p 3472.

No 69 *Local Government Amendment Act 1996*. Assented to 27.9.1996.
Date of commencement of Sch 1, 1.7.1997, sec 2 (1) and GG No 68 of 27.6.1997, p 4768; date of commencement of Sch 2 [1]–[3] and [6]–[10], 1.6.1997, sec 2 (1) and GG No 122 of 1.11.1996, p 7199; date of commencement of Schs 2 [4], [5] and [11]–[16], 3 [1]–[17] and 4 [1]–[27] and [30], 11.11.1996, sec 2 (1) and GG No 122 of 1.11.1996, p 7199; date of commencement of Sch 3 [18]–[20], 1.7.1993, sec 2 (2); date of commencement of Sch 4 [28] and [29], assent, sec 2 (3).

No 121 *Statute Law (Miscellaneous Provisions) Act (No 2) 1996*. Assented to 3.12.1996.
Date of commencement of Sch 1.10, assent, sec 2 (2); date of commencement of Sch 4.35, 4 months after assent, sec 2 (4).

No 122 *Building Services Corporation Legislation Amendment Act 1996*. Assented to 3.12.1996.
Date of commencement, 1.5.1997, sec 2 and GG No 43 of 24.4.1997, p 2171.

No 124 *Local Government Amendment (Tribunals) Act 1996*. Assented to 3.12.1996.
Date of commencement, assent, sec 2.

No 128 *Transport Administration Amendment (Light Rail) Act 1996*. Assented to 3.12.1996.
Date of commencement of Sch 2.1, 10.3.1997, sec 2 and GG No 24 of 7.3.1997, p 1360. Amended by *Statute Law (Miscellaneous Provisions) Act 1997* No 55. Assented to 2.7.1997. Date of commencement of Sch 2.22, assent, sec 2 (2).

No 133 *Local Government Amendment (Nude Bathing) Act 1996*. Assented to 12.12.1996.
Date of commencement, 7.2.1997, sec 2 and GG No 15 of 7.2.1997, p 364.

	No 139	*Strata Schemes Management (Miscellaneous Amendments) Act 1996*. Assented to 16.12.1996. Date of commencement, 1.7.1997, sec 2 and GG No 68 of 27.6.1997, p 4770. Amended by *Statute Law (Miscellaneous Provisions) Act 1997* No 55. Assented to 2.7.1997. Date of commencement of Sch 2.18, assent, sec 2 (2).
1997	No 1	*Local Government Amendment (Cudgegong Abattoir) Act 1997*. Assented to 21.4.1997. Date of commencement, assent, sec 2.
	No 51	*Occupational Health and Safety Amendment Act 1997*. Assented to 2.7.1997. The amendments made by Sch 3.5 were not commenced and were repealed by the *Occupational Health and Safety Act 2000* No 40.
	No 61	*Local Government Amendment Act 1997*. Assented to 2.7.1997. Date of commencement of Sch 1, items [22] [26] [38] and [39] excepted, 18.7.1997, sec 2 (1) and GG No 81 of 18.7.1997, p 5584; date of commencement of Sch 1 [22] and [26], 1.7.1997, sec 2 (2); date of commencement of Sch 1 [38] and [39], assent, sec 2 (3).
	No 65	*Rural Fires Act 1997*. Assented to 10.7.1997. Date of commencement, 1.9.1997, sec 2 and GG No 95 of 29.8.1997, p 6644.
	No 77	*Administrative Decisions Legislation Amendment Act 1997*. Assented to 10.7.1997. Date of commencement of Sch 5.19, 1.1.1999, sec 2 and GG No 178 of 24.12.1998, p 9946.
	No 94	*Local Government Amendment (Ecologically Sustainable Development) Act 1997*. Assented to 4.11.1997. Date of commencement, 1.1.1998, sec 2 and GG No 149 of 19.12.1997, p 10094.
	No 115	*Traffic Legislation Amendment Act 1997*. Assented to 9.12.1997. Date of commencement, 29.6.1998, sec 2 and GG No 97 of 26.6.1998, p 4431.
	No 119	*Road Transport (Vehicle Registration) Act 1997*. Assented to 9.12.1997. Date of commencement of Sch 2, 29.6.1998, sec 2 and GG No 97 of 26.6.1998, p 4429.
	No 145	*Local Government Amendment (Open Meetings) Act 1997*. Assented to 17.12.1997. Date of commencement, 1.3.1998, sec 2 and GG No 32 of 20.2.1998, p 819.
	No 147	*Statute Law (Miscellaneous Provisions) Act (No 2) 1997*. Assented to 17.12.1997. Date of commencement of Sch 2.16 [1] and [2], 1.7.1997, Sch 2.16; date of commencement of Sch 2.16 [3], 2.7.1997, Sch 2.16.
	No 152	*Environmental Planning and Assessment Amendment Act 1997*. Assented to 19.12.1997. Date of commencement, 1.7.1998, sec 2 and GG No 101 of 1.7.1998, p 5119. Amended by *Statute Law (Miscellaneous Provisions) Act (No 2) 1998* No 120. Assented to 26.11.1998. Date of commencement of Sch 2, assent, sec 2 (1).
	No 154	*Health Services Act 1997*. Assented to 19.12.1997. Date of commencement, 1.7.1998, sec 2 and GG No 97 of 26.6.1998, p 4423.
	No 156	*Protection of the Environment Operations Act 1997*. Assented to 19.12.1997. Date of commencement, 1.7.1999, sec 2 and GG No 178 of 24.12.1998, p 9952.
1998	No 16	*Local Government Amendment Act 1998*. Assented to 2.6.1998. Date of commencement, 22.6.1998, sec 2 and GG No 94 of 19.6.1998, p 4319.
	No 29	*Darling Harbour Authority Amendment and Repeal Act 1998*. Assented to 15.6.1998. Date of commencement of Sch 2, 10.7.1998, sec 2 (1) and GG No 105 of 10.7.1998, p 5326; the amendment made by Sch 3.5 was not commenced and was repealed by the *Sydney Harbour Foreshore Authority Act 1998* No 170.
	No 32	*Sydney Cove Redevelopment Authority Amendment Act 1998*. Assented to 15.6.1998. Date of commencement, 10.7.1998, sec 2 (1) and GG No 105 of 10.7.1998, p 5327.

No 34 *Disability Discrimination Legislation Amendment Act 1998*. Assented to 15.6.1998.
Date of commencement, 1.10.1998, sec 2 and GG No 139 of 25.9.1998, p 7665.

No 39 *Local Government Amendment (Meetings) Act 1998*. Assented to 23.6.1998.
Date of commencement, 1.7.1998, sec 2 and GG No 97 of 26.6.1998, p 4425.

No 46 *Coastal Protection Amendment Act 1998*. Assented to 26.6.1998.
Date of commencement, 31.7.1998, sec 2 and GG No 115 of 31.7.1998, p 5745.

No 47 *Aboriginal Housing Act 1998*. Assented to 26.6.1998.
Date of commencement, 24.7.1998, sec 2 and GG No 112 of 24.7.1998, p 5601.

No 48 *Administrative Decisions Tribunal Legislation Amendment Act 1998*. Assented to 29.6.1998.
Date of commencement of Sch 2.10, 1.1.1999, sec 2 and GG No 178 of 24.12.1998, p 9948.

No 62 *Local Government Amendment (Parking and Wheel Clamping) Act 1998*. Assented to 30.6.1998.
Date of commencement, 29.8.1998, sec 2 and GG No 126 of 28.8.1998, p 6527.

No 90 *Local Government Amendment (Ombudsman's Recommendations) Act 1998*. Assented to 2.10.1998.
Date of commencement, 23.10.1998, sec 2 and GG No 148 of 16.10.1998, p 8230.

No 120 *Statute Law (Miscellaneous Provisions) Act (No 2) 1998*. Assented to 26.11.1998.
Date of commencement of Sch 2, assent, sec 2 (1).

No 121 *Marine Safety Act 1998*. Assented to 26.11.1998.
Date of commencement of Sch 3.5, 1.7.2000, sec 2 and GG No 73 of 23.6.2000, p 5113.

No 138 *Heritage Amendment Act 1998*. Assented to 8.12.1998.
Date of commencement, 2.4.1999, sec 2 and GG No 27 of 5.3.1999, p 1546.

No 140 *Local Government Amendment (Community Land Management) Act 1998*. Assented to 8.12.1998.
Date of commencement, 1.1.1999, sec 2 and GG No 176 of 18.12.1998, p 9723.

No 141 *Local Government Legislation Amendment (Elections) Act 1998*. Assented to 8.12.1998.
Date of commencement, 12.2.1999, sec 2 and GG No 19 of 12.2.1999, p 612.

No 145 *Water Legislation Amendment (Drinking Water and Corporate Structure) Act 1998*. Assented to 8.12.1998.
Date of commencement, 1.1.1999, sec 2 and GG No 176 of 18.12.1998, p 9726.

No 170 *Sydney Harbour Foreshore Authority Act 1998*. Assented to 14.12.1998.
Date of commencement of Sch 3, 1.2.1999, sec 2 (1) and GG No 12 of 29.1.1999, p 285; date of commencement of Sch 4, 1.1.2001, sec 2 and GG No 170 of 29.12.2000, p 13950.

1999 No 4 *Property (Relationships) Legislation Amendment Act 1999*. Assented to 7.6.1999.
Date of commencement of Sch 2.19, 28.6.1999, sec 2 and GG No 72 of 25.6.1999, p 4082.

No 19 *Road Transport Legislation Amendment Act 1999*. Assented to 1.7.1999.
Date of commencement of Sch 2, 1.12.1999, sec 2 (1) and GG No 133 of 26.11.1999, p 10863.

No 31 *Statute Law (Miscellaneous Provisions) Act 1999*. Assented to 7.7.1999.
Date of commencement of Sch 2.22 [1], 1.7.1999, Sch 2.22; date of commencement of Sch 2.22 [2]–[4], assent, sec 2 (2).

No 38 *Local Government Amendment (Amalgamations and Boundary Changes) Act 1999*. Assented to 7.7.1999.
Date of commencement, 23.7.1999, sec 2 and GG No 84 of 23.7.1999, p 5144.

No 52 *Strata Schemes (Leasehold Development) Amendment Act 1999*. Assented to 16.11.1999.
Date of commencement, 31.12.1999, sec 2 and GG No 144 of 24.12.1999, p 12194.

	No 70	*Parliamentary Electorates and Elections Amendment Act 1999*. Assented to 30.11.1999. Date of commencement, 1.1.2000, sec 2 and GG No 144 of 24.12.1999, p 12188.
	No 85	*Statute Law (Miscellaneous Provisions) Act (No 2) 1999*. Assented to 3.12.1999. Date of commencement of Sch 2.33, assent, sec 2 (2).
	No 94	*Crimes Legislation Amendment (Sentencing) Act 1999*. Assented to 8.12.1999. Date of commencement of sec 7, Schs 4.130 and 5, 1.1.2000, sec 2 (1) and GG No 144 of 24.12.1999, p 12184.
	No 97	*Plantations and Reafforestation Act 1999*. Assented to 8.12.1999. Date of commencement, 14.12.2001, sec 2 and GG No 190 of 14.12.2001, p 9834.
2000	No 6	*Local Government Amendment (Filming) Act 2000*. Assented to 1.5.2000. Date of commencement of Sch 1 [1]–[3], 1.11.2002, sec 2 and GG No 201 of 1.11.2002, p 9301; date of commencement of Sch 1 [4]–[6], 4.9.2000, sec 2 and GG No 112 of 1.9.2000, p 8635.
	No 40	*Occupational Health and Safety Act 2000*. Assented to 26.6.2000. Date of commencement, 1.9.2001, sec 2 and GG No 129 of 24.8.2001, p 6186. Amended by *Local Government Amendment Act 2000* No 112. Assented to 20.12.2000. Date of commencement of Sch 4, 1.4.2001, sec 2 (1) and GG No 60 of 30.3.2001, p 1577.
	No 53	*Statute Law (Miscellaneous Provisions) Act 2000*. Assented to 29.6.2000. Date of commencement of Sch 1.15, assent, sec 2 (2); date of commencement of Sch 2, assent, sec 2 (1).
	No 77	*Community Relations Commission and Principles of Multiculturalism Act 2000*. Assented to 9.11.2000. Date of commencement, 13.3.2001, sec 2 and GG No 41 of 23.2.2001, p 777.
	No 89	*Transport Administration Amendment (Rail Management) Act 2000*. Assented to 6.12.2000. Date of commencement of Sch 2, 1.1.2001, sec 2 (1) and GG No 168 of 22.12.2000, p 13466.
	No 92	*Water Management Act 2000*. Assented to 8.12.2000. Date of commencement of Sch 8.16 [1]–[3] and [5], 1.1.2001, sec 2 and GG No 168 of 22.12.2000, p 13471; date of commencement of Sch 8.16 [4]. 1.7.2004, sec 2 and GG No 110 of 1.7.2004, p 5002.
	No 106	*Valuation of Land Amendment Act 2000*. Assented to 13.12.2000. Date of commencement of Sch 4.4, 31.12.2000, sec 2 and GG No 168 of 22.12.2000, p 13468.
	No 112	*Local Government Amendment Act 2000*. Assented to 20.12.2000. Date of commencement of Sch 1 [1]–[5] [9] and [10], 1.6.2003, sec 2 (2); date of commencement of Sch 1 [6], 26.9.2003, sec 2 (1) and GG No 154 of 26.9.2003, p 9518; date of commencement of Sch 1 [7] [8] and [11], 1.6.2002, sec 2 (3); date of commencement of Schs 2 and 3, 1.4.2001, sec 2 (1) and GG No 60 of 30.3.2001, p 1577.
2001	No 10	*Nature Conservation Trust Act 2001*. Assented to 18.4.2001. Date of commencement of Sch 5, 29.6.2001, sec 2 and GG No 103 of 29.6.2001, p 4444.
	No 19	*Local Government Amendment (Graffiti Removal) Act 2001*. Assented to 19.6.2001. Date of commencement, 1.7.2001, sec 2 and GG No 103 of 29.6.2001, p 4443.
	No 34	*Corporations (Consequential Amendments) Act 2001*. Assented to 28.6.2001. Date of commencement of Sch 4.33, 15.7.2001, sec 2 (1) and Commonwealth Gazette No S 285 of 13.7.2001.
	No 56	*Statute Law (Miscellaneous Provisions) Act 2001*. Assented to 17.7.2001. Date of commencement of Sch 1.8 [1] [5] and [6], assent, sec 2 (2); date of commencement of Sch 1.8 [2]–[4], 26.9.2003, Sch 1.8 and GG No 154 of 26.9.2003, p 9518.

No 58 *Waste Avoidance and Resource Recovery Act 2001*. Assented to 17.7.2001.
Date of commencement of Sch 3.5, 8.10.2001, sec 2 and GG No 143 of 21.9.2001, p 7867.

No 93 *Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001*. Assented to 6.12.2001.
Date of commencement of Sch 1, except Sch 1 [4] to the extent that it omits item 4 from Part F of the Table to sec 68, 26.10.2007, sec 2 (1) and GG No 132 of 28.9.2007, p 7325. Sch 1 [4] to the extent that it omits item 4 from Part F of the Table to sec 68 was not commenced and the Act was repealed by the *Environmental Planning and Assessment Amendment Act 2017* No 60.

No 107 *Coal Industry Act 2001*. Assented to 14.12.2001.
Date of commencement, 1.1.2002, sec 2 and GG No 199 of 28.12.2001, p 10826.

No 112 *Statute Law (Miscellaneous Provisions) Act (No 2) 2001*. Assented to 14.12.2001.
Date of commencement of Sch 1.19, assent, sec 2 (2).

No 118 *Aboriginal Land Rights Amendment Act 2001*. Assented to 19.12.2001.
Date of commencement, 25.10.2002, sec 2 and GG No 189 of 25.10.2002, p 9059.

No 121 *Justices Legislation Repeal and Amendment Act 2001*. Assented to 19.12.2001.
Date of commencement of Sch 2, 7.7.2003, sec 2 and GG No 104 of 27.6.2003, p 5978.

No 127 *Gaming Machines Act 2001*. Assented to 19.12.2001.
Date of commencement of Sch 5, 2.4.2002, sec 2 and GG No 67 of 28.3.2002, p 1834.

2002 No 19 *Local Government Amendment (Anti-Corruption) Act 2002*. Assented to 17.6.2002.
Date of commencement, assent, sec 2.

No 20 *Local Government Amendment (Graffiti) Act 2002*. Assented to 18.6.2002.
Date of commencement, 19.7.2002, sec 2 and GG No 119 of 19.7.2002, p 5432.

No 31 *Local Government Amendment (Enforcement of Parking and Related Offences) Act 2002*. Assented to 21.6.2002.
Date of commencement, 15.7.2002, sec 2 and GG No 116 of 12.7.2002, p 5225.

No 40 *Local Government Amendment (Miscellaneous) Act 2002*. Assented to 25.6.2002.
Date of commencement, 1.8.2002, sec 2 and GG No 122 of 26.7.2002, p 5543.

No 67 *Rural Fires and Environmental Assessment Legislation Amendment Act 2002*. Assented to 10.7.2002.
Date of commencement, 1.8.2002, sec 2 and GG No 122 of 26.7.2002, p 5545.

No 103 *Law Enforcement (Powers and Responsibilities) Act 2002*. Assented to 29.11.2002.
Date of commencement of Sch 4, 1.12.2005, sec 2 and GG No 45 of 15.4.2005, p 1356.

No 112 *Statute Law (Miscellaneous Provisions) Act (No 2) 2002*. Assented to 29.11.2002.
Date of commencement of Sch 1.14, assent, sec 2 (3).

2003 No 7 *City of Sydney Amendment (Electoral Rolls) Act 2003*. Assented to 2.6.2003.
Date of commencement, 1.9.2003, sec 2 and GG No 132 of 29.8.2003, p 8242.

No 8 *Local Government Amendment (National Competition Policy Review) Act 2003*. Assented to 2.6.2003.
Date of commencement of Sch 1, except Sch 1 [7], 1.9.2003, sec 2 and GG No 132 of 29.8.2003, p 8244; date of commencement of Sch 1 [7], 1.11.2003, sec 2 and GG No 132 of 29.8.2003, p 8244.

No 23 *Local Government Amendment (Elections) Act 2003*. Assented to 7.7.2003.
Date of commencement, 18.7.2003, sec 2 and GG No 114 of 18.7.2003, p 7258.

No 30 *Local Government Amendment (Employment Protection) Act 2003*. Assented to 15.7.2003.
Date of commencement, 5.9.2003, sec 2 and GG No 137 of 5.9.2003, p 9127.

	No 40	*Statute Law (Miscellaneous Provisions) Act 2003*. Assented to 22.7.2003. Date of commencement of Sch 1.27, assent, sec 2 (2).
	No 43	*Food Act 2003*. Assented to 8.9.2003. Date of commencement of Sch 1, 23.2.2004, sec 2 and GG No 42 of 20.2.2004, p 711.
	No 56	*Local Government Amendment (Cudgegong (Abattoir) County Council Dissolution) Act 2003*. Assented to 31.10.2003. Date of commencement, assent, sec 2.
	No 82	*Statute Law (Miscellaneous Provisions) Act (No 2) 2003*. Assented to 27.11.2003. Date of commencement of Sch 1.17 [1], 1.7.1993, Sch 1.17; date of commencement of Sch 1.17 [2], assent, sec 2 (2).
	No 96	*Transport Administration Amendment (Rail Agencies) Act 2003*. Assented to 10.12.2003. Date of commencement of Sch 3, 1.1.2004, sec 2 and GG No 197 of 19.12.2003, p 11271.
	No 99	*Transport Administration Amendment (Sydney Ferries) Act 2003*. Assented to 10.12.2003. Date of commencement, 1.7.2004, sec 2 and GG No 104 of 25.6.2004, p 4387.
2004	No 25	*Local Government Amendment (Council and Employee Security) Act 2004*. Assented to 6.5.2004. Date of commencement, except Sch 3, assent, sec 2 (1); date of commencement of Sch 3, 1.1.2004, sec 2 (2).
	No 40	*State Water Corporation Act 2004*. Assented to 30.6.2004. Date of commencement of Sch 3.8, 1.7.2004, sec 2 and GG No 110 of 1.7.2004, p 4983.
	No 44	*Local Government Amendment (Mayoral Elections) Act 2004*. Assented to 6.7.2004. Date of commencement, assent, sec 2.
	No 55	*Statute Law (Miscellaneous Provisions) Act 2004*. Assented to 6.7.2004. Date of commencement of Sch 2.20, assent, sec 2 (2); date of commencement of Sch 3, assent, sec 2 (1).
	No 73	*Local Government Amendment (Discipline) Act 2004*. Assented to 28.9.2004. Date of commencement, 1.1.2005, sec 2 and GG No 201 of 17.12.2004, p 9621.
	No 91	*Statute Law (Miscellaneous Provisions) Act (No 2) 2004*. Assented to 10.12.2004. Date of commencement of Sch 2.47, assent, sec 2 (2).
	No 101	*Home Building Amendment Act 2004*. Assented to 15.12.2004. Date of commencement of Sch 9.7, 29.4.2005, sec 2 and GG No 50 of 29.4.2005, p 1530.
	No 108	*Rookwood Necropolis Amendment Act 2004*. Assented to 15.12.2004. Date of commencement of Sch 3.3, assent, sec 2 (1).
	No 113	*Local Government Amendment (Public-Private Partnerships) Act 2004*. Assented to 21.12.2004. Date of commencement, 1.9.2005, sec 2 and GG No 110 of 1.9.2005, p 6394 (Sch 1 [1] was not commenced and was repealed by the *Local Government Amendment Act 2005* No 59). Amended by *Local Government Amendment Act 2005* No 59. Assented to 1.7.2005. Date of commencement of Sch 2, 15.7.2005, sec 2 and GG No 90 of 15.7.2005, p 3704.
2005	No 10	*Independent Commission Against Corruption Amendment Act 2005*. Assented to 14.4.2005. Date of commencement of Sch 2.6, 6.6.2005, sec 2 and GG No 64 of 1.6.2005, p 1909.
	No 11	*Road Transport (General) Act 2005*. Assented to 14.4.2005. Date of commencement of Sch 3.19, 30.9.2005, sec 2 (1) and GG No 120 of 30.9.2005, p 7674.
	No 19	*Environmental Planning and Assessment Amendment (Development Contributions) Act 2005*. Assented to 18.5.2005. Date of commencement, 8.7.2005, sec 2 and GG No 86 of 8.7.2005, p 3573.

	No 49	*Local Government and Valuation of Land Amendment (Water Rights) Act 2005*. Assented to 27.6.2005. Date of commencement, 1.7.2005, sec 2.
	No 58	*Crown Lands Legislation Amendment Act 2005*. Assented to 1.7.2005. Date of commencement, 15.7.2005, sec 2 and GG No 90 of 15.7.2005, p 3703.
	No 59	*Local Government Amendment Act 2005*. Assented to 1.7.2005. Date of commencement of Sch 1, Sch 1 [6] excepted, 15.7.2005, sec 2 and GG No 90 of 15.7.2005, p 3704; date of commencement of Sch 1 [6], 28.4.2006, sec 2 and GG No 58 of 28.4.2006, p 2367.
	No 64	*Statute Law (Miscellaneous Provisions) Act 2005*. Assented to 1.7.2005. Date of commencement of Sch 1.16, assent, sec 2 (2).
	No 68	*Property Legislation Amendment Act 2005*. Assented to 19.10.2005. Date of commencement of Sch 5, 1.1.2006, sec 2 and GG No 157 of 16.12.2005, p 10880.
	No 70	*Local Government Amendment (Stormwater) Act 2005*. Assented to 19.10.2005. Date of commencement, 13.4.2006, sec 2 and GG No 52 of 13.4.2006, p 2102.
	No 98	*Statute Law (Miscellaneous Provisions) Act (No 2) 2005*. Assented to 24.11.2005. Date of commencement of Sch 3, assent, sec 2 (2).
2006	No 30	*Legal Profession Amendment Act 2006*. Assented to 26.5.2006. Date of commencement of Sch 9, 2.6.2006, sec 2 and GG No 72 of 2.6.2006, p 3730.
	No 31	*Local Government Amendment (Miscellaneous) Act 2006*. Assented to 26.5.2006. Date of commencement, 30.6.2006, sec 2 and GG No 84 of 30.6.2006, p 4786.
	No 52	*Local Government Amendment (Waste Removal Orders) Act 2006*. Assented to 20.6.2006. Date of commencement, assent, sec 2.
	No 58	*Statute Law (Miscellaneous Provisions) Act 2006*. Assented to 20.6.2006. Date of commencement of Sch 2.29, assent, sec 2 (2).
	No 84	*Ports Corporatisation and Waterways Management Amendment Act 2006*. Assented to 30.10.2006. Date of commencement, assent, sec 2.
	No 104	*Water Industry Competition Act 2006*. Assented to 27.11.2006. Date of commencement, 8.8.2008, sec 2 and GG No 95 of 8.8.2008, p 7438.
2007	No 22	*State Revenue and Other Legislation Amendment (Budget) Act 2007*. Assented to 4.7.2007. Date of commencement of Sch 5, assent, sec 2 (2).
	No 27	*Statute Law (Miscellaneous Provisions) Act 2007*. Assented to 4.7.2007. Date of commencement of Sch 1.25, assent, sec 2 (2).
	No 72	*Local Government Amendment Act 2007*. Assented to 7.12.2007. Date of commencement, 1.1.2008, sec 2 and GG No 185 of 21.12.2007, p 9814.
	No 82	*Statute Law (Miscellaneous Provisions) Act (No 2) 2007*. Assented to 7.12.2007. Date of commencement of Sch 1, assent, sec 2 (2); date of commencement of Sch 4, assent, sec 2 (1).
	No 92	*Miscellaneous Acts (Casino, Liquor and Gaming) Amendment Act 2007*. Assented to 13.12.2007. Date of commencement of Sch 4, 1.7.2008, sec 2 and GG No 76 of 27.6.2008, p 5867.
	No 94	*Miscellaneous Acts (Local Court) Amendment Act 2007*. Assented to 13.12.2007. Date of commencement of Schs 1.62 and 2, 6.7.2009, sec 2 and 2009 (314) LW 3.7.2009.
2008	No 3	*Local Government Amendment (Election Date) Act 2008*. Assented to 19.3.2008. Date of commencement, assent, sec 2.

	No 4	*Road Transport Legislation Amendment (Car Hoons) Act 2008*. Assented to 19.3.2008. Date of commencement of Sch 3.1, 26.9.2008, sec 2 and GG No 123 of 26.9.2008, p 9395.
	No 23	*Miscellaneous Acts Amendment (Same Sex Relationships) Act 2008*. Assented to 11.6.2008. Date of commencement, 22.9.2008, sec 2 and GG No 118 of 19.9.2008, p 9283.
	No 36	*Environmental Planning and Assessment Amendment Act 2008*. Assented to 25.6.2008. Schs 5.4 [1]–[3] and 6.2 [3]–[6] were not commenced and the Act was repealed by the *Environmental Planning and Assessment Amendment Act 2017* No 60; date of commencement of Sch 5.4 [4]–[7], 25.2.2011, sec 2 and 2010 (654) LW 1.12.2010.
	No 39	*Filming Related Legislation Amendment Act 2008*. Assented to 25.6.2008. Date of commencement, 30.3.2009, sec 2 and 2009 (103) LW 27.3.2009.
	No 43	*Election Funding Amendment (Political Donations and Expenditure) Act 2008*. Assented to 30.6.2008. Date of commencement, 10.7.2008, sec 2 and GG No 86 of 10.7.2008, p 6857.
	No 44	*Local Government and Planning Legislation Amendment (Political Donations) Act 2008*. Assented to 30.6.2008. Date of commencement, 1.10.2008, sec 2 and GG No 118 of 19.9.2008, p 9282.
	No 64	*Threatened Species Conservation Amendment (Special Provisions) Act 2008*. Assented to 1.7.2008. Date of commencement, assent, sec 2.
	No 92	*Local Government Amendment (Legal Status) Act 2008*. Assented to 20.11.2008. Date of commencement, assent, sec 2.
	No 100	*Graffiti Control Act 2008*. Assented to 3.12.2008. Date of commencement of Sch 2.3, 20.2.2009, sec 2 and GG No 38 of 20.2.2009, p 1035.
	No 101	*Liquor Legislation Amendment Act 2008*. Assented to 3.12.2008. Date of commencement, assent, sec 2.
	No 114	*Statute Law (Miscellaneous Provisions) Act (No 2) 2008*. Assented to 10.12.2008. Date of commencement of Sch 1.12 [1] and [2], 1.7.2009, Sch 1.12 and 2009 (254) LW 26.6.2009; date of commencement of Sch 1.12 [3]–[6]: not in force; date of commencement of Sch 1.12 [7]–[9], assent, sec 2 (2).
	No 115	*Transport Administration Amendment (Metro Rail) Act 2008*. Assented to 10.12.2008. Date of commencement, 27.1.2009, sec 2 and GG No 20 of 23.1.2009, p 395.
2009	No 9	*Western Lands Amendment Act 2009*. Assented to 7.4.2009. Date of commencement of Sch 3, assent, sec 2 (1).
	No 17	*Real Property and Conveyancing Legislation Amendment Act 2009*. Assented to 13.5.2009. Date of commencement of Sch 3, assent, sec 2 (1).
	No 54	*Government Information (Public Access) (Consequential Amendments and Repeal) Act 2009*. Assented to 26.6.2009. Date of commencement, 1.7.2010, sec 2 and 2010 (248) LW 18.6.2010.
	No 67	*Local Government Amendment (Planning and Reporting) Act 2009*. Assented to 1.10.2009. Date of commencement, assent, sec 2.
	No 102	*Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009*. Assented to 14.12.2009. Date of commencement 24.9.2010, sec 2 and 2010 (542) LW 24.9.2010.
	No 106	*Statute Law (Miscellaneous Provisions) Act (No 2) 2009*. Assented to 14.12.2009. Date of commencement of Schs 1.11 and 5, 8.1.2010, sec 2 (2).

2010 No 6 *Credit (Commonwealth Powers) Act 2010*. Assented to 23.3.2010.
Date of commencement of Sch 2, 1.7.2010, sec 2 and 2010 (267) LW 25.6.2010.

No 19 *Relationships Register Act 2010*. Assented to 19.5.2010.
Date of commencement of Sch 3, assent, sec 2 (2).

No 31 *Transport Administration Amendment Act 2010*. Assented to 9.6.2010.
Date of commencement, 1.7.2010, sec 2 and 2010 (294) LW 25.6.2010.

No 36 *Liquor Legislation Amendment Act 2010*. Assented to 15.6.2010.
Date of commencement, assent, sec 2.

No 37 *Local Government Amendment (General Rate Exemptions) Act 2010*. Assented to 15.6.2010.
Date of commencement, assent, sec 2.

No 38 *National Parks and Wildlife Amendment Act 2010*. Assented to 15.6.2010.
Date of commencement of Sch 3.6, 2.7.2010, sec 2 and 2010 (344) LW 2.7.2010.

No 48 *Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010*. Assented to 28.6.2010.
Date of commencement of Sch 5, 1.10.2010, sec 2 and 2010 (532) LW 17.9.2010.

No 57 *Personal Property Securities Legislation Amendment Act 2010*. Assented to 28.6.2010.
Date of commencement of Sch 1.14, 30.1.2012, sec 2 and 2011 (661) LW 16.12.2011.

No 59 *Statute Law (Miscellaneous Provisions) Act 2010*. Assented to 28.6.2010.
Date of commencement of Sch 1.17, 9.7.2010, sec 2 (2).

No 61 *Commercial Arbitration Act 2010*. Assented to 28.6.2010.
Date of commencement, 1.10.2010, sec 1B and 2010 (541) LW 24.9.2010.

No 78 *Coastal Protection and Other Legislation Amendment Act 2010*. Assented to 27.10.2010.
Date of commencement of Sch 2, 1.1.2011, sec 2 and 2010 (713) LW 17.12.2010.

No 84 *Protected Disclosures Amendment (Public Interest Disclosures) Act 2010*. Assented to 1.11.2010.
Date of commencement of Sch 2, 3.3.2011, sec 2 and 2011 (121) LW 3.3.2011.

No 97 *Health Services Amendment (Local Health Networks) Act 2010*. Assented to 16.11.2010.
Date of commencement of Sch 2, 1.1.2011, sec 2 (1) and 2010 (716) LW 17.12.2010.

No 110 *Local Government Amendment (Environmental Upgrade Agreements) Act 2010*. Assented to 29.11.2010.
Date of commencement, 18.2.2011, sec 2 and 2011 (65) LW 18.2.2011.

No 125 *Local Government Amendment (Confiscation of Alcohol) Act 2010*. Assented to 7.12.2010.
Date of commencement, assent, sec 2.

No 127 *Public Health Act 2010*. Assented to 7.12.2010.
Date of commencement of Sch 4, 1.9.2012, sec 2 and 2012 (275) LW 29.6.2012.

2011 No 4 *Health Services Amendment (Local Health Districts and Boards) Act 2011*. Assented to 16.5.2011.
Date of commencement, 1.7.2011, sec 2 and 2011 (313) LW 1.7.2011.

No 24 *Local Government Amendment (Elections) Act 2011*. Assented to 27.6.2011.
Date of commencement, assent, sec 2.

No 25 *Parliamentary, Local Council and Public Sector Executives Remuneration Legislation Amendment Act 2011*. Assented to 27.6.2011.
Date of commencement, assent, sec 2.

No 27 *Statute Law (Miscellaneous Provisions) Act 2011*. Assented to 27.6.2011.
Date of commencement of Sch 2.26, 8.7.2011, sec 2 (2).

No 41 *Transport Legislation Amendment Act 2011*. Assented to 13.9.2011.
Date of commencement of Sch 5.19, 1.11.2011, sec 2 and 2011 (559) LW 28.10.2011.

No 48 *Public Sector Employment and Management Amendment (Ethics and Public Service Commissioner) Act 2011*. Assented to 20.10.2011.
Date of commencement, 1.11.2011, sec 2 and 2011 (558) LW 28.10.2011.

No 49 *Local Government Amendment (Roadside Vehicle Sales) Act 2011*. Assented to 25.10.2011.
Date of commencement, assent, sec 2.

No 59 *Plumbing and Drainage Act 2011*. Assented to 16.11.2011.
Date of commencement, 1.7.2012, sec 2 and 2012 (298) LW 29.6.2012.

No 67 *Work Health and Safety Legislation Amendment Act 2011*. Assented to 28.11.2011.
Date of commencement of Sch 4, 1.1.2012, sec 2 (1).

2012 No 15 *Local Government Amendment Act 2012*. Assented to 4.4.2012.
Date of commencement of Sch 1, Sch 1 [9] excepted, assent, sec 2 (1); date of commencement of Sch 1 [9], 10.8.2012, sec 2 (2) and 2012 (361) LW 10.8.2012.

No 21 *Local Government Amendment (Elections) Act 2012*. Assented to 11.4.2012.
Date of commencement, assent, sec 2.

No 22 *Local Government Amendment (Members of Parliament) Act 2012*. Assented to 11.4.2012.
Date of commencement, assent, sec 2.

No 42 *Statute Law (Miscellaneous Provisions) Act 2012*. Assented to 21.6.2012.
Date of commencement of Sch 2.21, 6.7.2012, sec 2 (1).

No 43 *Public Sector Employment and Management Amendment (Procurement of Goods and Services) Act 2012*. Assented to 22.6.2012.
Date of commencement, 1.7.2012, sec 2 and 2012 (306) LW 29.6.2012.

No 71 *Coastal Protection Amendment Act 2012*. Assented to 22.10.2012.
Date of commencement, 21.1.2013, sec 2 and 2012 (643) LW 21.12.2012.

No 94 *Local Government Amendment (Conduct) Act 2012*. Assented to 21.11.2012.
Date of commencement, 1.3.2013, sec 2 and 2012 (645) LW 21.12.2012.

No 95 *Statute Law (Miscellaneous Provisions) Act (No 2) 2012*. Assented to 21.11.2012.
Date of commencement of Sch 1.11, 4.1.2013, sec 2 (1).

No 96 *Forestry Act 2012*. Assented to 21.11.2012.
Date of commencement of Sch 4.17, 1.1.2013, sec 2 and 2012 (680) LW 21.12.2012.

2013 No 19 *Road Transport Legislation (Repeal and Amendment) Act 2013*. Assented to 3.4.2013.
Date of commencement, 1.7.2013, sec 2 and 2013 (329) LW 28.6.2013.

No 43 *Local Government Amendment (Conduct of Elections) Act 2013*. Assented to 25.6.2013.
Date of commencement, assent, sec 2.

No 44 *Local Government Amendment (Early Intervention) Act 2013*. Assented to 25.6.2013.
Date of commencement, assent, sec 2.

No 47 *Statute Law (Miscellaneous Provisions) Act 2013*. Assented to 25.6.2013.
Date of commencement of Sch 1.18, 5.7.2013, sec 2 (1).

No 56 *Police Legislation Amendment (Special Constables) Act 2013*. Assented to 23.8.2013.
Date of commencement, 1.12.2014, sec 2 and 2014 (750) LW 28.11.2014.

No 95 *Civil and Administrative Legislation (Repeal and Amendment) Act 2013*. Assented to 20.11.2013.
Date of commencement of Schs 2.91, 7.3 and 8.12, 1.1.2014, sec 2.

	No 111	*Statute Law (Miscellaneous Provisions) Act (No 2) 2013*. Assented to 3.12.2013. Date of commencement of Schs 1 and 2, 3.1.2014, sec 2 (1).
2014	No 5	*Bail (Consequential Amendments) Act 2014*. Assented to 12.3.2014. Date of commencement, 20.5.2014, sec 2 and 2014 (235) LW 24.4.2014.
	No 30	*Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014*. Assented to 24.6.2014. Date of commencement, 1.12.2014, sec 2 and 2014 (744) LW 28.11.2014.
	No 31	*Law Enforcement (Powers and Responsibilities) Amendment Act 2014*. Assented to 24.6.2014. Date of commencement of Sch 5.7, 1.11.2014, sec 2 and 2014 (697) LW 31.10.2014.
	No 33	*Statute Law (Miscellaneous Provisions) Act 2014*. Assented to 24.6.2014. Date of commencement of Sch 3.18, 4.7.2014, sec 2 (1).
	No 64	*Multicultural NSW Legislation Amendment Act 2014*. Assented to 28.10.2014. Date of commencement, 24.11.2014, sec 2 and 2014 (714) LW 14.11.2014.
	No 74	*Water NSW Act 2014*. Assented to 11.11.2014. Date of commencement, 1.1.2015, sec 2 and 2014 (839) LW 19.12.2014.
	No 80	*Local Government Amendment (Elections) Act 2014*. Assented to 19.11.2014. Date of commencement, 6.2.2015, sec 2 and 2015 (42) LW 6.2.2015.
2015	No 24	**Biosecurity Act 2015**. Assented to 22.9.2015. Date of commencement of Sch 8.25, 1.7.2017, sec 2 and 2017 (227) LW 2.6.2017.
	No 37	*Local Government Amendment (Councillor Misconduct and Poor Performance) Act 2015*. Assented to 2.11.2015. Date of commencement, 13.11.2015, sec 2 and 2015 (686) LW 13.11.2015.
	No 50	*Strata Schemes Management Act 2015*. Assented to 5.11.2015. Date of commencement of Sch 4, 30.11.2016, sec 2 and 2016 (492) LW 12.8.2016.
	No 51	*Strata Schemes Development Act 2015*. Assented to 5.11.2015. Date of commencement, 30.11.2016, sec 2 and 2016 (658) LW 4.11.2016.
2016	No 13	*Fines Amendment Act 2016*. Assented to 11.5.2016. Date of commencement, 1.6.2016, sec 2 and 2016 (276) LW 1.6.2016.
	No 20	*Coastal Management Act 2016*. Assented to 7.6.2016. Date of commencement, 3.4.2018, sec 2 and 2018 (110) LW 29.3.2018.
	No 35	*Local Government and Elections Legislation Amendment (Integrity) Act 2016*. Assented to 1.7.2016. Date of commencement, assent, sec 2.
	No 38	*Local Government Amendment (Governance and Planning) Act 2016*. Assented to 30.8.2016. Date of commencement of Sch 1 [1]–[3] [5] [7] [9] [10] [13] [15] [16] [23] [24] [32] [33] [39] [46]–[49] and [80]–[83], 23.9.2016, sec 2 (1) and 2016 (588) LW 23.9.2016; date of commencement of Sch 1 [4] [27] [31] [34] [35] [40] [41] [75]–[77] [84] and [85]: not in force; date of commencement of Sch 1 [6] [8] [11] [12] [14] [17] [19]–[22] [88] and [89], assent, sec 2 (2); date of commencement of Sch 1 [18] [25] [26] [28]–[30] [50]–[74] [78] [79] [86] [87] [90] and [91], 14.12.2018, sec 2 (1) and 2018 (740) LW 14.12.2018; date of commencement of Sch 1 [36]–[38], 1.10.2016, sec 2 (1) and 2016 (588) LW 23.9.2016; date of commencement of Sch 1 [42]–[45], 25.11.2016, sec 2 (1) and 2016 (696) LW 25.11.2016.
	No 55	*Statute Law (Miscellaneous Provisions) Act (No 2) 2016*. Assented to 25.10.2016. Date of commencement of Sch 3.17, 6.1.2017, sec 2 (1).

2017	No 8	*Local Government Amendment (Rates—Merged Council Areas) Act 2017*. Assented to 31.3.2017. Date of commencement, assent, sec 2.
	No 9	*Fire and Emergency Services Levy Act 2017*. Assented to 4.4.2017. Date of commencement, assent, sec 2.
	No 12	*Transport Administration Amendment (Transport Entities) Act 2017*. Assented to 11.4.2017. Date of commencement of Sch 1, 1.7.2017, sec 2 and 2017 (330) LW 30.6.2017; date of commencement of Sch 2: not in force.
	No 17	*Crown Land Legislation Amendment Act 2017*. Assented to 17.5.2017. Date of commencement of Sch 2.10, 1.7.2018, sec 2 (1) and 2018 (225) LW 1.6.2018.
	No 22	*Statute Law (Miscellaneous Provisions) Act 2017*. Assented to 1.6.2017. Date of commencement of Sch 2, 7.7.2017, sec 2 (3).
	No 39	*Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Act 2017*. Assented to 14.8.2017. Date of commencement of Sch 5, assent, sec 2 (1).
	No 63	*Statute Law (Miscellaneous Provisions) Act (No 2) 2017*. Assented to 23.11.2017. Date of commencement of Sch 4.27, 14.1.2018, sec 2 (3).
	No 65	*Local Government Amendment (Regional Joint Organisations) Act 2017*. Assented to 30.11.2017. Date of commencement, 15.12.2017, sec 2 and 2017 (730) LW 15.12.2017.
	No 66	*Electoral Act 2017*. Assented to 30.11.2017. Date of commencement, 1.7.2018, sec 2 and 2018 (302) LW 29.6.2018. Amended by *Electoral Funding Act 2018* No 20. Assented to 30.5.2018. Date of commencement, 1.7.2018, sec 2 and 2018 (365) LW 29.6.2018.
	No 69	*Building Products (Safety) Act 2017*. Assented to 30.11.2017. Date of commencement of Sch 2.8, 18.12.2017, sec 2 (1) and 2017 (715) LW 15.12.2017.
2018	No 11	*State Debt Recovery Act 2018*. Assented to 21.3.2018. Date of commencement of Sch 3.10, 27.8.2018, sec 2 and 2018 (462) LW 24.8.2018.
	No 18	*Transport Administration Amendment (Sydney Metro) Act 2018*. Assented to 23.5.2018. Date of commencement, 1.7.2018, sec 2 and 2018 (275) LW 22.6.2018.
	No 23	*Road Transport Legislation Miscellaneous Amendments Act 2018*. Assented to 30.5.2018. Date of commencement of Sch 1.2, 1.7.2018, sec 2 (1).
	No 25	*Statute Law (Miscellaneous Provisions) Act 2018*. Assented to 15.6.2018. Date of commencement of Sch 2, 1.8.2018, sec 2 (3).
	No 29	*Justice Legislation Amendment Act (No 2) 2018*. Assented to 21.6.2018. Date of commencement of Sch 2, assent, sec 2 (1).
	No 31	*Water Management Amendment Act 2018*. Assented to 27.6.2018. Date of commencement of Sch 2.2, assent, sec 2 (2).
	No 59	*Emergency Services Legislation Amendment Act 2018*. Assented to 26.10.2018. Date of commencement of Sch 5, assent, sec 2 (1).
	No 68	*Statute Law (Miscellaneous Provisions) Act (No 2) 2018*. Assented to 31.10.2018. Date of commencement of Sch 2.21, 8.1.2019, sec 2 (1).
2019	No 6	*Local Government Amendment Act 2019*. Assented to 25.6.2019. Date of commencement of Sch 1 [1]–[3] [5]–[14] and [21], assent, sec 2 (1); date of commencement of Sch 1 [4] and [15]–[20]: not in force.

Chapter 1, introduction	Rep 2016 No 55, Sch 3.17 [2].
Sec 4	Am 1997 No 152, Sch 3 [1]; 2001 No 93, Sch 1 [1]; 2017 No 17, Sch 2.10 [1].
Sec 5	Am 2017 No 17, Sch 2.10 [2].
Sec 6	Am 2016 No 55, Sch 3.17 [1].
Chapter 2, introduction	Rep 2016 No 55, Sch 3.17 [2].
Sec 7	Am 1997 No 94, Sch 1 [1]. Subst 2016 No 38, Sch 1 [1].
Chapter 3	Subst 2016 No 38, Sch 1 [2].
Sec 8	Am 1996 No 69, Sch 3 [1]; 1997 No 94, Sch 1 [2]; 1998 No 16, Sch 1 [1]; 2000 No 77, Sch 3.4 [1]; 2009 No 67, Sch 1 [1]; 2014 No 64, Sch 2.9 [1]. Subst 2016 No 38, Sch 1 [2].
Secs 8A–8C	Ins 2016 No 38, Sch 1 [2].
Chapter 4, introduction	Am 1997 No 152, Sch 3 [2]; 2009 No 67, Sch 1 [2]. Rep 2016 No 55, Sch 3.17 [2].
Sec 9	Am 1995 No 12, Sch 1 [1]; 1997 No 61, Sch 1 [1]; 1997 No 145, Sch 1 [1] [2].
Sec 10	Am 1994 No 44, Sch 1 (1). Subst 1997 No 145, Sch 1 [3].
Sec 10A	Ins 1997 No 145, Sch 1 [3]. Am 1998 No 39, Sch 1 [1] [2]; 2002 No 40, Sch 1 [1] [2]; 2012 No 94, Sch 1 [1].
Sec 10B	Ins 1997 No 145, Sch 1 [3]. Am 2009 No 54, Sch 2.28 [1].
Secs 10C, 10D	Ins 1997 No 145, Sch 1 [3].
Sec 10E	Ins 1997 No 145, Sch 1 [3]. Rep 1998 No 39, Sch 1 [3].
Sec 11	Am 1995 No 12, Sch 1 [2]; 1997 No 145, Sch 1 [4].
Chapter 4, Part 2	Rep 2009 No 54, Sch 2.28 [2].
Sec 12	Am 1994 No 44, Sch 1 (2); 1997 No 61, Sch 1 [2]; 1997 No 145, Sch 1 [5]–[9]; 1997 No 152, Sch 3 [3]; 1998 No 39, Sch 1 [4]; 2001 No 19, Sch 1 [1]; 2001 No 93, Sch 1 [2] [3]; 2002 No 20, Sch 1 [1]; 2002 No 40, Sch 1 [3] [4]; 2004 No 73, Sch 3 [1]; 2005 No 19, Sch 2.2; 2008 No 44, Sch 1 [1]; 2008 No 100, Sch 2.3 [1]; 2009 No 67, Sch 1 [3]. Rep 2009 No 54, Sch 2.28 [2].
Sec 12A	Ins 1997 No 145, Sch 1 [10]. Rep 2009 No 54, Sch 2.28 [2].
Sec 12B	Ins 1997 No 145, Sch 1 [10]. Am 2000 No 53, Sch 1.15 [1]. Rep 2009 No 54, Sch 2.28 [2].
Sec 13	Rep 2009 No 54, Sch 2.28 [2].
Sec 16	Am 1994 No 44, Sch 1 (3).
Sec 20	Am 2006 No 31, Sch 1 [1].
Chapter 5, introduction	Rep 2016 No 55, Sch 3.17 [2].
Sec 22	Am 1995 No 75, Sch 1; 1996 No 139, Sch 2.22 [1] [2] (am 1997 No 55, Sch 2.18 [1] [2]); 1997 No 65, Sch 4.14 [1]; 1999 No 31, Sch 2.22 [1]; 2002 No 67, Sch 5.4; 2002 No 112, Sch 1.14 [1] [2]; 2003 No 43, Sch 1.5 [1]; 2009 No 54, Sch 2.28 [3]; 2010 No 127, Sch 4.15 [1]; 2015 No 51, Sch 9.13 [1]; 2016 No 20, Sch 4.5 [1]; 2018 No 59, Sch 5.1, 5.4.

Sec 23A	Ins 2000 No 112, Sch 3 [1].
Chapter 5, note	Am 2016 No 55, Sch 3.17 [3].
Chapter 6, introduction	Rep 2016 No 55, Sch 3.17 [2].
Chapter 6, Part 2, note	Am 2017 No 17, Sch 2.10 [3].
Sec 28	Am 2008 No 114, Sch 1.12 [1].
Sec 29	Am 1998 No 140, Sch 1 [1]; 2008 No 114, Sch 1.12 [2].
Sec 30	Am 1998 No 140, Sch 1 [2]–[4]; 2017 No 17, Sch 2.10 [4].
Sec 31	Am 1994 No 45, Sch 1; 2000 No 112, Sch 3 [2]; 2017 No 17, Sch 2.10 [5].
Sec 33	Am 1994 No 44, Sch 2 (1).
Sec 34	Am 1994 No 44, Sch 2 (2); 2000 No 112, Sch 3 [3].
Sec 36	Am 1998 No 140, Sch 1 [5]–[8].
Sec 36A	Ins 1998 No 140, Sch 1 [9]. Am 2015 No 37, Sch 2 [2]–[4].
Sec 36B	Ins 1998 No 140, Sch 1 [9]. Am 2015 No 37, Sch 2 [2] [3]
Sec 36C	Ins 1998 No 140, Sch 1 [9].
Sec 36D	Ins 1998 No 140, Sch 1 [9]. Am 2015 No 37, Sch 2 [2].
Sec 36DA	Ins 2002 No 40, Sch 1 [5].
Secs 36E–36N	Ins 1998 No 140, Sch 1 [9].
Sec 40	Am 1998 No 140, Sch 1 [10]; 2000 No 112, Sch 3 [4] [5].
Sec 40A	Ins 1998 No 140, Sch 1 [11]. Am 2000 No 112, Sch 3 [6]. Subst 2002 No 40, Sch 1 [6].
Sec 45	Am 1994 No 44, Sch 2 (3); 1998 No 140, Sch 1 [12] [13]; 2017 No 17, Sch 2.10 [6].
Sec 46	Subst 1998 No 140, Sch 1 [14]. Am 2000 No 6, Sch 1 [1]; 2002 No 40, Sch 1 [7]–[9]; 2008 No 39, Sch 1.3 [1]; 2012 No 15, Sch 1 [1].
Sec 46A	Ins 1998 No 140, Sch 1 [14].
Sec 47	Am 1998 No 140, Sch 1 [15]–[21]; 1999 No 31, Sch 2.22 [2]; 2012 No 15, Sch 1 [2]–[4]; 2018 No 25, Sch 2.18 [1] [2].
Sec 47A	Ins 1998 No 140, Sch 1 [22].
Sec 47AA	Ins 2000 No 6, Sch 1 [2].
Sec 47B	Ins 1998 No 140, Sch 1 [22]. Am 2000 No 6, Sch 1 [3].
Secs 47C–47F	Ins 1998 No 140, Sch 1 [22].
Sec 47G	Ins 1998 No 140, Sch 1 [23].
Sec 48	Am 2005 No 58, Sch 3.3 [1]; 2017 No 17, Sch 2.10 [7].
Sec 49	Am 2005 No 68, Sch 5 [1]–[3].

Sec 50	Am 2017 No 17, Sch 2.10 [8].
Sec 54A	Ins 2000 No 112, Sch 3 [7].
Sec 54B	Ins 2005 No 58, Sch 3.3 [2]. Am 2017 No 17, Sch 2.10 [9].
Chapter 6, Part 2, Div 3, note	Am 2017 No 17, Sch 2.10 [10] [11].
Chapter 6, Part 2A	Ins 2010 No 110, Sch 1 [1].
Sec 54C	Ins 2010 No 110, Sch 1 [1]. Am 2015 No 50, Sch 4.16 [1]; 2015 No 51, Sch 9.13 [2].
Secs 54D–54J	Ins 2010 No 110, Sch 1 [1].
Sec 54K	Ins 2010 No 110, Sch 1 [1]. Am 2015 No 50, Sch 4.16 [2].
Sec 54L	Ins 2010 No 110, Sch 1 [1]. Am 2013 No 47, Sch 1.18.
Secs 54M–54O	Ins 2010 No 110, Sch 1 [1].
Sec 54P	Ins 2010 No 110, Sch 1 [1]. Am 2015 No 37, Sch 2 [5].
Secs 54Q, 54R	Ins 2010 No 110, Sch 1 [1].
Sec 55	Am 1994 No 44, Sch 2 (4); 2000 No 53, Sch 1.15 [2]; 2000 No 112, Sch 3 [8] [9]; 2003 No 8, Sch 1 [1]; 2004 No 113, Sch 1 [2] (am 2005 No 59, Sch 2.2 [2]); 2005 No 64, Sch 1.16 [1]; 2007 No 72, Sch 1 [1] [2]; 2010 No 110, Sch 1 [2]; 2011 No 24, Sch 1 [1]; 2011 No 27, Sch 2.26 [1]; 2012 No 43, Sch 3.4; 2019 No 6, Sch 1 [1]–[3].
Sec 55A	Ins 2007 No 72, Sch 1 [3].
Chapter 6, Part 3, Div 2, heading	Subst 1994 No 44, Sch 2 (5).
Chapter 6, Part 3, Div 2, note	Ins 1994 No 82, Sch 3 (1). Rep 1995 No 94, Sch 5.8 [1].
Sec 56	Am 1994 No 44, Sch 2 (6); 1994 No 88, Sch 7; 1996 No 69, Sch 3 [2] [3]. Subst 2000 No 92, Sch 8.16 [1]. Am 2004 No 91, Sch 2.47 [1]; 2012 No 94, Sch 1 [2].
Sec 57	Am 1994 No 44, Sch 2 (7); 2000 No 53, Sch 1.15 [3]; 2012 No 94, Sch 1 [3].
Sec 58	Am 2000 No 53, Sch 1.15 [3]; 2012 No 94, Sch 1 [3].
Sec 59	Am 1994 No 44, Sch 2 (8); 2000 No 53, Sch 1.15 [3]; 2012 No 94, Sch 1 [3].
Sec 59A	Ins 2002 No 40, Sch 1 [10]. Am 2009 No 17, Sch 3.12 [1].
Sec 60	Am 2000 No 53, Sch 1.15 [3]; 2012 No 94, Sch 1 [3].
Sec 61	Am 1994 No 44, Sch 2 (9); 2000 No 53, Sch 1.15 [3]; 2012 No 94, Sch 1 [3].
Secs 62, 63	Am 2000 No 53, Sch 1.15 [3]; 2012 No 94, Sch 1 [3].
Sec 64	Subst 1997 No 152, Sch 3 [4]; 2000 No 92, Sch 8.16 [2].
Sec 65	Am 2000 No 53, Sch 1.15 [3]; 2012 No 94, Sch 1 [3].
Sec 66	Am 2000 No 53, Sch 1.15 [3]; 2012 No 94, Sch 1 [3]; 2013 No 44, Sch 1 [1]–[5].
Chapter 6, Part 3, Div 3, note	Ins 1994 No 82, Sch 3 (2). Rep 1995 No 94, Sch 5.8 [2].

Sec 67	Am 2001 No 19, Sch 1 [2]; 2002 No 20, Sch 1 [2]; 2003 No 8, Sch 1 [2]; 2008 No 100, Sch 2.3 [2].
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Chapter 6, Part 3, Div 4	Rep 2008 No 100, Sch 2.3 [3].
Sec 67A	Ins 2001 No 19, Sch 1 [3]. Subst 2002 No 20, Sch 1 [3]. Rep 2008 No 100, Sch 2.3 [3].
Secs 67B, 67C	Ins 2002 No 20, Sch 1 [3]. Rep 2008 No 100, Sch 2.3 [3].
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Sec 68	Am 1994 No 44, Sch 3 (1) (a) (b); 1994 No 82, Sch 3 (4); 1994 No 88, Sch 7; 1995 No 94, Sch 5.8 [4]; 2000 No 92, Sch 8.16 [3].
Sec 68, table	Am 1994 No 44, Sch 3 (1) (c); 1997 No 152, Sch 3 [9]–[11]; 2000 No 112, Sch 3 [10] [11]; 2001 No 93, Sch 1 [4]; 2002 No 40, Sch 1 [11]; 2003 No 8, Sch 1 [3].
Sec 68A	Ins 2002 No 40, Sch 1 [12].
Sec 68B	Ins 2010 No 57, Sch 1.14.
Sec 69	Subst 1997 No 152, Sch 3 [12].
Sec 70	Am 1997 No 61, Sch 1 [3]–[5]. Rep 1997 No 152, Sch 3 [13].
Sec 71	Am 1997 No 61, Sch 1 [6]. Rep 2001 No 93, Sch 1 [5].
Sec 82	Am 1997 No 61, Sch 1 [7]–[9].
Sec 89	Am 1997 No 94, Sch 1 [3] [4]; 1998 No 120, Sch 2.23 [1].
Sec 92	Am 1994 No 44, Sch 3 (2); 2001 No 93, Sch 1 [6] [7].
Sec 95	Am 1994 No 44, Sch 3 (3); 1997 No 152, Sch 3 [14].
Sec 97	Am 1994 No 44, Sch 3 (4).
Sec 99	Am 1994 No 44, Sch 3 (5); 2001 No 93, Sch 1 [8].
Sec 100	Am 1996 No 69, Sch 3 [4].
Sec 102	Am 1996 No 69, Sch 4 [1]. Subst 1996 No 122, Sch 7.9 [1].
Sec 102A	Ins 1996 No 122, Sch 7.9 [1]. Am 1997 No 152, Sch 3 [15].
Sec 103	Am 1997 No 61, Sch 1 [10]; 1997 No 152, Sch 3 [16].
Sec 104	Rep 1997 No 152, Sch 3 [17].
Sec 105	Am 1997 No 152, Sch 3 [18].
Sec 106	Am 1996 No 69, Sch 3 [5]; 1997 No 61, Sch 1 [11].
Sec 107	Am 1994 No 44, Sch 3 (6); 1996 No 69, Sch 3 [6].
Sec 107A	Ins 2002 No 40, Sch 1 [13].
Sec 108	Am 1994 No 44, Sch 3 (7).

Chapter 7, Part 1, Div 4	Rep 1997 No 152, Sch 3 [19]. Ins 2000 No 6, Sch 1 [4].
Sec 114	Am 1994 No 44, Sch 3 (7); 1996 No 139, Sch 2.22 [3]. Rep 1997 No 152, Sch 3 [19]. Ins 2000 No 6, Sch 1 [4].
Sec 115	Rep 1997 No 152, Sch 3 [19]. Ins 2000 No 6, Sch 1 [4].
Sec 116	Rep 1997 No 152, Sch 3 [19]. Ins 2000 No 6, Sch 1 [4]. Am 2008 No 39, Sch 1.3 [2] [3].
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Sec 119	Rep 1997 No 152, Sch 3 [19]. Ins 2000 No 6, Sch 1 [4].
Sec 119A	Ins 2000 No 6, Sch 1 [4].
Sec 119B	Ins 2000 No 6, Sch 1 [4]. Am 2008 No 39, Sch 1.3 [4] [5].
Sec 119C	Ins 2000 No 6, Sch 1 [4]. Am 2008 No 39, Sch 1.3 [6]–[8].
Sec 119CA	Ins 2008 No 39, Sch 1.3 [9].
Sec 119D	Ins 2000 No 6, Sch 1 [4]. Subst 2008 No 39, Sch 1.3 [10].
Sec 119E	Ins 2000 No 6, Sch 1 [4].
Sec 119F	Ins 2000 No 6, Sch 1 [4]. Am 2008 No 39, Sch 1.3 [11].
Chapter 7, Part 1, Div 5, heading	Am 1994 No 44, Sch 3 (8); 2001 No 93, Sch 1 [9].
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Sec 124	Am 1994 No 44, Sch 3 (10); 1994 No 82, Sch 3 (5); 1995 No 92, sec 29; 1995 No 94, Sch 5.8 [5]; 1995 No 102, Sch 6.4 [1]–[3]; 1996 No 69, Sch 3 [7]–[10]; 1996 No 122, Sch 7.9 [2]; 1997 No 156, Sch 4.11 [1]; 1999 No 97, Sch 2.6; 2001 No 56, Sch 1.8 [1]; 2010 No 127, Sch 4.15 [2]; 2017 No 69, Sch 2.8.
Sec 124, table	Am 1997 No 61, Sch 1 [12] [13]; 1997 No 152, Sch 3 [20]–[26]; 1997 No 156, Sch 4.11 [2] [3]; 2000 No 92, Sch 8.16 [4]; 2000 No 112, Sch 3 [12]; 2001 No 93, Sch 1 [11]; 2003 No 43, Sch 1.5 [2]; 2006 No 52, Sch 1 [1]; 2010 No 127, Sch 4.15 [3]; 2011 No 59, Schs 2.7 [1], 3.2 [1] [2].
Sec 126	Am 2017 No 17, Sch 2.10 [12] [13].
Sec 128	Am 1994 No 82, Sch 3 (6); 1995 No 94, Sch 5.8 [6].
Sec 128A	Ins 2006 No 52, Sch 1 [2].
Sec 129	Am 2006 No 52, Sch 1 [3].
Sec 131A	Ins 1997 No 61, Sch 1 [14].
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Sec 138A	Ins 1996 No 69, Sch 4 [4]. Am 1997 No 152, Sch 3 [27].
Sec 140	Am 1996 No 69, Schs 3 [11], 4 [5].
Sec 141	Am 1996 No 69, Sch 3 [12] [13].

Sec 142	Am 1994 No 44, Sch 3 (11); 1998 No 138, Sch 2.6; 2006 No 52, Sch 1 [5].
Sec 143	Am 2006 No 52, Sch 1 [6].
Sec 149	Rep 1997 No 152, Sch 3 [28].
Sec 150	Am 1994 No 44, Sch 3 (12); 1996 No 69, Sch 4 [6]. Rep 1997 No 152, Sch 3 [28].
Sec 151	Am 1996 No 69, Sch 4 [7] [8]. Rep 1997 No 152, Sch 3 [28].
Sec 153	Am 1997 No 152, Sch 3 [29].
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Sec 156	Am 1997 No 152, Sch 3 [31].
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Sec 180	Am 1996 No 69, Sch 3 [15]; 1997 No 152, Sch 3 [34]; 2006 No 52, Sch 1 [8].
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Sec 202	Am 1996 No 69, Sch 4 [9]–[11]. Rep 1997 No 152, Sch 3 [36].
Sec 203	Am 1996 No 69, Sch 4 [12]. Rep 1997 No 152, Sch 3 [36].
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Sec 209	Rep 1999 No 38, Sch 1 [2].
Sec 210	Am 2002 No 40, Sch 1 [15].
Sec 210A	Ins 2002 No 40, Sch 1 [16]. Am 2009 No 102, Sch 6.3 [1]; 2017 No 66, Sch 8.16 [1].

Sec 210B	Ins 2011 No 24, Sch 1 [2].
Sec 211	Am 1994 No 44, Sch 5 (1); 1998 No 141, Sch 1 [1]–[3]. Subst 2002 No 40, Sch 1 [17].
Sec 213	Am 1994 No 44, Sch 5 (2); 1999 No 38, Sch 1 [3] [4]; 2003 No 30, Sch 1 [1]; 2017 No 65, Sch 1 [1] [2].
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Sec 214	Am 1999 No 38, Sch 1 [6].
Sec 218	Am 1999 No 38, Sch 1 [7]; 2002 No 40, Sch 1 [19] [20].
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Sec 218C	Ins 1999 No 38, Sch 1 [8]. Am 2003 No 30, Sch 1 [2].
Sec 218CA	Ins 2004 No 25, Sch 4 [1].
Sec 218CB	Ins 2017 No 8, Sch 1. Am 2019 No 6, Sch 1 [5].
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Sec 218F	Ins 1999 No 38, Sch 1 [8]. Am 2004 No 25, Sch 1 [1].
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Sec 221	Am 2008 No 92, Sch 1 [2].
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Sec 224A	Ins 2005 No 59, Sch 1 [1]. Am 2011 No 24, Sch 1 [3] [4].
Sec 226	Subst 2016 No 38, Sch 1 [5].
Sec 228	Am 1996 No 69, Sch 4 [13].
Sec 229	Am 1996 No 69, Sch 4 [14].
Sec 230	Am 2016 No 38, Sch 1 [6].
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Sec 233A	Ins 2016 No 38, Sch 1 [8].
Sec 234	Am 1998 No 16, Sch 1 [2]; 2002 No 40, Sch 1 [21] [22]; 2006 No 31, Sch 1 [2]; 2012 No 15, Sch 1 [5]; 2012 No 94, Sch 1 [4]; 2013 No 44, Sch 1 [6]; 2015 No 37, Sch 1 [1]; 2016 No 38, Sch 1 [9] [10].
Sec 239	Am 1994 No 44, Sch 5 (3).

Sec 240	Am 1994 No 44, Sch 5 (4).
Sec 241	Am 1994 No 44, Sch 5 (5).
Sec 242	Am 1994 No 44, Sch 5 (6).
Sec 242A	Ins 2011 No 25, Sch 2. Am 2016 No 38, Sch 1 [11].
Sec 247	Am 2014 No 33, Sch 3.18 [1].
Sec 248A	Ins 1995 No 12, Sch 1 [3]. Subst 2004 No 73, Sch 1 [1]. Am 2013 No 44, Sch 1 [7] [8].
Sec 252	Am 2000 No 112, Sch 3 [13]; 2005 No 59, Sch 1 [2] [3]; 2016 No 38, Sch 1 [12].
Sec 253	Subst 2000 No 112, Sch 3 [14]; 2005 No 59, Sch 1 [4]. Am 2016 No 38, Sch 1 [13] [14].
Sec 254	Am 2000 No 112, Sch 3 [15].
Sec 254A	Ins 1995 No 12, Sch 1 [4]. Am 2002 No 40, Sch 1 [23] [24].
Sec 255	Am 2002 No 19, Sch 1 [1]; 2013 No 44, Sch 1 [9]–[11].
Sec 256	Am 2013 No 44, Sch 1 [12].
Sec 257	Am 2013 No 44, Sch 1 [13].
Sec 258	Am 2013 No 44, Sch 1 [14]–[18]; 2016 No 38, Sch 1 [15] [16].
Sec 261	Am 2015 No 37, Sch 2 [6].
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Sec 263	Am 1999 No 38, Sch 1 [9] [10]; 1999 No 85, Sch 2.33.
Sec 264	Am 2005 No 98, Sch 3.40 [2].
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Sec 266	Am 2009 No 102, Sch 6.3 [2]; 2017 No 66, Sch 8.16 [2].
Sec 269	Am 2012 No 21, Sch 1 [1] [2]; 2017 No 66, Sch 8.16 [3].
Sec 270	Am 1994 No 44, Sch 6 (1); 1996 No 139, Sch 2.22 [4] (am 1997 No 55, Sch 2.18 [1] [2]); 2015 No 51, Sch 9.13 [3].
Sec 271	Am 1994 No 44, Sch 6 (2); 2000 No 53, Sch 1.15 [4].
Sec 275	Am 1999 No 31, Sch 2.22 [3] [4]; 1999 No 94, Sch 4.130 [1]; 2001 No 34, Sch 4.33 [1]; 2010 No 48, Sch 5.11; 2012 No 22, Sch 1 [1] [2]; 2013 No 95, Sch 2.91 [1]; 2015 No 37, Sch 1 [2]; 2016 No 35, Sch 2 [1].
Sec 277	Am 2013 No 44, Sch 1 [19].
Sec 281	Am 1995 No 11, Sch 1.75 [1].
Sec 283	Am 1995 No 11, Sch 1.75 [2]; 1995 No 12, Sch 1 [5].
Sec 285	Subst 1994 No 44, Sch 6 (3); 2012 No 15, Sch 1 [7].
Sec 287	Am 2003 No 23, Sch 1 [1]; 2008 No 3, Sch 1 [1]; 2013 No 44, Sch 1 [20].
Sec 290	Am 2012 No 21, Sch 1 [3]; 2013 No 44, Sch 1 [21].

Sec 291A	Ins 2014 No 80, Sch 1 [1]. Am 2016 No 38, Sch 1 [17].
Sec 292	Am 1998 No 141, Sch 1 [4]. Subst 2011 No 24, Sch 1 [6].
Sec 294	Am 2003 No 23, Sch 1 [2]; 2006 No 31, Sch 1 [3]; 2011 No 24, Sch 1 [7].
Sec 294A	Ins 2005 No 59, Sch 1 [5].
Sec 294B	Ins 2011 No 24, Sch 1 [8].
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Sec 296AA	Ins 2014 No 80, Sch 1 [2]. Am 2019 No 6, Sch 1 [6]–[8].
Sec 296	Subst 2011 No 24, Sch 1 [9]; 2013 No 43, Sch 1 [1]. Am 2019 No 6, Sch 1 [6] [9].
Sec 296A	Ins 2011 No 24, Sch 1 [9]. Am 2019 No 6, Sch 1 [10] [11].
Sec 296B	Ins 2011 No 24, Sch 1 [9].
Sec 297	Subst 2011 No 24, Sch 1 [9].
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Sec 298	Am 2012 No 21, Sch 1 [4]; 2014 No 80, Sch 1 [3]; 2017 No 66, Sch 8.16 [4]; 2019 No 6, Sch 1 [6] [12].
Sec 299	Subst 2011 No 24, Sch 1 [11]. Am 2014 No 80, Sch 1 [4]–[6]; 2019 No 6, Sch 1 [13].
Sec 300	Subst 2011 No 24, Sch 1 [11]. Am 2014 No 80, Sch 1 [7]–[9]; 2019 No 6, Sch 1 [13].
Sec 301	Am 2003 No 7, Sch 2; 2012 No 21, Sch 1 [5]–[8].
Sec 303	Am 1997 No 77, Sch 5.19 [1] [2]; 2012 No 21, Sch 1 [9]; 2013 No 95, Sch 2.91 [2] [3].
Sec 305	Am 2000 No 53, Sch 1.15 [5]. Subst 2012 No 21, Sch 1 [10].
Sec 306	Am 1998 No 141, Sch 1 [5]; 2000 No 112, Sch 1 [1]; 2017 No 66, Sch 8.16 [5].
Sec 308	Am 1998 No 141, Sch 1 [6]–[8].
Sec 308A	Ins 1995 No 12, Sch 1 [6]. Am 1998 No 141, Sch 1 [9]. Subst 2000 No 112, Sch 1 [2].
Sec 308B	Ins 1995 No 12, Sch 1 [6]. Subst 2000 No 112, Sch 1 [2].
Sec 308C	Ins 1995 No 12, Sch 1 [6]. Am 2000 No 112, Sch 1 [3] [4].
Sec 308D	Ins 1995 No 12, Sch 1 [6]. Am 2000 No 112, Sch 1 [5].
Sec 309	Am 2000 No 53, Sch 1.15 [6].
Sec 310A	Ins 2000 No 112, Sch 1 [6]. Am 2001 No 56, Sch 1.8 [2]–[4].
Sec 310B	Ins 2014 No 80, Sch 1 [10].
Sec 311	Am 2000 No 53, Sch 1.15 [7].
Sec 313	Subst 1998 No 141, Sch 1 [10]; 2011 No 24, Sch 1 [12]; 2012 No 21, Sch 1 [11]. Am 2019 No 6, Sch 1 [14].
Sec 314	Am 1998 No 141, Sch 1 [11]–[14].

Sec 315	Am 1998 No 141, Sch 1 [15] [16].
Sec 316	Am 2012 No 21, Sch 1 [12].
Sec 317	Am 2011 No 24, Sch 1 [13]; 2019 No 6, Sch 1 [13].
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Sec 320	Am 1995 No 11, Sch 1.75 [3]. Subst 1999 No 70, Sch 3. Am 2000 No 112, Sch 1 [7] [8]; 2017 No 66, Sch 8.16 [6] [7].
Chapter 10, Part 8	Rep 2008 No 43, sec 4 (1). Ins 2017 No 66, Sch 8.16 [8].
Sec 325	Rep 2008 No 43, sec 4 (1). Ins 2017 No 66, Sch 8.16 [8] (am 2018 No 20, Sch 3.2 [1]). Am 2018 No 68, Sch 2.21 [1].
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Sec 328	Am 1998 No 141, Sch 1 [17]–[20]; 2000 No 53, Sch 1.15 [8] [9]. Rep 2008 No 43, sec 4 (1).
Chapter 10, Part 8A	Ins 2008 No 44, Sch 1 [2].
Sec 328A	Ins 2008 No 44, Sch 1 [2]. Am 2012 No 94, Sch 1 [5]; 2014 No 30, Sch 4.3.
Sec 328B	Ins 2008 No 44, Sch 1 [2]. Am 2012 No 94, Sch 1 [6].
Sec 329	Subst 1998 No 48, Sch 2.10. Am 2002 No 19, Sch 1 [2]; 2004 No 73, Sch 3 [2]; 2013 No 95, Schs 2.91 [4] [5], 7.3 [1]; 2016 No 38, Sch 1 [18].
Sec 330	Subst 1998 No 48, Sch 2.10. Rep 2013 No 95, Sch 2.91 [6].
Sec 331	Subst 1998 No 48, Sch 2.10. Am 2013 No 95, Sch 2.91 [7].
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Sec 332	Am 1994 No 44, Sch 7; 2016 No 38, Sch 1 [19] [20].
Sec 333	Am 2016 No 38, Sch 1 [21] [22].
Sec 335	Am 2009 No 67, Sch 1 [6]. Subst 2016 No 38, Sch 1 [23].
Sec 336	Am 1998 No 34, Sch 1.5 [1] [2]; 1999 No 94, Sch 4.130 [2].
Sec 338	Am 2005 No 59, Sch 1 [6].
Sec 339	Rep 2016 No 38, Sch 1 [24].
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Sec 344	Am 1998 No 34, Sch 1.5 [3]–[5]; 2010 No 59, Sch 1.17.
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Sec 346	Am 2011 No 48, Sch 2.5.
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Sec 348	Am 2000 No 112, Sch 3 [16]; 2018 No 25, Sch 2.18 [3].
Sec 349	Am 1998 No 34, Sch 1.5 [6].
Sec 351	Am 2008 No 92, Sch 1 [3].

Sec 352	Subst 2004 No 73, Sch 2 [1].
Sec 354A	Ins 2003 No 30, Sch 1 [3].
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Sec 354B	Ins 2003 No 30, Sch 1 [4]. Am 2004 No 25, Sch 3 [1] [2].
Sec 354C	Ins 2003 No 30, Sch 1 [4].
Sec 354D	Ins 2003 No 30, Sch 1 [4]. Am 2004 No 25, Sch 3 [3].
Sec 354E	Ins 2003 No 30, Sch 1 [4]. Am 2004 No 25, Sch 3 [4].
Sec 354F	Ins 2003 No 30, Sch 1 [4]. Subst 2004 No 25, Sch 3 [5].
Sec 354G	Ins 2003 No 30, Sch 1 [4]. Am 2004 No 25, Sch 3 [6] [7].
Sec 354H	Ins 2003 No 30, Sch 1 [4]. Am 2004 No 25, Sch 3 [8].
Sec 354I	Ins 2004 No 25, Sch 3 [9].
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Sec 355	Am 1998 No 16, Sch 1 [3]; 2017 No 65, Sch 1 [3].
Sec 356	Am 1997 No 61, Sch 1 [15]; 2001 No 19, Sch 1 [4]; 2002 No 20, Sch 1 [4] [5]; 2008 No 100, Sch 2.3 [4]; 2009 No 67, Sch 1 [7].
Sec 358	Am 2003 No 82, Sch 1.17 [1]; 2004 No 113, Sch 1 [3] [4]; 2008 No 92, Sch 1 [4].
Sec 360	Subst 2016 No 38, Sch 1 [25].
Sec 362	Am 2016 No 38, Sch 1 [26].
Sec 366	Am 1994 No 44, Sch 8 (1); 1995 No 12, Sch 1 [7].
Sec 367	Am 1997 No 61, Sch 1 [16]; 1997 No 145, Sch 1 [11] [12].
Sec 368	Am 2013 No 44, Sch 1 [22].
Sec 370A	Ins 2016 No 38, Sch 1 [28].
Sec 372	Am 2004 No 73, Sch 3 [3] [4]; 2016 No 38, Sch 1 [29].
Sec 374	Am 2000 No 53, Sch 1.15 [11]; 2016 No 38, Sch 1 [30].
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Sec 379	Am 1996 No 69, Sch 4 [15]; 2017 No 65, Sch 1 [5]–[7].
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Sec 397	Am 1999 No 38, Sch 1 [12].
Sec 400	Am 1994 No 44, Sch 8 (5); 1999 No 38, Sch 1 [13]; 2000 No 53, Sch 1.15 [12]; 2017 No 65, Sch 1 [9].
Sec 400AA	Ins 2003 No 56, Sch 1 [1].
Sec 400A	Ins 1997 No 1, Sch 1. Rep 2003 No 56, Sch 1 [2].
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Sec 403	Am 1997 No 94, Sch 1 [5]; 2002 No 40, Sch 1 [26] [27]. Subst 2009 No 67, Sch 1 [10].
Sec 404	Am 2003 No 8, Sch 1 [4]. Subst 2009 No 67, Sch 1 [10].
Sec 405	Subst 2009 No 67, Sch 1 [10].
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Sec 407	Subst 1994 No 44, Sch 9 (1). Am 1996 No 69, Sch 4 [17]; 2000 No 112, Sch 3 [17]. Rep 2009 No 67, Sch 1 [10].

Sec 409	Am 1996 No 24, Sch 1; 1998 No 140, Sch 1 [24]; 2003 No 8, Sch 1 [5]–[7]; 2017 No 9, Sch 4.4 [2].
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Sec 431	Am 1996 No 24, Sch 1; 2013 No 44, Sch 1 [27]–[30].
Sec 432	Am 2013 No 44, Sch 1 [31].
Sec 433	Am 2007 No 82, Sch 1.15 [3]; 2013 No 44, Sch 1 [32].
Sec 434	Am 2013 No 44, Sch 1 [33]; 2015 No 37, Sch 1 [3] [4].
Sec 434A	Ins 1998 No 90, Sch 1 [1].
Sec 434B	Ins 2011 No 24, Sch 1 [14]. Am 2013 No 44, Sch 1 [34] [35]; 2013 No 95, Sch 2.91 [8] [9].
Sec 434C	Ins 2013 No 44, Sch 1 [36].

Sec 435	Am 2004 No 73, Sch 1 [2]; 2013 No 44, Sch 1 [37]–[39].
Sec 436	Am 2013 No 44, Sch 1 [40].
Sec 437	Am 1997 No 77, Sch 5.19 [3]; 2013 No 95, Sch 2.91 [10] [11].
Chapter 13, Part 6	Ins 2013 No 44, Sch 1 [41].
Sec 438A	Ins 2013 No 44, Sch 1 [41]. Am 2015 No 37, Sch 1 [5]–[7].
Sec 438B	Ins 2013 No 44, Sch 1 [41].
Sec 438C	Ins 2013 No 44, Sch 1 [41]. Am 2015 No 37, Sch 1 [8]–[16]; 2016 No 38, Sch 1 [42].
Secs 438D, 438E	Ins 2013 No 44, Sch 1 [41].
Sec 438F	Ins 2013 No 44, Sch 1 [41]. Am 2015 No 37, Sch 1 [17].
Sec 438G	Ins 2013 No 44, Sch 1 [41]. Am 2015 No 37, Sch 1 [18]; 2016 No 38, Sch 1 [43] [44].
Sec 438H	Ins 2013 No 44, Sch 1 [41].
Sec 438HA	Ins 2015 No 37, Sch 1 [19].
Secs 438HB, 438HC	Ins 2016 No 38, Sch 1 [45].
Chapter 13, Part 7	Ins 2013 No 44, Sch 1 [41].
Secs 438I–438L	Ins 2013 No 44, Sch 1 [41].
Sec 438M	Ins 2013 No 44, Sch 1 [41]. Am 2016 No 38, Sch 1 [46] [47].
Secs 438N–438T	Ins 2013 No 44, Sch 1 [41].
Chapter 13, Part 8	Ins 2013 No 44, Sch 1 [41].
Sec 438U	Ins 2013 No 44, Sch 1 [41].
Sec 438V	Ins 2013 No 44, Sch 1 [41]. Am 2013 No 95, Sch 2.91 [12] [13].
Secs 438W–438X	Ins 2013 No 44, Sch 1 [41].
Sec 438Y	Ins 2013 No 44, Sch 1 [41]. Am 2016 No 38, Sch 1 [48] [49].
Secs 438Z–438ZC	Ins 2013 No 44, Sch 1 [41].
Chapter 13, Part 9 (sec 438ZD)	Ins 2013 No 44, Sch 1 [41].
Chapter 14, introduction	Am 2004 No 73, Sch 3 [5] [6]; 2012 No 94, Sch 1 [7] [8]; 2013 No 95, Sch 7.3 [2]. Rep 2016 No 38, Sch 1 [50].
Chapter 14, Part 1, Div 1, heading	Ins 2002 No 19, Sch 1 [3].
Sec 439AA	Ins 2016 No 38, Sch 1 [51].
Sec 439	Am 1994 No 44, Sch 10 (1); 2012 No 94, Sch 1 [9]; 2016 No 38, Sch 1 [52].
Sec 440	Am 2003 No 82, Sch 1.17 [2]. Subst 2004 No 73, Sch 1 [3]. Am 2012 No 94, Sch 1 [10]; 2016 No 38, Sch 1 [53] [54].
Secs 440AAA, 440AAB	Ins 2016 No 38, Sch 1 [55].

Sec 440AA	Ins 2012 No 94, Sch 1 [11]. Am 2016 No 38, Sch 1 [56].
Chapter 14, Part 1, Div 2	Ins 2002 No 19, Sch 1 [4].
Sec 440A	Ins 2002 No 19, Sch 1 [4].
Sec 440B	Ins 2002 No 19, Sch 1 [4]. Am 2015 No 37, Sch 1 [20]–[22].
Sec 440C	Ins 2002 No 19, Sch 1 [4]. Am 2013 No 44, Sch 1 [42]; 2015 No 37, Sch 1 [23].
Sec 440D	Ins 2002 No 19, Sch 1 [4]. Am 2015 No 37, Sch 1 [24].
Sec 440E	Ins 2002 No 19, Sch 1 [4].
Chapter 14, Part 1, Div 3	Ins 2004 No 73, Sch 1 [4]. Subst 2012 No 94, Sch 1 [12].
Sec 440F	Ins 2004 No 73, Sch 1 [4]. Subst 2012 No 94, Sch 1 [12]. Am 2015 No 37, Sch 1 [25]; Am 2016 No 38, Sch 1 [57]–[59].
Sec 440G	Ins 2004 No 73, Sch 1 [4]. Subst 2012 No 94, Sch 1 [12]. Am 2015 No 37, Sch 1 [26].
Sec 440H	Ins 2004 No 73, Sch 1 [4]. Am 2005 No 10, Sch 2.6. Subst 2012 No 94, Sch 1 [12]. Am 2015 No 37, Sch 1 [27]–[30].
Sec 440I	Ins 2004 No 73, Sch 1 [4]. Subst 2012 No 94, Sch 1 [12]. Am 2015 No 37, Sch 1 [31].
Sec 440J	Ins 2004 No 73, Sch 1 [4]. Subst 2012 No 94, Sch 1 [12]. Am 2013 No 95, Sch 7.3 [3].
Sec 440K	Ins 2004 No 73, Sch 1 [4]. Subst 2012 No 94, Sch 1 [12]. Am 2013 No 44, Sch 1 [43].
Sec 440L	Ins 2004 No 73, Sch 1 [4]. Subst 2012 No 94, Sch 1 [12]. Am 2013 No 44, Sch 1 [44]; 2013 No 95, Sch 7.3 [4]–[6]; 2015 No 37, Sch 1 [32]–[34] .
Sec 440M	Ins 2004 No 73, Sch 1 [4]. Subst 2012 No 94, Sch 1 [12]. Am 2013 No 95, Sch 2.91 [14] [15].
Sec 440N	Ins 2004 No 73, Sch 1 [4]. Subst 2012 No 94, Sch 1 [12]. Am 2013 No 95, Sch 7.3 [7].
Sec 440O	Ins 2004 No 73, Sch 1 [4]. Subst 2012 No 94, Sch 1 [12].
Sec 440P	Ins 2004 No 73, Sch 1 [4]. Rep 2012 No 94, Sch 1 [12]. Ins 2013 No 44, Sch 1 [45].
Sec 440Q	Ins 2004 No 73, Sch 1 [4]. Rep 2012 No 94, Sch 1 [12].
Chapter 14, Part 2, Divs 1–4	Rep 2016 No 38, Sch 1 [60].
Sec 441	Am 1994 No 44, Sch 10 (2). Rep 2016 No 38, Sch 1 [60].
Sec 442	Am 2005 No 59, Sch 1 [7]. Rep 2016 No 38, Sch 1 [60].
Sec 443	Am 1994 No 44, Sch 10 (3); 1996 No 69, Sch 4 [25]; 1998 No 16, Sch 1 [16]; 2005 No 59, Sch 1 [8] [9]; 2010 No 19, Sch 3.60 [1]. Rep 2016 No 38, Sch 1 [60].
Secs 444, 445	Rep 2016 No 38, Sch 1 [60].
Sec 446	Am 1995 No 12, Sch 1 [10]. Rep 2016 No 38, Sch 1 [60].
Sec 447	Rep 2016 No 38, Sch 1 [60].
Sec 448	Am 1996 No 69, Sch 4 [26]. Subst 2000 No 112, Sch 2 [3]. Am 2005 No 59, Sch 1 [10] [11]; 2012 No 15, Sch 1 [8]; 2016 No 35, Sch 2 [2]. Rep 2016 No 38, Sch 1 [60].

Chapter 14, Part 2, Div 1, table	Am 1998 No 16, Sch 1 [18] (consequential); 2000 No 112, Sch 2 [2]; 2004 No 55, Sch 2.20. Rep 2016 No 38, Sch 1 [60].
Sec 449	Am 2000 No 112, Sch 2 [4]–[6]; 2003 No 23, Sch 1 [3]. Rep 2016 No 38, Sch 1 [60].
Sec 450	Rep 2000 No 112, Sch 2 [7].
Sec 450A	Ins 1996 No 69, Sch 4 [27]. Rep 2016 No 38, Sch 1 [60].
Sec 451	Am 2000 No 112, Sch 2 [8] [9]; 2005 No 59, Sch 1 [12]; 2012 No 15, Sch 1 [9]; 2015 No 37, Sch 1 [35]. Rep 2016 No 38, Sch 1 [60].
Sec 452	Am 1995 No 12, Sch 1 [11]; 1997 No 152, Sch 3 [38]. Rep 2000 No 112, Sch 2 [10].
Secs 453, 454	Rep 2016 No 38, Sch 1 [60].
Sec 455	Rep 2000 No 112, Sch 2 [11].
Sec 456	Am 2000 No 112, Sch 2 [12]. Rep 2016 No 38, Sch 1 [60].
Sec 457	Rep 2016 No 38, Sch 1 [60].
Sec 458	Am 2000 No 112, Sch 2 [13]. Rep 2016 No 38, Sch 1 [60].
Sec 459	Am 1998 No 16, Sch 1 [17]; 2000 No 112, Sch 2 [14]. Rep 2016 No 38, Sch 1 [60].
Chapter 14, Part 3, heading	Am 2015 No 37, Sch 1 [36].
Chapter 14, Part 3, flowchart	Am 2000 No 112, Sch 2 [15]–[17]; 2005 No 64, Sch 1.16 [2] [3]. Rep 2016 No 38, Sch 1 [61].
Sec 460	Am 1995 No 12, Sch 1 [12]; 2016 No 38, Sch 1 [62]–[64].
Sec 463	Am 2000 No 112, Sch 2 [18].
Sec 464	Am 2000 No 112, Sch 2 [19]; 2016 No 38, Sch 1 [65].
Sec 465	Am 2004 No 73, Sch 3 [7]; 2013 No 95, Sch 7.3 [8].
Sec 466	Am 2000 No 112, Sch 2 [20].
Sec 467	Am 2016 No 38, Sch 1 [66].
Sec 468	Am 2004 No 73, Sch 3 [7]; 2013 No 95, Sch 7.3 [9].
Chapter 14, Part 3, Div 2, heading	Am 2004 No 73, Sch 1 [5]; 2013 No 95, Sch 7.3 [10]; 2016 No 38, Sch 1 [67].
Sec 469	Subst 2000 No 112, Sch 2 [27]. Am 2004 No 73, Sch 3 [8]; 2013 No 95, Sch 7.3 [11] [12].
Sec 470	Subst 2000 No 112, Sch 2 [27]. Am 2004 No 73, Sch 3 [9]; 2013 No 95, Sch 7.3 [13] [14].
Chapter 14, Part 3, Div 3, heading	Ins 2004 No 73, Sch 1 [6]. Am 2012 No 94, Sch 1 [13]; 2013 No 95, Sch 7.3 [15].
Chapter 14, Part 3, Div 3	Ins 2004 No 73, Sch 1 [6].
Sec 470A	Ins 2004 No 73, Sch 1 [6]. Am 2012 No 94, Sch 1 [14]; 2013 No 95, Sch 7.3 [16] [17]; 2015 No 37, Sch 1 [37].
Sec 470B	Ins 2004 No 73, Sch 1 [6]. Am 2012 No 94, Sch 1 [15]; 2013 No 95, Sch 7.3 [18] [19]; 2015 No 37, Sch 1 [38].

Chapter 14, Part 3, Div 4, heading	Ins 2004 No 73, Sch 1 [7]. Am 2013 No 95, Sch 7.3 [20].
Sec 471	Am 2004 No 73, Sch 3 [10]. Rep 2013 No 95, Sch 7.3 [21].
Sec 472	Am 2004 No 73, Sch 3 [10]. Rep 2013 No 95, Sch 7.3 [22].
Sec 473	Am 2000 No 112, Sch 2 [28]; 2004 No 73, Sch 3 [10]; 2005 No 98, Sch 3.40 [3]. Rep 2013 No 95, Sch 7.3 [23].
Sec 474	Am 2000 No 112, Sch 2 [29]; 2004 No 73, Sch 3 [10]. Rep 2013 No 95, Sch 7.3 [24].
Sec 475	Am 1994 No 44, Sch 10 (4); 2000 No 112, Sch 2 [30]; 2004 No 73, Sch 3 [10]. Rep 2013 No 95, Sch 7.3 [25].
Sec 476	Am 2004 No 73, Sch 3 [10]. Rep 2013 No 95, Sch 7.3 [26].
Sec 477	Am 2004 No 73, Sch 3 [10]; 2005 No 98, Sch 3.40 [3] [4]. Rep 2013 No 95, Sch 7.3 [27].
Sec 478	Am 2000 No 112, Sch 2 [31]; 2004 No 73, Sch 1 [8]; 2012 No 94, Sch 1 [15]; 2013 No 95, Sch 7.3 [28].
Sec 479	Am 2004 No 73, Sch 3 [10]. Rep 2013 No 95, Sch 7.3 [29].
Sec 480	Am 2004 No 73, Schs 1 [9]–[11], 3 [10]; 2012 No 94, Sch 1 [15]. Rep 2013 No 95, Sch 7.3 [30].
Sec 481	Am 2004 No 73, Sch 3 [10]. Rep 2013 No 95, Sch 7.3 [31].
Sec 482	Am 1994 No 44, Sch 10 (5); 1998 No 16, Sch 1 [18]; 2000 No 112, Sch 2 [32]; 2004 No 73, Schs 1 [12], 3 [10]; 2012 No 94, Sch 1 [16]; 2013 No 95, Sch 7.3 [32]; 2016 No 38, Sch 1 [68]–[70].
Sec 482A	Ins 2004 No 73, Sch 1 [13]. Am 2012 No 94, Sch 1 [15] [17] [18]; 2013 No 95, Sch 7.3 [33]; 2015 No 37, Sch 1 [39].
Sec 483	Am 2004 No 73, Sch 3 [10]. Rep 2013 No 95, Sch 7.3 [34].
Sec 484	Am 2000 No 112, Sch 2 [33]; 2004 No 73, Schs 1 [14], 3 [10]; 2012 No 94, Sch 1 [15]. Rep 2013 No 95, Sch 7.3 [35].
Sec 485	Am 2004 No 73, Schs 1 [15], 3 [10]; 2012 No 94, Sch 1 [19]. Rep 2013 No 95, Sch 7.3 [36].
Sec 486	Am 1998 No 16, Sch 1 [19]; 2004 No 73, Sch 3 [10]; 2013 No 95, Sch 7.3 [37].
Sec 486A	Ins 2005 No 59, Sch [13]. Am 2005 No 98, Sch 3.40 [5]. Subst 2013 No 95, Sch 7.3 [38]. Am 2016 No 38, Sch 1 [71].
Chapter 14, Part 3, Div 4, flowchart	Am 1998 No 16, Sch 1 [18] (consequential); 2000 No 112, Sch 2 [21]–[26]; 2004 No 73, Sch 3 [11]–[13]. Rep 2013 No 95, Sch 7.3 [39].
Chapter 14, Part 4, heading	Am 2004 No 73, Sch 3 [14]. Rep 2013 No 95, Sch 7.3 [40].
Chapter 14, Part 4	Rep 2013 No 95, Sch 7.3 [40].
Sec 487	Am 2004 No 73, Sch 3 [15]. Rep 2013 No 95, Sch 7.3 [40].
Sec 488	Am 1996 No 124, Sch 1 (1); 2004 No 73, Sch 3 [15]; 2006 No 30, Sch 9.10. Rep 2013 No 95, Sch 7.3 [40].
Sec 489	Am 1998 No 16, Sch 1 [20]; 2004 No 73, Sch 3 [15]. Rep 2013 No 95, Sch 7.3 [40].
Sec 490	Am 2004 No 73, Sch 3 [15]. Rep 2013 No 95, Sch 7.3 [40].
Chapter 14, Part 5	Ins 2004 No 73, Sch 1 [16].

Sec 490A	Ins 2004 No 73, Sch 1 [16]. Am 2016 No 38, Sch 1 [72].
Sec 490B	Ins 2004 No 73, Sch 1 [16].
Sec 490C	Ins 2016 No 35, Sch 2 [3]. Am 2016 No 38, Sch 1 [73] [74].
Chapter 15, introduction	Am 1994 No 82, Sch 3 (7); 1995 No 94, Sch 5.8 [7]. Rep 2016 No 55, Sch 3.17 [2].
Sec 493	Am 1994 No 44, Sch 11 (1).
Sec 494	Am 1994 No 44, Sch 11 (2).
Sec 495A	Ins 2007 No 72, Sch 1 [5]. Am 2015 No 51, Sch 9.13 [4].
Sec 496	Am 1994 No 44, Sch 11 (3); 1997 No 61, Sch 1 [19].
Sec 496A	Ins 2005 No 70, Sch 1 [1].
Sec 496B	Ins 2010 No 78, Sch 2 [1]. Am 2016 No 20, Sch 4.5 [2]
Sec 497	Am 1996 No 69, Sch 2 [1].
Sec 498	Am 1999 No 38, Sch 1 [16].
Sec 499	Am 1999 No 38, Sch 1 [17].
Sec 501	Am 1996 No 69, Sch 2 [2].
Sec 502	Subst 1996 No 69, Sch 2 [3].
Sec 504	Am 1994 No 44, Sch 11 (4).
Sec 505	Am 1994 No 44, Sch 11 (5); 1997 No 61, Sch 1 [20]; 2000 No 112, Sch 3 [18]; 2005 No 70, Sch 1 [2] [3]; 2010 No 78, Sch 2 [2].
Sec 508	Am 2000 No 112, Sch 3 [19]; 2004 No 25, Sch 1 [2].
Sec 508A	Ins 2004 No 25, Sch 1 [3].
Sec 509	Am 1995 No 11, Sch 1.75 [5]; 1997 No 61, Sch 1 [21]; 2004 No 25, Sch 1 [4].
Sec 510	Am 1994 No 44, Sch 11 (6); 1995 No 11, Sch 1.75 [6]; 2004 No 25, Sch 1 [4].
Sec 510A	Ins 2005 No 70, Sch 1 [4].
Sec 511	Am 1995 No 11, Sch 1.75 [7]; 2004 No 25, Sch 1 [4].
Sec 511A	Ins 1997 No 61, Sch 1 [22]. Am 2017 No 9, Sch 4.4 [3].
Sec 512	Am 1995 No 11, Sch 1.75 [8]; 1997 No 61, Sch 1 [23]; 2005 No 49, Sch 1 [1] [2]; 2005 No 70, Sch 1 [5].
Sec 513	Am 1997 No 61, Sch 1 [24].
Chapter 15, Part 2, table	Am 2005 No 49, Sch 1 [3]; 2005 No 70, Sch 1 [6].
Sec 515	Am 1994 No 38, Sch 8.
Sec 516	Am 1994 No 87, Sch 1; 1997 No 61, Sch 1 [25].
Sec 518	Am 1994 No 44, Sch 11 (7).

Sec 518A	Ins 1997 No 61, Sch 1 [26]. Am 1997 No 147, Sch 2.16 [1] [2]; 2015 No 51, Sch 9.13 [5].
Sec 518B	Ins 1997 No 61, Sch 1 [26]. Am 2000 No 106, Sch 4.4 [1] [2].
Sec 519	Am 1996 No 69, Sch 2 [4].
Sec 520	Am 1994 No 44, Sch 11 (8).
Sec 525	Am 1994 No 44, Sch 11 (9).
Sec 529	Am 2005 No 49, Sch 1 [4] [5].
Sec 530	Rep 2005 No 49, Sch 1 [6].
Chapter 15, Part 3A (secs 531A, 531B)	Ins 1996 No 69, Sch 2 [5].
Sec 532	Subst 2009 No 67, Sch 1 [13].
Chapter 15, Part 4, chart	Am 2009 No 67, Sch 1 [14].
Sec 547	Am 1996 No 69, Sch 2 [6]–[8]; 1996 No 139, Sch 2.22 [5]; 1998 No 120, Sch 2.23 [2] [3]; 2015 No 51, Sch 9.13 [6].
Sec 548	Am 1996 No 69, Sch 2 [9] [10]; 2000 No 53, Sch 1.15 [13].
Sec 548A	Ins 1994 No 44, Sch 11 (10).
Sec 550	Am 2009 No 17, Sch 3.12 [2].
Sec 551	Subst 1994 No 44, Sch 11 (11).
Sec 553A	Ins 2006 No 104, Sch 3.7.
Chapter 15, Part 5, Div 3 (sec 553B)	Ins 2010 No 78, Sch 2 [3].
Sec 555	Am 1994 No 38, Sch 8; 1994 No 44, Sch 11 (12); 1994 No 88, Sch 7; 1996 No 56, Sch 2; 1997 No 61, Sch 1 [27] [28]; 1998 No 145, Sch 5.10 [1] [2]; 1999 No 52, Sch 2.2 [1]; 2000 No 89, Sch 2.3 [1]; 2001 No 10, Sch 5.4; 2001 No 118, Sch 2.8; 2003 No 96, Sch 3.9 [1]; 2004 No 40, Sch 3.8 [1] [2]; 2008 No 64, Sch 2 [1]; 2008 No 115, Sch 2.2 [1]; 2010 No 31, Sch 7.3; 2010 No 37, Sch 1 [1]; 2014 No 74, Sch 3.17 [1]; 2015 No 51, Sch 9.13 [7] [8]; 2017 No 63, Sch 4.27; 2018 No 18, Sch 2.10.
Sec 556	Am 1994 No 13, Sch 4; 1997 No 154, Sch 6.21 [1]; 1999 No 52, Sch 2.2 [2]; 2001 No 107, Sch 7.5; 2010 No 37, Sch 1 [2]; 2010 No 38, Sch 3.6; 2010 No 97, Sch 2.16; 2011 No 4, Sch 2.18; 2015 No 51, Sch 9.13 [9] [10].
Sec 560	Am 1998 No 47, Sch 2.4; 2018 No 68, Sch 2.21 [3].
Sec 562	Am 1994 No 44, Sch 11 (13).
Sec 565	Am 1996 No 69, Sch 2 [11].
Sec 566	Am 2018 No 11, Sch 3.10 [1].
Sec 567	Subst 1996 No 69, Sch 2 [12].
Sec 571	Am 2017 No 17, Sch 2.10 [14].
Sec 572	Am 1996 No 69, Sch 2 [13].
Sec 574	Am 1996 No 69, Sch 2 [14]; 2009 No 67, Sch 1 [15]; 2017 No 17, Sch 2.10 [15].

Sec 581	Am 1994 No 82, Sch 3 (8); 1995 No 94, Sch 5.8 [8].
Chapter 15, Part 8, Div 2, note	Am 2007 No 22, Sch 5.5 [1].
Sec 600	Am 1995 No 13, Sch 4; 1996 No 56, Sch 2; 2000 No 53, Sch 2.10; 2000 No 89, Sch 2.3 [2]; 2003 No 96, Sch 3.9 [2]; 2003 No 99, Sch 2.4; 2006 No 58, Sch 2.29; 2006 No 84, Sch 2.6; 2007 No 22, Sch 5.5 [2]; 2007 No 82, Sch 1.15 [4]; 2008 No 115, Sch 2.2 [2].
Sec 603	Am 2018 No 11, Sch 3.10 [2].
Sec 606	Am 2015 No 37, Sch 2 [9].
Secs 606A, 606B	Ins 2010 No 78, Sch 2 [4].
Sec 606C	Ins 2010 No 78, Sch 2 [4]. Am 2016 No 20, Sch 4.5 [3] [4].
Chapter 15, Part 10, Div 1, heading	Ins 2003 No 8, Sch 1 [8].
Sec 607A	Ins 2003 No 8, Sch 1 [8].
Sec 608	Am 1994 No 44, Sch 11 (14); 1996 No 69, Schs 1 [1], 2 [15] [16]; 1997 No 61, Sch 1 [29]; 1997 No 152, Sch 3 [39].
Sec 609	Rep 2003 No 8, Sch 1 [9].
Chapter 15, Part 10, Div 2, heading	Ins 2003 No 8, Sch 1 [10].
Sec 610A	Ins 1997 No 61, Sch 1 [30]. Rep 2003 No 8, Sch 1 [9]. Ins 2003 No 8, Sch 1 [10]. Am 2008 No 100, Sch 2.3 [5].
Sec 610B	Ins 2003 No 8, Sch 1 [10]. Am 2009 No 67, Sch 1 [16].
Chapter 15, Part 10, Div 3, heading	Ins 2003 No 8, Sch 1 [10].
Secs 610C–610E	Ins 2003 No 8, Sch 1 [10].
Sec 610F (previously sec 612)	Subst 1995 No 12, Sch 1 [13]. Am 2000 No 6, Sch 1 [5]; 2003 No 8, Sch 1 [12]. Renumbered 2003 No 8, Sch 1 [13]. Am 2008 No 39, Sch 1.3 [12]; 2009 No 67, Sch 1 [17].
Chapter 15, Part 10, Div 4, heading	Ins 2003 No 8, Sch 1 [11].
Sec 611	Am 1994 No 88, Sch 7; 1996 No 56, Sch 2; 1996 No 128, Sch 2.1 (am 1997 No 55, Sch 2.22); 1997 No 61, Sch 1 [31]; 1998 No 145, Sch 5.10 [1] [2]; 2000 No 89, Sch 2.3 [3]; 2004 No 40, Sch 3.8 [3]; 2014 No 74, Sch 3.17 [2].
Sec 612	Renumbered as sec 610F, 2003 No 8, Sch 1 [13].
Sec 614	Am 2015 No 37, Sch 2 [6].
Sec 615	Am 1998 No 16, Sch 1 [21].
Sec 625	Am 2000 No 53, Sch 1.15 [14]; 2004 No 113, Sch 1 [7].
Chapter 16, introduction	Am 1994 No 82, Sch 3 (11); 1995 No 94, Sch 5.8 [9]; 1998 No 120, Sch 2.23 [4]; 2001 No 56, Sch 1.8 [5]; 2001 No 121, Sch 2.142 [1]; 2010 No 125, Sch 1 [1] [2]. Rep 2016 No 55, Sch 3.17 [2].

Sec 626	Am 1994 No 44, Sch 12 (1); 1994 No 82, Sch 3 (9); 1995 No 94, Sch 5.8 [10]; 1997 No 152, Sch 3 [40]; 2001 No 93, Sch 1 [12].
Sec 627	Am 1994 No 82, Sch 3 (10); 1995 No 94, Sch 5.8 [11]; 1997 No 152, Sch 3 [41].
Sec 628	Am 1997 No 61, Sch 1 [32] [33]; 1997 No 152, Sch 3 [42]–[44]; 2000 No 53, Sch 1.15 [15].
Chapter 16, Part 2, heading	Subst 1994 No 44, Sch 12 (2).
Sec 629	Am 1994 No 44, Sch 12 (3). Subst 2000 No 112, Sch 3 [20].
Sec 630	Am 1994 No 44, Sch 12 (4); 2000 No 112, Sch 3 [21].
Sec 631	Am 2000 No 112, Sch 3 [22].
Sec 632	Am 1994 No 44, Sch 12 (5); 1995 No 79, Sch 1 [1]; 2000 No 112, Sch 3 [23]–[25]; 2005 No 11, Sch 3.19 [1]; 2010 No 125, Sch 1 [3] [4]; 2011 No 49, sec 3 (1) (2); 2013 No 19, Sch 4.37 [1].
Sec 632A	Ins 2010 No 36, Sch 2. Am 2010 No 125, Sch 1 [5]; 2018 No 29, Sch 2.12 [1] [2].
Sec 633	Am 1994 No 44, Sch 12 (6); 1996 No 133, Sch 1 [1]–[3]; 1998 No 121, Sch 3.5; 2000 No 112, Sch 3 [26]; 2007 No 27, Sch 1.25.
Sec 633A	Ins 1994 No 44, Sch 12 (7). Am 2000 No 112, Sch 3 [27].
Sec 633B	Ins 1994 No 44, Sch 12 (7). Am 2012 No 96, Sch 4.17 [1].
Sec 633C	Ins 1994 No 44, Sch 12 (7). Am 1997 No 115, Sch 4.9. Subst 1999 No 19, Sch 2.19 [1]. Am 2005 No 11, Sch 3.19 [2]; 2013 No 19, Sch 4.37 [2] [3].
Sec 634	Am 1996 No 122, Sch 7.9 [3]; 2004 No 101, Sch 9.7; 2011 No 59, Sch 3.2 [3].
Sec 639	Am 1994 No 44, Sch 12 (8); 2015 No 37, Sch 2 [10].
Sec 641	Rep 1994 No 44, Sch 12 (9).
Sec 642	Am 1995 No 79, Sch 1 [2]. Subst 2008 No 101, Sch 2 [1].
Sec 643	Am 1995 No 79, Sch 1 [3]. Rep 2008 No 101, Sch 2 [2].
Sec 644	Subst 1995 No 79, Sch 1 [4]. Am 2008 No 101, Sch 2 [3].
Sec 644A	Ins 1995 No 79, Sch 1 [4]. Am 2009 No 106, Sch 5.7 [1] [2]; 2018 No 25, Sch 2.18 [5].
Sec 644B	Ins 1995 No 79, Sch 1 [4]. Am 2008 No 101, Sch 2 [3]; 2018 No 25, Sch 2.18 [5].
Sec 644C	Ins 1995 No 79, Sch 1 [4].
Sec 645	Am 2018 No 25, Sch 2.18 [5].
Sec 646	Am 1995 No 79, Sch 1 [5] [6].
Sec 647	Am 1995 No 79, Sch 1 [7] [8]. Rep 2008 No 101, Sch 2 [2].
Sec 649	Rep 2008 No 101, Sch 2 [2].
Sec 650	Am 1998 No 62, Sch 1 [1]; 2018 No 23, Sch 1.2 [1].
Sec 650A	Ins 2015 No 50, Sch 4.16 [3]. Am 2017 No 22, Sch 2.26; 2018 No 23, Sch 1.2 [2].
Sec 651	Subst 1994 No 44, Sch 12 (10). Am 1999 No 19, Sch 2.19 [2]; 2000 No 112, Sch 3 [28]; 2005 No 11, Sch 3.19 [3]–[5]; 2013 No 19, Sch 4.37 [4]; 2015 No 50, Sch 4.16 [4]; 2016 No 13, Sch 2.5 [1]–[5].

Chapter 16, Part 5A	Ins 1998 No 62, Sch 1 [2].
Sec 651A	Ins 1998 No 62, Sch 1 [2].
Sec 651B	Ins 1998 No 62, Sch 1 [2]. Am 2008 No 4, Sch 3.1; 2010 No 6, Sch 2.10; 2013 No 19, Sch 4.37 [5].
Sec 651C	Ins 1998 No 62, Sch 1 [2].
Chapter 16, Part 7	Rep 1997 No 152, Sch 3 [45] (am 1998 No 120, Sch 2.15 [1]).
Sec 653	Rep 1997 No 152, Sch 3 [45] (am 1998 No 120, Sch 2.15 [1]).
Secs 653A, 653B	Ins 1996 No 69, Sch 1 [2]. Rep 1997 No 152, Sch 3 [45] (am 1998 No 120, Sch 2.15 [1]).
Secs 654, 655	Rep 1997 No 152, Sch 3 [45] (am 1998 No 120, Sch 2.15 [1]).
Sec 656	Am 1996 No 69, Sch 1 [3]. Rep 1997 No 152, Sch 3 [45] (am 1998 No 120, Sch 2.15 [1]).
Sec 657	Am 1996 No 69, Sch 1 [4]. Rep 1997 No 152, Sch 3 [45] (am 1998 No 120, Sch 2.15 [1]).
Sec 658	Rep 1997 No 152, Sch 3 [45] (am 1998 No 120, Sch 2.15 [1]).
Sec 660	Am 1994 No 44, Sch 12 (11); 2013 No 44, Sch 1 [46] [47].
Sec 661	Am 2012 No 94, Sch 1 [20].
Sec 664	Am 1994 No 44, Sch 12 (12); 1997 No 145, Sch 1 [13]; 1998 No 39, Sch 1 [5]; 2000 No 112, Sch 3 [29] [30]; 2009 No 54, Sch 2.28 [6].
Sec 665	Am 1996 No 69, Sch 1 [5]; 1997 No 152, Sch 3 [46].
Chapter 17, introduction	Am 1994 No 82, Sch 3 (12); 1995 No 94, Sch 5.8 [12]; 2013 No 95, Sch 8.12 [1]. Rep 2016 No 55, Sch 3.17 [2].
Chapter 17, Part 1, Div 1, heading	Ins 1994 No 44, Sch 13 (1).
Sec 673	Am 1998 No 16, Sch 1 [22]; 2004 No 73, Sch 3 [16]; 2013 No 95, Sch 7.3 [41]; 2016 No 38, Sch 1 [78].
Sec 674	Am 1998 No 16, Sch 1 [23]; 2004 No 73, Schs 1 [17], 3 [17]; 2012 No 94, Sch 1 [21]; 2013 No 95, Sch 7.3 [42] [43]; 2016 No 38, Sch 1 [79].
Sec 674A	Ins 2016 No 38, Sch 1 [80]. Am 2017 No 65, Sch 1 [11] [12].
Sec 678	Am 1994 No 44, Sch 13 (2); 2000 No 112, Sch 3 [31].
Sec 679	Am 1994 No 44, Sch 13 (3); 2008 No 101, Sch 2 [4].
Chapter 17, Part 1, Div 2, heading	Ins 1994 No 44, Sch 13 (4).
Sec 680	Am 1994 No 44, Sch 13 (5); 1997 No 156, Sch 4.11 [4]; 2001 No 121, Sch 2.142 [2]; 2014 No 4, Sch 2.24 [1]–[3].
Sec 680A	Ins 2013 No 56, Sch 3.4 [1]. Am 2014 No 31, Sch 5.7 [1] [2].
Sec 681A	Ins 1994 No 44, Sch 13 (6).
Sec 682	Am 2005 No 98, Sch 3.40 [6]; 2009 No 9, Sch 3.7. Rep 2013 No 95, Sch 8.12 [2].
Sec 684	Am 2015 No 37, Sch 2 [11].

Sec 687	Am 2007 No 94, Sch 2; 2017 No 9, Sch 4.4 [4].
Sec 691	Subst 1994 No 44, Sch 13 (7). Am 1996 No 69, Sch 3 [17]; 1997 No 152, Sch 3 [47] [48]; 2001 No 121, Sch 2.142 [3]; 2007 No 94, Sch 2.
Sec 691A	Ins 1996 No 69, Sch 1 [6]. Rep 1997 No 152, Sch 3 [49].
Sec 692	Rep 1997 No 152, Sch 3 [49].
Sec 693	Am 2017 No 39, Sch 5.
Sec 694	Am 2002 No 31, Sch 1 [1] [2]; 2002 No 40, Sch 1 [30] [31]; 2015 No 37, Sch 2 [12].
Sec 695A	Ins 2018 No 11, Sch 3.10 [3].
Sec 704	Am 1995 No 27, Sch 1.
Sec 707	Am 2018 No 25, Sch 2.18 [6].
Sec 708	Am 2015 No 37, Sch 2 [13].
Sec 710	Am 2006 No 31, Sch 1 [6]–[9]; 2018 No 25, Sch 2.18 [7].
Chapter 17, Part 2, Div 5, note	Ins 1994 No 82, Sch 3 (13). Rep 1995 No 94, Sch 5.8 [13].
Sec 713	Am 1997 No 61, Sch 1 [34]; 1998 No 16, Sch 1 [24].
Sec 715	Am 2018 No 25, Sch 2.18 [8] [9].
Sec 716	Am 1994 No 44, Sch 13 (8).
Secs 717, 718	Am 1998 No 16, Sch 1 [25].
Sec 720	Am 1995 No 75, Sch 1.
Sec 724	Am 2017 No 17, Sch 2.10 [16].
Sec 730	Am 2002 No 20, Sch 1 [6]; 2008 No 100, Sch 2.3 [6]; 2010 No 61, Sch 2.11.
Sec 731	Subst 1997 No 145, Sch 1 [14].
Sec 732	Am 1997 No 61, Sch 1 [35]; 1997 No 152, Sch 3 [50].
Sec 733	Am 1997 No 152, Sch 3 [51]–[53]; 1998 No 46, Sch 4; 2008 No 36, Sch 5.4 [4]–[7]; 2009 No 106, Sch 1.11; 2010 No 78, Sch 2 [5]–[7]; 2012 No 71, Sch 3.3 [1] [2]; 2014 No 74, Sch 3.17 [3]; 2015 No 37, Sch 2 [14]; 2016 No 20, Sch 4.5 [5]–[12]; 2017 No 17, Sch 2.10 [17]; 2018 No 31, Sch 2.2.
Chapter 18, introduction	Am 2013 No 44, Sch 1 [48]. Rep 2016 No 55, Sch 3.17 [2].
Sec 734	Am 1998 No 140, Sch 1 [25] [26].
Sec 734A	Ins 2004 No 73, Sch 2 [2].
Sec 735A	Ins 1997 No 61, Sch 1 [36].
Sec 736	Am 2000 No 53, Sch 1.15 [16].
Sec 739A	Ins 2009 No 54, Sch 2.28 [7].
Sec 740	Am 2001 No 121, Sch 2.142 [4]; 2007 No 94, Sch 1.62 [1] [2]. Rep 2013 No 44, Sch 1 [49].

Sec 740A	Ins 1994 No 44, Sch 14 (1).
Sec 741	Am 1994 No 88, Sch 7; 1998 No 145, Sch 5.10 [1] [2]; 2004 No 40, Sch 3.8 [4]; 2014 No 74, Sch 3.17 [4]; 2015 No 37, Sch 2 [15].
Sec 742	Am 1995 No 13, Sch 4; 1996 No 122, Sch 7.9 [4]; 1997 No 154, Sch 6.21 [2]; 1998 No 170, Schs 3.8 [1], 4.4; 2000 No 53, Sch 1.15 [17]; 2003 No 96, Sch 3.9 [3]; 2008 No 115, Sch 2.2 [3]; 2012 No 96, Sch 4.17 [2]; 2015 No 37, Sch 2 [15]; 2017 No 17, Sch 2.10 [18] [19].
Sec 745	Am 2013 No 44, Sch 1 [50]; 2015 No 37, Sch 2 [16].
Sec 748	Am 2011 No 59, Sch 2.7 [2]; 2017 No 66, Sch 8.16 [9].
Sec 749	Subst 1994 No 44, Sch 14 (2).
Chapter 18, Part 4 (sec 750)	Ins 1994 No 82, Sch 3 (14). Rep 1995 No 94, Sch 5.8 [14].
Sch 1	Am 1996 No 124, Sch 1 (2); 1999 No 94, sec 7 (3) and Sch 5, Part 3; 2014 No 33, Sch 3.18 [3] [4].
Sch 2	Am 1999 No 94, sec 7 (3) and Sch 5, Part 3; 2014 No 33, Sch 3.18 [4] [5]; 2015 No 37, Sch 2 [6] [17] [18].
Sch 3	Rep 2000 No 112, Sch 2 [34]. Ins 2004 No 113, Sch 1 [8] (am 2005 No 59, Sch 2.2 [15]). Am 2014 No 33, Sch 3.18 [6].
Sch 4, heading	Am 2005 No 64, Sch 1.16 [4].
Sch 4	Am 1999 No 94, sec 7 (2) and Sch 5, Part 2; 2004 No 73, Schs 2 [3] [4], 3 [18]. Rep 2013 No 95, Sch 7.3 [44].
Sch 5	Am 1999 No 94, sec 7 (3) and Sch 5, Part 3; 2014 No 33, Sch 3.18 [4] [7].
Sch 6	Am 1994 No 44, Sch 15 (1) (2); 1995 No 12, Sch 1 [14]; 1996 No 69, Sch 1 [7]; 1997 No 152, Sch 3 [54] [55]; 2000 No 112, Schs 1 [9], 2 [35]; 2001 No 56, Sch 1.8 [6]; 2001 No 93, Sch 1 [13]; 2003 No 8, Sch 1 [14]; 2004 No 113, Sch 1 [9]; 2008 No 114, Sch 1.12 [9]; 2009 No 67, Sch 1 [18]; 2010 No 78, Sch 2 [8]; 2011 No 24, Sch 1 [15]; 2011 No 27, Sch 2.26 [2]; 2012 No 15, Sch 1 [10]; 2016 No 38, Sch 1 [81]–[83] [86]; 2017 No 65, Sch 1 [13]; 2017 No 66, Sch 8.16 [10] (am 2018 No 20, Sch 3.2 [1]).
Sch 6A	Ins 2004 No 73, Sch 1 [18]. Rep 2016 No 38, Sch 1 [87].
Sch 7, heading	Subst 1994 No 44, Sch 16 (1).
Sch 7	Am 1994 No 44, Sch 16 (2)–(17); 1995 No 11, Sch 1.75 [9]; 1995 No 12, Sch 1 [15]–[17]; 1996 No 69, Sch 3 [18]–[20]; 1996 No 121, Sch 1.10 [1] [2]; 1997 No 61, Sch 1 [37]; 2000 No 53, Sch 1.15 [18].

Sch 8	Ins 1994 No 44, Sch 17. Am 1995 No 11, Sch 1.75 [10] [11]; 1995 No 12, Sch 1 [18]; 1995 No 79, Sch 1 [9]; 1996 No 69, Sch 4 [28] [29]; 1997 No 61, Sch 1 [38] [39]; 1997 No 94, Sch 1 [8]; 1997 No 147, Sch 2.16 [3]; 1997 No 152, Sch 3 [56]; 1998 No 16, Sch 1 [27] [28]; 1998 No 29, Sch 2.8 [1] [2]; 1998 No 32, Sch 2.3 [1] [2]; 1998 No 39, Sch 1 [6] [7]; 1998 No 62, Sch 1 [3]; 1998 No 90, Sch 1 [2]; 1998 No 120, Sch 2.23 [5]; 1998 No 140, Sch 1 [27] [28]; 1998 No 141, Sch 1 [21] [22]; 1998 No 170, Sch 3.8 [2]; 1999 No 38, Sch 1 [18] [19]; 1999 No 52, Sch 2.2 [3] [4]; 2000 No 112, Schs 1 [11], 3 [32] [33]; 2001 No 93, Sch 1 [14] [15]; 2002 No 19, Sch 1 [5]; 2002 No 20, Sch 1 [7] [8]; 2002 No 31, Sch 1 [3] [4]; 2002 No 40, Sch 1 [32] [33]; 2002 No 112, Sch 1.14 [4]; 2003 No 8, Sch 1 [15]; 2003 No 23, Sch 1 [4]–[14]; 2003 No 30, Sch 1 [5]; 2003 No 56, Sch 1 [3]; 2004 No 25, Sch 4 [2] [3]; 2004 No 44, Sch 1; 2004 No 55, Sch 3; 2004 No 73, Sch 2 [5] [6]; 2004 No 113, Sch 1 [10]; 2005 No 49, Sch 1 [7] [8]; 2005 No 59, Sch 1 [14]; 2005 No 70, Sch 1 [7]; 2006 No 31, Sch 1 [10] [11]; 2006 No 52, Sch 1 [10]; 2007 No 72, Sch 1 [6] [7]; 2007 No 82, Sch 4.8; 2008 No 3, Sch 1 [2] [3]; 2008 No 64, Sch 2 [2]; 2008 No 92, Sch 1 [7] [8]; 2008 No 101, Sch 2 [5]; 2009 No 67, Sch 1 [19] [20]; 2010 No 37, Sch 1 [3] [4]; 2010 No 78, Sch 2 [9]; 2010 No 110, Sch 1 [3] [4]; 2010 No 125, Sch 1 [6]; 2011 No 24, Sch 1 [16] [17]; 2011 No 59, Sch 2.7 [3]; 2012 No 15, Sch 1 [11] [12]; 2012 No 21, Sch 1 [13]; 2012 No 22, Sch 1 [3]; 2012 No 42, Sch 2.21; 2012 No 94, Sch 1 [22] [23]; 2012 No 95, Sch 1.11; 2013 No 43, Sch 1 [2] [3]; 2013 No 44, Sch 1 [51] [52]; 2016 No 35, Sch 2 [4]; 2016 No 38, Sch 1 [88]; 2019 No 6, Sch 1 [21].
Sch 9	Ins 1994 No 82, Sch 3 (15). Am 1995 No 18, Sch 5. Rep 1995 No 94, Sch 5.8 [15]. Ins 2003 No 56, Sch 1 [4].
Dictionary	Am 1994 No 38, Sch 8; 1994 No 44, Sch 18; 1995 No 63, Sch 3; 1995 No 79, Sch 1 [10]; 1995 No 102, Sch 6.4 [4] [5]; 1996 No 58, Sch 2.5 [1] [2]; 1996 No 69, Schs 1 [8], 4 [30]; 1996 No 139, Sch 2.22 [6] (am 1997 No 55, Sch 2.18 [1] [2]); 1997 No 94, Sch 1 [9]; 1997 No 119, Sch 2.12 [1] [2]; 1997 No 152, Sch 3 [57]; 1998 No 16, Sch 1 [26]; 1998 No 62, Sch 1 [4]; 1999 No 4, Sch 2.19; 1999 No 19, Sch 2.19 [3]; 1999 No 94, Sch 4.130 [3]; 2000 No 6, Sch 1 [6]; 2000 No 40, Sch 2.7 [2] (am 2000 No 112, Sch 4.2 [1] [2]); 2000 No 77, Sch 3.4 [3]; 2000 No 92, Sch 8.16 [5]; 2000 No 106, Sch 4.4 [3] [4]; 2000 No 112, Schs 1 [10], 3 [34]; 2001 No 58, Sch 3.5; 2001 No 93, Sch 1 [16]; 2001 No 127, Sch 5.5; 2002 No 40, Sch 1 [34]–[36]; 2003 No 8, Sch 1 [16] [17]; 2004 No 73, Sch 3 [19]; 2004 No 91, Sch 2.47 [2]; 2004 No 108, Sch 3.3; 2004 No 113, Sch 1 [11]; 2005 No 64, Sch 1.16 [5]; 2005 No 70, Sch 1 [8]; 2007 No 92, Sch 4.12; 2008 No 23, Sch 3.30 [1]–[3]; 2008 No 39, Sch 1.3 [13] [14]; 2008 No 101, Sch 2 [6] [7]; 2009 No 106, Sch 5.7 [3]; 2010 No 19, Sch 3.60 [2]; 2010 No 78, Sch 2 [10]; 2011 No 41, Sch 5.19; 2011 No 67, Sch 4.18; 2012 No 21, Sch 1 [14] [15]; 2012 No 71, Sch 3.3 [3] [4]; 2012 No 96, Sch 4.17 [3]; 2013 No 19, Sch 4.37 [6] [7]; 2013 No 44, Sch 1 [53] [54]; 2013 No 56, Sch 3.4 [2]; 2013 No 95, Sch 7.3 [45]; 2013 No 111, Sch 1.6; 2014 No 64, Sch 2.9 [2]; 2015 No 37, Sch 2 [19] [20]; 2015 No 50, Sch 4.16 [5]; 2015 No 51, Sch 9.13 [11]; 2016 No 20, Sch 4.5 [13] [14]; 2016 No 38, Sch 1 [89]–[91]; 2017 No 17, Sch 2.10 [20]–[23]; 2017 No 65, Sch 1 [14]; 2017 No 66, Sch 8.16 [11]; 2018 No 25, Sch 2.18 [10].
The whole Act (except Sch 8)	Am 2015 No 37, Sch 2 [1] ("Director-General" and "Director-General's" omitted wherever occurring, "Departmental Chief Executive" and "Departmental Chief Executive's" inserted instead, respectively).