

TASMANIA

LOCAL GOVERNMENT AMENDMENT BILL 2005

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LOCAL GOVERNMENT AMENDMENT BILL 2005

(Brought in by the Minister Assisting the Premier on Local Government, the Honourable James Glennister Cox)

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 2005*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Principal Act

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

*No. 95 of 1993

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “absolute majority”:

“Appeal Tribunal” means the Resource Management and Planning Appeal Tribunal established under the *Resource Management and Planning Appeal Tribunal Act 1993*;

- (b) by omitting “Parts 2 and 3” from the definition of “assets” and substituting “Parts 3 and 12A”;

- (c) by inserting the following definition after the definition of “assets”:

“authorised person” means a person authorised under section 20A;

- (d) by omitting “section 4” from the definition of “Board” and substituting “section 210”;

- (e) by inserting the following definition after the definition of “by-laws”:

“candidate” means a person whose nomination for an election under Part 15 has been accepted under section 272;

- (f) by inserting the following definition after the definition of “certificate of election”:

“chief executive officer” means, in relation to a single authority or joint authority, the person responsible for the administration and operation of that authority;

- (g) by inserting the following definition after the definition of “close associate”:

“Code of Conduct Panel” means the Code of Conduct Panel established under section 28G;

- (h) by omitting the definition of “de facto spouse”;

- (i) by inserting the following definitions after the definition of “elector poll”:

“electoral advertising” means any advertising in respect of a campaign for election by a candidate or intending candidate by any of the following means:

- (a) any notice, sign or poster;
- (b) any pamphlet or handbill;
- (c) any “how to vote” card;
- (d) any print medium;

“Electoral Commissioner” means the person holding that office under the *Electoral Act 2004*;

- (j) by inserting the following definition after the definition of “GST law”:

“intending candidate” means a person who has publicly declared the intention to nominate for an election under Part 15;

- (k) by inserting the following definition after the definition of “municipal area”:

“ordinary election” means an election under Part 15 that is not a by-election;

- (l) by inserting the following definition after the definition of “participating council”:

“partner” means a partner within the meaning of the *Relationships Act 2003*;

- (m) by omitting “section 12” from the definition of “proposed municipal area” and substituting “section 214E”;

- (n) by omitting the definition of “public office” and substituting the following definitions:

“public land” means public land as specified in section 177A(1);

“public office” means –

- (a) in the case of a municipal area, the place at which a council carries on its administrative activities;
or
- (b) in the case of a proposed municipal area, the place

at which a council or councils of that proposed municipal area carry out their administrative activities;

- (o) by inserting the following definition after the definition of “rates notice”:

“relevant period” means the period starting on the 30th day before the date of notice of election and ending at the end of the polling period;

- (p) by omitting “Part 2” from the definition of “review” and substituting “Part 12A”;

- (q) by inserting the following definition after the definition of “special committee”:

“Standards Panel” means a Standards Panel convened under section 28H;

- (r) by omitting “bicycle.” from the definition of “vehicle” and substituting “bicycle;”;

- (s) by inserting the following definitions after the definition of “vehicle”:

“volumetric charge” means a charge made under section 94A;

“volumetric charge notice” means a notice under section 123A;

“volumetric charge period” means a period during which a volumetric charge applies;

“water meter” means a device used for the measurement of the volume of water;

“water system” means the pipes, fittings, water meters and other connected accessories required for or incidental to the supply and the measurement of water provided by a council.

5. Part 2 repealed

Part 2 of the Principal Act is repealed.

6. Section 16 amended (Municipal areas)

Section 16 of the Principal Act is amended as follows:

- (a) by omitting from subsection (4) “Part 2” and substituting “Part 12A”;
- (b) by omitting from subsection (6) “section 12” and substituting “section 214E”.

7. Section 16A amended (Cities)

Section 16A(4) of the Principal Act is amended by omitting “section 12” and substituting “section 214E relating to cities to give effect to that order”.

8. Section 17 amended (Electoral districts)

Section 17(3) of the Principal Act is amended by omitting “section 12” and substituting “section 214E”.

9. Section 18 amended (Establishment of councils)

Section 18 of the Principal Act is amended as follows:

(a) by omitting subsection (3) and substituting the following subsection:

(3) A meeting of a council is to be conducted in accordance with prescribed procedures.

(b) by omitting from subsection (4) “section 12” and substituting “section 214E”.

10. Section 19 amended (Corporation of councils)

Section 19 of the Principal Act is amended as follows:

(a) by omitting subsection (4);

(b) by omitting from subsection (6) “the imprint of”.

11. Sections 20 and 20A substituted

Sections 20 and 20A of the Principal Act are repealed and the following sections are substituted:

20. Functions and powers

- (1) In addition to any functions of a council in this or any other Act, a council has the following functions:
 - (a) to provide for the health, safety and welfare of the community;
 - (b) to represent and promote the interests of the community;
 - (c) to provide for the peace, order and good government of the municipal area.
- (2) In performing its functions, a council is to consult, involve and be accountable to the community.
- (3) A council may do anything necessary or convenient to perform its functions either within or outside its municipal area.
- (4) A council may transfer to a single authority or a joint authority –
 - (a) any of its assets and liabilities on any condition it determines; or
 - (b) any of its employees.
- (5) A council may –

- (a) acquire, hold, dispose of and otherwise deal with property; and
- (b) sue and be sued in its corporate name.

20A. Powers of entry

- (1) In order that a council may perform its functions or exercise its powers under this or any other Act, the general manager may authorise a person to enter land for a specific purpose or in general.
- (2) An authorised person need not be an employee of a council.
- (3) The general manager must give notice to the owner or occupier of the land before entry is made under subsection (1) unless –
 - (a) an emergency exists; or
 - (b) the entry is in relation to an application by the owner or occupier for a licence, permit or other approval given by the council; or
 - (c) notice would defeat the purpose of the entry.
- (4) A person entering land under this section is to produce the identity card issued to that person under section 20B.
- (5) The general manager may revoke an authority under this section.

20B. Identity card

- (1) The general manager is to ensure that a person authorised to enter land pursuant to section 20A is issued with an identity card.
- (2) An identity card is to –
 - (a) specify the name of the person; and
 - (b) contain a recent photograph of the person; and
 - (c) specify the date of issue; and
 - (d) specify the council or agent of the council that employs the person.
- (3) A person whose authority is revoked under section 20A(5) must return his or her identity card to the general manager within 3 days of the revocation.

Penalty: Fine not exceeding 10 penalty units.

12. Section 21 amended (Enterprise powers)

Section 21 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1):
 - (1A) A motion by a council to exercise any of its powers under subsection (1) must be

accompanied by a statement of the objectives of the exercise of that power.

(b) by inserting the following subsection after subsection (4):

(5) The general manager is to report to the council –

(a) at least once every 3 months in respect of the performance of any activities carried out pursuant to subsection (1) and any strategic issues related to those activities; and

(b) any adverse developments that significantly affect or are likely to significantly affect the financial viability, the operating viability or any other aspect of any of those activities.

13. Section 22 amended (Delegation by council)

Section 22 of the Principal Act is amended as follows:

(a) by inserting in subsection (1) “under this or any other Act,” after “or powers”;

(b) by inserting the following paragraph after paragraph (a) in subsection (2):

- (ab) the postponement of rates and charges;
- (c) by omitting paragraph (c) from subsection (3) and substituting the following paragraph:
 - (c) the establishment of council committees, special committees, controlling authorities, single authorities or joint authorities;
- (d) by omitting paragraphs (e) and (f) from subsection (3) and substituting the following paragraphs:
 - (e) the revision of the strategic plan and the annual plan of the council;
 - (f) the appointment of the general manager;
 - (fa) the sale, donation, exchange or other disposal of land or public land;
 - (fb) the decision to exercise any power under section 21(1);

14. Section 23 amended (Council committees)

Section 23 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2) “and any councillor who fills a vacancy for a meeting at the request of the council committee” after “the council”;

(b) by omitting subsection (3) and substituting the following subsection:

(3) A meeting of a council committee is to be conducted in accordance with prescribed procedures.

15. Section 25 amended (Constitution of council)

Section 25(4) of the Principal Act is amended by omitting “section 12” and substituting “section 214E”.

16. Section 27 amended (Functions of mayors and deputy mayors)

Section 27 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “the mayors” and substituting “a mayor”;

(b) by omitting from subsection (1)(b) “principal”;

(c) by inserting the following paragraph after paragraph (b) in subsection (1):

(ba) to liaise with the general manager on the activities of the council and the performance of its functions and exercise of its powers; and

(d) by inserting the following subsection after subsection (1):

- (1A) The mayor or deputy mayor is to represent accurately the policies and decisions of the council in performing the functions of mayor or deputy mayor.
- (e) by omitting subsection (2A) and substituting the following subsection:
- (2A) The mayor, by notice in writing, may delegate for a specified period –
- (a) the function referred to in subsection (1)(b) to the deputy mayor, a councillor or the general manager; and
 - (b) any other power or function of the mayor, other than the function referred to in subsection (1)(a), to the deputy mayor.

17. Section 28 substituted

Section 28 of the Principal Act is repealed and the following sections are substituted:

28. Functions of councillors

- (1) A councillor, in the capacity of an individual councillor, has the following functions:
- (a) to represent the community;

- (b) to act in the best interests of the community;
 - (c) to facilitate communication by the council with the community;
 - (d) to participate in the activities of the council;
 - (e) to undertake duties and responsibilities as authorised by the council.
- (2) The councillors of a council collectively have the following functions:
- (a) to develop and monitor the implementation of strategic plans and budgets;
 - (b) to determine and monitor the application of policies, plans and programs for –
 - (i) the efficient and effective provision of services and facilities; and
 - (ii) the efficient and effective management of assets; and
 - (iii) the fair and equitable treatment of employees of the council;
 - (c) to facilitate and encourage the planning and development of the municipal area in the best interests of the community;

- (d) to appoint and monitor the performance of the general manager;
 - (e) to determine and review the council's resource allocation and expenditure activities;
 - (f) to monitor the manner in which services are provided by the council.
- (3) In performing any function under this Act or any other Act, a councillor must not –
- (a) direct or attempt to direct an employee of the council in relation to the discharge of the employee's duties; or
 - (b) perform any function of the mayor without the approval of the mayor.
- (4) A councillor is to represent accurately the policies and decisions of the council in performing the functions of councillor.

28A. Information and documents relating to functions

- (1) A councillor, in writing, may request the general manager to make available any information or document or a copy of any information or document in the possession of the council that may be required for the purpose of performing any of the councillor's functions.

- (2) A councillor who makes a request under subsection (1) is to –
 - (a) state in writing the relevance of the information or document to any of the councillor's functions; and
 - (b) declare that he or she would not have, or would be unlikely to have, any pecuniary interest in the matter to which the information or document relates if the matter were to be an item on the agenda of a meeting of the council or a council committee.
- (3) The general manager may refuse the request of a councillor if –
 - (a) the general manager believes that the request would unreasonably extend the resources of the council; or
 - (b) the councillor has declared an interest under section 48; or
 - (c) the councillor has failed or refused to make a declaration under subsection (2)(b); or
 - (d) the general manager considers that the information or document requested is not required for the purpose of performing any of the councillor's functions.
- (4) If the general manager refuses the request the general manager is to advise

the councillor in writing, stating the reasons for the refusal.

- (5) The general manager is to make any information or document made available to a councillor under this section available to any other councillor on request.

28B. Requirement to make information and documents available

- (1) A councillor may seek a decision of the council to require the general manager to make information or a document available if the general manager has refused a request under section 28A.
- (2) Subsection (1) does not apply to any information or document that, if made available, may disclose information relating to the personal affairs of any person.
- (3) The general manager is to comply with a requirement made as a result of a decision by the council.

28C. Confidentiality undertaking

- (1) If the general manager considers that the information or document is confidential, the general manager may require the councillor to whom the information or document is to be made available to give an undertaking to keep it confidential.
- (2) If a councillor refuses or fails to give the undertaking, the general manager may

refuse to make the information or document available to the councillor.

28D. Documents relating to agendas

- (1) A councillor, on request, is entitled to be provided with a copy of any document in the possession of the council that relates directly to an item on the agenda of a meeting of the council or a council committee.
- (2) A request –
 - (a) is to be in writing; and
 - (b) is to specify the document by name or title or subject matter.
- (3) The general manager is to make any document that is provided to a councillor under this section available to any other councillor on request.
- (4) If the general manager considers that a document is confidential, the general manager may require the councillor to whom the document is to be provided to give an undertaking to keep it confidential.
- (5) The general manager may refuse to provide the councillor with a document if the councillor –
 - (a) has declared an interest under section 48 in relation to a matter covered by the document; or

- (b) refuses or fails to give the undertaking under subsection (4).

28E. Code of conduct

- (1) A council must adopt a code relating to the conduct of councillors by 1 July 2006.
- (2) A code of conduct must –
 - (a) be consistent with this Act; and
 - (b) address any prescribed matters; and
 - (c) be reviewed within 12 months after an ordinary election.
- (3) The general manager is to make a copy of the council's code of conduct and any amendments to the code available –
 - (a) for public inspection at the public office during ordinary office hours; and
 - (b) for purchase at a reasonable charge; and
 - (c) on its internet site free of charge.
- (4) A councillor is to comply with the provisions of the code of conduct in performing the functions and exercising the powers of a councillor.

28F. Complaints relating to code of conduct

- (1) A person may make a complaint to a council in relation to an alleged failure of

a councillor to comply with any provision of the code of conduct.

- (2) A complaint is to be –
 - (a) made and lodged in the prescribed manner; and
 - (b) referred to the Code of Conduct Panel or a Standards Panel as prescribed; and
 - (c) heard and determined as prescribed.
- (3) A complainant or a councillor who is the subject of a complaint may appeal in the prescribed manner against a decision of the Code of Conduct Panel made in respect of that complaint.
- (4) An appeal under subsection (3) is to be heard and determined by a Standards Panel as prescribed.
- (5) Regulations may prescribe fees in respect of –
 - (a) the making of a complaint; and
 - (b) the lodging of an appeal; and
 - (c) the referral of a complaint.

28G. Establishment of Code of Conduct Panel

- (1) A council must establish a Code of Conduct Panel to hear and determine a complaint in respect of the alleged failure of a councillor to comply with a provision of the code of conduct.

- (2) A Code of Conduct Panel is to consist of 2 members appointed by the council of whom one is a person of good standing in the community and is not or has not been a councillor or employee of that council within the previous 5 years.
- (3) The person of good standing appointed under subsection (2) is the chairperson of a Code of Conduct Panel.
- (4) At the first ordinary meeting after an ordinary election, a council is to appoint 3 councillors, other than the mayor, to form a panel.
- (5) The chairperson of a Code of Conduct Panel is to select one member of the panel to be the second member of the Code of Conduct Panel in respect of a complaint.
- (6) Both members of a Code of Conduct Panel must be present to hear and determine a complaint.

28H. Establishment of Standards Panel

- (1) The Local Government Association of Tasmania must convene a Standards Panel to hear and determine, as prescribed –
 - (a) a complaint referred to it; and
 - (b) an appeal from a determination made by a Code of Conduct Panel.

- (2) A Standards Panel is to consist of at least 2 and not more than 3 members appointed by the Local Government Association of Tasmania of whom –
 - (a) one is the chairperson who has experience in local government; and
 - (b) one is a person who is a legal practitioner.
- (3) The Local Government Association of Tasmania may appoint a suitable person as the third member of a Standards Panel.
- (4) A member of the Standards Panel must not be or have been a councillor or employee of the same council as the respondent councillor within the previous 5 years.
- (5) All members appointed to a Standards Panel must be present to hear and determine a complaint or an appeal.

28I. Costs

Each party to a complaint or an appeal is to bear his or her own costs.

28J. Incapacity

- (1) A prescribed person may apply to a magistrate for an order that a councillor is unable to perform or exercise adequately or competently the functions or powers of a councillor due to the physical or mental incapacity of the councillor.

- (2) The magistrate may –
 - (a) grant the order; or
 - (b) refuse to grant the order.
- (3) If the magistrate grants the order –
 - (a) the councillor is removed from office with effect from the date of the order; and
 - (b) the office of the councillor is vacant as at that date.

18. Section 30 amended (Single and joint authorities)

Section 30 of the Principal Act is amended by omitting subsection (3).

19. Section 31 amended (Notice of proposed authority)

Section 31 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “resolves to establish a single authority or one of the councils that resolves” and substituting “decides to establish a single authority or one of the councils that decides”;
- (b) by inserting in subsection (2)(e) “of one of the participating councils” after “manager”;
- (c) by omitting subsection (5).

20. Section 32 amended (Approval and certification of rules)

Section 32 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2) “of one of the participating councils” after “manager”;
- (b) by inserting the following subsections after subsection (2):
 - (3) A council must not approve any proposed rules unless the rules have been certified by –
 - (a) a qualified legal practitioner to be in accordance with the law; and
 - (b) the general manager of one of the participating councils to have been made in accordance with this Act.
 - (4) The general manager of one of the participating councils is to provide the Director with a copy of –
 - (a) the approved rules; and
 - (b) any subsequent amendment to those rules.

21. Section 32A inserted

After section 32 of the Principal Act, the following section is inserted in Division 4:

32A. Amendment of rules

The provisions of sections 31 and 32 apply to any amendment of rules of a single authority or joint authority.

22. Section 34 amended (Body corporate)

Section 34(4) of the Principal Act is amended by omitting “the imprint of”.

23. Section 35A inserted

After section 35 of the Principal Act, the following section is inserted in Division 4:

35A. Adverse developments

A single authority or joint authority must notify as soon as practicable the single authority council or participating councils of any development which, in its opinion, may –

- (a) significantly affect the financial viability or operating ability of the authority; or
- (b) otherwise significantly affect the authority in an adverse manner.

24. Sections 36A and 36B inserted

After section 36 of the Principal Act, the following sections are inserted in Division 4:

36A. Annual reports of authorities

- (1) A single authority or joint authority must submit an annual report to the single authority council or participating councils.
- (2) The annual report of a single authority or joint authority is to include –
 - (a) a statement of its activities during the preceding financial year; and
 - (b) a statement of its performance in relation to the goals and objectives set for the preceding financial year; and
 - (c) the financial statements for the preceding financial year; and
 - (d) a copy of the audit opinion for the preceding financial year; and
 - (e) any other information it considers appropriate or necessary to inform the single authority council or participating councils of its performance and progress during the financial year.

36B. Quarterly reports of authorities

- (1) A single authority or joint authority must submit to the single authority council or

participating councils a report as soon as practicable after the end of March, June, September and December in each year.

- (2) The quarterly report of the single authority or joint authority is to include –
- (a) a statement of its general performance; and
 - (b) a statement of its financial performance.

25. Section 38 amended (Rules of authorities)

Section 38 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (d) in subsection (1):
 - (da) the setting of goals and objectives of the authority;
- (b) by inserting the following subsection after subsection (3):
 - (3A) If a board of management is provided for under subsection (3)(a), the rules of a single authority or joint authority are to provide for consultation between the membership of the authority and the board of management in respect of the strategic direction to be taken by the authority.

26. Section 39C amended (Payments)

Section 39C(3) of the Principal Act is amended by inserting “, or invoice a single authority council or participating councils,” after “section”.

27. Section 43 amended (Election by electors)

Section 43 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “on the same day as” and substituting “concurrently with”;
- (b) by omitting from subsection (3) “election of mayor and deputy mayor is” and substituting “elections of mayor and deputy mayor are”.

28. Section 44 amended (Term of office)

Section 44(1) of the Principal Act is amended by omitting “the election for” twice occurring and substituting “an ordinary election for”.

29. Section 45 amended (Election of councillors)

Section 45(4) of the Principal Act is amended by omitting “section 12” and substituting “section 214E”.

30. Section 46 amended (Term of office of councillors)

Section 46(1) of the Principal Act is amended by omitting “election for” twice occurring and substituting “ordinary election for”.

31. Section 46A inserted

After section 46 of the Principal Act, the following section is inserted in Division 2:

46A. Term of office relating to elections in 2000 and 2002

- (1) The term of office of a councillor elected in the election held in October 2000 is 5 years concluding on the day on which the certificate of election is issued in respect of the ordinary election to be held in October 2005.
- (2) The term of office of a councillor elected in the election held in October 2002 is 5 years concluding on the day on which the certificate of election is issued in respect of the ordinary election to be held in October 2007.
- (3) The term of office of a mayor or deputy mayor elected in the election held in October 2002 is 3 years concluding on the day on which the certificate of election is issued in respect of the ordinary election to be held in October 2005.

32. Section 47 amended (Resignations)

Section 47 of the Principal Act is amended by omitting subsection (3) and substituting the following subsections:

(3) On the date of receipt by the general manager of the resignation of a councillor –

(a) the resignation takes effect; and

(b) the office of councillor becomes vacant.

(3A) On receipt of a resignation, the general manager is to advise the council and the Electoral Commissioner of the resignation.

33. Section 47A repealed

Section 47A of the Principal Act is repealed.

34. Section 48 amended (Declaration of interest by councillor)

Section 48(4) of the Principal Act is amended by omitting “is to notify in writing” and substituting “, by notice in writing, is to advise”.

35. Section 48A inserted

After section 48 of the Principal Act, the following section is inserted in Part 5:

48A. Declaration of interest by member

- (1) At any meeting of a special committee or controlling authority, or the board of a single authority or joint authority, a member must not participate in any discussion, or vote on any matter, in respect of which the member –
 - (a) has an interest; or
 - (b) is aware or ought to be aware that a close associate has an interest.

Penalty: Fine not exceeding 20 penalty units.

- (2) A member must declare any interest in a matter before any discussion on that matter commences.

Penalty: Fine not exceeding 50 penalty units.

- (3) On declaring an interest, the member is to leave the room in which the meeting is being held.

Penalty: Fine not exceeding 20 penalty units.

- (4) A member of a special committee or controlling authority, by notice in writing, is to advise the general manager of the details of any interest declared under this section within 7 days of that declaration.

Penalty: Fine not exceeding 20 penalty units.

- (5) A member of a board of a single authority or joint authority, by notice in writing, is to advise the chief executive officer of that authority of the details of any interest declared under this section within 7 days of that declaration.

Penalty: Fine not exceeding 20 penalty units.

- (6) The general manager or chief executive officer is to –
- (a) ensure that the declaration of interest is recorded in the minutes of the meeting at which it is made; and
 - (b) record the details of any declared interest in the register of interests kept under section 53B or 54A.

36. Section 49 amended (Having an interest)

Section 49(1) of the Principal Act is amended as follows:

- (a) by inserting “or member” after “A councillor”;
- (b) by inserting “or member” after “the councillor”.

37. Section 51 amended (Close associate)

Section 51 of the Principal Act is amended as follows:

- (a) by inserting “or member” after “a councillor”;
- (b) by inserting in paragraph (a) “or member” after “councillor”;
- (c) by inserting in paragraph (b) “or member” after “councillor”;
- (d) by inserting in paragraph (c) “or member” after “councillor”;
- (e) by inserting in paragraph (d) “or member” after “councillor”;
- (f) by omitting paragraph (e) and substituting the following paragraph:
 - (e) a business partner of the councillor or member; or
- (g) by inserting in paragraph (f) “or member” after “councillor”;
- (h) by inserting in paragraph (g) “or member” after “councillor”;
- (i) by inserting in paragraph (g) “, council committee, special committee, controlling authority, single authority or joint authority” after “council”;
- (j) by omitting paragraphs (h) and (i) and substituting the following paragraphs:
 - (h) the spouse or partner of the councillor, member, councillor’s son or daughter or member’s son or daughter; or

- (i) the son, daughter, brother, sister, mother or father of the councillor or member or of their spouse or partner.

38. Section 52 amended (Non-application of Part)

Section 52 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “or a close associate” and substituting “, member or close associate”;
- (b) by omitting from subsection (1)(a) “or residents”;
- (c) by omitting paragraph (b) from subsection (1) and substituting the following paragraph:
 - (b) the matter relates to an insurance policy or an indemnity policy being considered or taken out by the council, single authority or joint authority to insure or indemnify councillors or members or their spouses or partners unless the matter relates to, or is a claim made by, the councillor or member; or
- (d) by inserting in subsection (1)(c) “, member” after “councillor”;
- (e) by inserting the following paragraph after paragraph (c) in subsection (1):

- (ca) the matter relates to the making of a rate or charge under Part 9; or
- (f) by omitting paragraph (d) from subsection (1) and substituting the following paragraph:
 - (d) the matter relates to any allowances or expenses payable to councillors or members; or
- (g) by inserting the following subsection after subsection (1):
 - (1A) For the purpose of subsection (1) –
 - “substantial proportion of the electors”** means at least 5% or 1 000 electors, whichever is the lesser.
- (h) by omitting from subsection (2) “or a close associate” and substituting “, member or close associate”;
- (i) by omitting from subsection (2)(a)(i) “and the councillor” and substituting “, council committee, special committee, controlling authority, single authority or joint authority and the councillor or member”;
- (j) by inserting in subsection (2)(b) “or member” after “councillor”;
- (k) by inserting in subsection (2)(c) “or member” after “councillor”;

- (l) by omitting paragraph (d) from subsection (2) and substituting the following paragraphs:
- (d) the councillor or member or close associate is a member of a body, club, union or other non-profit organisation if –
 - (i) a personal benefit or detriment to the councillor, member or close associate, or the spouse or partner of the councillor, member or close associate, is not involved; and
 - (ii) the councillor, member or close associate is not an office bearer of that body, club, union or organisation; or
 - (da) the councillor, member or close associate is appointed or nominated as a member of a body by the council; or
- (m) by inserting in subsection (2)(e) “or member” after “councillor”;
- (n) by inserting in subsection (2)(f) “or member” after “councillor”;
- (o) by inserting in subsection (2)(g) “or member” after “the councillor”;

(p) by omitting paragraph (h) from subsection (2) and substituting the following paragraph:

(h) the councillor, member or close associate is a member of a body established by a council.

(q) by inserting the following subsection after subsection (2):

(3) A council, at a meeting open to the public, may decide to exempt a councillor or member from this Part for a period not exceeding 12 months if the councillor or member has a potential pecuniary interest in a matter only because of being appointed or nominated as a councillor or member due to expertise arising from direct involvement in an activity that gives rise to that potential pecuniary interest.

39. Section 53 amended (Notification of interest)

Section 53 of the Principal Act is amended as follows:

(a) by omitting subsection (1) and substituting the following subsection:

(1) Any person who considers that a councillor or member has an interest in a matter to be, or being, dealt with by a council, council committee, special

committee or controlling authority may notify the general manager in writing of that interest.

- (b) by inserting in subsection (2)(a) “or chairperson” after “mayor”;
- (c) by inserting in subsection (2)(b) “or member” after “councillor”.

40. Sections 53A and 53B inserted

After section 53 of the Principal Act, the following sections are inserted in Part 5:

53A. Notification of interest of member

- (1) Any person who considers that a member of a board of a single authority or joint authority has an interest in a matter to be, or being, dealt with by a single authority or joint authority may notify the chief executive officer of that authority in writing of that interest.
- (2) On receipt of a notification, the chief executive officer is to advise –
 - (a) the chairperson; and
 - (b) the member who is the subject of the notification.

53B. Register of interests of board members

- (1) The chief executive officer of a single authority or joint authority is to keep a register of interests of members of the

board of that authority advised under section 48A(5).

- (2) A register kept under this section is exempt from the provisions of the *Freedom of Information Act 1991*.

41. Section 54 amended (Register of interests of councillors)

Section 54 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “of councillors” after “interests”;
- (b) by omitting subsections (2), (3), (4) and (5) and substituting the following subsections:
- (2) A person, by notice in writing to the general manager, may apply to inspect the register of interests.
- (3) On receipt of an application, the general manager is to allow the applicant to inspect the register of interests.

42. Section 54A inserted

After section 54 of the Principal Act, the following section is inserted in Part 5:

54A. Register of interests of members

- (1) The general manager is to keep a register of interests of members of a special committee or controlling authority.
- (2) The chief executive officer of a single authority or joint authority is to keep a register of interests of members of the board of that authority.
- (3) A councillor of a council that has established a special committee or controlling authority may inspect a register of interests kept under this section.
- (4) A register kept under this section is exempt from the provisions of the *Freedom of Information Act 1991*.

43. Section 55 amended (Interests of employees and general manager)

Section 55 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “is to notify the general manager, or in the case of the general manager to notify the mayor, in writing of any pecuniary interest as referred to in this Part that the employee or the general manager has” and substituting “must notify the general manager, or in the case of the general manager the mayor, in writing of having an interest as referred to in section 49”;

(b) by inserting the following subsection after subsection (1):

(1A) Section 51 applies as if a reference to a councillor were a reference to an employee or a general manager.

44. Section 55A inserted

After section 55 of the Principal Act, the following section is inserted in Part 5:

55A. Interests of employees of authorities

- (1) An employee of a single authority or joint authority must notify the chief executive officer in writing, or the chief executive officer of a single authority or joint authority must notify the board of management of that authority in writing, of having an interest as referred to in section 49 in any matter in respect of which he or she –
- (a) provides advice to that authority; or
 - (b) makes a decision or determination; or
 - (c) makes a recommendation to that authority.

Penalty: Fine not exceeding 50 penalty units.

- (2) Section 51 applies as if a reference to a councillor were a reference to an

employee or a chief executive officer of a single authority or joint authority.

- (3) The chief executive officer of a single authority or joint authority is to –
 - (a) advise the board of management of that authority of the existence of any interest notified under subsection (1); and
 - (b) keep a register of any such interest.
- (4) Any register kept under subsection (3)(b) is exempt from the provisions of the *Freedom of Information Act 1991*.

45. Section 56 amended (Validity of decisions)

Section 56 of the Principal Act is amended as follows:

- (a) by inserting “or member” after “a councillor”;
- (b) by omitting from paragraph (a) “section 48” and substituting “section 48 or 48A”;
- (c) by inserting in paragraph (b) “or member” after “councillor”.

46. Part 6 substituted

Part 6 of the Principal Act is repealed and the following Part is substituted:

PART 6 – PETITIONS, POLLS AND PUBLIC MEETINGS
Division 1 – Petitions

57. Petitions

- (1) A person may lodge a petition with a council by presenting it to a councillor or the general manager.
- (2) A person lodging a petition is to ensure that the petition contains –
 - (a) a clear and concise statement identifying the subject matter; and
 - (b) a heading on each page indicating the subject matter; and
 - (c) a brief statement on each page of the subject matter and the action requested; and
 - (d) a statement specifying the number of signatories; and
 - (e) the full printed name, address and signature of the person lodging the petition at the end of the petition.

58. Tabling petition

- (1) A councillor who has been presented with a petition is to –

- (a) table the petition at the next ordinary meeting of the council; or
 - (b) forward it to the general manager within 7 days after receiving it.
- (2) A general manager who has been presented with a petition or receives a petition under subsection (1)(b) is to table the petition at the next ordinary meeting of the council.
- (3) A petition is not to be tabled if –
 - (a) it does not comply with section 57; or
 - (b) it is defamatory; or
 - (c) any action it proposes is unlawful.
- (4) The general manager is to advise the lodger of a petition that is not tabled the reason for not tabling it within 21 days after lodgment.

59. Petitions seeking public meetings

- (1) A petition under section 57 may request that a council hold a public meeting regarding the subject matter of the petition.
- (2) A council must hold a public meeting if the petition complies with section 57 and it is signed by whichever is the lesser of the following:

- (a) 5% of the electors in the municipal area;
 - (b) 1 000 of those electors.
- (3) A petition that requests a public meeting is not to be made in respect of any matter relating to rates and charges in Part 9 if those rates or charges have been made for the current financial year.

60. Action on petition

- (1) The general manager, by notice in writing to the person who lodged the petition, is to –
- (a) advise whether the petition complies with section 59, if it seeks a public meeting; and
 - (b) give reasonable notice of when the council is to consider the petition.
- (2) Within 42 days after the tabling of the petition –
- (a) the general manager is to advise the council at a council meeting whether the petition complies with section 59, if applicable; and
 - (b) the council, at that meeting, is to determine any action to be taken in respect of the petition.
- (3) If the petition complies with section 59, or the council otherwise resolves to hold

a public meeting regarding the subject matter of the petition, the council, within 30 days after the meeting referred to in subsection (2), is to hold a public meeting to discuss the subject matter of the petition.

- (4) The council is to record in the minutes of the meeting referred to in subsection (2) –
 - (a) the subject matter of the petition; and
 - (b) the number of signatories to the petition.

60A. Public meetings and submissions

- (1) Before holding a public meeting under section 59 or section 60(3), a council, in a notice publicly displayed, must –
 - (a) state the date on which, and the time and place at which, the public meeting is to be held; and
 - (b) state the details of the subject matter; and
 - (c) invite written submissions in relation to the subject matter to be lodged with the general manager.
- (2) A copy of the notice under subsection (1) is to be –

- (a) published on at least 2 occasions in a daily newspaper circulating in the municipal area; and
 - (b) sent to the person who lodged the petition.
- (3) A submission must be lodged within 21 days after the first publication of the notice.
- (4) Any submission received is to be summarised by the general manager in a document, copies of which are to be made available to those attending the public meeting.
- (5) The minutes of the next ordinary meeting of the council following the public meeting are to record –
 - (a) a summary of any submission received under this section; and
 - (b) any decision made at a public meeting held under this section.

Division 2 – Elector polls

60B. Council-initiated elector polls

- (1) A council, on its own motion, may hold an elector poll on any issue the council determines.
- (2) An elector poll under subsection (1) may be conducted in any manner the council determines.

60C. Petition requesting elector poll

- (1) A council must hold an elector poll if –
 - (a) a petition requesting the elector poll is received within 30 days after a public meeting is held under section 59 in relation to the same subject matter as that contained in the petition requesting that public meeting; and
 - (b) the petition is signed by at least 5% of the electors in the municipal area or 1 000 of those electors, whichever is the lesser; and
 - (c) the petition complies with section 57(2).
- (2) If –
 - (a) the person who lodged the petition agrees to an elector poll being held in conjunction with the next ordinary election; or
 - (b) a petition requesting an elector poll is received within 60 days before the notice of election for the next ordinary election –

the elector poll may be held in conjunction with that next ordinary election.

60D. Elector polls

- (1) An elector poll under section 60C is to be –
 - (a) held within 60 days after the receipt of the petition, except as provided under section 60C(2); and
 - (b) held for the whole municipal area; and
 - (c) conducted as determined by the Electoral Commissioner or any other person authorised by the council.
- (2) An elector poll held in conjunction with an election is to be conducted as determined by the Electoral Commissioner.
- (3) A matter which is the subject of an elector poll is to be decided by a simple majority of the formal votes cast.
- (4) The general manager is to ensure that the result of an elector poll is published in a newspaper circulating in the municipal area.
- (5) A further elector poll on the same issue is not to be held until after the next ordinary election.

60E. Result of elector poll

- (1) A council is to discuss the result of an elector poll at its next ordinary meeting.
- (2) The result of an elector poll is not binding on a council.

*Division 3 – General public meetings***60F. Public meetings**

A council, on its own motion, may hold a public meeting to discuss any issue the council determines.

47. Sections 61 and 62 substituted

Sections 61 and 62 of the Principal Act are repealed and the following sections are substituted:

61. Appointment of general manager

- (1) A council is to appoint a person as general manager of the council for a term not exceeding 5 years on terms and conditions it considers appropriate.
- (2) An appointment under subsection (1) is not to be extended or renewed so as to exceed 5 years in total unless the council has reviewed its terms and conditions.
- (3) When a vacancy for the position of general manager occurs or is about to occur, a council is to notify the vacancy, and may invite applications for the

position, in a daily newspaper circulating in the municipal area.

- (4) Not later than 6 months before the expiry of the general manager's appointment, a council may resolve to reappoint the general manager without seeking applications for the position.
- (5) A reappointment under subsection (4) is to be treated as if it were an appointment under subsection (1).
- (6) The mayor may appoint a person as acting general manager until –
 - (a) the appointment of that person as general manager is confirmed at the next council meeting; or
 - (b) the council appoints another acting general manager.

62. Functions and powers of general manager

- (1) The general manager has the following functions:
 - (a) to implement the policies, plans and programs of the council;
 - (b) to implement the decisions of the council;
 - (c) to be responsible for the day-to-day operations and affairs of the council;
 - (d) to provide advice and reports to the council on the exercise and

performance of its powers and functions and any other matter requested by the council;

- (e) to assist the council in the preparation of the strategic plan, annual plan, annual report and assessment of the council's performance against the plans;
 - (f) to coordinate proposals for the development of objectives, policies and programs for the consideration of the council;
 - (g) to liaise with the mayor on the affairs of the council and the performance of its functions;
 - (h) to manage the resources and assets of the council;
 - (i) to perform any other function the council decides.
- (2) The general manager may do anything necessary or convenient to perform his or her functions under this or any other Act.

48. Section 63 amended (Employees)

Section 63 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

- (2) The general manager is to develop human resource practices and procedures in accordance with policies of the council

to ensure employees of the council receive fair and equitable treatment without discrimination.

49. Section 64 amended (Delegation by general manager)

Section 64(a) of the Principal Act is amended by inserting “under this or any other Act,” after “powers”.

50. Section 65 amended (Qualified persons)

Section 65 of the Principal Act is amended by omitting subsections (3) and (4).

51. Section 69 amended (Public inspection of strategic plan)

Section 69(b) of the Principal Act is amended by omitting “and the Director of Public Health each”.

52. Section 71 substituted

Section 71 of the Principal Act is repealed and the following section is substituted:

71. Annual plan

- (1) A council is to prepare an annual plan for the municipal area for each financial year.

- (2) An annual plan is to –
 - (a) be consistent with the strategic plan; and
 - (b) include a statement of the manner in which the council is to meet the goals and objectives of the strategic plan; and
 - (c) include a summary of the estimates adopted under section 82; and
 - (d) include a summary of the major strategies to be used in relation to the council’s public health goals and objectives.
- (3) As soon as practicable after a council adopts an annual plan, the general manager is to –
 - (a) make a copy of the annual plan available for public inspection at the public office during ordinary business hours; and
 - (b) provide the Director and the Director of Public Health with a copy of the annual plan.

53. Section 72 amended (Annual report)

Section 72 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “operational” and substituting “annual”;

- (b) by omitting paragraph (ca) from subsection (1) and substituting the following paragraphs:
- (ca) a statement of the activities and performance of the council in relation to any activity undertaken pursuant to section 21 as compared with its objectives for the preceding financial year;
 - (cb) a statement of the total allowances and expenses paid to the mayor, deputy mayor and councillors;
 - (cc) a statement detailing the attendance of each councillor at meetings of the council or any council committee during the preceding financial year;
 - (cd) a statement in accordance with subsection (4) relating to the total annual remuneration paid to employees of the council who hold positions designated by the council as being senior positions;
- (c) by inserting the following paragraph after paragraph (d) in subsection (1):
- (da) a statement specifying details of any land donated by the council under section 177, including the name of the recipient, the reasons for the donation and the value of the land;

(d) by inserting the following subsections after subsection (3):

(4) A statement under subsection (1)(cd) is to list the number of employees in groups according to the total annual remuneration as specified in subsection (5) where each group has a maximum of \$20 000 between the highest and lowest total annual remuneration.

(5) The total annual remuneration of an employee means the total of the following for the financial year:

(a) the salary payable to the employee;

(b) the amount of employer contribution to the employee's superannuation;

(c) the value of the use of any motor vehicle provided to the employee;

(d) the value of any other allowances or benefits paid or payable to, or provided for the benefit of, the employee.

54. Section 72A inserted

After section 72 of the Principal Act, the following section is inserted in Division 2:

72A. GST dispute statement

A council is to provide a statement to the Treasurer containing details of any dispute that the council may have had with the Australian Taxation Office during the financial year relating to compliance with the GST law in accordance with the *National Taxation Reform (Commonwealth-State Relations) Act 1999*.

55. Part 7, Division 3 inserted

After section 72A of the Principal Act, the following Division is inserted in Part 7:

Division 3 – Annual General Meeting**72B. Annual General Meeting**

- (1) A council must hold an Annual General Meeting on a date that –
 - (a) is not later than 15 December in each year; and
 - (b) is not before 14 days after the date of the first publication of a notice under subsection (2).
- (2) A council must publish a notice on at least 2 separate occasions in a daily

newspaper circulating in the municipal area or other prescribed newspaper specifying the date, time and place of the Annual General Meeting.

- (3) If a quorum of the council is not present –
 - (a) the Annual General Meeting is to be reconvened and held within 14 days; and
 - (b) a notice is to be published in a daily newspaper circulating in the municipal area or other prescribed newspaper specifying the date, time and place of the Annual General Meeting.
- (4) Only electors in the municipal area are entitled to vote at an Annual General Meeting.
- (5) A motion at an Annual General Meeting is passed by a majority of votes taken by a show of hands or by any other means of ascertaining the vote the council determines.
- (6) A motion passed at an Annual General Meeting is to be considered at the next meeting of the council.
- (7) The general manager is to keep minutes of the Annual General Meeting.

56. Section 74 amended (Expenditure)

Section 74 of the Principal Act is amended by omitting “prepared” and substituting “adopted”.

57. Section 77 amended (Grants and benefits)

Section 77 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “benefit” and substituting “pecuniary benefit or a non-pecuniary benefit”;

(b) by inserting the following subsection after subsection (1):

(1A) A benefit provided under subsection (1) may include –

(a) in-kind assistance; and

(b) fully or partially reduced fees, rates or charges; and

(c) remission of rates or charges under Part 9.

58. Section 82 amended (Estimates)

Section 82 of the Principal Act is amended by inserting after subsection (5) the following subsections:

(6) A council, by absolute majority, may authorise the general manager to make minor adjustments up to specified amounts to individual items within any

estimate referred to in subsection (2) so long as the total amount of the estimate is not altered.

- (7) The general manager is to report any adjustment and an explanation of the adjustment at the first ordinary meeting of the council following the adjustment.

59. Section 84 amended (Financial statements)

Section 84 of the Principal Act is amended as follows:

- (a) by omitting paragraph (a) from subsection (2) and substituting the following paragraph:
- (a) comply with applicable Australian Accounting Standards and Urgent Issues Group Abstracts approved by the Australian Accounting Standards Board; and
- (b) by omitting the definition of “Australian Accounting Standards” from subsection (5).

60. Section 86 amended (Interpretation of Part 9)

Section 86 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (a) in the definition of “rate”:

- (ab) for the purposes of Divisions 9, 10 and 11, a volumetric charge; and
- (b) by inserting the following definition after the definition of “service rate”:

“strata scheme” means a strata scheme as defined in the *Strata Titles Act 1998*;

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

Section 89A of the Principal Act is amended as follows:

- (a) by omitting from subsection (3)(b)(ii) “commencement of the next following period” and substituting “date of the event”;
- (b) by inserting the following subsection after subsection (4):
 - (4A) Where fresh valuations are made under section 18(1) of the *Valuation of Land Act 2001* as a result of a subdivision, the general manager may apportion any unpaid rates or charges, or penalties imposed or interest charged, under section 128 in proportion to the fresh valuations on the land now subdivided.

62. Section 93 amended (Service rate)

Section 93 of the Principal Act is amended as follows:

- (a) by omitting from subsection (4) “Crown land” and substituting “land owned by the Crown”;
- (b) by omitting subsection (5).

63. Section 93A inserted

After section 93 of the Principal Act, the following section is inserted in Division 3:

93A. Service rate for fire protection

- (1) A council may make a service rate or several service rates in respect of the fire service contributions it must collect under the *Fire Service Act 1979*.
- (2) A service rate or service rates made under subsection (1) must be for the contribution specified in a notice issued under section 81B of the *Fire Service Act 1979*.

64. Section 94 amended (Service charge)

Section 94 of the Principal Act is amended as follows:

- (a) by omitting subsection (2);

- (b) by omitting from subsection (4) “Crown land” and substituting “land owned by the Crown”;
- (c) by omitting subsection (5).

65. Section 94A inserted

After section 94 of the Principal Act, the following section is inserted in Division 3:

94A. Volumetric charge

- (1) A council, when making a general rate, may make a volumetric charge in respect of the volume of water supplied.
- (2) A volumetric charge may be in accordance with a scale of charges.
- (3) A volumetric charge that is made before 1 July in any year applies from the first reading of the water meter that occurs on or after 1 July in that year.
- (4) A volumetric charge that is made on or after 1 July in any year applies on and after the first reading of the water meter after the date on which it is made.
- (5) If a volumetric charge is made in respect of water supplied to –
 - (a) a strata scheme that does not have a water meter for each ratepayer;
or
 - (b) common property of a strata scheme –

the general manager, with the written agreement of the body corporate of the strata scheme, may apportion the volumetric charge to each ratepayer as specified in the agreement.

- (6) If there is no agreement under subsection (5), the general manager may determine the portion of the volumetric charge payable by each ratepayer.

66. Section 95 amended (General provisions)

Section 95 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (3):

(3A) A council may determine that a service rate or service charge in relation to water supply or sewage removal applies to land not referred to in subsections (2) or (3) if the service is provided through a connection to a pipe, sewer or drain that is not owned by the council.

- (b) by inserting in subsection (4) “or the volumetric charge in respect of the volume of water supplied” after “for the supply of water”;
- (c) by omitting from subsection (4)(a) “a council” and substituting “the general manager”;

- (d) by omitting from subsection (5) “A council” and substituting “The general manager”;
- (e) by inserting the following subsections after subsection (5):
 - (6) The general manager must remove the restriction of the supply of water as soon as practicable if –
 - (a) all outstanding rates or charges in relation to water are paid; and
 - (b) an appropriate fee is paid.
 - (7) A council may recover from a council in another municipal area, with that other council’s agreement, any costs incurred by it for any service specified in section 93(1) that it provides in that municipal area.

67. Part 9, Division 5: Heading amended

Division 5 of Part 9 of the Principal Act is amended by inserting in the heading to that Division “*and charges*” after “*rates*”.

68. Section 100 amended (Separate rate or charge)

Section 100 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or separate charge” after “rate”;
- (b) by inserting in subsection (2) “or separate charge” after “rate”;
- (c) by inserting in subsection (2)(a) “or charges” after “rates”;
- (d) by inserting in subsection (3) “or separate charge” after “rate”;
- (e) by inserting the following subsection after subsection (3):
 - (3A) A separate rate or separate charge applies from –
 - (a) a date specified by the council that is after the date on which it is made; or
 - (b) a date specified by the council that is before the date on which it is made if that date is stated in the notification referred to in section 101(2); or
 - (c) if a date is not specified, the date on which it is made.
- (f) by inserting in subsection (4) “or separate charge” after “separate rate”;
- (g) by inserting in subsection (5) “or separate charge” after “rate”;

- (h) by omitting from subsection (6) “is not continued for a particular financial year, the rate” and substituting “or separate charge is not continued for a particular financial year, the separate rate or separate charge”;
- (i) by inserting in subsection (7) “or separate charge” after “A separate rate”;
- (j) by omitting from subsection (7)(a) “rate” and substituting “separate rate or separate charge”;
- (k) by omitting from subsection (7)(b) “rate” and substituting “separate rate or separate charge”;
- (l) by inserting in subsection (8) “or separate charge” after “separate rate”.

69. Section 101 amended (Intention to make separate rate or charge)

Section 101 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or separate charge” after “makes a separate rate”;
- (b) by inserting in subsection (1)(a) “or separate charge” after “rate”;
- (c) by inserting in subsection (1)(b) “or separate charge” after “rate”;
- (d) by inserting in subsection (2)(a) “or separate charge” after “rate”;

- (e) by inserting in subsection (2)(b) “or separate charge” after “rate”;
- (f) by inserting in subsection (2)(c) “or separate charge” after “rate”;
- (g) by inserting the following paragraph after paragraph (c) in subsection (2):
 - (ca) state the date from which the separate rate or separate charge is to apply if that date is before the date on which it is made; and
- (h) by inserting in subsection (2)(d) “or separate charge” after “rate”;
- (i) by inserting in subsection (3) “or separate charge” after “rate”.

70. Section 102 amended (Submissions)

Section 102 of the Principal Act is amended as follows:

- (a) by inserting “or separate charge” after “rate”;
- (b) by omitting paragraph (ab);
- (c) by omitting from paragraph (b) “council” and substituting “general manager”.

71. Section 103 amended (Petitions)

Section 103(1) of the Principal Act is amended by omitting “may present a petition in the prescribed form” and substituting “or separate

charge may lodge a petition in accordance with section 57”.

72. Section 104 amended (Consideration by council)

Section 104 of the Principal Act is amended as follows:

- (a) by inserting in paragraph (a) “or separate charge” after “rate”;
- (b) by inserting in paragraph (b) “or separate charge” after “rate”;
- (c) by inserting in paragraph (c) “or separate charge” after “rate”;
- (d) by inserting in paragraph (d) “or separate charge” after “rate”.

73. Section 105 amended (Separate rate or charge for same purpose)

Section 105 of the Principal Act is amended as follows:

- (a) by inserting “or separate charge” after “make a separate rate”;
- (b) by inserting “or separate charge” after “of a separate rate”;
- (c) by inserting “or separate charge” after “previous separate rate”.

74. Section 105A amended (Review of separate rate or charge)

Section 105A of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “is to include an assessment of the particular benefit of the rate” and substituting “or separate charge is to include an assessment of the particular benefit of the separate rate or separate charge”;
- (b) by inserting in subsection (4) “or separate charge” after “rate”.

75. Section 105B amended (Adjustment of separate rate or charge)

Section 105B of the Principal Act is amended by omitting “applies for more than one financial year, the council may adjust the rate” and substituting “or separate charge applies for more than one financial year, a council may adjust the separate rate or separate charge”.

76. Section 106 amended (Refund of separate rate or charge)

Section 106 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or separate charge” after “a separate rate”;
- (b) by inserting in subsection (1)(a) “or separate charge” after “rate”;

- (c) by inserting in subsection (3) “or charge” after “rate”.

77. Section 106A amended (Exemptions and variations)

Section 106A(1) of the Principal Act is amended as follows:

- (a) by inserting in paragraph (a) “or separate charge” after “rate”;
- (b) by inserting in paragraph (b) “or separate charge” after “rate”.

78. Section 107 amended (Variation in rates)

Section 107 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “within the municipal area or” after “varies”;
- (b) by inserting the following paragraph after paragraph (b) in subsection (1):
 - (ba) the existence or non-existence of a water meter on the land or common land;
- (c) by omitting from subsection (1)(e) “factor approved by the Minister” and substituting “prescribed factor”;
- (d) by omitting paragraph (a) from subsection (2) and substituting the following paragraphs:
 - (a) residential purposes;

- (ab) commercial purposes;
- (ac) industrial purposes;
- (e) by omitting paragraph (e) from subsection (2) and substituting the following paragraph:
 - (e) quarrying or mining.

79. Section 112 amended (Interpretation of Division 8)

Section 112 of the Principal Act is amended as follows:

- (a) by omitting the definition of “de facto spouse”;
- (b) by omitting “de facto spouse” from paragraph (a) of the definition of “member of an owner's family” and substituting “partner”;
- (c) by omitting “de facto spouse” from paragraph (b) of the definition of “member of an owner's family” and substituting “partner”.

80. Section 120 amended (Liability for rates)

Section 120 of the Principal Act is amended as follows:

- (a) by omitting subsections (1) and (2) and substituting the following subsections:
 - (1) Subject to subsection (2), an owner of land, including the

Crown, is a ratepayer and is liable for the payment of rates in relation to that land.

- (2) An occupier of land may enter into a written agreement with the owner to be the ratepayer in respect of that land for specified rates.
- (b) by omitting from subsection (3) “decides” and substituting “enters into an agreement under subsection (2)”;
- (c) by inserting the following subsection after subsection (3):
 - (3A) In the case of land owned by the Crown, the Crown is to notify the general manager that the occupier of that land has entered into an agreement under subsection (2).
- (d) by inserting in subsection (4) “or volumetric charge notice” after “notice”;
- (e) by inserting in subsection (5) “specified in a rates notice” after “which rates”;
- (f) by inserting the following subsection after subsection (5):
 - (6) The date by which a volumetric charge is due to be paid must not be within 30 days of the date of issue of the volumetric charge notice.

81. Section 121 amended (Change in ownership or occupancy of land)

Section 121 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “owner of land that is sold, disposed of or compulsorily acquired is to give notice in writing to the Recorder of Titles” and substituting “purchaser of land or any other person to whom land is transferred must give notice in writing to the Recorder of Titles within 3 months of the purchase or transfer”;
- (b) by omitting paragraph (a) from subsection (1) and substituting the following paragraph:
 - (a) the fact of the purchase or transfer;
- (c) by inserting the following subsection after subsection (1):
 - (1A) If land is compulsorily acquired under or for the purpose of any Act, the authority acquiring the land must give notice of that acquisition in writing to the Recorder of Titles within 3 months of the acquisition.
- (d) by omitting from subsection (2B)(b) “sale” and substituting “purchase”.

82. Section 122 substituted

Section 122 of the Principal Act is repealed and the following section is substituted:

122. Rates notice

- (1) The general manager is to send to each ratepayer a notice relating to all rates, other than a volumetric charge, stating the following:
 - (a) the land in respect of which the rates are payable;
 - (b) the rates payable by that ratepayer;
 - (c) the basis on which the rates payable are calculated;
 - (d) any factor by which the rates are varied;
 - (e) the period for which the rates are payable;
 - (f) the date by which the rates are due to be paid;
 - (g) the place or places where the rates may be paid;
 - (h) the date on which the notice is issued;
 - (i) whether the rates may be paid in one sum or by instalments;
 - (j) the date or dates on which instalments are to be paid;

- (k) any rebate payable for early payment;
 - (l) if interest is payable on unpaid rates, the rate at which it is payable;
 - (m) if a penalty is payable if rates are not paid by the due date, the percentage rate applicable to such a penalty;
 - (n) if a minimum amount is payable, that minimum amount.
- (2) The general manager may include the information required under subsection (1)(c) and (d) in a document attached to the rates notice if –
- (a) the general manager determines that it is impracticable to include it in the rates notice; and
 - (b) the rates notice states that fact.

83. Section 123 amended (Objections to rates notice)

Section 123 of the Principal Act is amended by omitting subsections (3), (4) and (5) and substituting the following subsections:

- (3) The general manager may –
- (a) amend the rates notice as the general manager considers appropriate; or
 - (b) refuse to amend the rates notice.

- (4) A person may appeal to the Magistrates Court (Administrative Appeals Division) for a review if the general manager –
 - (a) fails to amend the rates notice within 30 days after lodging the objection; or
 - (b) refuses to amend the rates notice.

84. Section 123A inserted

After section 123 of the Principal Act, the following section is inserted in Division 9:

123A. Volumetric charge notice

- (1) The general manager is to send a volumetric charge notice to each ratepayer who is liable to pay a volumetric charge.
- (2) A volumetric charge notice is to state the following:
 - (a) the identification details of the land or common land in respect of which the volumetric charge is payable;
 - (b) the volumetric charge payable by the ratepayer;
 - (c) the basis on which the volumetric charge is calculated;
 - (d) the scale of charges that apply;

- (e) the period for which the volumetric charge is payable;
 - (f) the date by which the volumetric charge is due to be paid;
 - (g) the place or places where the volumetric charge may be paid;
 - (h) the date on which the volumetric charge notice is issued;
 - (i) if interest is payable on any unpaid volumetric charge, the rate at which it is payable;
 - (j) if a penalty is payable for the non-payment of the volumetric charge by the due date, the percentage rate applied to that penalty.
- (3) A volumetric charge notice may be –
- (a) incorporated into a rates notice;
or
 - (b) issued as a separate notice.

85. Section 124 amended (Instalment payments)

Section 124(5) of the Principal Act is amended by inserting “for the financial year” after “owing”.

86. Section 132 amended (Certificate of liabilities)

Section 132 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “a council” and substituting “the general manager”;
- (b) by omitting from subsection (3)(a) “in a form approved by the Minister”;
- (c) by omitting from subsection (3)(d) “manager; and” and substituting “manager.”;
- (d) by omitting paragraph (e) from subsection (3);
- (e) by omitting from subsection (4) “council” and substituting “the general manager”;
- (f) by inserting the following subsection after subsection (6):
 - (7) A prescribed fee is payable in respect of the issue of a certificate.

87. Section 133 amended (Recovery of rates)

Section 133 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (2A) An action for recovery of any debts may include debts relating to any land owned in the municipal area by the ratepayer.

88. Section 137 amended (Sale of land for unpaid rates)

Section 137 of the Principal Act is amended as follows:

- (a) by omitting from subsection (3) “it” and substituting “the general manager”;
- (b) by omitting from subsection (4) “council” and substituting “general manager”;
- (c) by omitting from subsection (5) “council is to cause a copy of the notice” and substituting “general manager is to cause the details of the notice as specified in subsection (5A)”;
- (d) by inserting the following subsection after subsection (5):
 - (5A) A notice referred to in subsection (5) is to specify –
 - (a) the land or lands to which the notice relates; and
 - (b) the owner or owners of the land or lands; and
 - (c) the matters referred to in subsection (3).
- (e) by omitting from subsection (6) “A council” and substituting “The general manager”;
- (f) by omitting from subsection (6) “the council” and substituting “the general manager”;

- (g) by omitting from subsection (7)(b) “council” and substituting “general manager”;
- (h) by inserting the following subsection after subsection (7):

(7A) If the ratepayer pays the outstanding amount within 90 days, the council may recover any costs incurred by it under this Division in relation to the matter as a debt owed to it under this Part.

89. Section 139 amended (Application of money from sale)

Section 139(f) of the Principal Act is amended by omitting “with 12 months” and substituting “within 3 years”.

90. Section 139A inserted

After section 139 of the Principal Act, the following section is inserted in Division 11:

139A. Register of money

- (1) The general manager is to keep a register of any money remaining after payments and discharges are made under section 139.
- (2) The register is to include details of the previous owner of the land.

- (3) The general manager is to cause prescribed details of the register in respect of prescribed amounts to be published at least once a year in a daily newspaper circulating in the municipal area.
- (4) Any money received by a council from the sale of land that is not claimed by the owner of the land within 3 years of the sale vests in the council.

91. Part 9A inserted

After section 140 of the Principal Act, the following Part is inserted:

PART 9A – WATER METERS

Division 1 – Installation, reading and testing of water meters

140A. Installation and replacement of water meter

- (1) A council may install a water meter at any time or at the request of a ratepayer.
- (2) A council may replace an existing water meter.
- (3) A council is not to install a water meter contrary to any requirements of the *National Measurement Act 1960* of the Commonwealth.
- (4) A council may charge for the cost of –
 - (a) a water meter; and
 - (b) installing a water meter.

- (5) A ratepayer is not entitled to charge the council any rent or charge in relation to a water meter installed by the council.

140B. Ownership of water meter

- (1) A council is the owner of a water meter installed for the purpose of this Part.
- (2) A person does not acquire any interest in a water meter –
 - (a) on the sale of land on which the water meter is installed; or
 - (b) as a result of bankruptcy or other legal proceedings against the owner of the land.

140C. Responsibilities relating to water meters

- (1) A council is to maintain a water meter to ensure it is accurate and in a working condition.
- (2) A council is to implement a compliance program to assess whether water meters are accurate and in working order.
- (3) Any measurement taken as part of a compliance program must be in accordance with the requirements of the *National Measurement Act 1960* of the Commonwealth.

- (4) A ratepayer is to take reasonable measures to ensure that a water meter owned by the council is –
 - (a) protected from possible damage, interference or obstruction; and
 - (b) accessible to enable the water meter to be read or maintained.

140D. Reading of water meter

- (1) An initial reading of a water meter is to be taken at the start of the first period during which a volumetric charge applies.
- (2) Any subsequent reading of a water meter is the first reading for the next volumetric charge period.
- (3) The general manager is to ensure that a water meter is read at least twice during a 12-month period during which a volumetric charge applies, excluding the initial reading.
- (4) If a breakage or malfunction occurs in the water meter or the water meter is replaced, a new reading is to be taken to start the next volumetric charge period.
- (5) The result of the reading of a water meter is evidence of the volume of water supplied, except if the water meter is found, on testing, to be inaccurate under section 140E.

140E. Testing of water meters

- (1) If a ratepayer is dissatisfied with the accuracy of a water meter, the ratepayer may request that the water meter be tested.
- (2) A request under subsection (1) must be in writing and accompanied by a deposit as required by the council.
- (3) On receipt of a request and deposit, the general manager is to arrange for a test to be carried out, and if so requested, in the presence of the ratepayer or a person authorised by the ratepayer to be present.
- (4) A water meter is taken to be accurate if, on testing, it is found to register the volume of water with an error margin as specified in the *National Measurement Regulations 1999* of the Commonwealth.
- (5) If, on testing, a water meter is found to be inaccurate in over-reading –
 - (a) any deposit paid is to be refunded to the ratepayer; and
 - (b) the payment for the volume of water supplied during the volumetric charge period is to be adjusted downwards based on the percentage error of the meter as identified by testing.
- (6) If, on testing, a water meter is found to be inaccurate in under-reading –

- (a) the charge for the volume of water supplied during the volumetric charge period in which the ratepayer made a request under subsection (1) is to be adjusted upwards based on the percentage error of the meter; and
 - (b) any deposit paid is to be forfeited.
- (7) If, on testing, a water meter is found to be accurate –
 - (a) the ratepayer is liable for the total cost of any tests carried out less any deposit paid; and
 - (b) the costs are a charge on the land.
- (8) Any testing of a water meter under this Part is to be in accordance with –
 - (a) the *National Measurement Regulations 1999* of the Commonwealth; and
 - (b) Australian Standard AS 3565-2004 Meters for Water Supply.

140F. Estimating supply

If a water meter has been determined by testing to have malfunctioned or to have been so damaged that it cannot measure the flow of water or it cannot be read for any other reason, a council may use one of the following methods to estimate volumetric supply:

- (a) an estimation of supply based on the corresponding or closest corresponding volumetric charge periods in the previous year;
- (b) an estimation of supply as the average cost for a sample of not less than 5 properties in a similar class to the affected property based on the corresponding or similar volumetric charge period.

140G. Relocation or adjustment of connection

- (1) A ratepayer, by written notice to the general manager, may request that –
 - (a) the connection to the council's water system be relocated from one point to another point; or
 - (b) the size of the connection be adjusted.
- (2) A notice under subsection (1)(a) is to specify the proposed new point of relocation.
- (3) The general manager, within 30 days of receipt of the notice, is to assess if it is practicable to relocate the connection to its water system as proposed or adjust it.
- (4) If it is practicable to relocate or adjust the connection, the general manager must arrange for it to be relocated or adjusted.

- (5) The cost of relocating or adjusting the connection to the water system is to be met by the ratepayer.

Division 2 – General powers of authorised persons

140H. Entry

- (1) An authorised person, together with any agent, may enter land to –
 - (a) read, or check the accuracy of, a water meter; and
 - (b) install, repair or replace a water meter or an adjoining pipework; and
 - (c) examine any water system.
- (2) An authorised person may only exercise the power of entry at a reasonable time, unless the general manager determines that an emergency exists.
- (3) If entry is refused or obstructed, the general manager, by notice in writing to the owner of the land, may request entry stating the reason, date and time of proposed entry.
- (4) If entry is refused again, the general manager may –
 - (a) restrict the water supply if it is possible to do so without entering the place; or
 - (b) if it is not possible to restrict the water supply without entering the

place, seek a warrant to enter to restrict the water supply.

- (5) The general manager must remove the restriction to the water supply if –
- (a) the owner or occupier consents to the entry and pays an appropriate fee; and
 - (b) it is safe to enter.

Division 3 – Offences

140I. Interference with water system

A person, without lawful authority, must not –

- (a) connect a pipe or other thing to a council's water system; or
- (b) connect, disconnect or otherwise interfere with the supply of water from the council's water system; or
- (c) interfere with a water meter.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 50 penalty units; or
- (b) an individual, a fine not exceeding 20 penalty units.

140J. Diversion of water

- (1) A person, without lawful authority, must not –
 - (a) take or divert water from a water system; or
 - (b) install a device to bypass a water meter.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
 - (b) an individual, a fine not exceeding 100 penalty units.
- (2) In any proceedings under this provision, the following is evidence of the unlawful taking or diversion of water:
 - (a) the finding of a device or connection that would have enabled the unlawful taking or diversion of water;
 - (b) the tampering with the water meter by the defendant or someone acting with the authority of the defendant.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or

- (b) an individual, a fine not exceeding 100 penalty units.

140K. Obstruction

A person, without reasonable excuse, must not obstruct an authorised officer or his or her agent in performing any function or exercising any power under this Part.

Penalty: Fine not exceeding 20 penalty units.

140L. Damage or destruction or removal of water meter

A person, without lawful authority, must not –

- (a) cause damage to, or destroy a water meter; or
- (b) remove a water meter.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 50 penalty units; or
- (b) an individual, a fine not exceeding 20 penalty units.

140M. Order for costs

A court, in addition to imposing a penalty for an offence under section 140I, 140J, 140K or 140L, may make an order for costs in respect of any damage caused as a result of that offence.

92. Section 150 amended (Restrictions on making of by-laws)

Section 150(1) of the Principal Act is amended by omitting paragraph (c).

93. Section 153 substituted

Section 153 of the Principal Act is repealed and the following section is substituted:

153. Publication of by-laws

- (1) A council must cause a by-law to be published in the *Gazette*.
- (2) A by-law that is not published in the *Gazette* is of no effect.

94. Section 155 amended (Expiry of by-laws)

Section 155 of the Principal Act is amended by omitting “8 years” and substituting “10 years”.

95. Section 156A amended (Regulatory impact statement)

Section 156A of the Principal Act is amended as follows:

- (a) by inserting in subsection (2)(a) “and the means by which the by-law is intended to achieve them” after “by-law”;
- (b) by inserting in subsection (2)(g) “proposed” after “the”;
- (c) by inserting in subsection (6) “to the council” after “issue”;
- (d) by omitting from subsection (6)(a) “and proposed by-law are” and substituting “is”.

96. Section 157 amended (Notice of proposed by-law)

Section 157 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “A council which has resolved to make a by-law” and substituting “On receipt of a certificate issued under section 156A(6), the general manager”;
- (b) by inserting the following subsection after subsection (1):
 - (1A) The notice must state the prescribed matters.
- (c) by omitting subsection (3).

97. Section 160 amended (Alterations to proposed by-law)

Section 160 of the Principal Act is amended as follows:

- (a) by omitting “amend” and substituting “alter”;
- (b) by omitting from paragraph (b) “amendment substantially changes the purpose or effect” and substituting “alteration substantially changes the purpose, or the effect on the public,”.

98. Sections 161, 162, 163 and 164 substituted

Sections 161, 162, 163 and 164 of the Principal Act are repealed and the following sections are substituted:

161. Making by-laws

A council may only make a by-law under its common seal.

162. Certification of by-law

- (1) A by-law made by a council is to be certified by –
 - (a) a legal practitioner that its provisions are in accordance with the law; and
 - (b) the general manager of the council that it is made in accordance with this Act.

- (2) A by-law that is not certified in accordance with subsection (1) is of no effect.

163. Commencement of by-law

A by-law commences –

- (a) on the day on which it is published in the *Gazette*; or
- (b) on a later day specified in the by-law.

164. By-law to Director

A council is to forward to the Director –

- (a) a sealed copy of the by-law; and
- (b) the certification under section 162; and
- (c) a statement explaining –
 - (i) the purpose and effect of the by-law; and
 - (ii) the outcomes of public consultations in respect of the by-law.

99. Section 166 amended (Copies of by-laws)

Section 166(1) of the Principal Act is amended as follows:

- (a) by omitting “A council is to keep a sealed and confirmed” and substituting

“The general manager is to keep a sealed”;

- (b) by inserting “inspection or” after “for”.

100. Section 175 amended (Purchase or lease of land)

Section 175 of the Principal Act is amended by inserting “or lease” after “purchase”.

101. Section 177 amended (Sale and disposal of land)

Section 177 of the Principal Act is amended as follows:

- (a) by omitting from subsection (5) “or exchange” and substituting “, donation, exchange or other disposal”;
- (b) by inserting the following subsection after subsection (5):
- (6) A decision by a council under this section must be made by absolute majority.

102. Section 177A inserted

After section 177 of the Principal Act, the following section is inserted in Division 1:

177A. Public land

- (1) The following land owned by a council is public land:

- (a) a public pier or public jetty;
 - (b) any land that provides health, recreation, amusement or sporting facilities for public use;
 - (c) any public park or garden;
 - (d) any land acquired under section 176 for the purpose of establishing or extending public land;
 - (e) any land shown on a subdivision plan as public open space that is acquired by a council under the *Local Government (Building and Miscellaneous Provisions) Act 1993*;
 - (f) any other land that the council determines is public land;
 - (g) any other prescribed land or class of land.
- (2) The general manager is to –
- (a) keep lists or maps of all public land within the municipal area; and
 - (b) make the lists and maps available for public inspection at any time during normal business hours.

103. Section 178 amended (Sale, exchange and disposal of public land)

Section 178 of the Principal Act is amended as follows:

- (a) by omitting subsection (2) and substituting the following subsection:

(2) Public land that is leased for any period by a council remains public land during that period.

- (b) by inserting in subsection (3) “, lease, donate, exchange or otherwise dispose of” after “sell”;

- (c) by omitting from subsection (4) “the council” first occurring and substituting “the general manager”;

- (d) by omitting from subsection (4)(a) “its” and substituting “that”;

- (e) by inserting the following paragraph after paragraph (a) in subsection (4):

(ab) display a copy of the notice on any boundary of the public land that abuts a highway; and

- (f) by omitting from subsection (4)(b) “council” and substituting “general manager”;

- (g) by omitting subsections (5), (6), (7) and (8) and substituting the following subsections:

- (5) If the general manager does not receive any objection under subsection (4) and an appeal is not made under section 178A, the council may sell, lease, donate, exchange or otherwise dispose of public land in accordance with its intention as published under subsection (4).
- (6) The council must –
- (a) consider any objection lodged; and
 - (b) by notice in writing within 7 days after making a decision to take or not to take any action under this section, advise any person who lodged an objection of –
 - (i) that decision; and
 - (ii) the right to appeal against that decision under section 178A.
- (7) The council must not decide to take any action under this section if –
- (a) any objection lodged under this section is being considered; or

- (b) an appeal made under section 178A has not yet been determined; or
- (c) the Appeal Tribunal has made a determination under section 178B(b) or (c).

104. Sections 178A and 178B inserted

After section 178 of the Principal Act, the following sections are inserted in Division 1:

178A. Appeal

- (1) Any person who lodged an objection under section 178 may appeal to the Appeal Tribunal against the decision of a council under section 178(6) within 14 days after receipt of notice of that decision under section 178(6)(b).
- (2) An appeal must be made in accordance with the *Resource Management and Planning Appeal Tribunal Act 1993*.
- (3) An appeal may only be made on the ground that the decision of the council is not in the public interest in that –
 - (a) the community may suffer undue hardship due to the loss of access to, and the use of, the public land; or

- (b) there is no similar facility available to the users of that facility.
- (4) The Appeal Tribunal is to hear and determine an appeal in accordance with the *Resource Management and Planning Appeal Tribunal Act 1993*.
- (5) The decision of the Appeal Tribunal on hearing an appeal is final and section 25 of the *Resource Management and Planning Appeal Tribunal Act 1993* does not apply.

178B. Determination of appeal

In hearing an appeal against a decision of a council, the Appeal Tribunal may –

- (a) confirm that decision; or
- (b) set aside that decision; or
- (c) set aside that decision and –
 - (i) substitute another decision; or
 - (ii) remit the matter to the council for reconsideration.

105. Section 179 substituted

Section 179 of the Principal Act is repealed and the following section is substituted:

179. Lease of public land for less than 5 years

A council may lease public land for a period not exceeding 5 years without complying with section 178.

106. Section 180 repealed

Section 180 of the Principal Act is repealed.

107. Section 182 amended (Fencing land)

Section 182 of the Principal Act is amended by omitting “A council” and substituting “The general manager”.

108. Section 183 amended (Land reinstated)

Section 183 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “A council” and substituting “The general manager”;
- (b) by omitting from subsection (2) “A council” and substituting “The general manager”.

109. Section 184 repealed

Section 184 of the Principal Act is repealed.

110. Section 185 amended (Compliance with notice)

Section 185(4) of the Principal Act is amended by omitting “it” and substituting “the general manager”.

111. Section 186 substituted

Section 186 of the Principal Act is repealed and the following section is substituted:

186. Towns

- (1) The Minister, at the request of a council and by order, may –
 - (a) create a town and establish its boundaries; and
 - (b) abolish a town; and
 - (c) alter the boundaries of a town.
- (2) The Minister, at the request of a council and on the recommendation of the Nomenclature Board constituted under the *Survey Co-ordination Act 1944* and by order, may –
 - (a) assign a name to a town; or
 - (b) alter the name of a town.

112. Section 189 amended (Closure of local highways)

Section 189(2) of the Principal Act is amended by omitting “it” and substituting “the general manager”.

113. Section 194 amended (Impounding animals)

Section 194 of the Principal Act is amended by omitting “A council” and substituting “The general manager”.

114. Section 195 amended (Notice of impounding)

Section 195 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “council” and substituting “general manager”;
- (b) by omitting from subsection (3) “council” and substituting “general manager”;
- (c) by omitting from subsection (4) “council” and substituting “general manager”.

115. Section 196 amended (Fees, costs and charges)

Section 196 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “A council” and substituting “The general manager”;
- (b) by omitting from subsection (4) “A council” and substituting “The general manager”.

116. Section 197 amended (Sale or destruction of unclaimed animals)

Section 197(2) of the Principal Act is amended as follows:

- (a) by omitting “A council” and substituting “The general manager”;
- (b) by omitting “its” and substituting “the”.

117. Section 198 amended (Destruction of animals)

Section 198 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “A council” and substituting “The general manager”;
- (b) by omitting from subsection (2) “council” and substituting “general manager”.

118. Section 199 amended (Interpretation of Division 6)

Section 199 of the Principal Act is amended by omitting “any person” from paragraph (a) of the definition of “nuisance” and substituting “the public”.

119. Section 200 amended (Abatement notices)

Section 200 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “it” and substituting “the general manager”;
- (b) by omitting from subsection (1A) “a council” and substituting “the general manager”;
- (c) by omitting paragraph (e) from subsection (2) and substituting the following paragraph:
 - (e) that the council may take action under section 201.
- (d) by inserting in subsection (3) “, unless the person lodges an appeal under subsection (5)” after “the notice”;
- (e) by omitting from subsection (4) “a council” and substituting “the general manager”;
- (f) by inserting the following subsections after subsection (4):
 - (5) A person served with, or specified in, an abatement notice may appeal to a magistrate within 14 days after service of the notice on any one or more of the following grounds:
 - (a) that a nuisance does not exist;
 - (b) that an action required by the abatement notice is unreasonable;

(c) that the period stated in the abatement notice is unreasonable.

(6) A magistrate may –

(a) order that the person is to comply with the abatement notice; or

(b) modify the abatement notice and order that the person and the council are to comply with the modified notice; or

(c) order that the council withdraw the abatement notice.

120. Section 201 amended (Council may take necessary action)

Section 201 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “A council may itself” and substituting “The general manager may”;

(b) by omitting from subsection (2) “council” and substituting “general manager”;

(c) by omitting from subsection (2) “it” and substituting “the general manager”;

(d) by omitting from subsection (3) “a council may” and substituting “the

general manager may authorise a person to”;

- (e) by omitting from subsection (4) “it takes” and substituting “taken”.

121. Section 202 substituted

Section 202 of the Principal Act is repealed and the following section is substituted:

202. Appeal against council’s action

- (1) If a council takes action pursuant to section 201(1)(a) or (b), the owner or occupier of the land on or from which the nuisance arises may appeal within 30 days after service of a notice under section 200 to a magistrate on any one or more of the following grounds:
 - (a) that the action was unreasonable or unnecessary in the circumstances;
 - (b) that the danger to any person or property was not so immediate as to justify the action.
- (2) A magistrate may –
 - (a) uphold the appeal; or
 - (b) dismiss the appeal.
- (3) If a magistrate upholds an appeal, the magistrate may –

- (a) award damages to the person who appealed for any loss suffered; and
- (b) make an order in respect of any charges under section 201; and
- (c) make an order requiring the council to undertake specified works.

122. Section 204 amended (Costs)

Section 204(1)(b) of the Principal Act is amended by omitting “section 201” and substituting “section 200 or 201”.

123. Section 208 amended (Council map)

Section 208(1) of the Principal Act is amended as follows:

- (a) by omitting “A council” and substituting “The general manager”;
- (b) by omitting from paragraph (a) “it” and substituting “the council”;
- (c) by omitting from paragraph (c) “known to it”;
- (d) by omitting from paragraph (d) “it” and substituting “the council”.

124. Part 12, Division 9 substituted

Division 9 of Part 12 of the Principal Act is repealed and the following Part is substituted:

PART 12A – LOCAL GOVERNMENT BOARD***Division 1 – Local Government Board*****210. Local Government Board**

- (1) The Local Government Board is established.
- (2) The Board consists of –
 - (a) one person nominated by the Local Government Association of Tasmania; and
 - (b) one person nominated by the Local Government Managers Australia (Tasmania); and
 - (c) one person who is the chairperson; and
 - (d) one person who has experience in local government; and
 - (e) the Director of Local Government or his or her nominee.
- (3) The persons referred to in subsection (2)(a), (b), (c) and (d) are appointed by the Minister.
- (4) If a nomination under subsection (2) is not made within 60 days after it is required to be made by the Minister, the

Minister may appoint a person without such a nomination.

- (5) If a body referred to in subsection (2) ceases to exist or changes its name, the Governor, by order, may amend that subsection by substituting –
 - (a) the name of a body which the Governor is satisfied substantially represents the interests represented by the body which has ceased to exist; or
 - (b) the name of the body as changed.
- (6) Schedule 1 has effect with respect to membership of the Board.
- (7) Schedule 2 has effect with respect to meetings of the Board.

211. Functions and powers of Board

- (1) The Board has the following functions:
 - (a) to carry out reviews;
 - (b) to advise the Minister on any other matters the Minister may determine.
- (2) The Board may do anything necessary or convenient to perform its functions.

212. Staff

The Board may make arrangements with the Head of a State Service Agency for State Service officers and State Service employees employed in that Agency to be made available to the Board to enable it to perform its functions under this Act.

213. Delegation by Board

The Board, in carrying out a review under section 214, may delegate in writing to any person any of its functions relating to that review.

*Division 2 – Reviews of councils***214. Reviews of council**

- (1) The Board is to carry out a general review of a council –
 - (a) at least once every 8 years; or
 - (b) sooner if the Minister so directs.
- (2) The Minister may require the Board to carry out a specific review relating to one or more of the matters specified in section 214A –
 - (a) at any time; or
 - (b) at the request of a council; or
 - (c) on a petition proposed in accordance with section 57(2) of

at least 20% of the electors in the municipal area.

- (3) Before carrying out a review of a council, the Board must give the council at least 30 days' notice of the date on which the review is to start, unless the council requests otherwise.
- (4) The Board may carry out any review in respect of more than one council.

214A. Scope of review

Any review may take into account any one or more of the following matters:

- (a) the governance and operations of a council;
- (b) the boundaries of the municipal area and any electoral district;
- (c) the naming of the municipal area, council and electoral district;
- (d) the declaration of a municipal area or part of a municipal area as a city;
- (e) the naming, or changing of the name, of a city;
- (f) the creation or abolition of a municipal area or electoral district;
- (g) the division of the municipal area into electoral districts;

- (h) the combining of 2 or more municipal areas, parts of 2 or more municipal areas or 2 or more electoral districts;
- (i) the creation or abolition of councils;
- (j) the election of councillors of a municipal area;
- (k) the total numbers of persons to be elected as councillors of a municipal area or in respect of each electoral district;
- (l) any other factor;
- (m) any matter referred to it by the Minister.

214B. Supplementary review

- (1) The Board may recommend to the Minister that a supplementary review of a council be carried out to follow up on any matter arising from a general review.
- (2) The Minister may –
 - (a) accept the recommendation; or
 - (b) refuse to accept the recommendation.

214C. Procedures for review

- (1) The Board may carry out any review in any manner it thinks appropriate.
- (2) In carrying out any review, the Board must provide –
 - (a) reasonable opportunity for public consultation; and
 - (b) reasonable opportunity for any council affected by the review to make any submissions.
- (3) The Board is to publish in a daily newspaper circulating in the municipal area a statement –
 - (a) specifying that a review is being carried out; and
 - (b) if it is a specific review, specifying any matter being reviewed; and
 - (c) inviting submissions relating to any matter referred to in section 214A or in the specific review.
- (4) Section 8 and Part 3 of the *Commissions of Inquiry Act 1995* apply to a review carried out by the Board as if –
 - (a) the Board were a Commission established under section 4 of that Act; and

- (b) the review were the inquiry being conducted by that Commission under that Act.

214D. Report of review

- (1) The Board is to submit to the Minister a written report of any review it carries out together with its recommendations.
- (2) The Board must not make any recommendation relating to an electoral district unless satisfied that –
 - (a) it is in the best interests of the municipal area concerned; and
 - (b) it would lead to a fair representation of the community in the municipal area.
- (3) The Board must not make any recommendation relating to the declaration of a municipal area or part of a municipal area as a city except in prescribed circumstances.
- (4) On receipt of a report, the Minister is to –
 - (a) forward a copy of the report to –
 - (i) the council in respect of which the review was carried out; and
 - (ii) any other council the Minister considers may be affected by the

recommendations of the Board; and

- (b) invite any such council to make submissions to the Minister on any matter covered by the report within a specified period.
- (5) After considering any submissions, the Minister may –
- (a) accept any or all of the Board’s recommendations; or
 - (b) request the Board to reconsider any or all of its recommendations; or
 - (c) refer to the Board any alterations to its report requested by a council; or
 - (d) reject any or all of the Board’s recommendations.
- (6) If the Minister rejects any of the Board’s recommendations in respect of a review, the Minister may not make a recommendation under section 214E relating to that recommendation in respect of that review.
- (7) The council is to keep all matters contained in the report and recommendations of the Board forwarded by the Minister confidential until the report is published under subsection (8).

- (8) The Minister is to cause to be published the report and recommendations of the Board, excluding any matter that the Board advises is confidential and the Minister considers is exempt information under the *Freedom of Information Act 1991*.

214E. Result of review

- (1) As a result of any review, the Governor, by order and on the recommendation of the Minister, may do any one or more of the following:
 - (a) create a municipal area;
 - (b) abolish a municipal area;
 - (c) alter and define the boundaries of a municipal area;
 - (d) combine 2 or more municipal areas or parts of such areas to form one municipal area;
 - (e) divide a municipal area into 2 or more municipal areas or parts of 2 or more municipal areas;
 - (f) name or change the name of a municipal area;
 - (g) declare a municipal area or part of a municipal area to be a city;
 - (h) name or change the name of a city;

- (i) create a council;
 - (j) abolish a council;
 - (k) dismiss all the councillors of a council;
 - (l) name or change the name of a council;
 - (m) determine the total number of persons to be elected as councillors of a municipal area;
 - (n) determine the number of persons to be elected in respect of each electoral district;
 - (o) divide a municipal area into 2 or more electoral districts;
 - (p) abolish the division of a municipal area into electoral districts;
 - (q) alter the boundaries of an electoral district;
 - (r) combine 2 or more electoral districts in a municipal area to form one electoral district;
 - (s) name or change the name of an electoral district;
 - (t) declare that an election is to be held.
- (2) In an order under subsection (1), the Governor may fix a closing day, within

the meaning of Part 15, for an election to be held.

- (3) An election fixed to be held under subsection (2) may be conducted in respect of any proposed municipal area or areas.
- (4) An order under subsection (1)(k) may be made only in conjunction with an order made under subsection (1)(a), (b), (c), (d), (e), (j), (m), (n), (o), (p), (q) or (r).
- (5) The Governor, on the recommendation of the Minister and in relation to an order under subsection (1), may make –
 - (a) an order in respect of any appropriate savings and transitional matters; and
 - (b) an order in respect of employees of a council that is affected by an order under subsection (1); and
 - (c) an order relating to the requirements of the first meeting of a council of a proposed municipal area; and
 - (d) any other order necessary or expedient.
- (6) An order made under subsection (5) that is inconsistent with any provision of this Act or any other Act, other than section 45C of the *Constitution Act 1934*, prevails over that provision to the extent of that inconsistency.

- (7) An election for an existing or a proposed municipal area to be held as a result of an order made under this section is to be held in accordance with Part 15 and any regulations made for the purpose of that Part.

214F. Transfer and vesting of assets

If, as a result of an order under section 214E, a municipal area is abolished and combined with an existing or a newly created municipal area –

- (a) any assets of the council of the abolished municipal area are transferred to, and vest in, the council of the existing or newly created municipal area with effect from the day specified in that order; and
- (b) any legal proceedings by or against the council of the abolished municipal area in respect of those assets not determined before that day may be continued, on or after that day, by or against the council of the existing or newly created municipal area; and
- (c) a judgment or order of a court obtained before that day by or against the council of the abolished municipal area in respect of those assets may be

enforced by or against the council of the existing or newly created municipal area; and

- (d) a document addressed to the council of the abolished municipal area in respect of those assets may be served on the council of the existing or newly created municipal area; and
- (e) a contract made or entered into by the council of an abolished municipal area in respect of those assets before that day but not performed or discharged before that day is taken to have been made or entered into by the council of the existing or newly created municipal area.

214G. Apportionment between councils

- (1) If, as a result of an order under section 214E, part of a municipal area is or is to be combined with an existing or a newly created municipal area, the Minister may require the councils of the municipal areas affected by the order to make an agreement in respect of the parts of the municipal area to be combined as to the apportionment of the assets between those councils or any proposed council.
- (2) The Minister may determine the apportionment as between the councils or

proposed councils if the existing councils –

- (a) fail to make an agreement in relation to the apportionment; or
 - (b) fail to agree on the apportionment of one or more assets.
- (3) The Minister may require an agreement to be made on or before a specified day.
- (4) The Minister may refer any matter that is in dispute between councils to an arbitrator appointed by the Minister for that purpose.
- (5) A decision of the Minister is final.
- (6) Any apportionment takes effect –
- (a) on the day on which the order under section 214E takes effect; or
 - (b) on a later day if the Minister so determines.
- (7) Any assets apportioned under this section are vested in the relevant council on the day –
- (a) specified in the agreement; or
 - (b) if there is no agreement, specified in the determination under subsection (2).

214H. Costs

- (1) A council created or directly affected by an order under section 214E is to pay the costs and expenses in relation to that order or any transfer or vesting under sections 214F and 214G.
- (2) The Minister may apportion the costs and expenses among more than one council in any manner the Minister considers appropriate.

*Division 3 – Reviews of single and joint authorities***214I. Review of single or joint authorities**

- (1) The Board –
 - (a) is to carry out a review of a single authority or a joint authority if the Minister so directs; or
 - (b) may carry out the review if it so determines.
- (2) The review may cover any one or more of the following:
 - (a) the structure and rules of a single authority or joint authority;
 - (b) the relationship between the authority and the single authority council or a participating council;
 - (c) the management and operations of the authority;
 - (d) any other relevant matter.

214J. Procedure for review

- (1) The Board may carry out a review in any manner it considers appropriate.
- (2) Before carrying out a review of a single authority or joint authority, the Board is to give the single authority, joint authority, single authority council or participating councils at least 30 days' notice of the date on which the review is to start.
- (3) In carrying out the review, the Board must provide –
 - (a) reasonable opportunity for public consultation; and
 - (b) reasonable opportunity for a single authority, joint authority, single authority council or participating council to make any submissions.
- (4) Section 8 and Part 3 of the *Commissions of Inquiry Act 1995* apply to a review carried out by the Board as if –
 - (a) the Board were a Commission established under section 4 of that Act; and
 - (b) the review were the inquiry being conducted by that Commission under that Act.

214K. Recommendations

- (1) The Board is to submit to the Minister a written report of any review it carries out together with its recommendations.
- (2) On receipt of a report, the Minister is to –
 - (a) forward a copy of the report to –
 - (i) the single authority or joint authority concerned; and
 - (ii) in relation to a joint authority, the participating councils; and
 - (iii) in relation to a single authority, the single authority council; and
 - (b) invite submissions on any matter in the forwarded report within a specified period.
- (3) After considering any submissions, the Minister may –
 - (a) accept any or all of the Board's recommendations; or
 - (b) request the Board to reconsider any or all of its recommendations; or
 - (c) refer to the Board any alterations to its report requested by the single authority, joint authority,

single authority council or participating councils; or

(d) reject any or all of the Board's recommendations.

(4) The single authority, joint authority, single authority council or each participating council is to keep all matters contained in the report and recommendations of the Board forwarded by the Minister confidential until published under subsection (5).

(5) The Minister is to cause to be published the report and the recommendations of the Board, excluding any matter that the Board advises is confidential and the Minister considers is exempt information under the *Freedom of Information Act 1991*.

125. Section 219 amended (Submissions)

Section 219 of the Principal Act is amended by inserting "councillor (whether suspended or not)," after "council,".

126. Section 225 amended (Result of inquiry)

Section 225(1) of the Principal Act is amended as follows:

(a) by inserting in paragraph (a) "councillor (whether suspended or not)," after "council,";

- (b) by inserting in paragraph (b) “councillor (whether suspended or not),” after “council,”.

127. Section 226 amended (Dismissal of councillors)

Section 226(3) of the Principal Act is amended by inserting “made by the Governor as a result of a recommendation by the Minister under this section” after “councillors”.

128. Part 13, Division 2: Heading amended

Division 2 of Part 13 of the Principal Act is amended by omitting “*Administrators*” from the heading to that Division and substituting “*Commissioners*”.

129. Section 230 amended (Appointment of commissioner on suspension)

Section 230 of the Principal Act is amended by omitting “administrator of the council” and substituting “commissioner for that council”.

130. Section 231 amended (Appointment of commissioner on dismissal)

Section 231 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “administrator of” and substituting “commissioner for”;

- (b) by omitting from subsection (2) “administrator” and substituting “commissioner”;
- (c) by omitting from subsection (3) “an administrator” and substituting “a commissioner”.

131. Section 232 amended (Powers and functions of commissioner)

Section 232 of the Principal Act is amended by omitting “An administrator” and substituting “A commissioner”.

132. Section 233 amended (Remuneration of commissioner)

Section 233 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “An administrator” and substituting “A commissioner”;
- (b) by omitting from subsection (2) “an administrator” and substituting “a commissioner”;
- (c) by omitting from subsection (2) “the administrator” and substituting “the commissioner”.

133. Section 234 amended (Termination of appointment as commissioner)

Section 234 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “an administrator” and substituting “a commissioner”;
- (b) by omitting from subsection (1)(b) “administrator” and substituting “commissioner”;
- (c) by omitting from subsection (2) “an administrator” and substituting “a commissioner”;
- (d) by omitting from subsection (2) “administrator” second occurring and substituting “commissioner”.

134. Section 247 amended (Right to carry out works)

Section 247 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(a) “council” and substituting “general manager”;
- (b) by omitting from subsection (6) “council” and substituting “general manager”.

135. Section 248 amended (Right of occupier to act in certain cases on default of owner)

Section 248 of the Principal Act is amended by omitting “council” and substituting “general manager”.

136. Part 14, Division 5 inserted

After section 252 of the Principal Act, the following Division is inserted in Part 14:

Division 5 – Proceedings for offences

252A. Proceedings for offences

- (1) Notwithstanding any provision of any other Act, any proceedings for an offence under this Act may be instituted within 2 years after the offence is alleged to have been committed.
- (2) This section only applies to an offence that allegedly has been committed on or from the commencement of the relevant provision of the *Local Government Amendment Act 2005*.

137. Section 253 amended (Interpretation of Part 15)

Section 253 of the Principal Act is amended as follows:

- (a) by omitting the definition of “Electoral Commissioner”;

- (b) by omitting the definition of “nomination period” and substituting the following definition:

“nomination period” means the period beginning at 9 a.m. on the 7th Monday immediately before the closing day and ending at noon on the 5th Monday immediately before the closing day;

138. Section 253B inserted

After section 253A of the Principal Act, the following section is inserted in Division 1:

253B. Prescribed procedures for certain elections

Regulations may provide for different procedures than specified in this Part for the purpose of an election for an existing municipal area or proposed municipal area to be held as a result of an order made under section 214E.

139. Section 260 amended (Closure of electoral roll)

Section 260 of the Principal Act is amended by inserting “, unless otherwise determined under section 308(3A)(c)” after “is kept”.

140. Section 268A amended (Closing day and polling period)

Section 268A(1) of the Principal Act is amended by omitting “even year unless the Governor, by order under this section or section 12(2)” and substituting “uneven year unless the Governor, by an order made under this section or section 214E”.

141. Section 270 amended (Eligibility for nomination as councillor)

Section 270(1)(c) of the Principal Act is amended by omitting “section 48(6)” and substituting “section 48(6), 338A, 339 or 339A”.

142. Section 274 amended (Election without poll)

Section 274 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) If the number of candidates for an office whose nominations have been accepted and not withdrawn is less than the number required to be elected –
 - (a) the Electoral Commissioner may call for new nominations for the unfilled vacancies; and
 - (b) the period during which the new nominations may be made ends at noon on the 4th Monday immediately before the closing day; and

- (c) the eligibility requirement referred to in section 41(1)(b) does not apply in respect of a vacancy in the office of mayor or deputy mayor.

143. Section 277 repealed

Section 277 of the Principal Act is repealed.

144. Section 278 amended (Electoral advertising)

Section 278 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “candidate, an election agent or a party within the meaning of the *Electoral Act 2004*” and substituting “person”;
- (b) by inserting in subsection (2) “under this section” after “convicts”;
- (c) by inserting the following subsections after subsection (2):
 - (3) A person, within the relevant period, must not print, publish or distribute any electoral advertising that contains the name, photograph or a likeness of a candidate or intending candidate at an election without the written consent of the candidate or intending candidate.

Penalty: Fine not exceeding 50 penalty units.

- (4) Subsection (3) does not apply to any matter printed, published or distributed by or on behalf of the Electoral Commissioner in the exercise or performance of his or her powers and functions.

145. Section 288 amended (Ballot papers)

Section 288 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2) “, mayor or deputy mayor” after “councillor”;
- (b) by omitting subsection (3).

146. Section 304 amended (Certificate of election)

Section 304(3) of the Principal Act is amended by omitting “in the prescribed form and manner”.

147. Section 306 amended (Keeping of electoral material)

Section 306(5) of the Principal Act is amended by omitting “ballot papers for 4 years” and substituting “used ballot papers in respect of councillors until the certificate of election is issued for the next ordinary election for those councillors”.

148. Section 307 amended (Casual vacancies)

Section 307(6) of the Principal Act is amended by omitting “next certificate of” and substituting “certificate of election for the next ordinary”.

149. Section 308 amended (By-elections)

Section 308 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1):

(1AA) A by-election is not to be held during the periods specified in section 307(3).

- (b) by omitting subsection (2) and substituting the following subsection:

(2) A by-election is to be held in conjunction with the next ordinary election if the vacancy occurs during the period referred to in section 307(3).

- (c) by omitting from subsection (3) “A” and substituting “Except as provided in subsection (3A), a”;

- (d) by inserting the following subsection after subsection (3):

(3A) The Electoral Commissioner, in consultation with the relevant general manager in relation to a by-election not held in conjunction with the next

ordinary election, may
determine –

- (a) the day on which notice of the by-election is to be given; and
 - (b) the nomination period; and
 - (c) the closure of electoral rolls.
- (e) by omitting from subsection (4) “subsections (1A), (2) and (3)” and substituting “subsections (1A), (2), (3) and (3A)”.

150. Section 311 amended (Electoral articles to be signed)

Section 311 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “residential”;
- (b) by omitting subsection (3);
- (c) by inserting the following definition before the definition of “article” in subsection (4):

“address” means an address, other than a post office box or an electronic address –

- (a) at which the responsible person resides; or

- (b) at or through which the responsible person may be readily contacted;
- (d) by omitting “, published or broadcast” from the definition of “responsible person” in subsection (4) and substituting “or published”.

151. Section 321 amended (Declaration of office)

Section 321(2) of the Principal Act is amended by omitting “A councillor” and substituting “A person elected as a councillor”.

152. Section 321A inserted

After section 321 of the Principal Act, the following section is inserted in Division 11:

321A. Vacancy of office on failure to make declaration

The office of a councillor becomes vacant if the councillor fails to make the prescribed declaration within 60 days of the issue of the certificate of election for the election at which the councillor was elected.

153. Section 331E repealed

Section 331E of the Principal Act is repealed.

154. Part 16, Division 2A inserted

After section 333 of the Principal Act, the following Division is inserted in Part 16:

Division 2A – Tenders and contracts for goods and services**333A. Tenders**

- (1) A council must invite tenders for any contract it intends to enter into for the supply or provision of goods or services valued at or above the prescribed amount.
- (2) Tenders must be invited and made in a prescribed manner.
- (3) Subsection (1) does not apply to prescribed situations or prescribed contracts.

333B. Code for tenders and contracts

- (1) A council must adopt a code relating to tenders and contracts under this Division by 1 January 2006.
- (2) The code must –
 - (a) be consistent with this Act; and
 - (b) include any prescribed matter; and
 - (c) promote any prescribed principles; and

- (d) be reviewed at least once every 4 years.
- (3) A council must comply with its code.
- (4) The general manager is to make a copy of the council's code and any amendments to the code available –
 - (a) for public inspection at the public office during ordinary office hours; and
 - (b) for purchase at a reasonable charge; and
 - (c) on its internet site free of charge.

155. Section 336A amended (Public Office)

Section 336A of the Principal Act is amended as follows:

- (a) by omitting “A council” and substituting “The general manager”;
- (b) by omitting “its” and substituting “the council’s”.

156. Section 337 substituted

Section 337 of the Principal Act is repealed and the following section is substituted:

337. Council land information certificate

- (1) A person may apply in writing to the general manager for a certificate in

respect of information relating to land specified and clearly identified in the application.

- (2) The general manager, on receipt of an application made in accordance with subsection (1), is to issue a certificate in the prescribed form with answers to prescribed questions that are attached to the certificate.
- (3) A certificate under subsection (2) relates only to information that the council has on record as at the date of issue of the certificate.
- (4) A prescribed fee is payable in respect of the issue of a certificate.
- (5) The general manager, on request, may provide in or with the certificate any other information or document relating to the land that the general manager considers relevant.
- (6) A council does not incur any liability in respect of any information provided in good faith from sources external to the council.
- (7) A person, with the consent of the occupier or owner of specified land, may request in writing to the general manager that an inspection be carried out of that land to obtain supplementary information relevant to that land.
- (8) If the general manager agrees to a request under subsection (5) or (7), the general

manager may impose any reasonable charges and costs incurred.

(9) In this section –

“land” includes –

- (a) any buildings and other structures permanently fixed to land; and
- (b) land covered with water; and
- (c) water covering land; and
- (d) any estate, interest, easement, privilege or right in or over land.

157. Section 338A inserted

After section 338 of the Principal Act, the following section is inserted in Division 3:

338A. Disclosure of information

- (1) A councillor must not disclose information –
 - (a) seen or heard by the councillor at a meeting or part of a meeting of a council or council committee that is closed to the public that is not authorised by the council or council committee to be disclosed; or
 - (b) given to the councillor by the mayor, deputy mayor, chairperson of a meeting of the council or council committee or

the general manager on the condition that it be kept confidential.

Penalty: Fine not exceeding 50 penalty units.

(2) In addition to any penalty imposed under subsection (1), a court may make an order –

(a) barring the councillor from nominating as a candidate at any election for a period not exceeding 7 years; or

(b) dismissing the councillor.

(3) A member must not disclose information acquired as such a member on the condition that it be kept confidential.

Penalty: Fine not exceeding 50 penalty units.

(4) An employee of a council, single authority or joint authority must not disclose information acquired as such an employee on the condition that it be kept confidential.

Penalty: Fine not exceeding 50 penalty units.

158. Sections 339C, 339D, 339E and 339F inserted

After section 339B of the Principal Act, the following sections are inserted in Division 3:

339C. Offence to perform functions or exercise powers of councillor

(1) A person specified in subsection (2) must not –

- (a) perform any function or exercise any power of a councillor; or
- (b) attempt to perform any function or exercise any power of a councillor.

Penalty: Fine not exceeding 50 penalty units.

(2) Subsection (1) applies to the following:

- (a) a person who is not a councillor;
- (b) a councillor who is suspended;
- (c) a councillor who has not made the prescribed declaration of office.

339D. Obstruction

A person, without reasonable excuse, must not obstruct or attempt to obstruct an authorised person in the performance or exercise of his or her functions or powers under this Act.

Penalty: Fine not exceeding 50 penalty units.

339E. Complaints against non-compliance or offence

- (1) A person may make a complaint to the Director –
 - (a) that a council, councillor or general manager has failed to comply with requirements under this or any other Act; or
 - (b) that a councillor, general manager or employee of a council may have committed an offence under this Act.
- (2) A complaint must –
 - (a) be in writing; and
 - (b) identify the complainant and the person against whom the complaint is made; and
 - (c) give particulars of the grounds of the complaint; and
 - (d) be verified by statutory declaration; and
 - (e) be lodged with the Director.
- (3) The Director may require a complainant to give further particulars of the complaint supported by a statutory declaration.
- (4) The Director may carry out an investigation without receiving a complaint specified in subsection (1).

- (5) The Director may determine the procedure for handling complaints or investigating matters.

339F. Customer service charter

- (1) A council must adopt a customer service charter on or before 1 January 2006.
- (2) The customer service charter is to –
 - (a) specify the principles relating to services provided by the council; and
 - (b) specify a procedure for dealing with complaints relating to services provided by the council; and
 - (c) include any prescribed matter.
- (3) The general manager is to make the customer service charter available –
 - (a) for public inspection at the public office during ordinary office hours; and
 - (b) on the council's internet site free of charge; and
 - (c) for purchase at a reasonable charge.
- (4) A council is to review its customer service charter at least once every 2 years.
- (5) The general manager is to provide the council with a report at least once a year

of the number and nature of complaints received.

159. Section 340 substituted

Section 340 of the Principal Act is repealed and the following section is substituted:

340. Interference with records and documents

A person must not interfere with, alter, remove without reasonable excuse or destroy any record or document in the possession of, or under the control of, a council –

(a) without the approval of –

(i) the general manager; or

(ii) in the case of the general manager, the council; or

(b) contrary to the *Archives Act 1983*.

Penalty: Fine not exceeding 50 penalty units.

160. Section 340A amended (Allowances)

Section 340A of the Principal Act is amended as follows:

(a) by inserting the following subsection after subsection (2):

(2A) Allowances are to be paid in arrears.

(b) by inserting the following subsections after subsection (4):

(5) Councillors who are suspended under section 215(5) are not entitled to any allowances during the period of suspension.

(6) A person who must not perform any function or exercise any power of a councillor under section 339C is not entitled to any allowances.

161. Section 344 amended (Rounding off rates, &c.)

Section 344 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “A council may round down” and substituting “The general manager may round up”;

(b) by omitting from subsection (2) “A council” and substituting “The general manager”.

162. Section 346 repealed

Section 346 of the Principal Act is repealed.

163. Schedule 1 amended (Membership of Local Government Board)

Clause 1 of Schedule 1 to the Principal Act is amended by omitting “section 4(2)(a), (b), (c) or (d)” and substituting “section 210(2)(a), (b), (c) or (d)”.

164. Schedule 4 repealed

Schedule 4 to the Principal Act is repealed.

165. Schedule 5 amended (Office of Councillors)

Schedule 5 to the Principal Act is amended by omitting clauses 1 and 2 and substituting the following clauses:

1. Expenses

- (1) A council, on or before 1 January 2006, is to –
 - (a) adopt a policy in respect of payment of expenses incurred by councillors in carrying out the duties of office; and
 - (b) make a copy of the policy available for public inspection.
- (2) A councillor is entitled to be reimbursed for reasonable expenses in accordance with the policy adopted under subclause (1) in relation to –
 - (a) any prescribed expenses; and

- (b) any other expenses the council determines appropriate.

2. Loan of services, facilities and equipment

A council may decide to provide support services, facilities and equipment on loan to a councillor on any conditions it considers appropriate.

3. Vacation of office

- (1) The office of a councillor becomes vacant if the councillor –
 - (a) dies; or
 - (b) resigns; or
 - (c) is absent without leave from 3 consecutive ordinary meetings of the council; or
 - (d) is removed or dismissed from office under this Act; or
 - (e) becomes a paid employee of the council; or
 - (f) is no longer eligible to nominate as a candidate under section 270.
- (2) If the general manager becomes aware of a vacancy, the general manager is to notify the Electoral Commissioner.