

TASMANIA

LOCAL GOVERNMENT AMENDMENT BILL (No. 2) 2011

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LOCAL GOVERNMENT AMENDMENT BILL
(No. 2) 2011

*(Brought in by the Minister for Local Government, the
Honourable Bryan Alexander Green)*

A BILL FOR

An Act to amend the *Local Government Act 1993*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Local Government Amendment Act (No. 2) 2011*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Principal Act

In this Act, the *Local Government Act 1993** is referred to as the Principal Act.

*No. 95 of 1993

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4. Section 86 amended (Interpretation of Part 9)

Section 86 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “assessed annual value”:

“averaged area rate” means an averaged area rate made under section 109A(1);

- (b) by inserting the following definitions after the definition of “capital value”:

“category of rateable land” means a category of rateable land specified in section 109A(5);

“certificate” means a certificate issued under section 109H;

- (c) by inserting “or an averaged area rate” after “charge” in paragraph (a) of the definition of “rate”;
- (d) by inserting “or an averaged area rate” after “charge” in paragraph (ab) of the definition of “rate”;
- (e) by inserting “or an averaged area rate” after “charge” in paragraph (b)(i) of the definition of “rate”;
- (f) by inserting “or an averaged area rate” after “rates” in the definition of “ratepayer”.

5. Sections 86A and 86B inserted

After section 86 of the Principal Act, the following sections are inserted in Division 1:

86A. General principles in relation to making or varying rates

- (1) A council, in adopting policies and making decisions concerning the making or varying of rates, must take into account the principles that –
 - (a) rates constitute taxation for the purposes of local government, rather than a fee for a service; and
 - (b) the value of rateable land is an indicator of the capacity of the ratepayer in respect of that land to pay rates.
- (2) Despite subsection (1), the exercise of a council's powers to make or vary rates cannot be challenged on the grounds that the principles referred to in that subsection have not been taken into account by the council.

86B. Rating and charging policies to be made available to public

- (1) A council must adopt a rates and charges policy by 31 August 2012.
- (2) A council's rates and charges policy must contain –

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- (a) a statement of the policy that the council intends to apply in exercising its powers, or performing its functions, under this Part; and
 - (b) a statement of policy in respect of prescribed matters, if any.
- (3) A council's rates and charges policy in relation to the making or varying of a rate must take into account the principles referred to in section 86A(1).
- (4) A council must review its rates and charges policy –
- (a) by the end of each successive 4-year period after 31 August 2012; and
 - (b) at the same time as, or before, making a type of rate, charge or averaged area rate in respect of a financial year, if a rate, charge or averaged area rate of that type was not made in respect of the previous financial year; and
 - (c) at the same time as, or before, making under section 107 a variation of a rate or charge in respect of a financial year, if such a variation of that rate or charge was not made in respect of the previous financial year; and

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- (d) at the same time as, or before, setting a minimum amount under this Part; and
 - (e) at the same time as, or before, altering the circumstances in which a rate, charge or averaged area rate, or a variation of a rate or charge, is to apply to rateable land.
- (5) A council, as soon as reasonably practicable after adopting or altering its rates and charges policy, must make copies of the policy as so adopted or altered available to the public –
- (a) in paper form, on payment of a reasonable charge; and
 - (b) in electronic form, at a website of the council, free of charge.
- (6) A rate, averaged area rate or charge is not invalid by reason only that it does not conform to the council's rates and charges policy.

6. Section 87 amended (Exemption from rates)

Section 87 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “, averaged area rates,” after “rates”;

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- (b) by inserting in subsection (2) “or an averaged area rate” after “rates”;
- (c) by inserting in subsection (3) “or averaged area rates” after “rates”.

7. Section 89A amended (Values under *Valuation of Land Act 2001* to be used as basis of rates)

Section 89A(4A) of the Principal Act is amended by inserting “, averaged area rates” after “rates”.

8. Section 89B inserted

After section 89A of the Principal Act, the following section is inserted in Division 1:

89B. Relevant percentages for purposes of minimum amounts

- (1) For the purposes of section 90(5)(a) and section 107(2B)(a), the relevant percentage in respect of a council for the 2012-2013 financial year is –
 - (a) 50%; or
 - (b) another higher percentage for that financial year that has been determined, in an order under subsection (8) in respect of the council, for the purposes of that provision.

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- (2) For the purposes of section 90(5)(b) and section 107(2B)(b), the relevant percentage in respect of a council for a financial year to which those provisions apply is –
 - (a) 35%; or
 - (b) another higher percentage for that financial year that has been determined, in an order under subsection (8) in respect of the council, for the purposes of that provision.
- (3) A council may apply to the Minister for the issue under subsection (8) of an order in relation to the council.
- (4) An application under subsection (3) by a council for an order is to specify –
 - (a) the financial year, or financial years, in respect of which the order is sought; and
 - (b) the provision or provisions, referred to in subsection (1) or (2), in respect of which the order is sought; and
 - (c) the percentage amount that the council is of the opinion ought to be determined in respect of a financial year, and a provision, in respect of which the order is sought; and

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- (d) information as to why the council is of the opinion that the grounds, specified in subsection (7), for the Minister to make the order are satisfied.
- (5) The Minister may request the council to provide to the Minister the further information, in relation to an application by the council under subsection (3), that the Minister requests.
- (6) The Minister may, after receiving an application under subsection (3) from a council –
 - (a) make an order under subsection (8) in relation to the application; or
 - (b) refuse to make an order under subsection (8) in relation to the application.
- (7) The Minister may only make an order under subsection (8) in relation to an application from a council if he or she is satisfied that it is desirable to do so to ensure that there will not be an unreasonably sudden and significant increase in the amount of rates payable by some ratepayers in the municipal area of the council.
- (8) The Minister, by order, may determine that, for the purposes of a provision referred to in subsection (1) or (2) the

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relevant percentage in respect of a council is, for a financial year, the percentage specified, in the order, in respect of the financial year.

- (9) An order under subsection (8) may –
- (a) apply to one or more provisions referred to in subsection (1) or (2); and
 - (b) apply to one or more financial years; and
 - (c) specify the same, or different, relevant percentages for different financial years; and
 - (d) specify, for the purposes of a provision specified in the order, a percentage that is higher than the percentage specified in subsection (1)(a) or subsection (2)(a).

9. Section 90 amended (General rate)

Section 90 of the Principal Act is amended by inserting after subsection (4) the following subsection:

- (5) A minimum amount payable in respect of a general rate may not be set by a council under subsection (4) if the minimum amount would –

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- (a) in respect of the 2012-2013 financial year, apply to more than the relevant percentage in respect of the council, as determined under section 89B for that financial year, of the number of areas of land that is rateable land to which no variation under section 107 of the general rate applies; or
- (b) in respect of any other financial year, apply to more than the relevant percentage in respect of the council, as determined under section 89B for that financial year, of the number of areas of land that is rateable land to which no variation under section 107 of the general rate applies.

10. Section 93 amended (Service rate)

Section 93 of the Principal Act is amended by inserting after subsection (4) the following subsection:

- (5) For the purpose of this Part, establishing, managing, providing or rehabilitating waste management facilities is to be taken to be part of –
 - (a) a waste management service; and

- (b) the supplying, or making available, of waste management services to land.

11. Section 107 amended (Variation in rates)

Section 107 of the Principal Act is amended by inserting after subsection (2) the following subsections:

- (2A) If a general rate is varied under subsection (1) according to a factor, the council may, if the general rate does not include a fixed charge, set a minimum amount payable in respect of that rate as varied in accordance with that factor.
- (2B) A council may not set under subsection (2A) a minimum amount payable in respect of a general rate varied under subsection (1) in accordance with a factor if the minimum amount would –
 - (a) in respect of the 2012-2013 financial year, apply to more than the relevant percentage in respect of the council, as determined under section 89B for that financial year, of the number of areas of land that is rateable land to which that factor relates; or
 - (b) in respect of any other financial year, apply to more than the relevant percentage in respect of

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the council, as determined under section 89B for that financial year, of the number of areas of land that is rateable land to which that factor relates.

- (2C) If a minimum amount payable in respect of a general rate is set under subsection (2A) and that minimum amount applies in relation to rateable land, a minimum amount, if any, set under section 90(4) in respect of the general rate does not apply in relation to the rateable land.

12. Section 108 amended (Notification of variation)

Section 108 of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

- (ba) of the minimum amount, if any, set under section 107(2A) in relation to the variation; and

13. Part 9, Divisions 6A and 6B inserted

After section 109 of the Principal Act, the following Divisions are inserted in Part 9:

Division 6A – Averaged area rates

109A. Averaged area rates may be made for locality

- (1) A council, on the same day as the day on which it makes a general rate in respect of a financial year, may make, in respect of the financial year, an averaged area rate.
- (2) An averaged area rate is to apply to a category of rateable land in a locality within the municipal area of the council.
- (3) A council may only make under subsection (1) in respect of a financial year an averaged area rate that applies to a category of rateable land in a locality if authorised by a certificate to do so.
- (4) A council may make under subsection (1) an averaged area rate that applies to a category of rateable land in a locality whether or not the council provides any services in respect of land in the locality.
- (5) The categories of rateable land are the following:
 - (a) rateable land that is used, or predominantly used, for residential purposes;
 - (b) rateable land that is –

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- (i) used, or predominantly used, for residential purposes; and
 - (ii) of a value that is within a range of values of land;
- (c) rateable land that may be classified as both –
 - (i) being used, or predominantly used, for residential purposes; and
 - (ii) non-use land.
- (6) The general rate in respect of a financial year is not payable in relation to rateable land, in a locality, in relation to which an averaged area rate is payable in respect of that financial year.

109B. Determination of amount of averaged area rate

- (1) In this section –

“applicable area of land”, in relation to an averaged area rate, means an area of land that is rateable land in a locality and that is within the category of rateable land, in the locality, to which the rate applies.

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- (2) The amount of an averaged area rate must be expressed in dollars or in dollars and cents.
- (3) The amount of an averaged area rate must be the amount obtained by dividing, by the number of applicable areas of land, the sum of all the relevant amounts in relation to the applicable areas of land.
- (4) For the purposes of subsection (3), the relevant amount in relation to an applicable area of land is the amount of the general rate that would be payable in respect of the land if the general rate applied in respect of the land for the financial year for which the averaged area rate is to apply.
- (5) For the purposes of subsection (4), the calculation, in relation to an applicable area of land, of the general rate payable in relation to land for the financial year in respect of which the averaged area rate is to apply must be made on the basis of the valuation that had effect in relation to the land immediately before that averaged area rate is made.
- (6) For the purposes of subsection (5), a supplementary valuation, of an area of land, that is made after the averaged area rate is made is not to be taken under section 89A to have effect in relation to the land immediately before that averaged area rate is made.

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- (7) The same category of value of land as the general rate is based on under section 90(3) in respect of a financial year must be used in determining –
- (a) the relevant amount for the financial year in respect of an applicable area of land; and
 - (b) whether the value of an applicable area of land is within a range of values of land.

109C. Public notice to be given of proposal to obtain authority to make averaged area rates

- (1) The general manager of a council that proposes to apply for a certificate is to ensure that a notice of the proposal is published in a daily newspaper circulating in the council's municipal area.
- (2) A notice for the purposes of subsection (1) is to –
- (a) specify that it is proposed to apply for a certificate authorising the making, in respect of each financial year, of an averaged area rate that is to apply in respect of that financial year to a category of rateable land in a

- locality within the municipal area of the council; and
- (b) specify the locality to which the proposal relates; and
 - (c) specify the category of rateable land to which the proposal relates, including, if the category is referred to in section 109A(5)(b), the range of values of land within the category; and
 - (d) specify the reasons why the council intends to impose on a ratepayer a rate that is based on an averaging of the value of all rateable land to which the rate is to apply rather than a rate based on the value of the ratepayer's land; and
 - (e) include a statement as to how the amount of an averaged area rate is calculated; and
 - (f) invite interested persons to make, within 21 days from the date on which the notice is published, written submissions in respect of the proposal; and
 - (g) invite interested persons to attend, on the date, and at a place, specified in the notice, a public meeting, in relation to the

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proposal, that is to be held in accordance with section 109F.

- (3) A date that is specified in a notice in relation to a proposal in accordance with subsection (2)(g) is to be at least 21 days after –
- (a) the issue of the notice; and
 - (b) the giving of notice under section 109D in relation to the proposal.
- (4) The general manager of the council is to ensure that –
- (a) a copy of a notice published under subsection (1) is available for inspection, without charge, and for purchase, for a reasonable charge, at the offices of the council; and
 - (b) a copy of the notice may be viewed at a website of the council –

on and from the date on which the notice is published, for a period of at least 12 months from that date.

109D. Notice of proposal to be given to certain ratepayers

- (1) The general manager of a council that proposes to apply for a certificate in relation to a locality is to ensure that a notice of the proposal is issued to each relevant ratepayer.
- (2) For the purposes of subsection (1), a relevant ratepayer is a ratepayer in respect of rateable land in relation to which, in the opinion of the general manager of the council, the averaged area rate to which the proposal to apply for a certificate relates would apply if the rate were made in accordance with the proposal.
- (3) For the purposes of subsection (1), a notice, issued to a relevant ratepayer in respect of rateable land, in relation to a proposal to apply for a certificate –
 - (a) is to contain, in relation to the proposal, the matters a notice in accordance with section 109C(2) is required to contain; and
 - (b) is to contain the additional calculations in respect of the rateable land.
- (4) For the purposes of subsection (3)(b), the additional calculations in respect of the rateable land are –

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- (a) the amount of the general rate that the relevant ratepayer in respect of the land was, in respect of the relevant financial year, liable to pay in relation to the land; and
 - (b) the amount of the averaged area rate that the relevant ratepayer would have been liable to pay, in respect of the relevant financial year, if the averaged area rate to which the proposal relates had applied in respect of the rateable land for the relevant financial year.
- (5) A reference in subsection (4) to the relevant financial year is a reference to the financial year in which the notice, containing the additional calculations referred to in that subsection, is issued to a ratepayer under subsection (1).
- (6) Brighton Council, George Town Council and Glamorgan-Spring Bay Council are exempted from the application of subsection (3)(b) in relation to a proposal to apply for a certificate, if the certificate would authorise the making of an averaged area rate in respect of the 2012-2013 financial year.

109E. Submissions in respect of proposal

- (1) A person may make a written submission to a council in relation to a proposal by the council to obtain a certificate.
- (2) A submission may only be made under subsection (1) in relation to a proposal within 21 days after the publication of the notice in relation to the proposal in accordance with section 109C.
- (3) The general manager of a council that has published a notice in relation to a proposal in accordance with section 109C is to ensure that a document, summarising each submission made under subsection (1) in relation to the proposal, is prepared and copies of the document are made available –
 - (a) to persons attending the meeting, in relation to the proposal, that is held in accordance with section 109F; and
 - (b) for inspection, without charge, and for purchase, for a reasonable charge, at the offices of the council as soon as practicable after the day on which the document is prepared, for a period of at least 3 months from that day; and
 - (c) for viewing at a website of the council as soon as practicable

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after the day on which the document is prepared, for a period of at least 3 months from that day.

109F. Public meeting in respect of proposal to be held

- (1) A council that has published in accordance with section 109C a notice in relation to a proposal to obtain a certificate must hold a public meeting in relation to the proposal.
- (2) The public meeting in relation to a proposal to obtain a certificate is to be held on the date, and at the place, that are specified, in accordance with section 109C(2)(g), in the notice.
- (3) After a public meeting is held in accordance with this section in relation to a proposal by a council to obtain a certificate, a record of –
 - (a) the document prepared in accordance with section 109E(3) in relation to the proposal; and
 - (b) any relevant issues raised at the public meeting –

is to be contained in the minutes of the next ordinary meeting of the council.

109G. Applications for certificates

- (1) A council may apply to the Director for the issue of a certificate.
- (2) An application under subsection (1) by a council is to specify –
 - (a) the locality, in the municipal area of the council, to which the application relates; and
 - (b) the category of rateable land to which the application relates, including, if the category is referred to in section 109A(5)(b), the range of values of land within the category.
- (3) A council must consider the record, referred to in section 109F(3), in relation to a proposal to apply for a certificate, before deciding –
 - (a) whether or not to apply for the certificate; and
 - (b) the area that is to comprise the locality for the purposes of the application; and
 - (c) if the proposal relates to a category of rateable land referred to in section 109A(5)(b), the range of values of land to which the application relates.

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109H. Certificates

- (1) The Director, after receiving an application from a council under section 109G, may determine the application by –
 - (a) issuing a certificate to the council; or
 - (b) refusing to issue a certificate to the council.
- (2) The Director may require a council to provide further information in relation to an application from the council under section 109G.
- (3) The Director is to make a determination under subsection (1) in relation to an application under section 109G –
 - (a) within 21 days of receiving the application; or
 - (b) if the Director has required the council to provide further information under subsection (2), within 21 days of receiving the further information.
- (4) A certificate is to specify –
 - (a) the council to which the certificate is issued; and
 - (b) the locality to which the certificate relates; and

- (c) the category of rateable land to which the certificate relates, including, if the category is referred to in section 109A(5)(b), the range of values of land that is within the category; and
 - (d) that the council is authorised to make, in respect of each financial year, an averaged area rate that is to apply, in respect of that financial year, to the category of rateable land in the locality.
- (5) The Director may only issue a certificate in relation to a category of rateable land in a locality if the Director is satisfied that the requirements of sections 109C, 109D, 109E and 109F have been substantially complied with in respect of a proposal to apply for a certificate in relation to that category of rateable land in that locality.
- (6) The Director may be satisfied that sections 109C, 109D, 109E and 109F have been substantially complied with in respect of a proposal to apply for a certificate in relation to a category of rateable land in a locality, and issue a certificate accordingly, even though –
 - (a) the locality specified in the certificate is not the same as the locality to which the proposal relates, if the locality is

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substantially the same as, or within the area of land contained in, the locality to which the proposal relates; and

- (b) where the category is referred to in section 109A(5)(b), the range of values of land that is within the category specified in the certificate is not the same as the range of values of land to which the proposal relates, if, in the opinion of the Director, the range of values of land is not substantially wider or narrower.
- (7) A certificate authorises the council to which it is issued to make, in respect of each financial year, an averaged area rate that is to apply, in respect of that financial year, to the category of rateable land, specified in the certificate in accordance with subsection (4)(c), in the locality specified in the certificate.
- (8) A certificate for a locality ceases to authorise the council to which it is issued to make an averaged area rate that is to apply to a category of rateable land in a locality if an averaged area rate is not, for any financial year after the certificate is issued, made in respect of the category of rateable land in the locality.

Division 6B – Re-making of rates

109I. Interpretation of Division 6B

(1) In this Division –

“previous rate”, in relation to a substituted rate, means a rate that is revoked in accordance with section 109K(1)(a) and replaced by the substituted rate;

“rate” means a general rate, separate rate, construction and service rate, each within the meaning of section 86, and includes –

- (a) a charge, or an averaged area rate, made under this Part; and
- (b) a variation of a rate or charge under this Part; and
- (c) a minimum amount payable under this Part;

“rectification order” means a rectification order made under section 109J(3)(a);

“substituted rate” means a rate that is made under this Part, in accordance with section 109K(1)(b), for the

purposes of replacing a previous rate.

- (2) In this Division, a reference to the making, or purported making, of a rate includes a reference to the making, or purported making, of a variation of a rate and the setting, or purported setting, of a minimum amount payable under this Part.

109J. Rectification orders

- (1) A council may apply in writing to the Minister for a rectification order to be made in respect of a rate made, or purportedly made, by the council under this Part.
- (2) The Minister may require a council to provide information so as to enable the Minister to consider an application made by the council under subsection (1).
- (3) The Minister, after receiving from a council an application under subsection (1) in respect of a rate made, or purportedly made, by the council under this Part, may –
- (a) make a rectification order in respect of the rate; or
 - (b) by notice in writing to the council, refuse to make a

rectification order in respect of the rate.

- (4) The Minister may only make a rectification order in respect of a rate made, or purportedly made, under this Part if the Minister is satisfied –
- (a) that an amount, a method, a description, or another factor, that was included in the resolution by which the rate was made was included in the resolution by error; or
 - (b) that the rate may be invalid because the rate, or the making of the rate, is not in accordance with one or more provisions of this Act.
- (5) The Minister may make a rectification order in respect of a rate made, or purportedly made, under this Part even if legal proceedings have been commenced or determined in relation to the validity of the rate.
- (6) A rectification order –
- (a) must identify the rate to which the order relates; and
 - (b) must state that the council that made, or purportedly made, the rate is authorised by the Minister to make, within the period

specified in the order, another rate for the purposes of replacing that rate; and

- (c) may require the relevant council to give notice, of the kind and in the manner specified in the order, of the making of the order.

109K. Revocation and re-making of rates

- (1) If the Minister makes a rectification order in relation to a rate made, or purportedly made, under this Part, the council –
 - (a) by simple majority, may revoke the rate; and
 - (b) may make under the relevant provision of this Part a rate for the purposes of replacing the rate that is revoked.
- (2) The council may make a rate in accordance with subsection (1) even though a period, if any, within which such a rate may be made under this Part has expired.
- (3) A rate may be made for the purposes of replacing a rate that is revoked even though the rate is not the same type of rate as the rate that has been revoked.

- (4) Nothing in this section is to be taken to prevent the making of a rate, in substitution for another rate, before the expiration of a period, if any, within which such a rate may be made under this Part.

109L. Validity of previous rate notices

- (1) A rates notice that imposes on a ratepayer a liability to pay an amount in respect of a previous rate is, if a substituted rate is made for the purposes of replacing the previous rate, taken to be, and to always have been, validly issued, whether or not the previous rate was validly made.
- (2) Subsection (1) does not apply to a rates notice that is invalid for reasons other than because the making of a rate to which the notice relates was invalid.

109M. Re-calculation to be made of amount of rates

The general manager of a council that has made a substituted rate in respect of a financial year is to calculate, in relation to an area of land that is rateable land to which the substituted rate is to apply, the difference between –

- (a) the amount of all rates for the financial year payable by the

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ratepayer in respect of the area of land, as contained in a rates notice sent to the ratepayer in accordance with section 122; and

- (b) the amount of all rates, for the financial year, that would have been payable by the ratepayer in respect of the area of land if the rates notice had contained, instead of the amount calculated in accordance with the previous rate, an amount calculated in accordance with the substituted rate.

109N. Supplementary rates notices

- (1) The general manager of a council in respect of a municipal area may send, to a ratepayer in respect of rateable land in the municipal area, a supplementary rates notice.
- (2) For the purposes of this section, a supplementary rates notice is a notice imposing on a ratepayer a liability to pay an amount specified in the notice.
- (3) An amount specified in a supplementary rates notice sent to a ratepayer in relation to an area of land is to be the amount, if any, by which the amount of rates, referred to in section 109M(b), in relation to the land is greater than the amount of

rates, referred to in section 109M(a), in relation to the land.

- (4) A supplementary rates notice is to state, in relation to the amount specified in the notice, the information specified in section 122(1) as required to be stated, in relation to all rates, in a rates notice.
- (5) For the purposes of this Part, a supplementary rates notice sent under subsection (1) is to be taken to be a rates notice sent under section 122(1).

109O. Refund, &c., where substituted rate made

- (1) This section applies to a ratepayer in respect of rateable land if there is an overcharged amount in respect of the land.
- (2) An overcharged amount in respect of land is the amount by which the amount of rates, referred to in section 109M(b), in relation to the land is less than the amount of rates, referred to in section 109M(a), in relation to the land.
- (3) If this section applies to a ratepayer in respect of land in a municipal area, the general manager of the council for the municipal area must send to a ratepayer a notice (a “**notice of overcharging**”) in respect of the overcharged amount.

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- (4) A notice of overcharging is to specify the amount of the overcharged amount and why the amount is an overcharged amount.
- (5) Despite section 109L, a ratepayer in respect of rateable land to which an overcharged amount relates is not liable to pay the overcharged amount to the council.
- (6) The general manager of a council is to refund or give credit for so much of an overcharged amount as a ratepayer has paid to the council.

14. Section 110 amended (Record of rates)

Section 110(1) of the Principal Act is amended as follows:

- (a) by inserting ‘(the “**rate records**”)’ after “records”;
- (b) by inserting in paragraph (b) “, if any,” after “rate”;
- (c) by inserting the following paragraph after paragraph (b):
 - (ba) if an averaged area rate applies in relation to the land, that averaged area rate;

15. Section 348 amended (Orders to be Statutory Rules)

Section 348 of the Principal Act is amended by inserting “, including a rectification order made under section 109J,” after “this Act”.

16. Section 350A inserted

After section 350 of the Principal Act, the following section is inserted in Division 3:

350A. Validation, &c., of certain rates and charges

Schedule 10 has effect.

17. Schedule 10 inserted

After Schedule 9 to the Principal Act, the following Schedule is inserted:

SCHEDULE 10 – VALIDATION

Section 350A

1. Interpretation of Schedule 10

In this Schedule –

“**charge**” means a charge made under Part 9;

“**introduction day**” means the day on which a bill entitled the *Local Government Amendment Bill*

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(No.2) 2011 is presented to the
House of Assembly;

“rate” means a general rate, a separate
rate, a construction rate, or a
service rate, each within the
meaning of Part 9;

“rates notice” has the same meaning
as it has in Part 9.

2. Validation of certain rates and charges

- (1) A rate or charge made, or purportedly made, under Part 9 on a day (**“the relevant day”**) before the introduction day is to be taken to have been validly made on the relevant day, and to have always been validly made on the relevant day, under this Act.
- (2) A variation, of a rate or charge, made, or purportedly made, under section 94(3), section 94(3A), section 106A(1) or section 107 on a day (**“the relevant day”**) before the introduction day is to be taken to have been validly made on the relevant day, and to have always been validly made on the relevant day, under this Act.
- (3) A minimum amount payable set, or purportedly set, under section 90(4), section 93(3) or section 107 on a day (**“the relevant day”**) before the

introduction day is to be taken to have been validly set on the relevant day, and to have always been validly set on the relevant day, under this Act.

- (4) If, on a day (“**the relevant day**”) before the introduction day, a council purported to vary under section 107 a minimum amount payable set, or purportedly set, under section 90(4), section 93(3) or section 107, the minimum amount as so varied is to be taken to have been validly set on the relevant day and to have always been validly set on the relevant day.

3. Effect of validation on current proceedings, &c.

- (1) In this clause, a reference to the relevant proceedings, in relation to a council, is a reference to proceedings, in a court, relating to a decision of the council, if –
- (a) the proceedings include or involve a relevant claim; and
 - (b) an instrument commencing the proceedings in the court has been lodged with the court before the introduction day –

whether or not the proceedings have been determined by the court.

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- (2) A relevant claim is a claim to the effect that –
- (a) a rate or a charge made, or purportedly made, under Part 9 was invalidly made or the making of it was attended by legal error or in any event was unauthorised by law; or
 - (b) a variation, of a rate or charge, made, or purportedly made, under section 94(3), section 94(3A), section 106A(1) or section 107, was invalidly made or the making of it was attended by legal error or in any event was unauthorised by law; or
 - (c) a minimum amount payable set, or purportedly set, under section 90(4), section 93(3) or section 107 was invalidly set or the setting of it was attended by legal error or in any event was unauthorised by law; or
 - (d) a variation made, or purportedly made, under section 107, of a minimum amount payable set, or purportedly set, under section 90(4), section 93(3) or section 107, was invalidly made or the making of it was attended by legal error or in any event was unauthorised by law.

- (3) Clause 2 does not affect any order or determination made by a court before that clause comes into effect.
- (4) If relevant proceedings in relation to a council are not finally determined before clause 2 comes into effect, the proceedings, and any proceedings for a review, or appeal, of a decision in relation to such proceedings, are to be dealt with and determined as if that clause had not come into effect.
- (5) A council may not, after this subclause comes into effect, issue, in relation to the particular rateable land to which relevant proceedings relate, a rates notice in relation to a rate or charge in respect of the 2011-2012 financial year, or any preceding financial year, if the rate or charge could not, but for clause 2, be imposed in respect of the rateable land.

18. Repeal of Act

This Act is repealed on the ninetieth day from the day on which it commences.