

Version No. 054
Local Government Act 1989
Act No. 11/1989

Version incorporating amendments as at 1 November 2000

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1. Purpose of Act	1
2. Commencement	1
3. Definitions	2
PART 2—THE COUNCIL	10
4. Types of Councils	10
5. The Council	10
5A. Council may be referred to by standardised name	11
6. Purposes of a Council	12
7. Objectives	12
8. Functions and powers	14
9. Resolution of disputes	14
10. Number of Councillors	15
PART 3—ELECTIONS	17
Division 1—Voters	17
11. Persons entitled to be enrolled	17
12. Persons entitled to apply to be enrolled	18
13. Corporations	18
13A. Corporations—City of Melbourne	20
14. Limitations on right of entitlement	22
15. Procedure if there are more than 2 non-resident owners/occupiers	22
16. Applications for enrolment	23
17. Provisions relating to appointments for the purposes of section 13	23
18. Procedure on receipt of notice of appointment under section 13	24
18A. Procedure if no representatives appointed under section 13(1)— City of Melbourne	25
19. General powers relating to enrolment	26
20. Notification of change or cessation of entitlement	26

<i>Section</i>	<i>Page</i>
Division 2—Voters' Rolls	27
21. Electoral Commissioner to prepare list	27
21A. Order in Council dates	28
22. Chief Executive Officer to prepare list	29
22A. Notice to people on voters' list—City of Melbourne	31
23. Correction of voters' lists	31
24. Preparation of voters' rolls	32
25. Validity of voters' rolls	33
26. Electoral Commissioner's expenses	34
27. Offences relating to voters' rolls	34
Division 3—Qualification of Councillors	35
28. Qualification to be a Councillor	35
29. Disqualifications	36
30. Relief from disqualification	37
Division 4—Annual Elections	38
31. Application of Division	38
32. Annual elections	38
Division 5—Triennial Elections	39
33. Application of Division	39
34. City of Melbourne must hold triennial elections	39
35. Councils may hold triennial elections	39
36. General elections	40
Division 6—Extraordinary Vacancies	40
37. Extraordinary vacancy within 3 months before an election	40
37A. Extraordinary vacancies—Councillors elected under Schedule 3 (Part 4A) or 3A	40
38. By-elections	41
Division 7—Conduct of Elections and Polls of Voters	43
39. One vote per person	43
40. Voting is compulsory	43
40A. Compulsory voting—City of Melbourne	47
40B. Compulsory voting—Councils re-constituted under section 220Q(na)	48
41. Holding of an election	48
41A. Election or poll by postal voting	49
42. Voting and counting of votes and polls of voters	50
43. Governor in Council may give directions	50
Division 8—General Provisions	51
44. Municipal electoral tribunals	51
45. Application for an inquiry	51

<i>Section</i>	<i>Page</i>
46. Powers of a municipal electoral tribunal	52
47. Report to the Minister	53
48. Decision of municipal electoral tribunal	53
49. Reasons for decision	53
50. Scrutiny of voters' roll	54
51. Validity of election or poll	54
52. Unlawful nomination	54
53. Prohibition of canvassing near polling place	55
54. Interfering with rights	55
55. Printing and publication of electoral material	56
56. How-to-vote cards	58
57. False or defamatory statements	58
57A. Injunction	58
58. Offences relating to ballot-papers	59
58A. Offence to interfere with postal ballot materials	61
59. Bribery, treating and undue influence	61
60. Infringement of secrecy	62
61. Penalty on officers	63
62. <i>Repealed</i>	63
PART 4—COUNCIL ADMINISTRATION	64
Division 1—The Mayor and other Councillors	64
63. Declaration of office	64
64. Oath of allegiance	64
65. Failure to take oath and make declaration	65
66. Penalty for acting as Councillor if incapable	65
67. Ouster from office	65
68. Retirement of Councillors	66
68A. Resignation of Councillor	67
69. Extraordinary vacancies	68
70. Councillor may be re-elected	69
71. Election of Mayor	69
72. Term of office	70
72A. Term of office of Lord Mayor—City of Melbourne	70
73. Precedence of Mayor	71
74. Allowances	71
74A. Allowances—Melbourne City Council	72
74B. General provisions concerning allowances	73
75. Reimbursement of expenses	73
76. Indemnity provision	73
76A. Council must take out insurance cover	73
77. Improper use of information	74
78. Pecuniary interests	75
79. Duty of Councillor or member of a special committee	78
80. Exemption by Minister	80

<i>Section</i>	<i>Page</i>
81. Register of interests	80
Division 2—Procedure and Proceedings	86
82. Council premises and office	86
83. Types of meetings	86
84. Special meetings	86
85. Call of the Council	86
86. Special committees of the Council	87
87. Special committees of Councillors	88
88. Other special committees	89
89. Meetings to be open to the public	90
90. Voting	91
91. Conduct of meetings	91
92. Validity of proceedings	92
93. Minutes of meetings	92
Division 3—Council Staff	93
94. The Chief Executive Officer	93
94A. Functions of the Chief Executive Officer	94
94B. Restrictions concerning the appointment of senior officers	95
95. Principles to be observed with respect to Council staff	96
95A. Employment of senior officers to be regulated by contract	97
95B. Powers of the Minister concerning the employment of senior officers	98
95C. Validity of decisions	99
96. Equal Employment Opportunity	99
97. <i>Repealed</i>	99
97A. Performance of senior officers to be assessed annually	100
97B. Register of senior officers' remuneration	100
97C. Outside employment of senior officers	100
98. Delegations	101
99. Benefits gained by Council staff	102
100. <i>Repealed</i>	102
101. Long service leave	103
102. Restriction concerning the employment of ex-councillors	104
103–110. <i>Repealed</i>	103
PART 5—LOCAL LAWS	105
111. Power to make local laws	105
111A. Power to make local laws about shop trading hours	105
112. Incorporation by reference	105
113. Permits, licences, fees and charges	106

<i>Section</i>	<i>Page</i>
114. Delegations	108
115. Penalties	109
116. Application of local law	109
117. Infringement notices	110
118. Local law is a subordinate instrument	111
119. Procedure for making a local law	111
120. Availability of local laws	111
121. Commencement of local laws	112
122. Sunset provision	113
123. Revocation by Governor in Council	114
124. Validity of local law	114
PART 6—ACCOUNTS AND AUDIT	115
125. Accounts and records	115
126. Annual report	116
126A. Meeting to discuss annual report	119
127. <i>Repealed</i>	118
127A. Minister may direct Councils etc. to submit financial statements	119
127B. <i>Repealed</i>	119
128. Audited report on performance statement	120
129–131. <i>Repealed</i>	119
132. Offences relating to investigations	120
133. Imposition of a surcharge	121
134. Payment of the surcharge	123
PART 7—FINANCIAL PROVISIONS	124
135. <i>Repealed</i>	123
136. Payments out of the municipal fund	124
136A. Power of Minister in respect of use of revenue	124
137. Power to defer or waive payments	125
138. Investments	126
139. Power to borrow	127
140. Circumstances in which power to borrow may be exercised	128
141. Borrowings to be secured	128
142. Provisions with respect to securities	129
143. Overdrafts	129
144. Council must prepare a budget	130
144A. Revised budget	130
144B. Minister may require information concerning budgets	130
145. Budget or revised budget must include proposed borrowings	131
145A. Use of loan for different purpose	131
146. Public notice	131
147–149. <i>Repealed</i>	131
150. Adoption of budget or revised budget	132

<i>Section</i>	<i>Page</i>
151. <i>Repealed</i>	131
152. Use of funds for different purpose	133
153. Deficit budgeting	133
153A. Corporate plan	134
153B. Performance statement	135
PART 8—RATES AND CHARGES ON RATEABLE LAND	137
Division 1—Declaration of Rates and Charges	137
154. What land is rateable?	137
155. What rates and charges may a Council declare?	139
156. Liability to pay rates and charges	139
157. Which systems of valuing land may a Council use?	141
158. Declaring rates and charges	141
158A. Rates and charges to be levied on each occupancy	143
159. Municipal charge	144
160. Uniform rate	145
161. Differential rates	146
161A. Limited differential rates	148
162. Service rate and service charge	148
163. Special rate and special charge	149
163A. Submissions concerning special rates and charges	151
164. Discontinuance of the works and projects for a special rate or special charge	151
165. Receipt of excess money	152
166. Variation of special rate or special charge	152
Division 2—Payment of Rates and Charges	153
167. Payment of rates and charges	153
168. Incentives for prompt payment	154
169. Rebates and concessions	154
170. Deferred payment	155
171. Waiver	155
172. Council may charge interest on unpaid rates and charges	158
173. Land becoming or ceasing to be rateable land	160
174. <i>Repealed</i>	160
174A. Land which ceases to be urban farm land or residential use land	161
175. Person acquiring rateable land	162
176. <i>Repealed</i>	162
177. Council may require occupier to pay rent	163
178. Occupier who pays rates or charges	164
179. Invalidity of any rate or charge	164
180. Unpaid rate or charge	164
181. Council may sell land to recover unpaid rates or charges	165

<i>Section</i>	<i>Page</i>
Division 3—Reviews and Appeals	168
182. <i>Repealed</i>	167
183. Review of differential rating by Victorian Civil and Administrative Tribunal	169
184. Appeal to County Court	169
185. Application to Victorian Civil and Administrative Tribunal	170
185AA. Application for declaration	172
185AB. Matters Tribunal must take into account	172
 PART 8A—MINISTER MAY LIMIT INCOME FROM RATES AND CHARGES	 173
185A. Definition	173
185B. Minister may give directions concerning rates and charges	173
185C. Councils must comply with Minister's direction	175
 PART 9—SPECIFIC FUNCTIONS, POWERS AND RESTRICTIONS	 177
Division 1—General Provisions	177
186. Restriction on power to enter into contracts	177
187. Acquisition and compensation	178
187A. Creation of easements	179
188. Power to accept gifts	179
189. Restriction on power to sell land	179
190. Restriction on power to lease land	180
191. Transfer, exchange or lease of land without consideration	181
192. Use of land for another purpose	181
193. Entrepreneurial powers	182
194. Power to compound	185
195. Assistance to a member of Council staff	185
196. Regional libraries	185
197. Submissions on regional library agreements	188
197A. Restrictions on the power of a regional library to borrow	188
197B. Restriction on power of regional library to delegate its powers	188
197C. <i>Repealed</i>	188
197D. Corporate plan	189
197E. Offence to fail to comply with annual report and corporate plan provisions	189
197F. Restriction on power to make local laws	190
197G. Winding up of regional libraries	190
198. Sewers and drains vested in the Council	191
199. Concentration or diversion of drainage	191
200. Drainage of land	191
201. Approved schemes	192

<i>Section</i>	<i>Page</i>
Division 2—Provisions Relating to Roads and Public Highways and Traffic Regulation	192
202. Crown has absolute property	192
203. Public highways to vest in Councils	192
204. Council may declare a road to be a public highway or to be open to the public	193
205. Councils to have the care and management of certain roads	193
206. Power of Councils over roads	194
207. Powers of Councils over traffic	195
207A. Submissions under section 223	195
207B. Certain land used, or to be used, for roads to vest in Council	195
207C. Sewers, pipes, wires etc. of public authorities not affected	196
207D. Registration of titles of land affected by action concerning roads	197
207E. Alterations to titles if land exchanged	198
207F. Right of Council to recover for damage to road from person responsible	199
208. Transport Act 1983 and Road Safety Act 1986	200
Division 3—Best Value Principles	201
208A. Best Value Principles to be followed	201
208B. Best Value Principles	201
208BA. <i>Repealed</i>	201
208C. Factors that may be looked at in applying the Principles	202
208D. Quality and cost standards	202
208E. When the Best Value Principles are to be implemented	203
208F. Standards to be publicly available	203
208G. Report on Best Value Principles compliance	204
208H. Ministerial Codes	204
208I. Ministerial guidelines	204
208J. Minister must consult	205
PART 10—INQUIRIES, REVIEWS AND SUSPENSION OF COUNCILS	206
Division 1—Inquiries and Suspension of Councillors	206
209. Minister may appoint Commissioner and establish inquiry	206
210. Protection of Commissioner	207
211. Rules of evidence do not apply	207
212. Witnesses may be represented	207

<i>Section</i>	<i>Page</i>
213. Access of Commissioner to places, documents etc.	207
214. Powers of Commissioner	208
215. Some proceedings of inquiry may be in private	209
216. Publishing report of Commissioner or proceedings	209
217. Notice to Council	209
218. Outcome of inquiry	209
219. Suspension of Councillors	211
Division 2—Periodic Review of Electoral Representation by Council	215
220. Council must undertake review	215
PART 10A—LOCAL GOVERNMENT PANELS	217
220A. Local government panels	217
220B. Membership of panels	217
220C. Conditions of appointment	217
220D. Panel proceedings	217
220E. Improper use of information	218
PART 10B—LOCAL GOVERNMENT RESTRUCTURING REVIEWS	219
220F. Terms of review must be publicised	219
220G. Conduct of the review	219
220H. Legal proceedings excluded	219
220I. Supreme Court—limitation of jurisdiction	220
220J–220O. <i>Repealed</i>	219
PART 10C—RESTRUCTURING ORDERS	221
220P. Operation of this Part	221
220Q. Power to make Orders	221
220R. Matters which may be included in Order	223
220S. General provisions relating to Orders	224
220T. Panel review not needed for minor boundary changes	227
PART 11—GENERAL	228
221. Service charges on non-rateable land	228
222. Right of inspection	229
223. Right to make submission	229
223A. Appointment of inspectors of municipal administration	231
223B. Powers of inspectors of municipal administration	231
224. Authorised officers	232
224A. Police may act as authorised officers to enforce certain local laws	234

<i>Section</i>	<i>Page</i>
225. When Council or other person can carry out required work	235
226. Right of owner to carry out required work on occupied land	235
227. Recovery of money owed to Council by former owner or occupier	236
227AA. Recovery of costs and fees under Housing Act 1983	236
227A. Council may charge interest on unpaid money	237
228. Indemnity provision	238
229. Land information certificate	238
230. Notice in relation to disposition of land	239
231. <i>Repealed</i>	238
232. Proceedings	239
233. Service on a Council	240
234. Service on a person	240
235. Evidence of service	241
236. Power of delegation	241
237. Council records and information	242
238. Obstructing Council	242
239. Persons who are liable for offences	242
240. Penalties	243
241. Evidence of ownership	244
242. Evidentiary provisions	244
242A. Supreme Court—limitation of jurisdiction	246
243. Regulations	246
PART 12—PROVISIONS APPLYING TO THE MELTON SHIRE COUNCIL	251
Division 1—Definitions	251
244. Definitions	251
Division 2—The holding of the first Poll	251
245. Minister may fix date for poll	251
246. What is needed for poll to be carried	251
247. Commissioners to continue if poll carried	252
Division 3—Elections	254
248. General election to be held	254
249. Meeting to be called after election	254
250. Commissioners to go out of office	254
251. Future elections	255
252–255. <i>Repealed</i>	254
Division 4, 5—<i>Repealed</i>	254
256–264. <i>Repealed</i>	254

<i>Section</i>	<i>Page</i>
<hr/>	
SCHEDULES	256
SCHEDULE 1—Functions of councils	256
SCHEDULE 2—Provisions with respect to the holding of an election	259
SCHEDULE 3—Provisions with respect to voting and the counting of votes and polls of voters	272
SCHEDULE 3A—Provisions with respect to filling extraordinary vacancies	289
SCHEDULE 4—Provisions relating to municipal electoral tribunals	297
SCHEDULE 5—How-to-vote cards	301
SCHEDULE 6—Provisions with respect to equal employment opportunity	306
SCHEDULE 7— <i>Repealed</i>	309
SCHEDULE 8—Provisions with respect to local laws	311
SCHEDULE 8A— <i>Repealed</i>	311
SCHEDULE 9—Provisions relating to securities	313
SCHEDULE 10—Powers of councils over roads	315
SCHEDULE 11—Powers of councils over traffic	319
SCHEDULE 11A— <i>Repealed</i>	321
SCHEDULE 12—Regulations	323
<hr/> <hr/>	
NOTES	326
1. General Information	326
2. Table of Amendments	327
3. Explanatory Details	334

Version No. 054
Local Government Act 1989
Act No. 11/1989

Version incorporating amendments as at 1 November 2000

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purpose of Act*

The purpose of this Act is to—

- (a) provide for a democratic, efficient and effective system of local government in Victoria; and
- (b) give Councils powers which will enable Councils to meet the needs of their communities; and
- (c) provide for an accountable system of local government; and
- (d) reform the law relating to local government in Victoria.

2. *Commencement*

- (1) This Act comes into operation on a day or days to be proclaimed.
- (2) The proclamation or proclamations made under sub-section (1) must be made on or before 1 July 1990.

3. Definitions

(1) In this Act—

"accounting records" includes—

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry; and
- (b) any working papers and other documents which are necessary to explain the methods and calculations by which accounts are made up;

"accounts" means—

- (a) income and expenditure accounts; and
- (b) balance sheets; and
- (c) notes attached to or intended to be read with any income and expenditure account or balance sheet;

"auditor" means the Auditor-General;

"bank" means—

- (a) a bank within the meaning of the Commonwealth Banking Act 1959; or
- (b) a bank constituted by a law of a State or of the Commonwealth;

S. 3(1) def. of "auditor" inserted by No. 33/1995 s. 4(2)(a).

S. 3(1) def. of "Board" repealed by No. 27/1997 s. 3(a).

* * * * *

"capital improved value" means the sum which land, if it were held for an estate in fee simple unencumbered by any lease, mortgage or other charge, might be expected to realize at the time of valuation if offered for sale on any reasonable terms and conditions which a genuine seller might in ordinary circumstances be expected to require;

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

S. 3(1) def. of "Chief Executive Officer" inserted by No. 125/1993 s. 3(a), amended by No. 125/1993 s. 6(1).

* * * * *

S. 3(1) def. of "competitive tendering statement" inserted by No. 40/1994 s. 4, repealed by No. 59/1999 s. 5(a).

"corporation" includes—

- (a) any body corporate, whether formed or incorporated within or outside the State of Victoria; and
- (b) any public statutory corporation constituted by or under any law of the State of Victoria, any other State or Territory of the Commonwealth or the Commonwealth; and

Local Government Act 1989
Act No. 11/1989

(c) any incorporated association within the meaning of the **Associations Incorporation Act 1981**—

but does not include a Council or any other body incorporated or constituted by or under this Act;

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

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

S. 3(1) def. of "Council staff" repealed by No. 125/1993 s. 3(b).

* * * * *

S. 3(1) def. of "designated officer" repealed by No. 125/1993 s. 3(b).

* * * * *

S. 3(1) def. of "entitlement date" amended by Nos 13/1990 s. 5(2), 34/1996 s. 33(a).

"entitlement date" means the date fixed by Order in Council for the purposes of Division 1 of Part 3;

S. 3(1) def. of "farm land" inserted by No. 91/1994 s. 35(a).

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

S. 3(1) def. of "financial year" substituted by No. 99/1994 s. 3(1).

"financial year" means the period of 12 months ending on 30 June each year¹;

"how-to-vote card" means any card, handbill, pamphlet or notice—

- (a) which is or includes a representation or partial representation or purported representation or purported partial representation of a ballot-paper for use in an election; or
- (b) which lists the names of any or all of the candidates for an election with a number indicating an order of voting preference against the names of any or all of those candidates;

"local government panel" means a panel established by the Minister under section 220A;

S. 3(1) def. of "local government panel" inserted by No. 27/1997 s. 3(b).

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

"municipal enterprise" means any venture under section 193 or any trading or entrepreneurial enterprise under clause 9 of item 7 of Schedule 1;

"Order in Council" means an Order made by the Governor with the advice of the Executive Council and published in the Government Gazette;

"owner" in relation to any land, means the person who is entitled to receive the rack-rent for the land or who, if the land were let at a rack-rent, would be entitled to receive the rent;

"person" in relation to Part 3, means a person who has attained the age of 18 years but does not include—

Local Government Act 1989
Act No. 11/1989

- (a) a corporation; or
- (b) a Council or any other body incorporated or constituted by or under this Act;

S. 3(1) def. of "prescribed" repealed by No. 78/1991 s. 3(a).

* * * * *

"printed electoral material" means an advertisement, handbill, pamphlet or notice that is intended or calculated to affect the result of an election, and includes a how-to-vote card;

"public body" means any government department or municipal council or body established for a public purpose by an Act of the Parliament of Victoria, any other State or Territory of the Commonwealth, or the Commonwealth;

S. 3(1) def. of "public highway" inserted by No. 125/1993 s. 21(a).

"public highway" is a road which is open to the public for traffic as a right, irrespective of whether the road is in fact open to traffic, and includes a road—

- (a) declared to be a public highway under section 204(1) or under any other Act;
- (b) which becomes a public highway under section 24(2)(c) of the **Subdivision Act 1988**;

"public notice" means a notice published in a newspaper generally circulating in the municipal district of the Council chosen by the Council for the purpose;

Local Government Act 1989
Act No. 11/1989

s. 3

"rateable land" means any land that is rateable under section 154;

S. 3(1) def. of "rateable land" inserted by No. 78/1991 s. 3(b).

"residential use land" has the same meaning as it has in the **Valuation of Land Act 1960**;

S. 3(1) def. of "residential use land" inserted by No. 91/1994 s. 35(b).

"road" includes—

- (a) a street; and
- (b) a right of way; and
- (c) any land reserved or proclaimed as a street or road under the **Crown Land (Reserves) Act 1978** or the **Land Act 1958**; and
- (d) a passage; and
- (e) a cul de sac; and
- (f) a by-pass; and
- (g) a bridge or ford; and
- (h) a footpath, bicycle path or nature strip; and
- (i) any culvert or kerbing or other land or works forming part of the road;

S. 3(1) def. of "road" substituted by No. 125/1993 s. 21(b).

"senior officer" means a member of Council staff who is entitled to total remuneration in any 12 month period of at least \$60 000 (or any other amount that might be prescribed from time to time);

S. 3(1) def. of "senior officer" inserted by No. 125/1993 s. 3(c).

Local Government Act 1989
Act No. 11/1989

s. 3

S. 3(1) def. of
"total
remuneration"
inserted by
No. 125/1993
s. 3(c).

"total remuneration", in relation to a member of Council staff, means the sum of—

- (a) the gross salary of the member; and
- (b) the cost in dollars to the Council of any other allowance, benefit or remuneration that the member receives from the Council or that is paid or given by the Council to another person for the ultimate benefit of the member (other than any allowances in relation to expenses incurred in the discharge of the member's duties);

"tribunal" is a reference to a municipal electoral tribunal established under section 44;

S. 3(1) def. of
"unenrolled
voter"
inserted by
No. 15/1992
s. 25(2).

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

S. 3(1) def. of
"urban farm
land"
inserted by
No. 91/1994
s. 35(c).

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

"voter" means a person who is enrolled on a voters' roll;

"ward" means a subdivision of a municipal district and includes a riding.

(2) For the purposes of—

- (a) the performance of the functions or the exercise of the powers of a Council; and

(b) any proceedings for offences under the
Transport Act 1983 or the **Road Safety Act
1986**—

"road" includes a shopping mall.

(3) If the boundary of a municipal district is described by reference to a road, proposed road, railway line, former railway line or waterway (other than a waterway that forms part of the sea coast), that boundary is to be taken to be constituted by a line along the centre for the time being of the road, proposed road, railway line, former railway line or waterway.

S. 3(3)
amended by
No. 81/1989
s. 3(Sch.
item 30.1),
substituted by
No. 33/1995
s. 8.

(3A) If the boundary of a municipal district is described by reference to the sea coast (regardless of whether it is referred to as the sea shore or the waters of the sea or a bay or in any other way), that boundary is to be taken to be the line for the time being of the low water mark on that sea coast.

S. 3(3A)
inserted by
No. 33/1995
s. 8,
amended by
No. 76/1997
s. 3.

(3B) Sub-section (3) or (3A) does not apply if an intention contrary to the effect of that sub-section appears in the description.

S. 3(3B)
inserted by
No. 33/1995
s. 8.

(4) If a municipal district is not subdivided a reference to "ward" is to be taken to be a reference to the municipal district.

(5) Where a Council is empowered to do any act, matter or thing, the decision to do the act, matter or thing is to be made by a resolution of the Council.

PART 2—THE COUNCIL

4. *Types of Councils*

- (1) A Council may be constituted as a—
 - (a) City Council; or
 - (b) Rural City Council; or
 - (c) Shire Council.
- (2) The municipal district of a City Council must be predominantly urban in character.
- (3) The municipal district of a Rural City Council must be partly urban and partly rural in character.
- (4) The municipal district of a Shire Council must be predominantly rural in character.

5. *The Council*

- (1) A Council consists of its Councillors, who are the representatives, elected in accordance with this Act, of persons who are residents in the Council's municipal district or ratepayers of the Council.
- (2) A Council—
 - (a) is a body corporate with perpetual succession; and
 - (b) must have a common seal; and
 - (c) may sue or be sued in its corporate name; and
 - (d) is capable of acquiring, holding, dealing with or disposing of property for the purpose of performing its functions and exercising its powers; and
 - (e) is capable of doing and suffering all acts and things which bodies corporate may by law do and suffer and which are necessary or

expedient for performing its functions and exercising its powers.

- (3) The common seal of a Council must—
- (a) bear the name of the Council (which name may refer to the inhabitants of the municipal district) and any other word, letter, sign or device the Council determines should be included; and
 - (b) be kept at the Council office; and
 - (c) be used in accordance with the local laws of the Council.
- (4) All courts, judges and persons acting judicially must take judicial notice of the imprint of the seal of a Council on any document and must presume that the document was properly sealed until the contrary is proved.

S. 5(3)(a)
amended by
No. 78/1991
s. 13(a).

5A. Council may be referred to by standardised name²

Despite anything to the contrary in this or any other Act, in all proceedings and in all Acts, regulations and documents it is sufficient for all purposes to refer to—

- (a) a City Council as—
"[name of municipal district] City Council";
- (b) a Rural City Council as—
"[name of municipal district] Rural City Council";
- (c) a Shire Council as—
"[name of municipal district] Shire Council";
- (d) a Council that has "Borough" as part of its name as—
"[name of municipal district] Borough Council";

S. 5A
inserted by
No. 78/1991
s. 4.

- (e) a Council that has "Town" as part of its name as—
"[name of municipal district] Town Council".

6. *Purposes of a Council*

- (1) The purposes of a Council are—
- (a) to provide for the peace, order and good government of its municipal district; and
 - (b) to facilitate and encourage appropriate development of its municipal district in the best interests of the community; and
 - (c) to provide equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively; and
 - (d) to manage, improve and develop the resources of its district efficiently and effectively.
- (2) It is the intention of Parliament that the provisions of this Act be interpreted and every function, power, authority, discretion and duty conferred or imposed by or under this or any other Act on a Council be performed or exercised so as to give effect to the purposes and objectives of Councils.

7. *Objectives*

In seeking to achieve its purposes, a Council has the following objectives—

- (a) to facilitate the involvement of members of the community, users of facilities and services and Council staff in the development, improvement and co-ordination of local government;

Local Government Act 1989
Act No. 11/1989

s. 7

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- (aa) to achieve the Best Value Principles set out in section 208B;
- (b) to co-ordinate with other public bodies to ensure that services and facilities are provided and resources are used effectively and efficiently;
- (c) to ensure adequate planning for the future of its municipal district;
- (d) to represent and promote the interests of the community and to be responsive to the needs of the community;
- (e) to formulate comprehensive policies and set performance targets;
- (f) to develop, implement and monitor its strategic plans and budgets;
- (g) to develop, implement and monitor its corporate and financial management control techniques;
- (h) to raise funds for local purposes by the equitable imposition of rates and charges and by obtaining borrowings and grants;
- (i) to delegate decision making to appropriate levels within the organisation;
- (j) to develop and implement co-ordinated personnel and industrial relations policies;
- (k) to facilitate accountability at all levels within the organisation by maintaining suitable information and reporting systems;
- (l) to promote and undertake research into any matter relating to the Council's objectives, functions or powers.

S. 7(aa)
inserted by
No. 59/1999
s. 3.

8. *Functions and powers*

- (1) A Council has the following functions—
 - (a) the functions specified in Schedule 1;
 - (b) any other function conferred on a Council by or under this Act;
 - (c) any function conferred on a Council by or under any other Act.
- (2) A Council may perform its functions inside and outside its municipal district.
- (3) A Council has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions and to enable it to achieve its purposes and objectives.
- (4) The generality of sub-section (3) is not limited by the conferring of specific powers on a Council by or under this Act or any other Act.
- (5) Schedule 1 does not limit the functions or powers conferred on a Council by or under this Act or any other Act.

9. *Resolution of disputes*

- (1) Any difference or dispute arising between a Council and another public body may be referred to the Governor in Council.
- (2) The Governor in Council is to appoint a board of inquiry to inquire into and determine any difference or dispute referred to the Governor in Council.
- (3) For the purposes of any inquiry a board of inquiry has all the powers conferred by sections 14 to 16 of the **Evidence Act 1958**.

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- (4) A determination of a board of inquiry is binding on the parties.
 - (5) If an Act contains a mechanism for resolving a dispute or difference in respect of the performing of a function conferred on a Council by that Act, that mechanism must be used instead of this section.

10. Number of Councillors

- (1) A Council must consist of not fewer than 5 Councillors and not more than 12 Councillors.
- (2) In respect of a Council which holds triennial elections there must be at least 1 Councillor to represent each ward.
- (3) If a Council holds annual elections there must be at least 3 Councillors to represent each ward.
- (4) Despite anything to the contrary in this Act—
 - (a) the municipal district of the Melbourne City Council must consist of 4 wards; and
 - (b) 1 Councillor must represent each ward; and
 - (c) 5 councillors must represent the municipal district as a whole and must be elected in accordance with Part 4A of Schedule 3; and
 - (d) the Melbourne City Council must consist of 9 Councillors.
- (5) Sub-sections (2) and (3) do not apply to any Council that has been re-constituted by an Order made under section 220Q(na) while that Order remains in force.
- (6) The Councillors of a Council referred to in sub-section (5) who are to be elected to represent the municipal district of the Council as a whole must

S. 10(1)
substituted by
No. 76/1995
s. 3(1).

S. 10(4)
repealed by
No. 76/1995
s. 3(2),
new s. 10(4)
inserted by
No. 34/1996
s. 32(2).

S. 10(5)
inserted by
No. 76/1997
s. 4(1).

S. 10(6)
inserted by
No. 76/1997
s. 4(1).

s. 10

Local Government Act 1989
Act No. 11/1989

be elected in accordance with Part 4 of Schedule 3, unless the Order made under section 220Q(na) specifies that they are to be elected under Part 4A of Schedule 3.

PART 3—ELECTIONS

Division 1—Voters

11. *Persons entitled to be enrolled*

- (1) A person who on the entitlement date would be an elector in respect of an address in a ward if a roll of electors for the Legislative Assembly was prepared, is entitled without application to be enrolled on the voters' roll in respect of that address.
- (2) A person who on the entitlement date—
 - (a) is not a person referred to in sub-section (1); and
 - (b) is not less than 18 years of age; and
 - (c) is the owner of any rateable land in a ward whether solely or jointly with any other person or persons; and
 - (d) is not a resident of the ward in which that rateable land is located—is entitled without application to be enrolled on the voters' roll in respect of that rateable land.
- (3) For the purposes of sub-section (2) only 2 joint owners are entitled to be enrolled in respect of any 1 property which is rateable land.
- (4) A person who on the entitlement date—
 - (a) is not a person referred to in sub-section (1) or (2); and
 - (b) is not less than 18 years of age; and
 - (c) is the occupier of any rateable land, whether solely or jointly with any other person or persons; and

S. 11(3)
amended by
No. 76/1997
s. 5(1)(a).

(d) is not a resident of the ward in which that rateable land is located—

is entitled without application to be enrolled on the voters' roll in respect of that rateable land.

S. 11(5)
substituted by
No. 13/1990
s. 3.

(5) For the purposes of sub-section (4)—

S. 11(5)(a)
amended by
Nos 15/1992
s. 3, 76/1997
s. 5(1)(b).

(a) in relation to rateable land any part of which is separately occupied, only 2 joint occupiers are entitled to be enrolled in respect of each part of the rateable land assessed as a separate occupancy in accordance with section 158A; and

S. 11(5)(b)
amended by
No. 76/1997
s. 5(1)(b).

(b) in relation to any other rateable land, only 2 joint occupiers are entitled to be enrolled in respect of that rateable land.

S. 12
substituted by
No. 43/1993
s. 7.

12. *Persons entitled to apply to be enrolled*

A person who on the entitlement date—

- (a) is not a person referred to in section 11; and
- (b) is not less than 18 years of age; and
- (c) is an owner or occupier of any rateable land in a ward—

is entitled to apply to be enrolled on the voters' roll in respect of that rateable land.

13. *Corporations*

S. 13(1)
amended by
No. 33/1995
s. 12(1)(a)(b),
substituted by
No. 76/1997
s. 5(2).

(1) If on the entitlement date—

- (a) a corporation is the sole owner or the sole occupier of any rateable land in a ward; or
- (b) a corporation is the joint owner or the joint occupier of any rateable land in a ward, but

none of the other joint owners or occupiers
(as the case may be) is a corporation—

the corporation may appoint a person to represent
it at Council elections to vote on its behalf.

(1A) Notice of an appointment under sub-section (1) or
(3) must—

S. 13(1A)
inserted by
No. 33/1995
s. 12(2),
amended by
No. 76/1995
s. 4(a).

(a) contain the details required by the
regulations; and

S. 13(1A)(a)
substituted by
No. 54/1998
s. 3(1)(a).

* * * * *

S. 13(1A)(b)
repealed by
No. 54/1998
s. 3(1)(a).

(c) be delivered to the Council office by 4 p.m.
on the entitlement date.

(2) A corporation may only be represented by one
person under this section at a Council election in
respect of a ward, regardless of anything to the
contrary in sub-sections (1) and (3).

S. 13(2)
substituted by
No. 76/1997
s. 5(3).

(3) If, on the entitlement date, any rateable land in a
ward is jointly owned or jointly occupied by 2 or
more corporations, those corporations may
appoint a person to represent them at Council
elections to vote on their behalf.

S. 13(3)
amended by
No. 76/1995
s. 4(b)(i)(ii),
substituted by
No. 76/1997
s. 5(3).

(4) Sub-section (3) applies even if one or more of the
joint owners or joint occupiers is a person.

S. 13(4)
inserted by
No. 76/1997
s. 5(3).

(5) A corporation that is entitled to be represented
under sub-section (1) in respect of a ward is not
entitled to be represented under sub-section (3) in
respect of that ward.

S. 13(5)
inserted by
No. 76/1997
s. 5(3).

Local Government Act 1989
Act No. 11/1989

s. 13A

S. 13(6)
inserted by
No. 76/1997
s. 5(3).

- (6) A corporation that is already represented under sub-section (3) in respect of a ward is not entitled to participate in the appointment of another representative under sub-section (3) in respect of that ward.

S. 13A
inserted by
No. 98/1993
s. 15.

13A. Corporations—City of Melbourne

- (1) This section applies only in respect of the City of Melbourne.

- (2) This Act applies as if—

- (a) for sections 13(1) and (2) there were substituted—

"(1) If on the entitlement date—

- (a) a corporation is the owner or occupier of any rateable land in a ward; or

- (b) the joint owners or joint occupiers of any rateable land in a ward consist of corporations or a combination of people and corporations (of at least 1 person and 1 corporation)—

the corporation or the joint owners or joint occupiers may appoint 2 people to represent it or them.

- (2) A corporation may only exercise the right of entitlement conferred by sub-section (1) once in respect of a ward, regardless of how many parcels of rateable land it owns or occupies or jointly owns or occupies in that ward.";

S. 13A(2)(a)
amended by
No. 33/1995
s. 13(1)(a)(b),
substituted by
No. 76/1997
s. 5(4).

- (aa) after section 13(2) there were inserted—

"(2A) If on the entitlement date a corporation is the sole owner or sole occupier of

S. 13A(2)(aa)
inserted by
No. 33/1995
s. 13(2).

rateable land in more than one ward of the City of Melbourne—

(a) its 2 representatives are to represent it in each ward in which it owns or occupies rateable land; and

(b) in an election for the municipal district as a whole, each of those representatives is only entitled to vote once.";

(b) sections 13(3)—(6) were repealed;

S. 13A(2)(b) substituted by No. 76/1997 s. 5(5).

(c) the references to sections 13(3) in sections 14, 16, 17, 20(1) and 22(2) were omitted;

(ca) for sections 17(1)(c) and (d) there were substituted—

S. 13A(2)(ca) inserted by No. 33/1995 s. 13(3).

"(c) is for any other reason already enrolled, or entitled to be enrolled, on the voters' roll in respect of any ward of the City of Melbourne.";

(d) for section 18(1) there were substituted—

S. 13A(2)(d) amended by No. 125/1993 s. 14(a), substituted by No. 33/1995 s. 13(4).

"(1) On receiving notice of an appointment, the Chief Executive Officer must enrol the person appointed unless he or she believes the person is not entitled to be enrolled.

(1A) If the Chief Executive Officer receives a notice of appointment in respect of any rateable land in respect of which 2 people have already been enrolled—

(a) if the notice only appoints one person and does not revoke the

appointment of either of the 2 people enrolled, the Chief Executive Officer must refuse to enrol the person;

- (b) if the notice appoints 2 people, the Chief Executive Officer must enrol those 2 people and must remove the names of the 2 people previously enrolled from the voters' list, regardless of whether or not the notice revokes the earlier appointment."

14. *Limitations on right of entitlement*

- (1) A person or corporation is not entitled to elect which right of entitlement conferred by section 11(1), 11(2), 11(4), 12, 13(1) or 13(3) to exercise.
- (2) Despite anything to the contrary in this Part, a person is only entitled to vote once at any election in respect of a ward, regardless of how many different entitlements the person may have to vote in respect of that ward.

S. 14(2)
substituted by
No. 76/1997
s. 5(6).

15. *Procedure if there are more than 2 non-resident owners/occupiers*

For the purposes of section 11(2) or (4), if it appears from the rate records of the Council that there are more than 2 owners or more than 2 occupiers of any rateable land, the Chief Executive Officer must enrol without application the 2 owners or the 2 occupiers (as the case may be)—

- (a) whose names appear first on the rate records in relation to that land when those names are read in the order in which they appear in those records; and

S. 15
amended by
No. 125/1993
s. 14(a),
substituted by
No. 76/1997
s. 6.

- (b) who are eligible to be enrolled under that section in respect of that land.

16. Applications for enrolment

An application for a person to be enrolled for the purposes of section 12 or 13(3) must—

- (a) be in writing; and
(b) contain the details required by the regulations; and

S. 16 amended by No. 33/1995 s. 14(1).

S. 16(b) substituted by No. 54/1998 s. 3(1)(b).

* * * * *

S. 16(c) repealed by No. 54/1998 s. 3(1)(b).

- (d) be delivered to the Council office not later than 4 p.m. on the entitlement date.

17. Provisions relating to appointments for the purposes of section 13

- (1) An appointment under section 13(1) and an application for a person to be enrolled for the purposes of section 13(3) is void if at the time the appointment is made the person appointed—
- (a) has not reached 18 years of age; or
(b) has not consented in writing to be appointed; or
(c) is for any other reason entitled to be enrolled on the voters' roll in respect of the ward for which the appointment is made; or
(d) is as a result of another appointment for the purposes of section 13(1) or 13(3) which is still in force, already enrolled on the voters' roll in respect of the ward for which the appointment is made.

S. 17(1) amended by No. 33/1995 s. 14(2)(a)(b).

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- (2) An appointment for the purposes of section 13(1) or 13(3) is revoked if—
- (a) the person appointed—
 - (i) dies; or
 - (ii) delivers a notice of resignation containing the details required by the regulations to the Council office; or
 - (iii) for any other reason becomes entitled in his or her own right to be enrolled on the voters' roll in respect of the ward for which the appointment was made; or
 - (b) notice of revocation containing the details required by the regulations is delivered to the Council office; or
 - (c) the entitlement under section 13(1) or 13(3) ceases to exist.

S. 17(2)(a)(ii)
amended by
No. 54/1998
s. 3(1)(c).

S. 17(2)(b)
amended by
No. 54/1998
s. 3(1)(c).

S. 18
amended by
No. 125/1993
s. 14(b),
substituted by
No. 33/1995
s. 15.

18. *Procedure on receipt of notice of appointment under section 13*

- (1) On receiving notice of an appointment, the Chief Executive Officer must enrol the person appointed unless he or she—
 - (a) believes the person is not entitled to be enrolled; or
 - (b) has already received a valid notice of appointment in respect of the rateable land to which the appointment relates and the notice of appointment does not state that it is revoking that previous appointment.
- (2) If the Chief Executive Officer refuses to enrol an appointed person, he or she must advise the person who submitted the notice of appointment of the refusal in writing and give the person the reason for the refusal.

18A. Procedure if no representatives appointed under section 13(1)—City of Melbourne

S. 18A
inserted by
No. 33/1995
s. 15.

(1) This section applies if a corporation is the sole owner or occupier of any rateable land in a ward in the City of Melbourne and the Chief Executive Officer has not received by 4 p.m. on the entitlement date notice under section 13(1) that the corporation has appointed 2 representatives who are entitled to be enrolled.

(2) If the corporation has validly appointed one representative, it is deemed to have appointed as its other representative the first of the following people who is eligible to be enrolled as a representative and who is not already a representative—

(a) a company secretary of the corporation (to be taken in alphabetical order);

S. 18A(2)(a)
substituted by
No. 76/1997
s. 7(a).

(b) a director of the corporation (to be taken in alphabetical order);

* * * * *

S. 18A(2)(c)
repealed by
No. 76/1997
s. 7(b).

(3) If the corporation has not validly appointed any representatives, it is deemed to have appointed as its representatives the first 2 of the people listed in sub-section (2) who are eligible to be enrolled as a representative.

(4) In determining the eligibility of a person to be a representative, the Chief Executive Officer must assume that any information supplied to him or her by the Australian Securities Commission on or after the entitlement date concerning the name, address and age of a company secretary or director is current and accurate.

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- (5) If a person is deemed to be a representative of a corporation, the Chief Executive Officer must—
- (a) enrol the person on the voters' list as soon as possible after the entitlement date; and
 - (b) advise the corporation of that fact in writing.

19. *General powers relating to enrolment*

S. 19(1)
amended by
Nos 125/1993
s. 14(b),
33/1995
s. 16(1).

- (1) If the Chief Executive Officer refuses an application for enrolment under section 12, the Chief Executive Officer must advise the applicant that further evidence to his or her satisfaction is required that the applicant is eligible to be enrolled.

S. 19(2)
amended by
No. 125/1993
s. 14(b).

- (2) The Chief Executive Officer or a member of the Council staff who is authorised in that behalf by the Chief Executive Officer may either orally or in writing put to any person in occupation of, resident in, in charge of, or any person or corporation who is the owner of, or any person who is the agent for the owner of, any land, questions upon any matter relating to an application and, in the case of questions put in writing, may require the answers to be in writing and signed by the person giving the answers.

S. 19(3)
amended by
No. 125/1993
s. 14(b).

- (3) If the Chief Executive Officer refuses to make an enrolment under an application because the municipal clerk is of the opinion that the applicant is not entitled to enrolment the Chief Executive Officer must advise the applicant in writing of the refusal and of the reason for the refusal.

20. *Notification of change or cessation of entitlement*

S. 20(1)
amended by
Nos 125/1993
s. 14(c),
33/1995
s. 16(2)(a)(b).

- (1) If there has been a change in the particulars (other than age) or a cessation of entitlement to enrolment on the qualification specified for the purposes of section 12, 13(1) or 13(3)—

(a) the person enrolled, in the case of an enrolment under section 12; or

S. 20(1)(a)
inserted by
No. 33/1995
s. 16(2)(b).

(b) the corporation on whose behalf a person is enrolled, in the case of an enrolment under section 13—

S. 20(1)(b)
inserted by
No. 33/1995
s. 16(2)(b).

must notify the Chief Executive Officer in writing within 1 month of that change or cessation of entitlement.

(2) Any person or corporation that contravenes subsection (1) is guilty of an offence and liable to a penalty of not more than 3 penalty units.

Division 2—Voters' Rolls

21. *Electoral Commissioner to prepare list*

(1) The Chief Executive Officer must supply to the Electoral Commissioner within the period specified by the Electoral Commissioner any information required by the Electoral Commissioner to prepare voters' lists under subsection (2).

S. 21(1)
amended by
No. 125/1993
s. 14(d).

(2) The Electoral Commissioner must on or before a date to be specified by Order in Council supply to the Chief Executive Officer a voters' list for each ward of the persons who appear to the Electoral Commissioner to be entitled to be enrolled on the voters' roll under section 11(1).

S. 21(2)
amended by
Nos 125/1993
s. 14(d),
76/1997
s. 9(1)(a).

(3) The Electoral Commissioner must before the voters' roll is prepared advise the Chief Executive Officer in writing of—

S. 21(3)
amended by
Nos 13/1990
s. 31(a),
125/1993
s. 14(d).

(a) any omission, error, misnomer or inaccurate description of any person, place or thing; and

Local Government Act 1989
Act No. 11/1989

s. 21A

(b) the name of any person who the Electoral Commissioner knows has died and whose name was included—

on the voters' list.

S. 21(3A)
inserted by
No. 99/1994
s. 6(1).

(3A) The Electoral Commissioner must on or before the date referred to in sub-section (2) supply to the Chief Executive Officer a list of the names of persons³—

(a) who have been removed from the roll of electors for the Legislative Assembly under section 48(2)(d) of the **Constitution Act 1975** since the Electoral Commissioner last supplied such a list; and

(b) whose last recorded address was in the municipal district.

S. 21(4)
amended by
Nos 125/1993
s. 14(d),
99/1994
s. 6(3).

(4) Except as otherwise provided in section 23(1) and sub-section (3), the Chief Executive Officer must accept any list supplied under sub-section (2) or (3A) by the Electoral Commissioner as being correct.

S. 21(5)
inserted by
No. 54/1998
s. 4(1).

(5) If an Order in Council is made under section 21A(e) and a by-election is to be held for one or more wards only, the Electoral Commissioner need only supply the relevant lists and information for those wards.

S. 21A
inserted by
No. 76/1997
s. 8.

21A. Order in Council dates

The date specified for the purposes of section 21(2) or 22(2) by Order in Council—

(a) must be a date after the entitlement date of the relevant election or poll;

(b) must be specified each year for Councils that hold annual elections;

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- (c) in respect of a Council that holds triennial elections, need only be specified in the election year of that Council (unless paragraph (e) applies);
- (d) must be specified in respect of any Council that is required to hold a poll of voters (unless the poll is to be held at the same time as an election);
- (e) must be specified in respect of any Council that is to hold a by-election (unless the by-election is to be held at the same time as a general election).

S. 21A(c)
amended by
No. 54/1998
s. 4(2)(a).

S. 21A(e)
inserted by
No. 54/1998
s. 4(2)(b).

22. Chief Executive Officer to prepare list

- (1) The Chief Executive Officer is responsible for the preparation of the voters' list prepared under this section and the maintenance of any records which may be required to facilitate the preparation of an accurate and complete voters' list.
- (2) The Chief Executive Officer must on or before a date to be specified by Order in Council make out a voters' list of the persons who appear to the Chief Executive Officer to be entitled to be enrolled on the voters' roll or rolls under section 11(2), 11(4), 12, 13(1) or 13(3).
- (2A) If an Order in Council is made under section 21A(e) and a by-election is to be held for one or more wards only, the Chief Executive Officer need only make out a voters' list for those wards.
- (3) The Chief Executive Officer must not include on the voters' list prepared under this section—
- (a) any person who appears on the voters' list prepared by the Electoral Commissioner; or

S. 22(1)
amended by
No. 125/1993
s. 14(d).

S. 22(2)
amended by
Nos 125/1993
s. 14(d),
76/1997
s. 9(1)(b).

S. 22(2A)
inserted by
No. 54/1998
s. 4(3).

S. 22(3)
amended by
No. 125/1993
s. 14(d),
substituted by
No. 99/1994
s. 6(4).

Local Government Act 1989
Act No. 11/1989

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- (b) any person who appears on the list supplied to the Chief Executive Officer under section 21(3A).
- S. 22(4) amended by No. 125/1993 s. 14(d).
- (4) The Chief Executive Officer may make any inquiries he or she considers appropriate to ascertain whether any person who was enrolled on the previous voters' roll is still entitled to be enrolled.
- S. 22(5) inserted by No. 13/1990 s. 4, amended by No. 125/1993 s. 14(d).
- (5) The Chief Executive Officer must ensure that the voters' list prepared by the Electoral Commissioner and the voters' list prepared by the Chief Executive Officer are available for inspection by members of the public for at least 5 days after they have been prepared.
- S. 22(5A) inserted by No. 33/1995 s. 17.
- (5A) The Chief Executive Officer must publish a public notice on or before the date specified under subsection (2) stating when and where the voters' lists are available for inspection by members of the public.
- S. 22(6) inserted by No. 13/1990 s. 4, amended by Nos 15/1992 s. 4, 125/1993 s. 14(d).
- (6) A person may within the period specified in subsection (5) object in writing to the Chief Executive Officer on the ground that a voters' list contains—
- (a) an omission, error, misnomer or inaccurate description of any person, place or thing; or
- (b) the name of a person who had died; or
- (c) the name of a person who is not on the roll of electors for the Legislative Assembly by virtue of section 48(2)(d) of the **Constitution Act 1975**.
- S. 22(6)(b) amended by No. 99/1994 s. 6(5).
- S. 22(6)(c) inserted by No. 99/1994 s. 6(5).

- (7) The Chief Executive Officer must as soon as practicable after receiving an objection which relates to the voters' list prepared by the Electoral Commissioner forward the objection to the Electoral Commissioner.

S. 22(7)
inserted by
No. 13/1990
s. 4,
amended by
No. 125/1993
s. 14(d).

22A. Notice to people on voters' list—City of Melbourne

S. 22A
inserted by
No. 33/1995
s. 18.

- (1) The Chief Executive Officer of the Melbourne City Council must give to each person who is on the voters' list prepared by him or her a notice stating—
- (a) that the person is on the list; and
 - (b) that the person has a right to object, and the grounds on which an objection may be made; and
 - (c) any other details required by the regulations.
- (2) The Chief Executive Officer must ensure that the notice is posted or delivered to each person at the address shown on the voters' list and that it is posted or delivered at least 3 days before the date specified under section 22(2).

23. Correction of voters' lists

- (1) The Chief Executive Officer must amend the voters' list prepared by the Electoral Commissioner—
- (a) to give effect to any advice received under section 21(3); and
 - (b) to omit the name of any person who the Chief Executive Officer knows has died.
- (2) The Chief Executive Officer must on the voters' list prepared by the Chief Executive Officer—

S. 23(1)
amended by
No. 125/1993
s. 14(d).

S. 23(1)(b)
amended by
No. 125/1993
s. 14(d).

S. 23(2)
amended by
No. 125/1993
s. 14(d).

S. 23(2)(b)
amended by
No. 125/1993
s. 14(d).

- (a) correct any omission, error, misnomer or inaccurate description of any person, place or thing; and
- (b) omit the name of any person who the Chief Executive Officer knows has died.

24. Preparation of voters' rolls

S. 24(1)
amended by
Nos 125/1993
s. 14(d),
76/1995
s. 5(a).

- (1) The Chief Executive Officer must prepare a voters' roll which must contain the prescribed particulars.

- (2) A voters' roll may be prepared—

S. 24(2)(a)
amended by
No. 125/1993
s. 14(d).

- (a) for each of, or combining, the voters' list prepared by the Electoral Commissioner and the voters' list prepared by the Chief Executive Officer; and
- (b) for each ward or for the whole of the municipal district but identifying the ward in respect of which each person is enrolled.

S. 24(3)
amended by
No. 125/1993
s. 14(d).

- (3) In the case of a Council which holds annual elections, the Chief Executive Officer must not later than 3 days before nomination day certify in writing that the voters' roll has been prepared in accordance with this Act.

S. 24(4)
amended by
Nos 125/1993
s. 14(d),
76/1997
s. 9(1)(c).

- (4) In the case of a Council which holds triennial elections, the Chief Executive Officer must not later than 3 days before nomination day in any year in which a triennial election is to be held certify in writing that the voters' roll has been prepared in accordance with this Act.

S. 24(4A)
inserted by
No. 76/1997
s. 9(2).

- (4A) In the case of a Council that is required to conduct a poll of voters, the Chief Executive Officer must not later than 3 days before the poll is to be held
-

certify in writing that the voters' roll has been prepared in accordance with this Act (unless the poll is to be held at the same time as an election).

(4B) If an Order in Council is made under section 21A(e), the Chief Executive Officer must not later than 3 days before nomination day certify in writing that the voters' roll for the by-election has been prepared in accordance with this Act.

S. 24(4B) inserted by No. 54/1998 s. 4(4).

(5) The voters' roll signed and certified by the Chief Executive Officer—

S. 24(5) amended by No. 125/1993 s. 14(d).

(a) continues in force until the next voters' roll is prepared; and

(b) must not except under section 43 be amended.

* * * * *

S. 24(6) amended by No. 125/1993 s. 14(d), repealed by No. 76/1995 s. 5(b).

* * * * *

S. 24(7) inserted by No. 13/1990 s. 5(1), repealed by No. 76/1995 s. 5(b).

25. Validity of voters' rolls

(1) The validity of a voters' roll is not affected if—

(a) from any cause, any act or thing required to be done in connection with the preparation, printing or copying of the voters' roll has been omitted or has not been completed; or

(b) from any cause, there has been an error in the preparation, printing or copying of the voters' roll; or

(c) there has been any misnomer or any inaccurate description of any person, place or thing on the voters' roll which is capable of being given meaning.

(2) A voters' roll which is altered as directed under section 43 is as valid as if it had been prepared as required by this Act.

26. *Electoral Commissioner's expenses*

The Electoral Commissioner may send to each Council an account of the reasonable expenses incurred by the Electoral Commissioner in assisting each Council to prepare its voters' rolls.

27. *Offences relating to voters' rolls*

(1) A member of the Council staff who intentionally contravenes any provision of this Division is guilty of an offence.

Penalty: 10 penalty units.

(2) A person who alters any voters' roll after it has been signed and certified by the Chief Executive Officer without authority to do so is guilty of an offence.

Penalty: 10 penalty units.

(3) A person who intentionally gives any wrong information to the Chief Executive Officer or any person authorised by the Chief Executive Officer resulting in any person being wrongfully inserted or retained on a voters' roll is guilty of an offence.

Penalty: 10 penalty units.

S. 27(2)
amended by
No. 125/1993
s. 14(d).

S. 27(3)
amended by
No. 125/1993
s. 14(d).

Division 3—Qualification of Councillors

28. Qualification to be a Councillor

- (1) A person is qualified to be a candidate for the office of Councillor if—
- (a) in the case of an annual election or a general election, he or she is or is entitled to be; or
 - (b) in the case of a by-election, he or she is or since the preparation of the last voters' roll has become entitled to be—
enrolled on the voters' roll in respect of any ward of the Council and is capable of becoming and continuing to be a Councillor if he or she continues to be entitled to be enrolled.
- (2) If a Councillor ceases to have a qualification entitling the Councillor to continue in office, the Councillor continues to hold the office of Councillor for 30 days after ceasing to be qualified.
- (3) A Councillor to whom sub-section (2) applies, goes out of office at the expiry of the period specified in sub-section (2) unless the Councillor has within that period—
- (a) obtained a qualification entitling him or her to continue to be a Councillor; and
 - (b) lodged a written statement with the Chief Executive Officer specifying that qualification.

S. 28(1)(a)
amended by
No. 15/1992
s. 5(1).

S. 28(3)(b)
amended by
No. 125/1993
s. 14(e).

29. Disqualifications

- (1) A person is not capable of becoming or continuing to be a Councillor or nominating as a candidate at an election if—
- (a) he or she is an undischarged bankrupt; or
 - (b) his or her property is subject to control under the law relating to bankruptcy; or
 - (c) he or she is of unsound mind; or
 - (d) except as provided in sub-section (3), he or she is a member of Council staff of the Council for which he or she intends to be a Councillor; or
 - (e) he or she has not taken an oath of allegiance or made the declaration of the office of Councillor within 3 months after the day on which he or she was declared elected; or
 - (f) he or she is not a person referred to in section 48(1)(a) of the **Constitution Act 1975**; or
 - (g) he or she is otherwise incapable of becoming or continuing to be a Councillor under this Act.
- (2) A person who—
- (a) is convicted of an offence against section 77 or 79; or
 - (ab) is convicted of an offence against section 55(5), 57, 58(1), 58(2), 58(3), 59 or 60 or clause 8 or 9 of Schedule 5; or
 - (b) has been convicted of an offence committed when he or she was of or over 18 years of age which is punishable upon first conviction for a term of imprisonment of 5 years or more under the law of Victoria or the law of any other State or Territory of the

S. 29(2)
substituted by
No. 15/1992
s. 5(2)(a).

S. 29(2)(ab)
inserted by
No. 43/1993
s. 8.

Commonwealth of Australia or the law of the
Commonwealth of Australia—

is not capable of becoming or continuing to be a
Councillor for a period of 7 years after the
conviction.

- (3) Sub-section (1)(d) does not apply to a member of
the Council staff who takes leave to stand for
election to the office of Councillor and who if
elected resigns from the Council staff immediately
upon being declared elected.

30. Relief from disqualification

- (1) In this section "**the Court**" means—

(a) if the person was convicted of an offence
referred to in section 29(2) in Victoria, the
Court which imposed the conviction; or

S. 30(1)(a)
amended by
No. 15/1992
s. 5(2)(b)(i)(ii).

(b) if the person was convicted of an offence
referred to in section 29(2) outside Victoria,
the Supreme Court; or

S. 30(1)(b)
amended by
No. 15/1992
s. 5(2)(c).

(c) in any case, the Supreme Court.

- (2) Any person convicted of an offence referred to in
section 29(2) may apply to the Court for relief
from the disqualification imposed by that section
and if the application is made within 30 days of
the disqualification occurring the disqualification
does not take effect unless the Court confirms the
disqualification or if an appeal is made under sub-
section (6) the Supreme Court confirms the
disqualification.

S. 30(2)
amended by
No. 15/1992
s. 5(2)(c)(d).

- (3) Until the Court decides the application or the
Supreme Court hears the appeal, the person must
take leave of absence from the office of
Councillor.

Local Government Act 1989
Act No. 11/1989

s. 31

S. 30(4)
amended by
No. 15/1992
s. 5(2)(e).

(4) For the purposes of inquiring into and deciding an application for relief from disqualification, the Court may do all such things as the Court would be entitled to do if the application was an appeal against the sentence imposed on the conviction giving rise to the disqualification.

S. 30(5)
amended by
No. 15/1992
s. 5(2)(e).

(5) The Court may if it thinks fit in the circumstances of the case declare that a person who has made an application is not by virtue of the conviction in respect of which the application is made to be or continue to be disqualified from holding the office of Councillor.

(6) If the Court (not being the Supreme Court) to which the application for relief from disqualification is made, refuses the application, the person may appeal to the Supreme Court.

(7) Sub-sections (4) and (5) apply to an appeal under sub-section (6).

(8) The decision of the Supreme Court on an application under sub-section (2) or an appeal under sub-section (6) is final.

Division 4—Annual Elections

31. *Application of Division*

This Division applies to any Council which does not conduct triennial elections under Division 5.

32. *Annual elections*

S. 32(1)
amended by
No. 99/1994
s. 5(a).

(1) An annual election of Councillors is to be held on the third Saturday in March in each year.

(2) At the annual election at least 1 Councillor must be returned for each ward.

- (3) If the third Saturday in March in any year is Easter Saturday, the annual election of Councillors is to be held on the second Saturday in March in that year.

S. 32(3)
inserted by
No. 54/1998
s. 5(1).

Division 5—Triennial Elections

33. Application of Division

This Division applies to the City of Melbourne and any Council under section 35.

34. City of Melbourne must hold triennial elections

The City of Melbourne must hold triennial elections under this Division.

35. Councils may hold triennial elections⁴

- (1) A Council may decide—
- (a) that it is to hold triennial elections; and
 - (b) at any time after the Council has commenced the second term of triennial elections, that it is to cease to hold triennial elections.
- (2) A Council cannot decide to hold or cease to hold triennial elections unless the Council—
- (a) has given notice of the proposed decision to the Minister; and
 - (b) has published a public notice as to the proposed decision; and
 - (c) has considered the results of a poll of voters where a poll of voters has been required to be held.

S. 35(2)
substituted by
No. 13/1990
s. 6(1)(a).

* * * * *

S. 35(3)
repealed by
No. 76/1997
s. 13(a).

- (4) This section does not apply to the City of Melbourne.

36. General elections

S. 36(1)
substituted by
No. 13/1990
s. 6(1)(b),
amended by
No. 99/1994
s. 5(a).

- (1) A general election of Councillors must be held on the third Saturday in March in a year determined by the Council following a decision by the Council to hold triennial elections.

S. 36(2)
amended by
No. 99/1994
s. 5(a),
substituted by
No. 54/1998
s. 6.

- (2) A general election of Councillors must be held on the third Saturday in March—
- (a) in every third year after the general election held under sub-section (1); or
 - (b) in the case of the City of Melbourne, in every third year after 1996.

S. 36(3)
inserted by
No. 54/1998
s. 5(2).

- (3) If the third Saturday in March in an election year is Easter Saturday, the general election of Councillors is to be held on the second Saturday in March in that year.

Division 6—Extraordinary Vacancies

37. Extraordinary vacancy within 3 months before an election

If an extraordinary vacancy occurs within 3 months before an election, a Council may decide that the extraordinary vacancy not be filled.

S. 37A
inserted by
No. 54/1998
s. 7.

37A. Extraordinary vacancies—Councillors elected under Schedule 3 (Part 4A) or 3A

- (1) This section applies if—
- (a) an extraordinary vacancy occurs as a result of the departure from office of a person who was elected to a Council in accordance with Part 4A of Schedule 3 or with Schedule 3A; and

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- (b) either—
- (i) the vacancy occurs more than 3 months before a general election is due; or
 - (ii) the Council decides to fill the vacancy within 3 months before a general election is due.
- (2) The extraordinary vacancy is to be filled in accordance with Schedule 3A.
- (3) This section overrides any provision to the contrary in section 38.
- (4) An election to fill an extraordinary vacancy to which this section applies must be conducted—
- (a) by the returning officer who conducted the election at which the person whose departure created the extraordinary vacancy was elected; or
 - (b) if that is not possible, by the deputy returning officer at that election; or
 - (c) if that is not possible, by a returning officer appointed in accordance with this Act.

38. By-elections

- (1) An election to fill an extraordinary vacancy must be held on a Saturday to be appointed by the Chief Executive Officer which is not later than the 90th day after the extraordinary vacancy.
- (2) If an extraordinary vacancy is caused by the ouster of a Councillor from office by the Supreme Court, the extraordinary vacancy occurs on the following days—
- (a) if notice of appeal to the Court of Appeal is not served within the period allowed, on the day after that period;

S. 38(1)
amended by
Nos 125/1993
s. 14(e),
54/1998 s. 8.

S. 38(2)(a)
amended by
No. 109/1994
s. 34(10).

Local Government Act 1989
Act No. 11/1989

s. 38

S. 38(2)(b)
amended by
No. 109/1994
s. 34(10).

(b) if an appeal to the Court of Appeal is dismissed, on the day the decision is given.

S. 38(2A)
inserted by
No. 15/1992
s. 6.

(2A) If an extraordinary vacancy is caused by the declaration of a municipal electoral tribunal, the extraordinary vacancy occurs on the following days—

S. 38(2A)(a)
amended by
No. 52/1998
s. 311(Sch. 1
item 55.1).

(a) if an application for review to the Victorian Civil and Administrative Tribunal is not served within 7 days of the decision of the municipal electoral tribunal, on the day after that period;

S. 38(2A)(b)
amended by
No. 52/1998
s. 311(Sch. 1
item 55.1).

(b) if an application for review to the Victorian Civil and Administrative Tribunal is dismissed, on the day the decision is given.

S. 38(2B)
inserted by
No. 15/1992
s. 6.

(2B) Sub-section (2A) applies in respect of a triennial election and for that purpose all the extraordinary vacancies are deemed to have occurred on the same day as determined in accordance with that sub-section.

S. 38(2C)
inserted by
No. 15/1992
s. 6.

(2C) Despite sub-section (3), if more than one extraordinary vacancy in a ward is caused by the declaration of a municipal electoral tribunal, an election must be held to fill all the extraordinary vacancies at the same time.

S. 38(3)
substituted by
No. 13/1990
s. 7.

(3) If more than 1 extraordinary vacancy occurs in respect of the same ward and an election is required to be held to fill the vacancies on the same day, a separate election must be held in respect of each vacancy.

Division 7—Conduct of Elections and Polls of Voters

39. One vote per person

- (1) A person who is enrolled on the voters' roll is entitled to 1 vote in respect of each ward for which he or she is enrolled.
- (2) A person who is enrolled on the voters' roll for the Melbourne City Council or a specified council is also entitled to 1 vote at any election in respect of the municipal district as a whole.
- (3) If a person is entitled to vote in more than one ward of the City of Melbourne or the municipal district of a specified council, the person is still only entitled to 1 vote at any election in respect of the municipal district as a whole.
- (4) In this section, "**specified Council**" means a Council that has been re-constituted by an Order made under section 220Q(na) while that Order remains in force.

S. 39
amended by
No. 33/1995
s. 19(1)(a).

S. 39(2)
inserted by
No. 33/1995
s. 19(1)(b),
amended by
No. 76/1997
s. 9(3)(a).

S. 39(3)
inserted by
No. 33/1995
s. 19(1)(b),
amended by
No. 76/1997
s. 9(3)(b).

S. 39(4)
inserted by
No. 76/1997
s. 9(4).

40. Voting is compulsory

- (1) Except as is provided in the regulations, it is compulsory for a person who is enrolled on the voters' roll to vote at any election in respect of the ward in which his or her principal place of residence is located.
- (1A) It is an offence against this Act to fail to vote as required by sub-section (1).
Penalty: 1 penalty unit.
- (2) In this section—
"**infringement**" means an offence against this section;

S. 40
amended by
No. 15/1992
s. 8(a).

S. 40(1A)
inserted by
No. 43/1993
s. 9(a),
amended by
No. 33/1995
s. 20.

S. 40(2)
inserted by
No. 15/1992
s. 8(b).

S. 40(2) def. of
"prosecution
officer"
amended by
Nos 43/1993
s. 9(b),
76/1995
s. 6(a)(b).

S. 40(3)
inserted by
No. 15/1992
s. 8(b).

S. 40(4)
inserted by
No. 15/1992
s. 8(b).

"prescribed penalty" means the penalty prescribed for the purposes of this section;

"prosecution officer" means the Chief Executive Officer or a person appointed by the Chief Executive Officer for the purposes of this section.

- (3) A prosecution officer may serve or cause to be served an infringement notice on any person if the prosecution officer has reason to believe that the person has committed an infringement.
- (4) An infringement notice must be addressed to the alleged offender and be signed by the prosecution officer and include the following particulars—
- (a) the day, time and place of the alleged infringement;
 - (b) the nature of the alleged infringement;
 - (c) the prescribed penalty for the alleged infringement;
 - (d) the place or places at which the prescribed penalty may be paid;
 - (e) the date of the notice and a statement that the prescribed penalty may be paid within 28 days after the date;
 - (f) a statement to the effect that if the prescribed penalty is paid at a place specified in the notice, the matter will not be brought before a court unless, before the expiration of the period specified in the notice as the period within which payment may be made, notice is given that the infringement notice is withdrawn;

Local Government Act 1989
Act No. 11/1989

s. 40

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- (g) a summary of the provisions of this Act relating to the withdrawal of infringement notices.
- (5) A prosecution officer may withdraw an infringement notice at any time within 28 days of the date of the infringement notice by serving or causing to be served a withdrawal notice on the alleged offender. S. 40(5)
inserted by
No. 15/1992
s. 8(b).
- (6) A withdrawal notice must be signed by the prosecution officer and include— S. 40(6)
inserted by
No. 15/1992
s. 8(b).
- (a) a statement to the effect that the infringement notice has been withdrawn; and
- (b) a statement to the effect that court proceedings may be instituted against the alleged offender for the alleged infringement specified in the infringement notice.
- (7) An infringement notice may be withdrawn even if the prescribed penalty has been paid. S. 40(7)
inserted by
No. 15/1992
s. 8(b).
- (8) Once a withdrawal notice is served, the Council must refund the amount of any penalty which was paid on an infringement notice before it was withdrawn. S. 40(8)
inserted by
No. 15/1992
s. 8(b).
- (9) If the amount of the prescribed penalty shown on the infringement notice is paid at the appropriate place before the end of the period for payment set out in the notice, or, if the prosecution officer allows, at any time before the service of a summons in respect of the alleged infringement— S. 40(9)
inserted by
No. 15/1992
s. 8(b).
- (a) the offender has expiated the infringement by payment of the prescribed penalty; and
- (b) no further proceedings may be taken in respect of the infringement; and
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(c) no conviction for the infringement may be regarded as having been recorded.

S. 40(10)
inserted by
No. 15/1992
s. 8(b).

(10) Every penalty paid under this section must be applied in the same manner as if the offender had been convicted of the infringement in the Magistrates' Court on a charge filed by the prosecution officer who served the infringement notice or caused it to be served.

S. 40(11)
inserted by
No. 15/1992
s. 8(b).

(11) Payment of any penalty under this section may be made by cheque or money order either lodged at or sent by post to the place referred to in the notice, but in the case of a cheque payment is not to be taken to be made unless and until the cheque is honoured upon presentation.

S. 40(12)
inserted by
No. 15/1992
s. 8(b).

(12) Nothing in this section prejudices the institution or the prosecution of proceedings for an alleged infringement if—

(a) an infringement notice has been served in respect of the alleged infringement and the amount of the prescribed penalty is not paid before the end of the period specified in the notice as the time for payment or of any further period allowed by the prosecution officer; or

(b) an infringement notice in respect of the alleged infringement has been withdrawn.

S. 40(13)
inserted by
No. 15/1992
s. 8(b).

(13) In any proceedings for an alleged infringement, if the court is satisfied that an infringement notice was served in respect of the alleged infringement and has been withdrawn, the conviction imposed by the court must not be taken to be a conviction for any purpose except in relation to—

(a) the making of the conviction itself; and

- (b) subsequent proceedings which may be taken in respect of the conviction itself, including proceedings by way of appeal.

40A. Compulsory voting—City of Melbourne

S. 40A
inserted by
No. 33/1995
s. 21.

- (1) Section 40(1) does not apply to the City of Melbourne.
- (2) Except as is provided in the regulations, it is compulsory for a person who is enrolled on the voters' roll in respect of any ward of the City of Melbourne to vote—
- (a) at any election in respect of that ward; and
- (b) at any election in respect of the municipal district as a whole.
- (3) A person must vote as required by sub-section (2).
Penalty: 1 penalty unit.
- (4) If an election in respect of a ward and in respect of the municipal district as a whole is held on the same day, a person who fails to vote in both elections is only guilty of one offence under sub-section (3).
- (5) If one or both of the representatives appointed by a corporation fail to vote at an election—
- (a) the corporation is guilty of an offence against sub-section (3);
- (b) the representative is, or the representatives are, not guilty of an offence against sub-section (3).
- (6) A corporation is not guilty of an offence under sub-section (3) in respect of the failure to vote of a deemed representative if it did not receive a notice under section 18A(5) in respect of the enrolment of the representative before the date of the election.

Local Government Act 1989
Act No. 11/1989

s. 40B

S. 40A(7)
substituted by
No. 76/1997
s. 10.

- (7) Sections 40(2) to (13) apply as if—
- (a) an offence under sub-section (3) was an offence under section 40(1A); and
 - (b) a reference to a person in section 40(3) included a reference to a corporation.

S. 40B
inserted by
No. 76/1997
s. 11.

40B. *Compulsory voting—Councils re-constituted under section 220Q(na)*

- (1) Section 40(1) does not apply to elections for any Council re-constituted by an Order made under section 220Q(na) while that Order remains in force.
- (2) Except as is provided in the regulations, it is compulsory for a person who is enrolled on the voters' roll in respect of any ward of such a Council to vote—
 - (a) at any election in respect of that ward; and
 - (b) at any election in respect of the municipal district as a whole.
- (3) A person must vote as required by sub-section (2).
Penalty: 1 penalty unit.
- (4) If an election in respect of a ward and in respect of the municipal district as a whole is held on the same day, a person who fails to vote in both elections is only guilty of one offence under sub-section (3).
- (5) Sections 40(2)–(13) apply as if an offence under sub-section (3) was an offence under section 40(1A).

41. *Holding of an election*

Schedule 2 has effect in respect of the holding of an election.

41A. Election or poll by postal voting

S. 41A
inserted by
No. 99/1994
s. 7.

(1) A Council may decide that all voting at an election or at a poll of voters is to be by means of postal voting.

S. 41A(1)
amended by
No. 76/1997
s. 12(1)(a).

(2) If the Council makes such a decision, the returning officer must—

(a) state in the public notice of the election or poll that all voting at the election or poll is to be by postal voting; and

S. 41A(2)(a)
amended by
No. 76/1997
s. 12(1)(b).

(b) send or deliver to each voter on the voters' roll who is entitled to vote at the election or poll—

S. 41A(2)(b)
amended by
No. 76/1997
s. 12(1)(b).

(i) a postal vote certificate or declaration;

(ii) a ballot paper for postal voting;

(iii) a prepaid envelope for the return of the certificate and ballot paper;

(iv) instructions on how to vote;

(v) notice of how and when the ballot paper must be returned by;

(vi) any document prescribed for the purposes of this paragraph;

(vii) any other material that the returning officer thinks is appropriate.

(3) If an election or a poll is conducted under this section, a reference in this Act to "election day" or "polling day" or a specific day on which an election or a poll is to be held is to be read as a reference to the day fixed by the returning officer as the last day on which postal ballots may be validly received by him or her.

S. 41A(3)
amended by
No. 76/1997
s. 12(1)(c)(i)(ii).

S. 41A(4)
amended by
No. 76/1997
s. 12(1)(b).

- (4) Subject to this section, the election or poll is to be conducted in accordance with the regulations and the provisions of Schedules 2 and 3 that are not inconsistent with the regulations.

42. *Voting and counting of votes and polls of voters*

Schedule 3 has effect in respect of voting at elections and the counting of votes and polls of voters.

43. *Governor in Council may give directions*

- (1) The Governor in Council may by Order in Council—
- (a) direct that an act or thing required to be done in connection with the preparation, printing or copying of a voters' roll which has been omitted or has not been completed, is to be done; and
 - (b) direct that any error in the preparation, printing or copying of a voters' roll is to be corrected; and
 - (c) direct that any misnomer or any inaccurate description of any person, place or thing on a voters' roll is to be corrected; and
 - (ca) direct that an election or poll is to be held on or by a specified date; and
 - (d) give any directions or provide for any matters or things as may appear to the Governor in Council to be necessary or expedient with respect to the conduct of any election or poll (including the conduct of an election or poll by a person other than the Council or its returning officer); and

S. 43(1)(ca)
inserted by
No. 15/1992
s. 7(a),
amended by
No. 76/1997
s. 12(2).

S. 43(1)(d)
amended by
No. 15/1992
s. 7(b).

- (e) give directions in connection with any election or poll to any Council or other public body or any officer thereof; and
- (f) appoint any person or an officer of any Council or other public body to carry out any directions referred to in paragraph (d) or (e).
- (2) An Order in Council under sub-section (1) cannot change the method of counting votes under this Act.

S. 43(1)(e)
amended by
No. 15/1992
s. 7(b).

Division 8—General Provisions

44. *Municipal electoral tribunals*

- (1) There may be established one or more municipal electoral tribunals to consider disputes which may arise from the holding of elections.
- (1A) The Minister may determine that one municipal electoral tribunal be established for a period of up to 12 months as the Minister considers appropriate.
- (2) Schedule 4 has effect with respect to municipal electoral tribunals.

S. 44(1)
substituted by
No. 15/1992
s. 9(1).

S. 44(1A)
inserted by
No. 15/1992
s. 9(1).

45. *Application for an inquiry*

- (1) Within 14 days of the declaration of the result of an election, a candidate or any 10 voters or unenrolled voters at that election who—
- (a) disputes or dispute the validity of the election; or
- (b) is or are dissatisfied with the conduct of the election—
- may apply for an inquiry by a municipal electoral tribunal into the election.

S. 45(1)
amended by
Nos 15/1992
s. 9(2)(a)(b),
34/1996
s. 28(2),
54/1998
s. 3(1)(d).

Local Government Act 1989
Act No. 11/1989

s. 46

S. 45(1A)
inserted by
No. 54/1998
s. 3(2).

(1A) The application must be made in writing and must contain the details required by the regulations.

S. 45(2)
substituted by
No. 34/1996
s. 28(3).

(2) The application for an inquiry must be lodged with the principal registrar of the Magistrates' Court.

(3) The prescribed fee must be forwarded with the application.

46. Powers of a municipal electoral tribunal

S. 46(1)
substituted by
No. 15/1992
s. 9(3).

(1) A municipal electoral tribunal has the following powers—

- (a) to declare that any person declared elected was not duly elected;
- (b) to declare any candidate duly elected who was not declared elected;
- (c) to declare an election void;
- (d) to dismiss or uphold an application in whole or in part;
- (e) to amend or permit the amendment of an application;
- (f) to order the inspection of, and permit copying of, documents used in connection with an election, subject to such terms and conditions as it considers appropriate;
- (g) to undertake a preliminary review of an application;
- (h) to require any further information relating to an application.

S. 46(1A)
inserted by
No. 15/1992
s. 9(3).

(1A) A municipal electoral tribunal may impose a financial penalty not exceeding the amount prescribed for the purposes of this section.

- (2) A municipal electoral tribunal cannot order a recount of the whole or any part of the ballot-papers unless it is satisfied that a recount is justified and has advised the returning officer of its intention.

47. Report to the Minister

A municipal electoral tribunal must submit a report to the Minister on any possible offences against this Act at an election.

S. 47
amended by
No. 15/1992
s. 9(4).

48. Decision of municipal electoral tribunal

- (1) If the members of a municipal electoral tribunal are unable to reach agreement on a matter, the decision of the magistrate or acting magistrate is to be treated as the decision of the tribunal on the matter.
- (2) A person whose interests are affected by a decision of a municipal electoral tribunal may apply to the Victorian Civil and Administrative Tribunal for review of the decision.
- (3) An application for review must be made within 7 days after the later of—
- (a) the day on which the decision is given;
 - (b) the day on which the written reasons for the decision are given.

S. 48(1)
amended by
No. 34/1996
s. 28(4).

S. 48(2)
amended by
Nos 15/1992
s. 9(5),
76/1995
s. 7(1),
substituted by
No. 52/1998
s. 311(Sch. 1
item 55.2).

S. 48(3)
inserted by
No. 76/1995
s. 7(2),
substituted by
No. 52/1998
s. 311(Sch. 1
item 55.2).

49. Reasons for decision

- (1) A municipal electoral tribunal must give reasons for its decision.
- (2) A municipal electoral tribunal must give reasons in writing for its decision if so required by a party within 7 days of the giving of the decision.

50. *Scrutiny of voters' roll*

The returning officer must as soon as practicable after an election undertake a scrutiny of the voters' roll used at the election and prepare a list of the names of persons who were required to vote and did not vote at the election.

51. *Validity of election or poll*

S. 51(1)
amended by
No. 76/1997
s. 13(b).

- (1) The validity of an election or poll is not affected by any defect in the appointment of any person for the purpose of holding the election or poll.

S. 51(2)
amended by
No. 76/1997
s. 13(b).

- (2) The validity of an election or poll is not affected by—

(a) any irregularity in any of the proceedings preliminary to voting; or

S. 51(2)(b)
amended by
No. 76/1997
s. 13(b).

(b) any failure to hold the election or poll at any place appointed; or

S. 51(2)(c)
amended by
No. 76/1997
s. 13(b).

(c) any failure to comply with any directions as to the holding of the election or poll or the counting of the votes; or

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

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

52. *Unlawful nomination*

If a person who is not qualified to be a candidate or is not capable of becoming a Councillor submits a notice of candidature the person is guilty of an offence.

Penalty: 20 penalty units.

53. Prohibition of canvassing near polling place

(1) A person must not—

- (a) canvass for votes; or
- (b) solicit the vote of a person; or
- (c) attempt to induce a person not to vote for a particular candidate; or

S. 53(1)
amended by
No. 15/1992
s. 10.

(d) attempt to induce a person not to vote at the election; or

S. 53(1)(c)
amended by
No. 13/1990
s. 31(b).

(e) exhibit any notice or sign (other than an official notice) relating to the election—

within 6 metres (or a lesser distance fixed by the returning officer) of any entrance to or within the premises used as a polling place at any time during polling hours or any adjournment.

Penalty: 10 penalty units.

S. 53(1)(d)
amended by
No. 13/1990
s. 31(c).

- (2) The authorised person in charge of a polling place may cause any area in the vicinity of the premises used as a polling place to be delineated by notices, signs or other means, and that area is to be treated as the polling place for the purposes of sub-section (1).

54. Interfering with rights

- (1) A person must not hinder or interfere with the free exercise or performance by any other person of any political right or duty that is relevant to an election.

Penalty: 1 penalty unit.

- (2) During the hours of polling at an election, a person must not—
- (a) make any public demonstration having any reference to the election; or
 - (b) use any loud speaker or amplifier or any other apparatus or device for broadcasting or disseminating any matter intended or likely to affect the result of the election.

Penalty: 1 penalty unit.

- (3) Sub-sections (1) and (2) do not apply to any official statement or announcement made or exhibited under the authority of this Act.
- (4) Any person who breaches clause 17(2) or 17(3) of Schedule 2 is guilty of an offence.

Penalty: 1 penalty unit.

- (5) A scrutineer must not—
- (a) interfere with or attempt to influence any voter within the polling booth; or
 - (b) communicate with any person in the polling booth except so far as is necessary to act as a scrutineer.

Penalty: 1 penalty unit.

55. *Printing and publication of electoral material*

- (1) In this section "**electoral material**" means any advertisement, handbill, pamphlet or notice that is intended or calculated to affect the result of an election but does not include an advertisement in a newspaper announcing the holding of a meeting.
- (2) A person must not print, publish or distribute or cause to be printed, published or distributed any electoral material unless—

Local Government Act 1989
Act No. 11/1989

s. 55

(a) the name and address (not being a post-office box) of the person who authorised the electoral material appears at the end of the electoral material; and

S. 55(2)(a)
amended by
No. 15/1992
s. 11(a).

(b) in the case of electoral material which is printed otherwise than in a newspaper, the name and business address of the printer appears at the end of the electoral material.

Penalty: 10 penalty units if the offender is a natural person or 20 penalty units if the offender is a corporation.

(3) Sub-section (2) does not apply to—

(a) a car-sticker, T-shirt, lapel badge, pen, pencil or balloon; or

(b) an article included in a prescribed class of articles.

(4) Sub-section (2) applies in respect of how-to-vote cards as if for the words "appears at the end of" in paragraphs (a) and (b) there were substituted the words "are displayed prominently in".

S. 55(4)
inserted by
No. 15/1992
s. 11(b).

(5) A person must not print, publish or distribute or cause to be printed, published or distributed any electoral material that is likely to mislead or deceive a voter in relation to the casting of the vote of the voter.

S. 55(5)
inserted by
No. 15/1992
s. 11(b).

Penalty: 10 penalty units if the offender is a natural person or 20 penalty units if the offender is a corporation.

(6) It is a defence in a prosecution for an offence against sub-section (5) if the person proves that the person did not know, and could not reasonably be expected to have known, that the electoral material was likely to mislead or deceive in relation to the casting of the vote of the voter.

S. 55(6)
inserted by
No. 15/1992
s. 11(b).

56. How-to-vote cards

Schedule 5 has effect with respect to how-to-vote cards.

57. False or defamatory statements

- (1) A person must not make or publish any false or defamatory statement in relation to the personal character or conduct of a candidate.

Penalty: 10 penalty units if the offender is a natural person or 50 penalty units if the offender is a corporation.

- (2) It is a defence if the defendant proves that he or she had reasonable grounds for believing and did in fact believe the statement made or published to be true.

S. 57A
inserted by
No. 15/1992
s. 12.

57A. Injunction

- (1) If a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute an offence under section 55 or 57, the Supreme Court may on the application of a candidate in an election grant an injunction restraining that person from engaging in the conduct and, if in the opinion of the Supreme Court it is desirable to do so, requiring that person to do any act or thing.
- (2) If an application is made to the Supreme Court for an injunction under sub-section (1), the Supreme Court may, if in the opinion of the Supreme Court it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in that sub-section pending the determination of the application.
- (3) The Supreme Court may discharge or vary an injunction granted under sub-section (1) or (2).
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- (4) If an application is made to the Supreme Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Supreme Court to grant the injunction may be exercised—
- (a) if the Supreme Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Supreme Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the Supreme Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.
- (5) The powers conferred on the Supreme Court under this section are in addition to, and not in derogation of, any other powers of the Supreme Court.

58. *Offences relating to ballot-papers*

- (1) A person who—
- (a) erases, obliterates or alters any official mark, stamp or writing on any ballot-paper; or
 - (b) places any writing or other matter on any ballot-paper which might lead persons to believe that it was placed under authority—

is guilty of an offence.

Penalty: 10 penalty units.

- (2) A person who—
- (a) forges or fraudulently marks, defaces or destroys a ballot-paper; or
 - (b) without authority supplies a ballot-paper to any person; or
 - (c) fraudulently puts any unauthorised ballot-paper into a ballot-box; or
 - (d) is in possession of an unauthorised ballot-paper; or
 - (e) without authority destroys, takes, opens or otherwise interferes with any ballot-box or parcel of ballot-papers—

is guilty of an offence.

Penalty: Imprisonment for 2 years if a returning officer, authorised person or interpreter or imprisonment for 6 months if any other person.

- (3) A person who—
- (a) votes or attempts to vote more than once at an election (unless allowed or required to do so by section 39 or 40A); or
 - (b) fraudulently removes a ballot-paper from a ballot-box; or
 - (c) impersonates any voter—

S. 58(3)(a)
amended by
No. 33/1995
s. 19(2).

S. 58(3)(c)
amended by
No. 76/1995
s. 8(1).

is guilty of an offence.

Penalty: Imprisonment for 6 months.

- (4) A person who leaves a polling place with a ballot-paper is guilty of an offence.

Penalty: 1 penalty unit.

- (5) A person who agrees to post a postal ballot-paper on behalf of a voter and who fails to post the ballot-paper in accordance with the agreement is guilty of an offence.

S. 58(5)
inserted by
No. 76/1995
s. 8(2).

Penalty: 5 penalty units.

- (6) It is a defence to a charge under sub-section (5) if the ballot-paper was received by the returning officer in time for the ballot-paper to be counted in the election.

S. 58(6)
inserted by
No. 76/1995
s. 8(2).

58A. Offence to interfere with postal ballot materials

S. 58A
inserted by
No. 76/1995
s. 9.

- (1) A person must not interfere with any material being, or to be, sent or delivered to a voter under section 41A(2)(b).

Penalty: 10 penalty units.

- (2) This does not apply to a person who is acting with the authority of the returning officer.

59. Bribery, treating and undue influence

- (1) A person must not ask for, receive or obtain, or offer or agree to ask for, or receive or obtain, any property or benefit of any kind for himself or herself or any other person, on an understanding that—

(a) any vote of the first-mentioned person; or

(b) any candidature of the first-mentioned person; or

(c) any support of, or opposition to, a candidate, by the first-mentioned person; or

(d) the doing of any act or thing by the first-mentioned person the purpose of which is, or

the effect of which is likely to be, to influence the preferences set out in the vote of a voter—

will in any manner be influenced or affected.

Penalty: Imprisonment for 2 years.

- (2) A person must not, in order to influence or affect—
- (a) any vote of another person; or
 - (b) any candidature of another person; or
 - (c) any support of, or opposition to, a candidate, by another person; or
 - (d) the doing of any act or thing by another person the purpose of which is, or the effect of which is likely to be, to influence the preferences set out or the effect of which is likely to be, to influence the preferences set out in the vote of a voter—

give or confer, or promise or offer to give or confer, any property or benefit of any kind to that other person or to a third person.

Penalty: Imprisonment for 2 years.

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

60. *Infringement of secrecy*

- (1) It is the responsibility of the returning officer and any authorised person, interpreter, scrutineer and member of the police force at a polling place to maintain and aid in maintaining the secrecy of voting.
- (2) Except as authorised by law, the returning officer and any authorised person, interpreter, scrutineer

and member of the police force must not communicate to any person any information likely to defeat the secrecy of voting.

Penalty: Imprisonment for 6 months.

- (3) Except as provided in this Act, a person must not—
- (a) interfere with or attempt to interfere with a voter when marking his or her ballot-paper; or
 - (b) attempt to obtain in the polling place any information as to the candidate for whom any voter has or is to vote; or
 - (c) communicate to any person any information obtained in a polling place as to the candidate for whom any voter has or is to vote.

Penalty: Imprisonment for 6 months.

- (4) A person must not directly or indirectly induce any voter to display his or her ballot-paper after he or she has marked it, so as to show to any person the name of the candidate for or against whom he or she voted.

Penalty: Imprisonment for 6 months.

61. *Penalty on officers*

Any returning officer, authorised person or interpreter who does any wilful or negligent act of omission or commission contrary to this Part is guilty of an offence.

Penalty: 20 penalty units.

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S. 62
repealed by
No. 13/1990
s. 8.

PART 4—COUNCIL ADMINISTRATION

Division 1—The Mayor and other Councillors

63. Declaration of office

- (1) A person elected to be a Councillor is not capable of acting as a Councillor unless he or she has made the following declaration:

"I, AB declare that I will undertake the duties of the office of Councillor in the best interests of the people in the municipal district of and faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under this or any other Act to the best of my skill and judgment."

- (2) The declaration must be—

S. 63(2)(a)
amended by
No. 125/1993
s. 14(g).

- (a) made before the Chief Executive Officer;
and

- (b) recorded in the minutes of the Council; and

S. 63(2)(c)
amended by
No. 125/1993
s. 14(g).

- (c) dated and signed before the Chief Executive Officer.

64. Oath of allegiance

A person elected to be a Councillor is not capable of acting as a Councillor unless he or she has taken an oath of allegiance which must be—

S. 64(a)
amended by
No. 125/1993
s. 14(g).

- (a) made before the Chief Executive Officer;
and
-

- (b) recorded in the minutes of the Council; and
- (c) dated and signed before the Chief Executive Officer.

S. 64(c)
amended by
No. 125/1993
s. 14(g).

65. Failure to take oath and make declaration

If a person elected to be a Councillor does not take the oath of allegiance and make the declaration within 3 months after the day on which he or she was declared elected the office of that Councillor becomes vacant.

66. Penalty for acting as Councillor if incapable

Any person who acts as a Councillor while incapable of being or continuing to be a Councillor other than because of unsound mind is guilty of an offence.

Penalty: 10 penalty units.

67. Ouster from office

- (1) The Minister, a Council of which a particular Councillor is a member or any person who is on the voters' roll of that Council may apply to the Supreme Court for the ouster from the office of Councillor of any person whom he, she or it believes is declared elected or holds the office contrary to this Act.
- (2) If an application relates to the election of a Councillor the application must be made during the term for which that person was elected.
- (3) The Supreme Court may make rules with respect to—
 - (a) the procedure for making applications; and
 - (b) proceedings for hearing the application; and

- (c) the payment of a deposit as security for costs; and
- (d) ordering an inquiry into any matter raised by the proceedings; and
- (e) orders as to costs.

68. Retirement of Councillors

- (1) If a Council is holding annual elections the following provisions apply—
 - (a) at 6 a.m. on the day of an annual election at least 1 of the Councillors must go out of office by rotation but so that no one Councillor remains in office for longer than a period of time comprising 3 consecutive annual elections without being re-elected;
 - (b) the Councillors who have been the longest time in office without re-election must go out first;
 - (c) if it is not apparent as to which of any 2 or more Councillors are to go out of office, they are to go out of office in the order determined by the number of votes on which the Councillor was declared elected commencing with the Councillor who received the least number of votes;
 - (d) if any Councillors have been elected without an election, the Council must before public notice of the election under clause 3 of Schedule 2 is given, determine by lot the order in which the Councillors are to go out of office;
 - (e) a Councillor elected to fill an extraordinary vacancy is to be treated as having been elected at the same time and in the same manner and, if necessary, the same order as

S. 68(1)(c)
substituted by
No. 43/1993
s. 10.

S. 68(1)(d)
substituted by
No. 43/1993
s. 10.

the last holder of the office elected otherwise than to fill an extraordinary vacancy.

- (2) If a Council is holding triennial elections the following provisions apply—
- (a) all Councillors are to go out of office at 6 a.m. on the day appointed for each general election;
 - (b) the term of office of a Councillor elected at a general election commences at 6 p.m. on the day of the general election and expires at 6 a.m. on the day appointed for the next general election.

68A. Resignation of Councillor

S. 68A
inserted by
No. 43/1993
s. 11(1).

- (1) For the purpose of holding an election to fill the extraordinary vacancy caused by the resignation of a Councillor, a Councillor is to be taken to have resigned on the date that the resignation is delivered to the Chief Executive Officer.
- (2) Despite sub-section (1), the Councillor continues to hold office until the date specified in his or her resignation.
- (3) A person cannot revoke his or her resignation as a Councillor after the resignation has been delivered to the Chief Executive Officer.
- (4) Upon the resignation being delivered to the Chief Executive Officer, the Chief Executive Officer may commence the holding of an election to fill the extraordinary vacancy.
- (5) Despite sub-section (4)—

S. 68A(1)
amended by
No. 125/1993
s. 14(g).

S. 68A(3)
amended by
No. 125/1993
s. 14(g).

S. 68A(4)
amended by
No. 125/1993
s. 14(g).

- (a) the declaration of the election result cannot be made until the date specified in the resignation; and
- (b) the Councillor elected cannot take office until the declaration is made.

69. *Extraordinary vacancies*

- (1) An extraordinary vacancy is created if the office of a Councillor becomes vacant because the Councillor—
 - (a) fails to take the oath of allegiance or make the declaration of office; or
 - (b) dies; or
 - (c) resigns in writing delivered to the Chief Executive Officer; or
 - (d) becomes incapable of continuing to be a Councillor; or
 - (e) ceases to be qualified to be a Councillor; or
 - (f) is ousted from office; or
 - (g) is absent from 4 consecutive ordinary meetings of the Council without leave obtained from the Council.
- (2) The Council must not unreasonably refuse to grant leave.
- (3) A Councillor is not to be taken to be absent from an ordinary meeting of the Council—
 - (a) unless a meeting of the Council at which a quorum is present is actually held; or
 - (b) while any proceeding for ouster from office of the Councillor is pending.

S. 69(1)(c)
amended by
No. 125/1993
s. 14(h).

70. Councillor may be re-elected

Subject to Schedule 3A, a Councillor may be re-elected to the office of Councillor if he or she is capable of being and continuing to be a Councillor.

S. 70
amended by
No. 54/1998
s. 9.

71. Election of Mayor

(1) The Councillors must elect a Councillor to be the Mayor of the Council.

* * * * *

S. 71(2)
repealed by
No. 76/1995
s. 10(1)(a).

(3) The Mayor is to be elected—

S. 71(3)
amended by
No. 76/1995
s. 10(1)(b).

(a) not later than the second Friday in April in each year; or

S. 71(3)(a)
amended by
No. 99/1994
s. 5(b).

(b) as soon as possible after any vacancy in the office of Mayor occurs.

S. 71(3)(b)
amended by
No. 76/1995
s. 10(1)(c).

(4) The election of a Mayor after the period specified in this section does not invalidate the election.

S. 71(4)
amended by
No. 76/1995
s. 10(1)(d).

(5) The Mayor of the City of Melbourne is to be titled the Lord Mayor.

S. 71(5)
substituted by
No. 76/1995
s. 10(2).

(6) The Mayor of a Shire Council may be titled the President.

S. 71(6)
substituted by
No. 76/1995
s. 10(2).

Local Government Act 1989
Act No. 11/1989

s. 72

S. 71(7)
substituted by
No. 76/1995
s. 10(2).

- (7) Any reference to "**Mayor**" includes a reference to "**Lord Mayor**" or "**President**" as the case may be.

72. Term of office

S. 72(1)
amended by
No. 76/1995
s. 10(3)(a).

- (1) The office of Mayor becomes vacant—

S. 72(1)(a)
amended by
No. 76/1995
s. 10(3)(a).

- (a) at 6 a.m. on the day of the election of the Mayor; or

- (b) if he or she dies or ceases to be a Councillor; or

S. 72(1)(c)
amended by
No. 125/1993
s. 14(h).

- (c) if he or she resigns in writing which is given at a Council meeting or to the Chief Executive Officer; or

- (d) if he or she is ousted from office.

S. 72(2)
repealed by
No. 76/1995
s. 10(3)(b).

* * * * *

S. 72(3)
amended by
No. 76/1995
s. 10(3)(c).

- (3) Any Councillor is eligible for election or re-election to the office of Mayor.

S. 72A
inserted by
No. 98/1993
s. 17.

72A. Term of office of Lord Mayor—City of Melbourne

- (1) Section 71(3)(a) does not apply in respect of the Lord Mayor of the City of Melbourne.

S. 72A(2)
amended by
No. 99/1994
s. 5(b).

- (2) The Lord Mayor of the City of Melbourne is to be elected not later than the second Friday in April in the year in which a general election is held and

hold office until the office becomes vacant in accordance with section 72.

(3) In addition to the matters listed in section 72(1), the office of the Lord Mayor of the City of Melbourne also becomes vacant if 6 Councillors pass a motion that the office be declared vacant.

S. 72A(3)
inserted by
No. 33/1995
s. 9.

(4) A person who is removed from office as the Lord Mayor by the passing of such a motion continues to be a Councillor.

S. 72A(4)
inserted by
No. 33/1995
s. 9.

73. *Precedence of Mayor*

(1) The Mayor of a Council takes precedence at all municipal proceedings within the municipal district.

(2) The Mayor must take the chair at all meetings of the Council at which he or she is present.

(3) If there is a vacancy in the office of Mayor or the Mayor is absent, incapable of acting or refusing to act, the Council must appoint one of the Councillors to be the acting Mayor.

S. 73(3)
substituted by
No. 76/1995
s. 10(4).

(4) An acting Mayor may perform any function or exercise any power conferred on the Mayor.

74. *Allowances*

(1) A Council must pay to each of its Councillors the allowance specified in any Order in Council made for the purposes of this section from time to time.

S. 74
amended by
No. 99/1994
s. 5(b),
substituted by
No. 76/1995
s. 11.

(2) A Council may pay to each of its Councillors a higher allowance than that required by sub-section (1).

(3) However, the amount of the higher allowance—

(a) must not exceed any limit specified in any Order in Council made for the purposes of this sub-section from time to time; and

(b) must be the same for each Councillor.

(4) An Order in Council may specify that amounts and limits higher than those specified for the purposes of sub-sections (1) and (3) are to apply to Mayors.

S. 74(4A)
inserted by
No. 76/1997
s. 14(1).

(4A) A Mayor is not entitled to receive an allowance as a Councillor if she or he is receiving an allowance as a Mayor.

S. 74(4B)
inserted by
No. 76/1997
s. 14(1).

(4B) An Order in Council may specify that different amounts and limits are to apply in respect of specified categories of Councils.

S. 74(4C)
inserted by
No. 76/1997
s. 14(1).

(4C) In paying an allowance under this section, a Council must make the payment in the manner specified in the Order in Council that specified the amount of the allowance.

(5) This section does not apply to the Melbourne City Council.

S. 74A
inserted by
No. 76/1995
s. 11.

74A. Allowances—Melbourne City Council

(1) The Melbourne City Council must pay to its Councillors the allowance specified in any Order in Council made for the purposes of this section from time to time.

S. 74A(2)
substituted by
No. 76/1997
s. 14(2).

(2) The Order in Council may specify that the Lord Mayor is to receive a higher allowance than that specified for other Councillors.

S. 74A(2A)
inserted by
No. 76/1997
s. 14(2).

(2A) The Lord Mayor is not entitled to receive an allowance as a Councillor if she or he is receiving an allowance as Lord Mayor.

S. 74A(2B)
inserted by
No. 76/1997
s. 14(2).

(2B) In paying an allowance under this section, the Council must make the payment in the manner specified in the Order in Council that specified the amount of the allowance.

- (3) Only one amount may be specified for Councillors.

74B. General provisions concerning allowances

- (1) A Council does not have to pay an allowance under section 74 or 74A to a Councillor who does not wish to receive it.
- (2) A person is only entitled to receive an allowance under section 74 or 74A while she or he holds the office for which it is payable.

S. 74B
inserted by
No. 76/1995
s. 11.

75. Reimbursement of expenses

A Council may reimburse Councillors or members of Council committees for necessary out-of-pocket expenses incurred while performing duties as a Councillor or committee member.

76. Indemnity provision

A Council must indemnify and keep indemnified each Councillor, member of a Council committee, member of Council staff and any person exercising any function or power on behalf of a Council against all actions or claims (whether arising during or after the term of office or employment of that Councillor or member) in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of any function or power conferred on the Council or Council committee or any Councillor, member of the Council committee or member of Council staff by or under this or any other Act.

S. 76
substituted by
No. 13/1990
s. 9.

76A. Council must take out insurance cover

- (1) A Council must take out and maintain insurance against—
- (a) public liability for an amount of at least \$30 million or such higher amount as may be fixed by Order in Council; and

S. 76A
inserted by
No. 22/1992
s. 3,
amended by
No. 43/1993
s. 12(a).

Local Government Act 1989
Act No. 11/1989

s. 77

(b) professional liability for an amount of at least \$5 million or such higher amount as may be fixed by Order in Council.

S. 76A(2)
inserted by
No. 43/1993
s. 12(b).

(2) A Council may comply with sub-section (1) by becoming a member of or participating in a scheme approved by the Minister for the purposes of this sub-section.

S. 76A(3)
inserted by
No. 43/1993
s. 12(b).

(3) A Council may become a member of or participate in a scheme approved by the Minister for the purposes of this sub-section without complying with any restriction or requirement otherwise imposed on a Council by this Act.

S. 77
substituted by
No. 34/1996
s. 3.

77. *Improper use of information*

- (1) A person who is, or has been, a Councillor or a member of a Council committee must not make improper use of any information acquired as a Councillor or member—
- (a) to gain, or to attempt to gain, directly or indirectly, a pecuniary advantage for himself or herself or for any other person; or
 - (b) to harm, or to attempt to harm, the Council.

Penalty: For a first offence: 20 penalty units;
For a second or subsequent offence:
imprisonment for 3 months.

- (2) A person who is, or has been, a Councillor or a member of a Council committee must not release information that the person knows, or should reasonably know, is information—
- (a) that is confidential to the Council; and
 - (b) that the Council wishes to keep confidential.

Penalty: For a first offence: 20 penalty units;
For a second or subsequent offence:
imprisonment for 3 months.

78. *Pecuniary interests*

- (1) Section 79 does not apply to a direct or indirect pecuniary interest in a contract, proposed contract or other matter which a Councillor or a member of a special committee has—
- (a) only as a voter or ratepayer and in common with other voters or ratepayers; or
 - (b) only because the contract, proposed contract or other matter involves expenditure from money belonging to or held by the Council and the Councillor or member of a special committee is as a ratepayer a contributor to the money; or
 - (c) in relation to the declaration of rates and charges or the fixing of a fee by the Council; or
 - (d) in relation to the terms and conditions on which the right to participate in the supply of goods and services is offered to members of the public; or
 - (e) only as a person to whom goods or services are supplied in the like manner and subject to the same terms and conditions as apply to members of the public; or
 - (f) only by reason of receiving an allowance or travelling allowances as permitted by this Act; or

- (g) only by reason of the Councillor or member of a special committee or his or her spouse or de facto spouse being insured by the Council; or
 - (h) only as a member of a local community body, club, union or other organisation which is a non-profit organisation if no personal gain to the Councillor or member of a special committee or his or her spouse or de facto spouse is involved; or
 - (i) only in planning and development matters which have a general application throughout the municipal district or a ward; or
 - (j) in relation to the consideration of an application or request for a consent, permission, approval, authorisation, licence, permit, exemption or other right or privilege under this or any other Act, if the extent of the interest of the Councillor or member of a special committee or his or her spouse or de facto spouse is the same as other members of the public; or
 - (k) only as an employee in the service of the Crown or of a body established by or under any Act for a public purpose; or
 - (l) only by reason of being a candidate for election as Mayor; or
 - (m) only as a member of a body (whether or not incorporated) who is appointed or nominated by the Council and whether or not any remuneration or allowances are received.
- (2) For the purposes of section 79, a person is to be treated as having an indirect pecuniary interest in a contract, proposed contract or other matter if—
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S. 78(1)(l)
amended by
No. 76/1995
s. 10(5).

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- (a) the Councillor or member of a special committee or a nominee of the Councillor or member of a special committee is a member of a company or other body with which the contract is made or is proposed to be made or which has a direct or indirect pecuniary interest in the matter under consideration; or
- (b) the Councillor or member of a special committee is a partner, agent, consultant or employee of a person with whom the contract is made or is proposed to be made or who has a direct or indirect pecuniary interest in the matter under consideration; or
- (c) the Councillor or member of a special committee is a director, manager, employee or agent of a company which has a direct or indirect pecuniary interest in the matter under consideration; or
- (d) the spouse or de facto spouse of the Councillor or member of a special committee has an interest of a kind referred to in paragraph (a), (b) or (c); or
- (e) the spouse or de facto spouse of the Councillor or member of a special committee has a direct or indirect pecuniary interest in the contract, proposed contract or other matter.
- (3) If a Councillor or a member of a special committee has an indirect pecuniary interest in any contract or proposed contract with the Council or in any other matter referred to in section 79(1) only because he or she has a beneficial interest in shares of a company or other body and the total nominal value of those shares does not exceed \$2000 or 1% of the total nominal value of the issued share capital of the company or body
- S. 78(2)(d) amended by No. 99/1994 s. 8(a).
- S. 78(2)(e) inserted by No. 99/1994 s. 8(a).

(whichever is the less), section 79(1) does not preclude him or her from taking part in the consideration or discussion of, or voting on any question with respect to the contract, proposed contract or other matter.

79. *Duty of Councillor or member of a special committee*

- (1) If a Councillor or member of a special committee has a direct or indirect pecuniary interest in any contract or proposed contract with the Council or in any other matter in which the Council is concerned which is to be or is likely to be considered or discussed at a meeting of the Council or a special committee, the Councillor or member of the special committee must—
 - (a) if he or she intends to be present at the meeting, disclose the nature of the interest immediately before the consideration or discussion; or
 - (b) if he or she does not intend to be present at the meeting, disclose the nature of the interest to the Chief Executive Officer or the Chairperson of the special committee at any time before the meeting is held.
- (2) The Councillor or member of the special committee may choose to remain in the room in which the meeting is being held during any consideration or discussion of the contract, proposed contract or other matter.
- (3) The Councillor or member of the special committee may take part in the consideration or discussion but cannot move or second a motion on any question relating to the contract, proposed contract or other matter.

S. 79(1)(b)
amended by
No. 125/1993
s. 14(h).

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- (4) While any vote is taken on a question relating to the contract, proposed contract or other matter the Councillor or member of the special committee must—
- (a) leave the room and notify the Mayor or the Chairperson of the special committee that he or she is doing so; and
 - (b) remain outside the room and any gallery or other area in view or hearing of the room.
- (5) After the result on the vote on the question relating to the contract, proposed contract or other matter has been declared, the Mayor or the Chairperson of the special committee must cause the Councillor or member of the special committee to be notified that he or she may return to the room.
- (6) If a Councillor or member of a special committee discloses an interest the Chief Executive Officer or the Chairperson of the special committee must record the declaration and the nature of the interest in the minutes of the meeting at which the consideration or discussion took place.
- (7) Unless sub-section (8) or section 80 applies, a Councillor or member of a special committee who fails to comply with this section is guilty of an offence.
- Penalty: 100 penalty units.
- (8) It is a defence to a prosecution if the Councillor or member of the special committee proves that he or she did not know—
- (a) that he or she had a direct or indirect pecuniary interest in the contract, proposed contract or other matter; or

S. 79(6)
amended by
Nos 125/1993
s. 14(h),
99/1994
s. 8(b).

- (b) that a contract, proposed contract or other matter in which he or she had a direct or indirect interest was considered or discussed at the meeting.
- (9) This section does not prevent any person from taking part in the consideration or discussion of, or voting on—
 - (a) any question whether the amount payable for goods or services previously supplied or provided under any contract should be paid from the municipal fund or any other money held by the Council; or
 - (b) any question whether an application should be made to the Minister for the exercise of the powers conferred by section 80.

80. *Exemption by Minister*

- (1) Despite section 79, if the Council is of the opinion that the transaction of any Council or special committee business would be impeded because of the number of Councillors or members of a special committee affected by section 79, the Minister may upon application by the Council in writing exempt any Councillor or member of a special committee from any or all of the provisions of section 79 subject to any conditions the Minister thinks fit.
- (2) An exemption may be for an unlimited or a specified period.
- (3) The Minister may revoke an exemption.

81. *Register of interests*

- (1) In this section—

"nominated officer" means the senior officers of the Council and any other member of the Council staff nominated by the Council;

S. 81(1) def. of "nominated officer" substituted by No. 99/1994 s. 9(a).

"return period" in relation to the ordinary return of a Councillor, member of a special committee or nominated officer means—

S. 81(1) def. of "return period" amended by No. 34/1996 s. 4(1)(a).

- (a) if the last return of the Councillor, member of a special committee or nominated officer was a primary return, the period between the date of the primary return and 30 June next following; or
- (b) if the last return of the Councillor, member of a special committee or nominated officer was an ordinary return, the period between the date of that return and 30 June next following.

(2) A person who becomes a Councillor or a member of a special committee must within 30 days of making the declaration of office of a Councillor or becoming a member of a special committee submit a primary return in the prescribed form to the Chief Executive Officer.

S. 81(2) amended by No. 99/1994 s. 9(b).

(2A) A Council may exempt a member of a special committee who is not a Councillor from being required to submit a primary return or an ordinary return.

S. 81(2A) inserted by No. 13/1990 s. 10.

(3) If a person is re-elected or re-appointed or upon completion of his or her term of office as a Councillor or member of a special committee, the Councillor or member of a special committee does not have to submit a new primary return.

Local Government Act 1989
Act No. 11/1989

s. 81

- S. 81(4)
substituted by
No. 99/1994
s. 9(c).
- (4) Any person who becomes a nominated officer must within 30 days of becoming a nominated officer submit a return in the prescribed form to the Chief Executive Officer.
- S. 81(4A)
inserted by
No. 99/1994
s. 9(c).
- (4A) Any person who becomes a nominated officer solely because of the amendment made to this Act by section 8 of the **Local Government (Amendment) Act 1994** is deemed for the purposes of sub-section (4) to have become a nominated officer on the date section 8 of that Act came into operation.
- S. 81(5)
amended by
No. 99/1994
s. 9(b).
- (5) A Councillor, a member of a special committee or a nominated officer must on 30 June or within 30 days of 30 June submit an ordinary return in the prescribed form to the Chief Executive Officer.
- (6) A Councillor, a member of a special committee or a nominated officer must disclose the following information in the primary return as at the date of the primary return—
- S. 81(6)(a)
amended by
No. 34/1996
s. 4(1)(b).
- (a) the name of any company or other body in which he or she holds any office whether as a director or otherwise;
- S. 81(6)(b)
substituted by
No. 34/1996
s. 4(1)(c).
- (b) the name or description of any company, partnership, association or other body in which he or she holds a beneficial interest which exceeds in value \$2000;
- S. 81(6)(c)
inserted by
No. 34/1996
s. 4(1)(c).
- (c) the address or description of any land in the municipal district of the Council or in a municipal district which adjoins that municipal district in which he or she has any beneficial interest other than by way of security for any debt;
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Local Government Act 1989
Act No. 11/1989

s. 81

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- (d) a concise description of any trust in which he or she holds a beneficial interest or of which he or she is a trustee and a member of his or her family holds a beneficial interest;
- (e) any other substantial interest whether of a pecuniary nature or not of him or her or of a member of his or her family of which he or she is aware and which he or she considers might appear to raise a material conflict between his or her private interest and his or her public duty as a Councillor, a member of a special committee or nominated officer.
- (6A) A person who does not comply with sub-section (2), (4), (5) or (6) is guilty of an offence against this Act.
- (7) A Councillor, a member of a special committee or a nominated officer must disclose in an ordinary return the following information in relation to the return period—
- (a) if he or she has held an office whether as director or otherwise in any company or body, corporate or unincorporate—the name of the company or body;
- (b) the name or description of any company, partnership, association or other body in which he or she held a beneficial interest which exceeded in value \$2000;
- (c) the address or description of any land in the municipal district of the Council or in a municipal district which adjoins that municipal district in which he or she had any beneficial interest other than by way of security for any debt;
- S. 81(6)(d) inserted by No. 34/1996 s. 4(1)(c).
- S. 81(6)(e) inserted by No. 34/1996 s. 4(1)(c).
- S. 81(6A) inserted by No. 43/1993 s. 13.
- S. 81(7)(b) amended by No. 34/1996 s. 4(1)(d)(i)(ii).
- S. 81(7)(c) amended by No. 34/1996 s. 4(1)(e).

Local Government Act 1989
Act No. 11/1989

s. 81

S. 81(7)(d)
amended by
No. 34/1996
s. 4(1)(f).

(d) a concise description of any trust in which he or she held a beneficial interest or of which he or she is a trustee and a member of his or her family held a beneficial interest;

(e) particulars of any gift of or above the amount or value of \$2000 received by him or her from a person other than a person related to him or her by blood or marriage; and

S. 81(7)(f)
amended by
No. 13/1990
s. 31(d).

(f) any other substantial interest whether of a pecuniary nature or not of him or her or of a member of his or her family of which he or she is aware and which he or she considers might appear to raise a material conflict between his or her private interest and his or her public duty as a Councillor, member of a special committee or nominated officer.

Penalty: 50 penalty units.

S. 81(8)
repealed by
No. 99/1994
s. 9(d).

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S. 81(9)
substituted by
No. 99/1994
s. 9(e).

(9) The Chief Executive Officer must maintain a register of the interests of Councillors, members of special committees and nominated officers consisting of the last 3 returns that those Councillors, members and officers were required to submit under this section.

S. 81(10)
amended by
No. 99/1994
s. 9(f).

(10) The Chief Executive Officer must allow a person to inspect the register if that person has previously made written application to the Chief Executive Officer to do so and the application meets the requirements of the regulations.

(11) The register may be inspected at the office of the Council during normal office hours.

Local Government Act 1989
Act No. 11/1989

(12) The Chief Executive Officer must take all reasonable steps to ensure that no person other than a person who has made application has access to or is permitted to inspect the register or any return.

S. 81(12)
amended by
No. 99/1994
s. 9(f).

(13) A person must not publish any information derived from the register unless that information is a fair and accurate summary or copy of the information derived from the register.

(14) A person employed by the Council must not, whether before or after he or she ceases to be so employed, make a record of, divulge or communicate to any person any information in relation to a matter dealt with by this section that is gained by or conveyed to him or her during his or her employment with the Council or make use of that information for any purpose other than the discharge of his or her official duties under this section.

Penalty: 50 penalty units.

(15) The Chief Executive Officer must—

S. 81(15)
amended by
No. 99/1994
s. 9(f).

(a) retain the returns of a Councillor, a member of a special committee or a nominated officer for a period of 3 years after the person has ceased to be a Councillor, a member of a special committee or a nominated officer; and

(b) at the end of that period, cause the returns to be destroyed.

(16) As soon as practicable after a person ceases to be a Councillor or a member of a special committee or a nominated officer, the Chief Executive Officer must remove all the returns submitted by that person from the register.

S. 81(16)
amended by
No. 99/1994
s. 9(f)(g).

Division 2—Procedure and Proceedings

82. *Council premises and office*

- (1) The Council must maintain premises that are adequate for the Council to perform its functions.
- (2) A Council must establish and maintain a Council office.
- (3) The Council office must be open on the days and during the times determined by the Council.

83. *Types of meetings*

The Council may hold—

- (a) ordinary meetings at which general business of the Council may be transacted; and
- (b) special meetings at which the business specified in the notice calling the meeting may be transacted.

84. *Special meetings*

- (1) The Mayor or at least 3 Councillors may by a written notice call a special meeting of the Council.
- (2) The notice must specify the date and time of the special meeting and the business to be transacted.
- (3) The Chief Executive Officer must call the special meeting as specified in the notice.

- (4) Unless all Councillors are present and unanimously agree to deal with another matter, only the business specified in the notice is to be transacted.

85. *Call of the Council*

S. 84(3)
amended by
No. 125/1993
s. 14(h).

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- (1) If a quorum of a Council cannot be formed or maintained due to the absence of Councillors, the Minister or the Chief Executive Officer may require all Councillors to attend a call of the Council meeting.
 - (2) A call of the Council meeting is to be treated as a special meeting.
 - (3) The Minister or a person appointed by the Minister is entitled to attend and speak at a call of the Council meeting which the Minister required Councillors to attend.
 - (4) If a Councillor does not attend within 30 minutes after the time fixed for a call of the Council meeting or remain at the meeting the Chief Executive Officer must immediately advise the Minister in writing.
 - (5) The Minister must advise the Councillor and the Council that—
 - (a) he or she has received advice that the Councillor did not attend or remain at the call of the Council meeting; and
 - (b) any submissions may be made to the Minister within the period specified by the Minister.
 - (6) If after considering any submissions from the Councillor and the Council the Minister is not satisfied that the Councillor had a reasonable excuse for not attending or remaining at the call of the Council meeting, the Minister may order that as from the date specified in the order the Councillor is incapable of remaining a Councillor.
 - (7) The Minister must send a copy of the order to the Council and the Councillor.

S. 85(1)
amended by
No. 125/1993
s. 14(i).

S. 85(4)
amended by
No. 125/1993
s. 14(j).

86. *Special committees of the Council*

- (1) In addition to any advisory committees that a Council may establish, a Council may establish one or more special committees of the following—
 - (a) Councillors;
 - (b) Council staff;
 - (c) other persons;
 - (d) any combination of persons referred to in paragraphs (a), (b) and (c).
- (2) A Council may appoint members to a special committee and may at any time remove a member from a special committee.
- (3) Except as provided in sub-section (4), a Council may by instrument of delegation delegate any of its functions, duties or powers under this or any other Act to a special committee.
- (4) A Council cannot delegate to a committee the following powers—
 - (a) this power of delegation;
 - (b) to declare a rate or charge;
 - (c) to borrow money;
 - (d) to enter into contracts for an amount exceeding an amount previously determined by the Council;
 - (e) to incur any expenditure exceeding an amount previously determined by the Council;
 - (f) any prescribed power.
- (5) A Council may require a special Committee to report to the Council at intervals determined by the Council.

87. *Special committees of Councillors*

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- (1) The Council must keep a register of delegations to special committees composed solely of Councillors.
 - (2) The Council may appoint a Chairperson for each special committee composed solely of Councillors.
 - (3) If the Chairperson is not present at a meeting of a special committee composed solely of Councillors, the members must appoint a Chairperson.
 - (4) A meeting of a special committee composed solely of Councillors must be held at a time and place determined by the special committee.
 - (5) Until approved by the Council a decision of a special committee composed solely of Councillors which does not relate to a matter delegated to that special committee cannot be given effect to.

88. *Other special committees*

- (1) This section applies to special committees other than special committees comprised solely of councillors.
- (2) The Council must keep a register of delegations to special committees.
- (3) A special committee may appoint a Chairperson.
- (4) If the Chairperson is not present at a meeting of a special committee the members must appoint a Chairperson for that meeting.
- (5) A meeting of a special committee must be held at a time and place determined by the special committee.
- (6) Until approved by the Council a decision of a special committee which does not relate to a

Local Government Act 1989
Act No. 11/1989

matter delegated to the special committee cannot be given effect to.

- (7) A Council may specify in the instrument of delegation that a member of a special committee who is a member of the public or of Council staff does not have voting rights on the special committee.

89. *Meetings to be open to the public*

- (1) Unless sub-section (2) applies, any meeting of a Council or a special committee must be open to members of the public.
- (2) A Council or special committee may resolve that the meeting be closed to members of the public if the meeting is discussing any of the following—
- (a) personnel matters;
 - (b) the personal hardship of any resident or ratepayer;
 - (c) industrial matters;
 - (d) contractual matters;
 - (e) proposed developments;
 - (f) legal advice;
 - (g) matters affecting the security of Council property;
 - (h) any other matter which the Council or special committee considers would prejudice the Council or any person;
 - (i) a resolution to close the meeting to members of the public.
- (3) If a Council or special committee resolves to close a meeting to members of the public the reason must be recorded in the minutes of the meeting.

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- (4) The Council must provide reasonable notice to the public of meetings of the Council.
 - (5) The Chairperson of a special committee must provide reasonable notice to the public of meetings of the special committee.

90. Voting

- (1) A question before a meeting of a Council or special committee is to be determined as follows—
 - (a) each Councillor present at a meeting of the Council and each member of a special committee present at a meeting of the special committee who is entitled to vote is entitled to one vote;
 - (b) unless otherwise prohibited by this Act, each Councillor or member of the special committee present must vote;
 - (c) unless the procedures of a Council or special Committee otherwise provide, voting must be by a show of hands;
 - (d) the question is determined by a majority of the votes;
 - (e) subject to sub-section (2), if there is an equality of votes the Chairperson has a second vote.
- (2) If there is an equality of votes on a question arising under section 71(1), 87(2), 87(3), 88(3) or 88(4), the matter is to be determined by lot.

S. 90(1)(a)
substituted by
No. 13/1990
s. 11(a).

S. 90(1)(e)
amended by
No. 13/1990
s. 11(b).

S. 90(2)
inserted by
No. 13/1990
s. 11(c),
amended by
No. 34/1996
s. 33(b).

91. Conduct of meetings

S. 91
substituted by
No. 13/1990
s. 12.

- (1) A Council must make local laws governing the conduct of meetings of the Council and special committees.
- (2) Except as provided in this Act and subject to any local laws, the conduct of meetings of a Council is in the Council's discretion.
- (3) Except as provided in this Act and subject to any local laws and any resolutions of a Council, the conduct of meetings of a special committee is in the special committee's discretion.

92. *Validity of proceedings*

Proceedings of a Council or committee are not invalidated because of—

- (a) any vacancy in the number of Councillors or members; or
- (b) any defect in the election or appointment of a Councillor or member; or
- (c) any incapacity to be a Councillor or member; or
- (d) any failure to comply with section 89.

93. *Minutes of meetings*

- (1) The Council must keep minutes of each meeting of the Council.
 - (2) The minutes of a Council meeting must be submitted to the next appropriate meeting of the Council for confirmation.
 - (3) The Chairperson of a special committee must arrange for minutes of each meeting of the committee to be kept.
 - (4) If sub-section (3) applies, the Chairperson must submit the minutes of a committee meeting to the next meeting of the committee for confirmation.
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- (5) If the minutes are confirmed the Chairperson at the meeting must sign the minutes and certify that they have been confirmed.

Division 3—Council Staff

94. *The Chief Executive Officer*

- (1) A Council must appoint a natural person to be its Chief Executive Officer.
- (2) The Chief Executive Officer is a member of Council staff.
- (3) A Council may only appoint a person to be its Chief Executive Officer after it has invited applications for the position in a notice in a newspaper circulating generally throughout Victoria and has considered all applications received by it that comply with the conditions specified in the notice.
- (4) Sub-section (3) does not apply if—
- (a) in the 6 months immediately before the person's contract as Chief Executive Officer is due to expire, the Council passes a resolution to reappoint that person as its Chief Executive Officer; and
 - (b) at least 14 days before the resolution is passed, public notice was given of the intention to put the resolution; and
 - (c) the public notice contained—
 - (i) a statement that the passing of the resolution would result in the reappointment of the Chief Executive Officer without the position being advertised; and

S. 94
amended by
Nos 13/1990
s. 31(e),
125/1993
s. 4(1)–(3),
99/1994
s. 10(1)(2),
substituted by
No. 27/1997
s. 4.

S. 94(4)
substituted by
No. 23/2000
s. 3(1).

Local Government Act 1989
Act No. 11/1989

s. 94A

(ii) any other details required by the regulations.

S. 94(4A)
inserted by
No. 23/2000
s. 3(1).

(4A) Sub-section (3) also does not apply if a Council appoints a person to act as its Chief Executive Officer for a period of not more than 12 months.

(5) A Council must not remunerate in any way a person who has filled the Chief Executive Officer's position on an acting basis for 12 months for anything the person does in respect of that position after that 12 month period (unless the person is appointed after the Council has complied with sub-section (3)).

S. 94(6)
substituted by
No. 23/2000
s. 3(2).

(6) If a Council passes a resolution to reappoint a person as its Chief Executive Officer without advertising the position, the Council must make details of the person's proposed total remuneration as Chief Executive Officer under the new contract available for public inspection within 14 days after the passing of the resolution.

S. 94(7)
inserted by
No. 23/2000
s. 3(2).

(7) A contract of employment as Chief Executive Officer between a Council and a person is void if it is made—

(a) in circumstances that are contrary to this section; or

(b) while a current contract of employment as Chief Executive Officer with the person exists and that current contract is not due to expire for at least another 6 months (regardless of whether or not the Chief Executive Officer's position has been readvertised).

S. 94A
inserted by
No. 27/1997
s. 4.

94A. *Functions of the Chief Executive Officer*

(1) A Council's Chief Executive Officer is responsible for—

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- (a) establishing and maintaining an appropriate organisational structure for the Council; and
 - (b) ensuring that the decisions of the Council are implemented without undue delay; and
 - (c) the day to day management of the Council's operations in accordance with the Council's corporate plan; and
 - (d) providing timely advice to the Council.
- (2) The Chief Executive Officer may appoint as many members of Council staff as are required to enable the functions of the Council under this Act or any other Act to be carried out and to enable the Chief Executive Officer to carry out her or his functions.
 - (3) The Chief Executive Officer is responsible for appointing, directing, managing and dismissing Council staff and for all other issues that relate to Council staff.
 - (4) A reference to Council staff in this section does not include a reference to the Chief Executive Officer.

94B. *Restrictions concerning the appointment of senior officers*

S. 94B
inserted by
No. 27/1997
s. 4.

- (1) A Chief Executive Officer may only appoint a person to be a senior officer after she or he has invited applications for the position in a notice in a newspaper circulating generally throughout Victoria and has considered all applications received by her or him that comply with the conditions specified in the notice.
- (2) Sub-section (1) does not apply if a Chief Executive Officer appoints a person to fill a senior officer's position on an acting basis for a period of not more than 12 months.

- (3) A Chief Executive Officer must ensure that a person who has filled a senior officer's position on an acting basis for 12 months is not remunerated in any way for anything the person does in respect of that position after that 12 month period (unless the person is appointed after the Chief Executive Officer has complied with sub-section (1)).

95. Principles to be observed with respect to Council staff

- (1) The following principles are to be observed with respect to Council staff—
- (a) recruitment to Council staff should be from individuals selected on the basis of relative ability, knowledge and skills in fair and open competition which assures that all receive equal opportunity;
 - (b) promotion and advancement should be from qualified individuals selected in fair and open competition on the basis of relative efficiency measured in relation to the position involved;
 - (c) all Council staff should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, colour, religion, national origin, sex, marital status or physical disability;
 - (d) equal pay should be provided for work of equal value with appropriate consideration being given to the different requirements of various occupational employment categories;
 - (e) Council staff should be used efficiently and effectively;
 - (f) Council staff should as far as possible be provided with effective education and training if the education and training would
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result in better organisational and individual performance;

- (g) Council staff should be protected against arbitrary action, personal favouritism and coercion;
- (h) all necessary steps should be taken to ensure that all Council staff maintain proper standards of integrity, conduct and concern for the public interest.

- (2) The Chief Executive Officer must give the Council staff an opportunity to apply for any vacant permanent full-time Council staff position that she or he intends to fill.

S. 95(2)
substituted by
No. 27/1997
s. 5(1).

95A. *Employment of senior officers to be regulated by contract*⁵

S. 95A
inserted by
No. 125/1993
s. 7(1).

- (1) A senior officer may only be employed under a contract.

S. 95A(1)
amended by
No. 27/1997
s. 5(2)(a).

- (2) The contract must—

- (a) specify performance criteria for the purpose of reviews of the senior officer's performance; and
- (b) specify the date on which it expires, which must be a date that is not more than 5 years after the date it is signed; and
- (c) include any other matter that is required by the regulations.

S. 95A(2)(b)
amended by
No. 99/1994
s. 11(1).

- (3) On the expiry of a senior officer's contract, the senior officer may be invited to enter into a new contract.

S. 95A(3)
substituted by
No. 27/1997
s. 5(3).

Local Government Act 1989
Act No. 11/1989

s. 95B

S. 95A(3A)
inserted by
No. 99/1994
s. 11(2),
amended by
No. 27/1997
s. 5(2)(b),
repealed by
No. 23/2000
s. 3(3).
S. 95A(4)
substituted by
No. 27/1997
s. 5(4).

* * * * *

- (4) Any contract of employment between—
- (a) a Council and a Chief Executive Officer; or
 - (b) a Chief Executive Officer and a senior officer—
- that does not comply with sub-section (2) is void.

S. 95A(5)
amended by
No. 99/1994
s. 11(3).

- (5) This section does not apply to work performed by a person filling a position on an acting basis for a period of not more than 12 months.
- (6) For the purposes of this section, if a contract contains an option for renewal, the expiry date of the contract is the date on which the last option period ends.

S. 95B
inserted by
No. 125/1993
s. 7(1),
substituted by
No. 27/1997
s. 6.

95B. Powers of the Minister concerning the employment of senior officers

- (1) The Minister may, by notice published in the Government Gazette, exempt a Council or a Chief Executive Officer from complying with section 95A.
- (2) If the Minister does this, section 95A does not apply to the Council or Chief Executive Officer until the Minister revokes the notice by a further notice published in the Government Gazette.
- (3) The Minister may also, by notice published in the Government Gazette, for a period specified in the notice, forbid—
- (a) a Council from employing a new Chief Executive Officer, or entering into a new

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- contract with an existing Chief Executive Officer, or entering into a contract with a Chief Executive Officer that expires after a specified period or date;
- (b) a Chief Executive Officer from employing new senior officers, or entering into new contracts with existing senior officers, or entering into any contracts with senior officers that expire after a specified period or date.
- (4) A Council must comply with a notice under sub-section (3)(a).
- (5) A Chief Executive Officer must comply with a notice under sub-section (3)(b).
- (6) If a Council or Chief Executive Officer is forbidden to fill a vacancy by a notice, it or she or he may only employ a person on an acting basis to perform the functions assigned to the vacant position.
- (7) Any contract entered into by a Council or Chief Executive Officer in contravention of a notice under sub-section (3) is void.

95C. *Validity of decisions*

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

S. 95C
inserted by
No. 23/2000
s. 4.

96. *Equal Employment Opportunity*

Schedule 6 has effect with respect to equal employment opportunity in Councils.

Local Government Act 1989
Act No. 11/1989

s. 97C

S. 97
repealed by
No. 125/1993
s. 8, new s. 97
inserted by
No. 125/1993
s. 9,
repealed by
No. 27/1997
s. 7.
S. 97A
inserted by
No. 125/1993
s. 9.

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97A. *Performance of senior officers to be assessed annually*

- (1) At least once each year a Council must review the performance of its Chief Executive Officer.
- (2) At least once each year the Chief Executive Officer must review the performance of every other senior officer.

S. 97B
inserted by
No. 125/1993
s. 9.

97B. *Register of senior officers' remuneration*

- (1) The Chief Executive Officer must maintain a register that shows, in respect of each person who is a senior officer, all the information required by the regulations, in the form required by the regulations, concerning the amounts that are payable, or that have been paid, by the Council in respect of the senior officer.
- (2) The Chief Executive Officer must make the register available for inspection on request by any person.

Penalty: 20 penalty units.

S. 97C
inserted by
No. 27/1997
s. 8.

97C. *Outside employment of senior officers*

- (1) This section applies if a senior officer is given approval to engage in any paid employment outside the duties of her or his office.
- (2) The Chief Executive Officer must—
 - (a) give public notice of the details of the approval within 14 days of the approval being given; and

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- (b) maintain a register that shows details of every such approval.
 - (3) The Chief Executive Officer must make the register available for inspection on request by any person.
 - (4) Within 7 days of receiving an approval, a senior officer may apply to the Minister for a direction—
 - (a) that public notice is not to be given of the approval;
 - (b) that the approval is not to be shown on the register.
 - (5) The Minister may give such a direction if she or he is satisfied that there are special circumstances that justify the giving of the direction.
 - (6) The Chief Executive Officer must not give effect to sub-section (2)—
 - (a) within 7 days of an approval being given; or
 - (b) if within that time the senior officer applies to the Minister under sub-section (4), until the Minister rejects the application.
 - (7) With respect to approvals given to current senior officers before the commencement of section 8 of the **Local Government (Further Amendment) Act 1997**, the Chief Executive Officer must comply with this section within 30 days of the date that section 8 of that Act comes into operation.

S. 97C(6)(c)
re-numbered
as s. 97C(6)(b)
by No.
76/1997 s.
24(a).

98. Delegations

- (1) A Council may by instrument of delegation delegate to a member of its staff any power, duty or function of a Council under this Act or any other Act other than—

S. 98(2)
amended by
No. 125/1993
s. 14(k).

- (a) this power of delegation; and
 - (b) the power to declare a rate or charge; and
 - (c) the power to borrow money except as provided in section 149; and
 - (d) the power to approve any expenditure not contained in a budget approved by the Council; and
 - (e) any power, duty or function of the Council under section 223; and
 - (f) any prescribed power.
- (2) The Chief Executive Officer may by instrument of delegation delegate to a member of the Council staff any power, duty or function of his or her office other than this power of delegation unless sub-section (3) applies.
- (3) The instrument of delegation to the Chief Executive Officer may empower the Chief Executive Officer to delegate a power of the Council other than the power of delegation to a member of the Council staff.
- (4) The Council must keep a register of delegations to members of Council staff.

99. *Benefits gained by Council staff*

- (1) A member of Council staff must not exact or accept from any person any fee or reward—
 - (a) for anything done by virtue of his or her employment; or
 - (b) in relation to any act, matter or thing to be done under this Act or any other Act dealing with local government or requiring any act,
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Local Government Act 1989
Act No. 11/1989

matter or thing to be done or performed by the Council for a local governing purpose and which is a duty of that employment unless the fee or reward is received from the Council or with the Council's written permission.

- (2) A person who contravenes this section is guilty of an offence.

Penalty: 10 penalty units.

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S. 100
repealed by
No. 125/1993
s. 10(1).

101. *Long service leave*

- (1) A Council must implement appropriate long service leave arrangements for Council staff in accordance with the regulations.

- (2) Regulations made under this Act with respect to long service leave cannot—

- (a) reduce or adversely affect the position of any person in respect of service; or
- (b) specify levels of benefits for any person or class of persons which are less than those which applied—

under the **Local Government Act 1958** as in force before the commencement of this section.

Local Government Act 1989
Act No. 11/1989

s. 102

S. 102
amended by
Nos 13/1990
s. 13(a),
22/1992
ss 4(1), 7(2)(a),
repealed by
No. 125/1993
s. 11(1),
new s. 102
inserted by
No. 125/1993
s. 12.

**102. Restriction concerning the employment of
*ex-councillors***

- (1) A Council must not appoint to its staff any person who has been a Councillor of the Council within 2 years after he or she ceases to hold that office.
- (2) Any appointment that contravenes this section is void.

S. 103
amended by
Nos 13/1990
s. 13(b),
78/1991
s. 13(b),
22/1992
ss 4(1), 7(2)(a),
repealed by
No. 125/1993
s. 11(1).

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Ss 104–110
repealed by
No. 125/1993
s. 11(1).

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PART 5—LOCAL LAWS

111. *Power to make local laws*

- (1) A Council may make local laws for or with respect to any act, matter or thing in respect of which the Council has a function or power under this or any other Act.
- (2) A local law must not be inconsistent with any Act or regulation.
- (3) A local law is inoperative to the extent that it is inconsistent with any Act or regulation.
- (4) If a planning scheme is in force in the municipal district of a Council, the Council must not make a local law which duplicates or is inconsistent with the planning scheme.

111A. *Power to make local laws about shop trading hours*

- (1) A Council within the meaning of the **Shop Trading Reform Act 1996** may, subject to that Act, make a local law for or with respect to the closing and keeping closed of shops, other than exempt shops within the meaning of that Act, outside ordinary shop closing times within the meaning of that Act—
 - (a) at all times on all Sundays; or
 - (b) between specified hours on all Sundays.
- (2) Despite anything to the contrary in section 116, a local law referred to in sub-section (1) must be expressed so as to apply throughout the whole of the municipal district.

S. 111A
inserted by
No. 38/1996
s. 13.

112. *Incorporation by reference*

- (1) A local law may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued,

prescribed or published by any authority or body whether—

- (a) wholly or partially or as amended by the local law; or
 - (b) as formulated, issued, prescribed or published at the time the local law is made or at any time before then; or
 - (c) as formulated, issued, prescribed or published from time to time.
- (2) If a local law has applied, adopted or incorporated any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published from time to time and that document, code, standard, rule, specification or method is at any time amended, until the Council causes notice to be published in the Government Gazette of that amendment, the document, code, standard, rule, specification or method is to be taken to have not been so amended.

113. *Permits, licences, fees and charges*

- (1) A local law may—
- (a) provide that a Council may by resolution determine a fee, charge, fare or rent in relation to any property, undertaking, goods, service or other act, matter or thing; and
 - (b) prescribe, regulate or determine the purposes for which and the conditions on which a Council may—
 - (i) grant a permit, licence, authority or registration; or
 - (ii) perform or supply a service; or
 - (iii) supply any goods or information; and
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- (c) prescribe the manner in which an application may be made for a permit, licence, authority or registration; and
 - (d) prescribe the fee which is payable for the granting, renewal or transfer of a permit, licence, authority or registration.
- (2) The power to make a local law imposing fees may be exercised by providing for all or any of the following matters—
- (a) specific fees;
 - (b) maximum or minimum fees;
 - (c) maximum and minimum fees;
 - (d) scales of fees according to the value of goods or services provided for the fees or the project being assessed;
 - (e) the payment of fees either generally or under specified conditions or in specified circumstances;
 - (f) the reduction, waiver or refund, in whole or in part, of the fees.
- (3) If a local law provides for a reduction, waiver or refund, in whole or in part, of a fee, the reduction, waiver or refund may be expressed to apply—
- (a) subject to specified conditions or in the discretion of any specified person or body; and
 - (b) either generally or specifically—
 - (i) in respect of certain matters or transactions or classes of matters or transactions; or
 - (ii) in respect of certain documents or classes of documents; or
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- (iii) when an event happens; or
- (iv) in respect of certain persons or classes of persons; or
- (v) in respect of any combination of matters, transactions, documents, events or persons.

114. Delegations

A local law may—

- (a) confer a discretionary authority or impose a duty on a specified person or body or a specified class of persons and bodies; and
- (b) leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by the Council; and
- (c) delegate to a Councillor or a member of the Council staff the power to—
 - (i) sign, seal, issue, revoke or cancel any notice, order or agreement on behalf of the Council; and
 - (ii) sign any document on behalf of the Council; and
 - (iii) do any act, matter or thing necessary or incidental to the performance or exercise of any function or power by the Council.

S. 114(c)(iii)
amended by
No. 125/1993
s. 26(1)(a).

S. 114(d)
repealed by
No. 125/1993
s. 26(1)(b).

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115. Penalties

- (1) A local law may—
- (a) prescribe a penalty not exceeding 20 penalty units for a contravention of a local law; and
 - (b) prescribe a penalty not exceeding 2 penalty units for each day after conviction for an offence during which the contravention continues; and
 - (c) prescribe higher penalties (not exceeding 20 penalty units) for a subsequent offence.
- (2) If a local law does not expressly prescribe a penalty for a contravention of the local law the court before which proceedings are brought may impose a penalty not exceeding 10 penalty units.

116. Application of local law

A local law may be expressed so as to do any or all or a combination of the following—

- (a) apply at all times or at a specified time;
- (b) apply throughout the whole of the municipal district or in a specified part of the municipal district;
- (c) apply to all cases or to all cases subject to specified exceptions or to any specified case or class of case;
- (d) make provision for all cases or different provision for different cases or classes of case or different provisions for the same case or class of case for different purposes;
- (e) require a matter to be in accordance with a specified standard or specified requirement or approved by or to the satisfaction of a specified person or body or a specified class of persons or bodies;

- (f) provide in a specified case or class of case for the exception of persons or things or a class of persons or things from the local law, whether unconditionally or on specified conditions and either wholly or to the extent specified.

117. *Infringement notices*

- (1) A local law may provide for a person to be served with an infringement notice specifying a fixed penalty for an offence against the local law as an alternative to a prosecution for the offence.
- (2) The local law must specify—
 - (a) the amount of the fixed penalty; and
 - (b) the person or class of persons who may issue a notice of infringement; and
 - (c) the person to whom payment of the fixed penalty may be made; and
 - (d) the period within which the fixed penalty must be paid in order to avoid prosecution.
- (3) A notice of infringement must specify—
 - (a) the name of the alleged offender; and
 - (b) the nature of the offence alleged to have been committed in general terms; and
 - (c) the date, time and place of the alleged offence; and
 - (d) the amount of the fixed penalty; and
 - (e) the period within which and the place where the fixed penalty may be paid; and
 - (f) that the alleged offender is entitled to disregard the infringement notice and defend the prosecution for the offence in court.

118. *Local law is a subordinate instrument*

A local law is a subordinate instrument for the purposes of the **Interpretation of Legislation Act 1984**.

119. *Procedure for making a local law*

- (1) Before a Council makes a local law it must comply with the following procedure.
- (2) The Council must give a notice in the Government Gazette and a public notice stating—
 - (a) the purpose and general purport of the proposed local law; and
 - (b) that a copy of the proposed local law can be obtained from the Council office; and
 - (c) that any person affected by the proposed local law may make a submission relating to the proposed local law under section 223.
- (3) After a local law has been made the Council must give a notice in the Government Gazette and a public notice specifying—
 - (a) the title of the local law; and
 - (b) the purpose and general purport of the local law; and
 - (c) that a copy of the local law may be inspected at the Council office.
- (4) After a local law has been made the Council must send a copy to the Minister.

120. *Availability of local laws*

- (1) A Council must print copies of every local law which is in force in its municipal district.

- (2) A Council must ensure that a copy of every local law—
 - (a) is available for inspection at the Council office during the Council office's office hours; and
 - (b) can be purchased on demand at the Council office during the Council office's office hours.
- (3) A Council must ensure that a copy of every document incorporated by a local law under section 112 is available for inspection at the Council office during the Council office's office hours.
- (4) Even though a local law has come into operation—
 - (a) a person cannot be convicted of an offence against the local law if it is proved that at the time of the alleged offence a copy of the local law could not be purchased or inspected at the Council office during the Council office's office hours; and
 - (b) a person cannot be prejudicially affected or made subject to any liability by the local law if it is proved that at the relevant time a copy of the local law could not be purchased or inspected at the Council office during the Council office's office hours.

121. *Commencement of local laws*

- (1) A local law or a provision of a local law comes into operation at the beginning of the day on which the local law is made or at the beginning of such later day as is expressed in the local law as the day on which the local law or provision comes into operation.
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- (2) Even though a local law has come into operation—
- (a) a person cannot be convicted of an offence against the local law if it is proved that at the time of the alleged offence the Council had not complied with section 119(3) or 120(1) unless it is proved that at that time reasonable steps had been taken for the purpose of bringing the general purport of the local law to the notice of the public or of persons likely to be affected by it or of the person charged; and
 - (b) a person cannot be prejudicially affected or made subject to any liability by the local law if it is proved that at the relevant time the Council had not complied with section 119(3) or 120(1) unless it is proved that at that time reasonable steps had been taken for the purpose of bringing the purport of the local law to the notice of the public or of persons likely to be affected by it or of the person concerned.

122. *Sunset provision*

- (1) Unless sooner revoked, a local law is by this section revoked on the day which is 10 years after the day which is the earliest day on which any provision of the local law came into operation.
- (2) If a local law has been amended, sub-section (1) applies to the local law as amended from time to time and not to any of the amending local laws.
- (3) If a local law is revoked by this section any local law amending that local law is also revoked.

123. *Revocation by Governor in Council*

- (1) A local law may be revoked in whole or part by the Governor in Council by an Order in Council on the recommendation of the Minister.
- (2) In deciding whether to recommend that a local law be revoked, the Minister must consider—
 - (a) whether there is a substantial breach of any of the matters specified in Schedule 8; and
 - (b) whether the contents of the local law would be more appropriately contained in a planning scheme; and
 - (c) any other matter the Minister considers to be appropriate.
- (3) If the Minister is of the opinion that a local law substantially breaches clause 2(j) of Schedule 8, she or he must not recommend that the local law be revoked unless she or he has consulted the Council that made the local law about the possible breach.
- (4) The Minister must not, before 1 July 1999, recommend that a local law made before 1 July 1997 be revoked on the grounds that it substantially breaches clause 2(j) of Schedule 8.

S. 123(3)
inserted by
No. 54/1998
s. 20(2).

S. 123(4)
inserted by
No. 54/1998
s. 20(2).

124. *Validity of local law*

A person may dispute the validity of a local law under section 103 of the **Supreme Court Act 1986** as if a local law were a by-law.

PART 6—ACCOUNTS AND AUDIT⁶

125. *Accounts and records*

- (1) A Council has a duty to ensure that there are kept in accordance with the regulations proper accounts and records of the transactions and affairs of the Council and such other records as will sufficiently explain the financial operations and financial position of the Council.
- (2) A Council has a duty to do all things necessary to—
 - (a) ensure that all money payable to the Council is properly collected; and
 - (b) ensure that appropriate arrangements are implemented for the security of all money received by the Council; and
 - (c) ensure that all money expended by the Council is correctly expended and properly authorised; and
 - (d) ensure that adequate control is maintained over assets owned by or in the custody of the Council; and
 - (e) ensure that all liabilities incurred by the Council are properly authorised; and
 - (f) ensure efficiency and economy of operations and the avoidance of waste and extravagance; and
 - (g) develop and maintain an adequate budgeting and accounting system; and
 - (h) develop and maintain adequate internal control systems.

Local Government Act 1989
Act No. 11/1989

s. 126

S. 125(3)
inserted by
No. 34/1996
s. 5(1).

(3) A Council has a duty to ensure that its accounts and records are kept up to date and ready for inspection at any time by any person authorised to inspect them.

126. Annual report

(1) A Council must in respect of each financial year prepare an annual report containing—

(a) a report of its operations during the financial year; and

S. 126(1)(aa)
inserted by
No. 40/1994
s. 5(a),
substituted by
No. 34/1996
s. 6(1),
repealed by
No. 59/1999
s. 5(b).

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S. 126(1)(ab)
inserted by
No. 40/1994
s. 5(a),
repealed by
No. 34/1996
s. 6(1).

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S. 126(1)(ac)
inserted by
No. 40/1994
s. 5(a),
amended by
No. 33/1995
s. 4(2)(b),
repealed by
No. 59/1999
s. 5(b).

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S. 126(1)(b)
amended by
Nos 22/1992
s. 5(1)(a),
34/1996 s.
6(2).
S. 126(1)(c)
inserted by
No. 34/1996
s. 6(2).

(b) audited financial statements for the financial year; and

(c) a copy of the performance statement prepared under section 153B; and

Local Government Act 1989
Act No. 11/1989

s. 126

(d) a copy of the report on the performance statement prepared under section 128.

S. 126(1)(d) inserted by No. 34/1996 s. 6(2).

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S. 126(2) substituted by No. 22/1992 s. 5(1)(b), repealed by No. 34/1996 s. 6(3).

(3) The report of operations must—

- (a) be prepared in a form and contain information determined by the Council to be appropriate; and
- (b) contain any prescribed information.

(4) The financial statements must—

- (a) be prepared in the prescribed manner and form; and
- (b) be submitted in their finalised form to the auditor for auditing as soon as possible after the end of the financial year; and

S. 126(4)(b) substituted by No. 22/1992 s. 5(1)(c), amended by No. 34/1996 s. 6(4).

- (c) present fairly the financial transactions of the Council during the financial year to which they relate; and

S. 126(4)(c) inserted by No. 34/1996 s. 6(4).

- (d) present fairly the financial position of the Council at the end of that year; and

S. 126(4)(d) inserted by No. 34/1996 s. 6(4).

- (e) be certified in the manner prescribed.

S. 126(4)(e) inserted by No. 34/1996 s. 6(4).

Local Government Act 1989
Act No. 11/1989

s. 126

S. 126(4A)
inserted by
No. 34/1996
s. 6(4).

(4A) The auditor must not sign the auditor's report concerning the financial statements unless sub-section (4)(e) has been complied with.

S. 126(4B)
inserted by
No. 34/1996
s. 6(4).

(4B) The annual report must be submitted to the Minister within 3 months of the end of each financial year or such longer period as the Minister may permit in a particular case.

S. 126(4C)
inserted by
No. 76/1997
s. 15.

(4C) The Council must not submit the financial statements to its auditor or the Minister unless it has passed a resolution giving its approval in principle to the statements.

S. 126(4D)
inserted by
No. 76/1997
s. 15.

(4D) The Council must authorise 2 Councillors to certify the statements in their final form after any changes recommended, or agreed to, by the auditor have been made.

S. 126(5)
substituted by
No. 22/1992
s. 5(1)(d),
amended by
No. 34/1996
s. 6(5).

(5) If a Council fails to submit its annual report within the time allowed under sub-section (4B), the Minister must ensure that details of the failure are published in the annual report of the Ministry or Department administering this Act.

(6) After the annual report has been submitted to the Minister, the Council must give public notice that the annual report has been prepared and can be inspected at the Council office.

S. 126(7)
inserted by
No. 33/1995
s. 4(3),
amended by
Nos 93/1997
s. 28(Sch.
item 18),
53/1999
s. 26(Sch.
item 15).

(7) After it has received a copy of the report of the auditor under section 9 of the **Audit Act 1994**, a Council must—

(a) give public notice that it has received the copy and that the copy can be inspected at the Council office;

(b) ensure that the copy is available for public inspection at any time that the Council office is open to the public.

126A. Meeting to discuss annual report

- (1) A council must hold a meeting to discuss its annual report once each year.
- (2) The meeting—
 - (a) must be held as soon as practicable (but within the time required by the regulations) after the Council has sent the reports to the Minister; and
 - (b) must be advertised at least 14 days before it is held in a public notice that states the purpose of the meeting and the place from which copies of the annual report can be obtained before the meeting; and
 - (c) must not be held in conjunction with any other meeting; and
 - (d) must be kept open to the public at all times.

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S. 126A inserted by No. 13/1990 s. 14, repealed by No. 22/1992 s. 5(2), new s. 126A inserted by No. 34/1996 s. 7.

S. 127 amended by Nos 22/1992 ss 5(2), 7(2)(b), 125/1993 s. 14(l), substituted by No. 33/1995 s. 5, repealed by No. 34/1996 s. 5(2), S. 127A inserted by No. 33/1995 s. 5.

127A. Minister may direct Councils etc. to submit financial statements

- (1) If the Minister considers it necessary or appropriate in the public interest, he or she may in writing direct a Council to prepare and submit within 4 weeks after the date of the direction financial statements in respect of any part of a financial year together with any other related information specified by him or her.

(2) In this section, a reference to a Council includes a reference to—

- (a) a corporation, all the shares in which are owned by or on behalf of one or more Councils, whether directly or indirectly; or
- (b) a trustee of a trust of which a Council is the principal beneficiary or of which several Councils are the principal beneficiaries; or
- (c) a regional library under section 196.

S. 127B
inserted by
No. 33/1995
s. 5,
repealed by
No. 59/1999
s. 5(b).

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New s. 128
inserted by
No. 34/1996
s. 8.

128. *Audited report on performance statement*

The auditor must prepare a report on the performance statement prepared by a Council under section 153B in the form and containing the details required by the Minister and must submit a copy of that report to the Minister and the Council as soon as is reasonably practicable after the report has been prepared.

Ss 128–131
repealed.⁷

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132. *Offences relating to investigations*

(1) A person must not—

- (a) refuse or fail to comply with a requirement of an inspector of municipal administration to the extent to which that person is able to comply; or
- (b) give information which he or she knows is false or misleading to an inspector of municipal administration; or

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- (c) when appearing before an inspector of municipal administration—
- (i) refuse to take an oath or affirmation; or
 - (ii) make a false or misleading statement.

Penalty: 100 penalty units or imprisonment for 2 years.

- (2) If a person fails to comply with a requirement made by an inspector of municipal administration and does not prove that he or she had a lawful excuse for the failure, the inspector of municipal administration may certify the failure in writing to the Supreme Court.
- (3) The Supreme Court may inquire into the failure and may—
- (a) make an order requiring the person to comply with the requirement made by the inspector of municipal administration within the period fixed by the Supreme Court; or
 - (b) instead of or in addition to an order under paragraph (a), if the Supreme Court is satisfied that the person failed without lawful excuse to comply with the requirement of the inspector of municipal administration punish the person as if he or she had been guilty of contempt of court.

133. *Imposition of a surcharge*

- (1) If the Secretary to the Department of Infrastructure considers that—
- (a) any expenditure has been incurred in contravention of any Act, regulation or local law; or

S. 133(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (b) any deficiency or loss has been incurred by the misconduct of a Councillor or a member of the Council staff; or
- (c) any money which should have been brought into account has not been brought into account—

the Secretary to the Department of Infrastructure may unless section 76 or 228 applies recommend to the Minister that the Councillor or member of the Council staff responsible be surcharged.

- (2) The Minister may by notice in writing require the Councillor or member of the Council staff to show cause why he or she should not be surcharged.
- (3) The surcharge must not exceed the amount of the expenditure, deficiency or loss or the amount which has not been brought into account.
- (4) If the Councillor or member of the Council staff does not show cause to the satisfaction of the Minister, the Minister may by notice in writing impose the surcharge.
- (5) A person whose interests are affected by a decision of the Minister imposing a surcharge may apply to the Victorian Civil and Administrative Tribunal for review of the decision.
- (6) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 133(5)
substituted by
No. 52/1998
s. 311(Sch. 1
item 55.3).

S. 133(6)
inserted by
No. 52/1998
s. 311(Sch. 1
item 55.3).

134. *Payment of the surcharge*

- (1) A surcharge is a debt due and payable to the Council by the person on whom it is imposed.
 - (2) The Council is entitled to deduct any amount towards the discharge of the amount of the surcharge from any allowances or other benefit payable to the person on whom the surcharge is imposed.
 - (3) If the person on whom a surcharge is imposed is a Councillor who does not pay the surcharge within 3 months of it being imposed or confirmed on a review, the person becomes incapable of continuing to be or becoming a Councillor until the surcharge is paid.
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PART 7—FINANCIAL PROVISIONS

S. 135
amended by
No. 13/1990
s. 16,
repealed by
No. 22/1992
s. 8(a).

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S. 136
amended by
No. 22/1992
s. 8(b).

136. *Payments out of the municipal fund*

A Council may apply any money to—

- (a) enable the Council to perform the functions and exercise the powers conferred on the Council by or under this Act or any other Act; or
- (b) repay to a person any money overpaid or wrongly paid by the person to the Council; or
- (c) refund to a person the whole or part of any money paid by the person to the Council for a particular purpose or as a condition of any agreement or arrangement which has not been performed or which has been only partly performed whether by that person or the Council.

S. 136A
inserted by
No. 98/1993
s. 18.

136A. *Power of Minister in respect of use of revenue*

- (1) The Minister may by Order published in the Government Gazette before 1 October in any financial year of the Melbourne City Council provide that a specified percentage of the revenue raised by the Melbourne City Council must be applied by the Melbourne City Council in the financial year in which it is raised to provide works and services for the benefit of a part of the municipal district of the Melbourne City Council specified in the Order.

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- (2) The Melbourne City Council must comply with an Order under sub-section (1).
 - (3) The Melbourne City Council must provide to the Minister any information which the Minister requires so as to determine whether the Melbourne City Council has complied with an Order under sub-section (1).
 - (4) If the Melbourne City Council has not complied with an Order under sub-section (1), unless the Minister otherwise determines, the Melbourne City Council must not declare general rates or a municipal charge under Part 8 in the following financial year without first obtaining the approval of the Minister to the proposed declaration.
 - (5) If the Melbourne City Council declares general rates or a municipal charge in contravention of sub-section (4), the general rates are or the municipal charge is invalid for all purposes whatsoever.

137. *Power to defer or waive payments*

- (1) A Council may waive the payment by a person of the whole or part of any money payable by the person to the Council for a particular purpose or as a condition of any agreement or arrangement which has not been performed or which has been only partly performed whether by that person or the Council.
- (2) Sub-section (3) applies—
 - (a) to a person who owes any money (other than rates and charges) to a Council for any act, matter or thing done by the Council or for a particular purpose or as a condition of any agreement or arrangement; and

(b) if the Council considers that the payment of the money would cause hardship to the person.

(3) The Council may—

(a) defer the payment of the whole or any part of the money and the interest or any part of the interest payable on that money for the period and subject to any conditions determined by the Council; or

(b) waive the payment of the whole or any part of the money and the interest or any part of the interest payable on that money; or

(c) waive the payment of the whole or any part of the interest payable on the money.

138. Investments

(1) A Council may invest any money—

(a) in Government securities of the Commonwealth; or

(b) in securities guaranteed by the Government of Victoria; or

(c) with a bank; or

S. 138(1)(c) substituted by No. 22/1992 s. 9.

(ca) with any financial institution guaranteed by the Government of Victoria;

S. 138(1)(ca) inserted by No. 22/1992 s. 9.

S. 138(1)(d) repealed by No. 18/1994 s. 66(Sch. 2 item 15) (as amended by No. 75/1994 s. 7(6)).

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- (e) on deposit with any corporation that is declared to be an authorized dealer in the short term money market under section 97(7)(b) of the **Companies (Victoria) Code**; or
- (f) in any other manner approved by the Minister after consultation with the Treasurer either generally or specifically, to be an authorised manner of investment for the purposes of this sub-section.

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S. 138(2)
repealed by
No. 22/1992
s. 8(c).

139. Power to borrow

- (1) A Council may borrow money to enable the Council to perform the functions and exercise the powers conferred on the Council under this Act or any other Act.
- (2) This section also applies to borrowing in the form of finance leases.
- (3) The amount borrowed for ordinary purposes must not at any time exceed 6 per cent of the capital improved value of all the rateable land in the municipal district as shown in the audited financial statements of the Council for the last financial year.
- (4) The amount borrowed for the purposes of municipal enterprises must not at any time exceed the total value of the assets of the municipal enterprise and the estimated gross income from the municipal enterprise for a period of 10 years.

- (5) The amount borrowed on the security of any special rates and special charges must not at any time exceed the estimated income from the special rates and special charges.

140. *Circumstances in which power to borrow may be exercised*

S. 140(1)
repealed by
No. 125/1993
s. 27.

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- (2) The power to borrow conferred by section 139 may be exercised—
- (a) to repay the principal money owing under any previous borrowing; or
 - (b) to meet the consideration still outstanding under a contract which has been partly or wholly performed and in respect of which the power to borrow conferred by section 139 could have been exercised at the time the contract was made.

S. 140(3)
amended by
No. 22/1992
s. 10.

- (3) The power to borrow conferred by section 139 cannot be exercised to repay an advance by overdraft under section 143(1) or 143(3) unless the approval of the Minister has been obtained and any conditions imposed by the Minister are complied with.

141. *Borrowings to be secured*

S. 141(1)
amended by
No. 22/1992
s. 11(1).

- (1) Except in the case of finance leases, money borrowed under section 139 is to be secured by entering into a security—
- (a) in the case of borrowings under section 139(3), over the general rates; or
 - (b) in the case of borrowings under section 139(4), over the total value of the assets of

the municipal enterprise and the income from the municipal enterprise; or

(c) in the case of borrowings under section 139(5), over the special rates and charges.

(2) Unless expressly forbidden by the Act or instrument under which a body corporate or company acts, a security under this section is a lawful investment for any money which a body corporate incorporated under an Act or any company is authorised to invest.

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S. 141(3)
repealed by
No. 22/1992
s. 8(d).

142. Provisions with respect to securities

Schedule 9 has effect with respect to securities given by a Council under section 141.

143. Overdrafts

- (1) Council may obtain an advance from a bank by overdraft of the current account secured by entering into a security over the general rates of the Council.
- (2) The advance under sub-section (1) must not exceed the amount of all general rates, municipal charges, service rates and service charges received by the Council during the previous financial year.
- (3) A Council may also obtain an advance from a bank by overdraft of the current account secured on the assets and income of a municipal enterprise which must not exceed the total value of the assets of the municipal enterprise and the estimated gross income from the municipal enterprise for a period of 10 years.

S. 143(1)
amended by
No. 22/1992
s. 11(2).

- (4) A Council may also obtain an advance from a bank by overdraft of the current account secured on a special rate or charge which must not exceed the estimated income from the special rates and special charges.

S. 144 substituted by No. 22/1992 s. 12(1), amended by Nos 125/1993 s. 28, 99/1994 s. 3(2)(a), substituted by No. 34/1996 s. 9.

144. Council must prepare a budget

- (1) A Council must prepare a budget for each financial year.
- (2) The Council must ensure that the budget contains—
 - (a) the information the Council is required to declare under section 158(1); and
 - (b) if the Council intends to declare a differential rate under section 161, the details listed in section 161(2); and
 - (c) if the Council intends to declare a differential rate under section 161A, the details listed in section 161(2); and
 - (d) any other details required by the regulations.

S. 144A inserted by No. 34/1996 s. 9.

144A. Revised budget

- (1) A Council must prepare a revised budget if circumstances arise which cause a material change in the budget and which affects the financial operations and position of the Council.
- (2) The Council must ensure that a revised budget is prepared as soon as is practicable after the Council becomes aware of the change in the budget.
- (3) The Council must ensure that a revised budget contains all the details required by the regulations.

S. 144B inserted by No. 34/1996 s. 9.

144B. Minister may require information concerning budgets

- (1) A Council must give the Minister any details required by the regulations concerning budgets or

revised budgets within the time specified in the regulations.

- (2) A Council must give the Minister any details concerning its budget or revised budget that the Minister asks for.
- (3) A Council must comply with sub-section (2) within 14 days (or any longer period specified by the Minister) of receiving a request in writing for the details from the Minister.

145. Budget or revised budget must include proposed borrowings

S. 145 substituted by No. 22/1992 s. 12(1).

- (1) A Council cannot borrow money under section 139(3) or 139(4) unless the proposed borrowings were included in a budget or revised budget.
- (2) If the proposed borrowings are to re-finance existing loans, the Council does not have to include the proposed borrowings in a budget or revised budget.

145A. Use of loan for different purpose

A Council may only apply unexpended money previously borrowed for a particular purpose for capital works included in the current budget or a revised budget.

S. 145A inserted by No. 34/1996 s. 10.

146. Public notice

- (1) As soon as practicable after a Council has prepared a budget or revised budget, the Council must give public notice.
- (2) A person has a right to make a submission under section 223 on any proposal contained in the budget or revised budget.
- (3) In addition to any other requirements specified by this Act, the notice referred to in sub-section (1) must—

S. 146 substituted by No. 22/1992 s. 12(1).

S. 146(2) substituted by No. 34/1996 s. 11.

S. 146(3) substituted by No. 34/1996 s. 11.

- (a) contain any details required by the regulations; and
- (b) advise that copies of the budget or revised budget are available for inspection at the Council office for at least 14 days after the publication of the notice; and
- (c) be displayed at the Council office and district offices and at any place required by the regulations.

Ss 147, 148
repealed by
No. 22/1992
s. 12(1).

* * * * *

S. 149
repealed by
No. 22/1992
s. 12(2).

* * * * *

S. 150
substituted by
No. 22/1992
s. 12(3).

150. Adoption of budget or revised budget

S. 150(1)
substituted by
No. 34/1996
s. 12.

(1) A Council may adopt a budget or revised budget if it has complied with all of the relevant requirements of this Act relating to budgets and revised budgets.

(2) The Council must give public notice of its decision under sub-section (1).

S. 150(3)
amended by
No. 99/1994
s. 3(2)(b).

(3) The Council must adopt the budget by 31 August each year⁸.

* * * * *

S. 151
substituted by
No. 22/1992
s. 12(3),
repealed by
No. 34/1996
s. 29.

152. Use of funds for different purpose

A Council may with the consent of the Minister use part or all of a specific purpose fund (other than borrowings) under this Act or any other Act for a different purpose.

153. Deficit budgeting

(1) A Council must prepare a statement for the purpose of determining the general rate in respect of any financial year which shows budgeted aggregate cash inflows and outflows and, in preparing the statement, a Council may—

S. 153(1)
amended by
No. 22/1992
s. 13.

- (a) budget for an accumulated deficit not exceeding 1 per cent; or
- (b) with the consent of the Minister, budget for an accumulated deficit not exceeding 3 per cent; or
- (c) with the consent of the Minister after consultation with the Treasurer, budget for an accumulated deficit not exceeding 5 per cent—

of estimated general rates for that year.

- (2) The Minister may—
- (a) grant an application for consent subject to any terms and conditions the Minister considers appropriate; or
 - (b) refuse the application.

S. 153A
inserted by
No. 22/1992
s. 14,
substituted by
No. 34/1996
s. 13.

153A. Corporate plan

- (1) By the end of each financial year a Council must submit to the Minister a corporate plan that sets out—
 - (a) the corporate objectives of the Council for the next 3 financial years; and
 - (b) strategies for achieving those objectives; and
 - (c) indicators against which the performance of the Council in achieving those objectives can be measured; and
 - (d) a general resource allocation plan, covering both financial and non-financial resources, for the next 3 financial years; and
 - (e) the business plan that the Council will pursue over the next financial year; and
 - (f) performance targets and measures by which the Council's performance may be judged in relation to the achievement of that business plan; and
 - (g) any other matters that are required by the regulations.
- (2) A Council must review its corporate plan before submitting it to the Minister.
- (3) The Minister may extend the period within which a Council must comply with sub-section (1).
- (4) If a Council fails to submit a corporate plan to the Minister within the time allowed, the Minister must ensure that details of the failure are published in the annual report of the Department administering this Act.
- (5) A copy of the current corporate plan must be available for inspection by the public at the

Council office and district offices and at any place required by the regulations.

- (6) The regulations may require that Councils include in their corporate plans specified performance measures by which their performance may be judged in relation to the achievement of their business plans.

S. 153A(6)
inserted by
No. 54/1998
s. 10.

153B. *Performance statement*

- (1) As soon as is reasonably practicable after the end of each financial year, a Council must prepare a performance statement.
- (2) The statement must—
- (a) outline the performance targets and measures set out in relation to the achievement of the business plan in respect of that year described in the Council's corporate plan; and
 - (b) describe the extent to which the business plan was met in that year having regard to those targets and measures.
- (3) The statement must be in the form, and must contain the details, required by the regulations.
- (4) The Council must submit the statement to its auditor as soon as possible after the statement has been prepared.
- (4A) The Council must not submit the statement to its auditor or the Minister unless it has passed a resolution giving its approval in principle to the statement.
- (4B) The Council must authorise 2 Councillors to approve the statement in its final form after any changes recommended, or agreed to, by the auditor have been made.

S. 153B
inserted by
No. 34/1996
s. 14 (as
amended by
No. 76/1997
s. 22).

- (4C) The approval by the 2 Councillors must be given in the form and manner required by the regulations.
 - (5) The Council must submit the statement to the Minister within 3 months of the end of the financial year to which the statement relates.
 - (6) The Council must do this even if the auditor has not yet prepared the report on the statement required by section 128.
 - (7) If the statement shows that the Council has failed to substantially achieve the targets set out in the business plan, the Council must ensure that the copy of the statement submitted to the Minister is accompanied by a written explanation of why it failed to achieve those targets.
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PART 8—RATES AND CHARGES ON RATEABLE LAND

Division 1—Declaration of Rates and Charges

154. *What land is rateable?*

- (1) Except as provided in this section, all land is rateable.
- (2) The following land is not rateable land—
 - (a) land which is unoccupied and is the property of the Crown or is vested in a Minister, a Council, a public statutory body or trustees appointed under an Act to hold that land in trust for public or municipal purposes;
 - (b) any part of land, if that part—
 - (i) is vested in or owned by the Crown, a Minister, a Council, a public statutory body or trustees appointed under an Act to hold that land in trust for public or municipal purposes; and
 - (ii) is used exclusively for public or municipal purposes;
 - (c) any part of land, if that part is used exclusively for charitable purposes;
 - (d) land which is vested in or held in trust for any religious body and used exclusively—
 - (i) as a residence of a practising Minister of religion; or
 - (ii) for the education and training of persons to be Ministers of religion; or
 - (iii) for both the purposes in sub-paragraphs (i) and (ii);

- (e) land which is used exclusively for mining purposes;
 - (f) land held in trust and used exclusively—
 - (i) as a club for or a memorial to persons who served in the First or Second World War or in any other war, hostilities or special assignment referred to in the **Patriotic Funds Act 1958**; or
 - (ii) as a sub-branch of the Returned Services League of Australia; or
 - (iii) by the Air Force Association (Victoria Division); or
 - (iv) by the Australian Legion of Ex-Servicemen and Women (Victorian Branch).
- (3) For the purposes of sub-sections (2)(a) and (2)(b) any part of the land is not used exclusively for public or municipal purposes if—
- (a) it is used for banking or insurance; or
 - (b) a house or flat on the land—
 - (i) is used as a residence; and
 - (ii) is exclusively occupied by persons including a person who must live there to carry out certain duties of employment; or
 - (c) it is used by the Metropolitan Fire Brigades Board.

S. 154(3A)
inserted by
No. 98/1998
s. 47.

- (3A) For the purposes of sub-section (2)(b), any part of land does not cease to be used exclusively for public purposes only because it is leased—
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- (a) to a rail freight operator within the meaning of the **Transport Act 1983**; or
 - (b) to a passenger transport company within the meaning of that Act.
- (4) For the purposes of sub-sections (2)(c) and (2)(d), any part of the land is not used exclusively for charitable purposes if it is in any of the following categories—
- (a) it is separately occupied and used for a purpose which is not exclusively charitable;
 - (b) a house or flat on the land—
 - (i) is used as a residence; and
 - (ii) is exclusively occupied by persons including a person who must live there to carry out certain duties of employment;
 - (c) it is used for the retail sale of goods;
 - (d) it is used to carry on a business for profit (unless that use is necessary for or incidental to a charitable purpose).

S. 154(4)
amended by
No. 13/1990
s. 31(f).

155. *What rates and charges may a Council declare?*

A Council may declare the following rates and charges on rateable land—

- (a) general rates under section 158;
- (b) municipal charges under section 159;
- (c) service rates under section 162;
- (d) service charges under section 162;
- (e) special rates under section 163;
- (f) special charges under section 163.

S. 155
substituted by
No. 34/1996
s. 15.

156. *Liability to pay rates and charges*

Local Government Act 1989
Act No. 11/1989

S. 156(2)
amended by
Nos 13/1990
s. 17, 34/1996
s. 16.

- (1) The owner of land is liable to pay the rates and charges on that land.
- (2) If the owner cannot be found or identified, the occupier of, or the mortgagee in possession of, the land is liable to pay the rates and charges.
- (3) If there is a person who is the private occupier or lessee of the land and the land is land on which rates and charges could not be declared if there were no such occupier or lessee, that person is liable to pay the rates and charges.

S. 156(3A)
inserted by
No. 23/1993
s. 21.

- (3A) For the purposes of this Part and Part II of the **Valuation of Land Act 1960** a caravan park is a single rateable property of which the caravan park owner is taken to be the occupier.

S. 156(4)
amended by
No. 81/1989
s. 3(Sch. item
30.2).

- (4) A person who has a licence to pasture any animals on Crown land under the **Forests Act 1958**, the **Land Act 1958** or the **Water Act 1989**, is liable to pay the rates and charges on that land as if it is rateable land.

S. 156(5)
amended by
No. 96/1994
s. 57.

- (5) A person who has or should have a licence under the **Land Act 1958** in respect of any unused roads or water frontages is liable to pay the rates and charges on that land as if it is rateable land.

S. 156(5A)
inserted by
No. 35/1998
s. 17.

- (5A) A person who is a licensee of vested land under Part 3A of the **Victorian Plantations Corporation Act 1993** is liable to pay the rates and charges on that land as if it is rateable land.

S. 156(6)
amended by
No. 78/1991
s. 13(c)(i)(ii).

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

157. Which systems of valuing land may a Council use?

(1) A Council may use the site value, net annual value or capital improved value system of valuation.

(2) A Council must publish public notice of its decision to change its system of valuation.

S. 157(2) amended by No. 78/1991 s. 13(d).

* * * * *

S. 157(3) repealed by No. 76/1997 s. 13(a).

* * * * *

S. 157(4) repealed by No. 34/1996 s. 19(2).

(5) A person has a right to make a submission under section 223 on a Council's decision to change its system of valuation.

S. 157(5) substituted by No. 34/1996 s. 17.

158. Declaring rates and charges

(1) A Council must at least once in respect of each financial year declare by 31 August the following for that year⁹—

S. 158(1) amended by No. 99/1994 s. 3(2)(c).

(a) the amount which the Council intends to raise by general rates, municipal charges, service rates and service charges;

(b) whether the general rates will be raised by the application of—

(i) a uniform rate; or

(ii) differential rates (if the Council is permitted to raise such rates under section 161(1)); or

S. 158(1)(b)(ii) substituted by No. 34/1996 s. 18(1).

(iii) urban farm rates, farm rates or residential use rates (if the Council is permitted to raise such rates under section 161A).

S. 158(1)(b)(iii) inserted by No. 34/1996 s. 18(1).

S. 158(3A)
inserted by
No. 13/1990
s. 18.

S. 158(4)
amended by
No. 13/1990
s. 31(g),
substituted by
No. 22/1992
s. 15(a).

S. 158(4)(b)
substituted by
No. 27/1997
s. 9(1).

S. 158(4)(c)
substituted by
No. 27/1997
s. 9(1).

- (2) The Council must declare the general rate in respect of a period of time between 3 months and a year.
- (3) A Council may levy general rates, municipal charges, service rates and service charges by sending a notice to the person who is liable to pay them.
- (3A) At the written request of the person liable to pay rates or charges, the Council may send the notice to a person specified in the written request.
- (4) The notice must—
 - (a) contain the prescribed information; and
 - (b) state—
 - (i) in the case of general rates, municipal charges, service rates and service charges, the dates when the 4 instalments of the rates or charges are due, and, if those rates and charges may be paid in a lump sum, the date when that lump sum is due; or
 - (ii) in any other case, when the rates or charges are due; and
 - (c) specify any other options for payment determined by the Council; and
 - (d) be issued at least 14 days before the date on which the first payment of the rates or charges is due.

Local Government Act 1989
Act No. 11/1989

s. 158A

(4A) If general rates, municipal charges, service rates or service charges—

(a) are not payable in a lump sum; or

(b) are payable in a lump sum but the first instalment is paid—

the Council must send a notice that contains the information set out in sub-sections (4)(a), (b) and (c) at least 14 days before each of the second, third and fourth instalments are due.

S. 158(4A)
inserted by
No. 22/1992
s. 15(a),
substituted by
No. 27/1997
s. 9(2).

(4B) Despite anything to the contrary in section 167, a failure to comply with sub-section (4)(d) or (4A) alters the date on which the relevant payment is due to the 14th day after the date on which the notice relating to that payment is sent.

S. 158(4B)
inserted by
No. 27/1997
s. 9(2).

(5) If a Council has declared more than one general rate, municipal charge, service rate or service charge for the year, it may levy any of those rates or charges as a combined rate or charge.

(6) A Council must, as far as is practicable, levy all general rates, municipal charges, service rates and service charges which are declared in a financial year in the same financial year.

158A. *Rates and charges to be levied on each occupancy*

(1) If the Council levies a rate or charge on any land, the Council must separately levy that rate or charge in respect of each portion of that land for which the Council has a separate valuation.

(2) If a valuation treats as a single rateable entity land that is owned separately by 2 or more people, a Council may apportion any rates or charges that apply to that land in accordance with the value that each separately owned parcel of that land

S. 158A
inserted by
No. 78/1991
s. 5.

bears in relation to the value of that land as a whole.

159. Municipal charge

- (1) A Council may declare a municipal charge to cover some of the administrative costs of the Council.
- (2) A Council's total revenue from a municipal charge in a financial year must not exceed 20 per cent of the sum total of the Council's—
 - (a) total revenue from a municipal charge; and
 - (b) total revenue from general rates—
 in that financial year.
- (3) A person may apply to a Council for an exemption from the payment of a municipal charge on rateable land if—
 - (a) the rateable land in respect of which the exemption is claimed is farm land within the meaning of section 2(1) of the **Valuation of Land Act 1960** or would be farm land if it were 2 hectares or more in area; and
 - (b) the rateable land forms part of a single farm enterprise; and
 - (c) an exemption is not claimed in respect of at least one other rateable property which forms part of the single farm enterprise; and
 - (d) in the case of a single farm enterprise which is occupied by more than one person, an exemption is not claimed in respect of more than one principal place of residence.
- (4) In sub-section (3)—

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

S. 159(3)
inserted by
No. 78/1991
s. 6,
substituted by
No. 43/1993
s. 14.

S. 159(4)
inserted by
No. 43/1993
s. 14.

-
- (a) which—
- (i) are farm land; and
 - (ii) are farmed as a single enterprise;
and
 - (iii) are occupied by the same person
or persons—
whether or not the properties are
contiguous; or

- (b) which—
- (i) as to all the properties except one,
are farm land farmed as a single
enterprise occupied by the same
person or persons; and
 - (ii) as to one property contiguous with
at least one of the other properties,
is the principal place of residence
of that person or one of those
persons.

(5) An application must be in the form and made
within the period determined by the Council.

S. 159(5)
inserted by
No. 43/1993
s. 14.

(6) The Council may require the applicant—

(a) to give further particulars; or

(b) to verify particulars—

in relation to the application.

S. 159(6)
inserted by
No. 43/1993
s. 14.

160. Uniform rate

If a Council declares that general rates will be
raised by the application of a uniform rate—

- (a) the Council must specify a percentage as the
uniform rate; and

s. 161

S. 160(b)
substituted by
No. 34/1996
s. 18(2).

- (b) the general rate for any rateable land is to be determined by multiplying the value of the land (as determined under the valuation system used by the Council) by that percentage.

161. *Differential rates*

S. 161(1)
substituted by
No. 34/1996
s. 19(1).

- (1) A Council may raise any general rates by the application of a differential rate if—
 - (a) it uses the capital improved value system of valuing land; and
 - (b) it considers that the differential rate will contribute to the equitable and efficient carrying out of its functions.
- (2) If a Council declares a differential rate for any land, the Council must—
 - (a) specify the objectives of the differential rate which must be consistent with the equitable and efficient carrying out of the Council's functions and must include the following—
 - (i) a definition of the types or classes of land which are subject to the rate and a statement of the reasons for the use and level of that rate in relation to those types or classes of land;
 - (ii) an identification of the types or classes of land which are subject to the rate in respect of the uses, geographic location (other than location on the basis of whether or not the land is within a specific ward in the Council's municipal district) and planning scheme zoning of the land and the types of buildings

situated on it and any other criteria relevant to the rate;

- (iii) if there has been a change in the valuation system, any provision for relief from a rate for certain land to ease the transition for that land; and

- (b) specify the characteristics of the land which are the criteria for declaring the differential rate.

- (3) A Council which declares a differential rate must ensure that copies of the following information are available for public inspection at the Council office—

S. 161(3) amended by No. 34/1996 s. 19(3)(a).

* * * * *

S. 161(3)(a) repealed by No. 34/1996 s. 19(3)(b).

- (b) the objectives of the differential rate and the criteria on the basis of which that rate was declared;

- (c) the rate and amount of rates payable in relation to land in each category of differential rating and what proportion of the total rates and charges this represents;

S. 161(3)(c) amended by No. 34/1996 s. 19(3)(c).

- (d) any other information which the Council considers it necessary to make available.

* * * * *

S. 161(4) repealed by No. 34/1996 s. 19(4).

- (5) The highest differential rate in a municipal district must be no more than 4 times the lowest differential rate in the municipal district.

Local Government Act 1989
Act No. 11/1989

s. 161A

S. 161(6)
inserted by
No. 23/1999
s. 3.

(6) Sub-section (1)(a) does not apply to the Melbourne City Council for the financial year ending 30 June 2000 or any other financial year specified by Order of the Governor in Council published in the Government Gazette.

S. 161(7)
inserted by
No. 23/1999
s. 3.

(7) The Governor in Council, on the recommendation of the Minister, may make an Order necessary for the purposes of sub-section (6).

S. 161A
inserted by
No. 34/1996
s. 20.

161A. *Limited differential rates*

- (1) This section only applies to a Council that does not use the capital improved value system of valuing land.
- (2) The Council may raise general rates by applying a differential rate in relation to farm land, urban farm land or residential use land, but only if—
 - (a) the farm rate, urban farm rate or residential use rate is applied on the basis of whether or not any land is within a specific ward in the Council's municipal district; and
 - (b) a majority of the Councillors for any such ward which is to be subject to the higher differential rate agree to that differential rate.
- (3) If a Council declares a differential rate under this section, sections 161(2), (3) and (5) apply in respect of the declaration.

162. *Service rate and service charge*

- (1) A Council may declare a service rate or an annual service charge or any combination of such a rate and charge for any of the following services—
 - (a) the provision of a water supply;
 - (b) the collection and disposal of refuse;
 - (c) the provision of sewage services;

(d) any other prescribed service.

(2) A service rate or service charge may be declared on the basis of any criteria specified by the Council in the rate or charge.

163. *Special rate and special charge*

(1) A Council may declare a special rate, a special charge or a combination of both only for the purposes of—

- (a) defraying any expenses; or
- (b) repaying (with interest) any advance made to or debt incurred or loan raised by the Council—

in relation to the performance of a function or the exercise of a power of the Council, if the Council considers that the performance of the function or the exercise of the power is or will be of special benefit to the persons required to pay the special rate or special charge.

(1A) A Council must not make a declaration under subsection (1) unless it has given public notice of its intention to make the declaration at least 28 days before making the declaration.

S. 163(1A)
inserted by
No. 27/1997
s. 10.

(1B) In addition to any other requirements specified by this Act, the public notice must—

S. 163(1B)
inserted by
No. 27/1997
s. 10.

- (a) contain an outline of the proposed declaration; and
- (b) set out the date on which it is proposed to make the declaration; and
- (c) advise that copies of the proposed declaration are available for inspection at the Council office for at least 14 days after the publication of the notice.

- (2) A special rate or special charge may be declared on the basis of any criteria specified by the Council in the rate or charge.
- (3) The Council must specify—
 - (a) the wards, groups, uses or areas for which the special rate or special charge is declared; and
 - (b) the land in relation to which the special rate or special charge is declared; and
 - (c) the manner in which the special rate or special charge will be assessed and levied; and
 - (d) details of the period for which the special rate or special charge remains in force.
- (4) A Council may levy a special rate or special charge by sending a notice to the person who is liable to pay it.
- (5) The notice must contain—
 - (a) the prescribed information; and
 - (b) a statement about when the special rate or special charge is payable; and
 - (c) details of the period for which the special rate or special charge remains in force.
- (6) A Council may use the money from a special rate or special charge for any or all of the following—
 - (a) any purpose for which the rate or charge was made and the purchase of land and materials required for that purpose (including land acquired before the Council declared the rate or charge);

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- (b) repayment of money borrowed for anything mentioned in paragraph (a) and of interest on that money;
 - (c) maintenance and repair of damage, management, advertising or security; and
 - (d) any expenses related—
 - (i) to anything mentioned in paragraphs (a) to (c); or
 - (ii) to the declaration or levying of the rate or charge.
- (7) If a private street (within the meaning of section 575(1) of the **Local Government Act 1958**) is constructed wholly or partly at the cost of the owners or occupiers of any land which abuts or fronts the street, the Council may not at any future time recover any further costs in respect of the construction of a component of the private street if that component has been previously constructed to the satisfaction of the Council from the owners or occupiers of the land under this section by way of a special rate or special charge.
- (8) For the purposes of sub-section (7) and section 221(6), "**construct**" and "**component**" have the same meanings as in section 12 of the **Local Government (Consequential Provisions) Act 1989**.

163A. Submissions concerning special rates and charges

A person may make a submission under section 223 in relation to a Council's proposal to make a declaration under section 163.

S. 163A
inserted by
No. 34/1996
s. 21,
substituted by
No. 27/1997
s. 11.

164. Discontinuance of the works and projects for a special rate or special charge

- (1) After complying with the procedure for the levying of a special rate or special charge a Council may—
 - (a) discontinue the whole or part of any purpose for which it is charging the special rate or special charge; or
 - (b) resolve not to proceed with the purchase of any land for any such purpose.
- (2) A Council must ensure that those persons who are liable to pay a special rate or special charge referred to in sub-section (1) are notified of any decision under that sub-section.

165. *Receipt of excess money*

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

166. *Variation of special rate or special charge*

- (1) A special rate or special charge—
 - (a) remains in force for the period specified in the declaration of it without any further declaration in any subsequent year; and
 - (b) may be varied in relation to—
 - (i) the amount to be paid; and
 - (ii) the persons on whom it is levied (except as is specifically provided under section 178 or 180); and
 - (iii) the land to which it applies.
 - (2) A Council must ensure that those persons who are liable to pay a special rate or special charge which is varied are notified if it is varied.
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Local Government Act 1989
Act No. 11/1989

Division 2—Payment of Rates and Charges

167. *Payment of rates and charges*

- | | |
|--|--|
| (1) A Council must allow a person to pay a rate or charge (other than a special rate or charge) in 4 instalments. | S. 167(1)
substituted by
Nos 22/1992
s. 15(b),
27/1997 s. 12. |
| (2) An instalment is due and payable on the date fixed by the Minister by notice published in the Government Gazette. | S. 167(2)
substituted by
Nos 22/1992
s. 15(b),
27/1997 s. 12. |
| (2A) A Council may allow a person to pay a rate or charge in a lump sum. | S. 167(2A)
inserted by
No. 22/1992
s. 15(b),
amended by
No. 99/1994
s. 3(2)(d),
substituted by
No. 27/1997
s. 12. |
| (2B) If allowed, a lump sum payment of general rates, municipal charges, service rates or service charges is due and payable on the date fixed by the Minister by notice published in the Government Gazette. | S. 167(2B)
inserted by
No. 27/1997
s. 12. |
| (2C) Any notice published by the Minister under subsection (2) or (2B)(or any variation of such a notice) must be published at least 3 months before the start of the financial year in respect of which the rate or charge is levied. | S. 167(2C)
inserted by
No. 27/1997
s. 12. |
| (3) A special rate or special charge is due and must be paid by the date specified in the notice requiring payment, which is a date not less than 14 days after the date of issue of the notice. | |
| (4) A person who is liable to pay a special rate or special charge may apply to the Council for | |

permission to pay by a lump sum as determined by agreement between the Council and the person.

S. 167(5)
repealed by
No. 22/1992
s. 15(c).

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168. Incentives for prompt payment

- (1) At the meeting at which a Council declares any rates or charges, the Council may declare that incentives are to be given by it for the payment of those rates and charges before the due date and must include in the declaration details of the circumstances in which an incentive will be given.
- (2) A notice requiring payment of a rate or charge must specify any incentives.

169. Rebates and concessions

- (1) A Council may grant a rebate or concession in relation to any rate or charge—
 - (a) to assist the proper development of the municipal district; or
 - (b) to preserve buildings or places in the municipal district which are of historical or environmental interest; or
 - (c) to restore or maintain buildings or places of historical, environmental, architectural or scientific importance in the municipal district; or
 - (d) to assist the proper development of part of the municipal district.
- (2) If a person granted a rebate or concession has not complied with the terms on which the rebate or concession was granted, the Council may by a notice sent to the person—

-
- (a) require the payment of the whole or part of the rate or charge by a specified date; and
 - (b) require the payment of interest for the late payment of the rate or charge, as if the rebate or concession had not been granted.

170. *Deferred payment*

- (1) A Council may defer in whole or in part the payment by a person of any rate or charge which is due and payable for a specified period and subject to any conditions determined by the Council if it considers that an application by that person shows that the payment would cause hardship to the person.
- (2) On deferral of the payment the person who is liable to make the payment is not liable until the Council sends the person a notice under subsection (3).
- (3) A Council may by a notice sent to a person—
 - (a) require that person to pay the whole or part of any deferred rate or charge by a specified date if—
 - (i) it considers that the person's circumstances have so changed that the payment would no longer cause hardship to the person; or
 - (ii) the person no longer owns or occupies the land in relation to which the rate or charge was levied; and
 - (b) require the payment of interest for the late payment of the rate or charge, as if the deferral had not occurred.

171. *Waiver*

- (1) A person who—

- (a) is suffering financial hardship; or
- (b) would suffer financial hardship if that person paid the full amount of a rate or charge for which he or she is liable—

may apply to a Council for the waiver of the whole or part of any rate or charge or of any interest imposed for late payment.

- (2) The Council may require the applicant—
 - (a) to give further particulars; or
 - (b) to verify particulars—
 in relation to the application.
- (3) The Council may waive the whole or part of any rate or charge or interest.
- (4) The following provisions apply to the waiver of the whole or part of any rates or charges or interest in relation to eligible recipients within the meaning of the **State Concessions Act 1986**—
 - (a) the Minister may make an Order published in the Government Gazette which sets out—
 - (i) the person or class of persons to whom the waiver applies; and
 - (ii) the extent of the waiver;
 - (b) a person may only apply for a waiver in respect of rateable land or a part of rateable land which is used exclusively for residential purposes by that person and is that person's sole or principal place of residence;
 - (ba) in addition, if the person does not own the land or part, he or she may only apply for a waiver if—
 - (i) he or she is liable to pay those rates or charges or interest (or an amount in

S. 171(4)
amended by
No. 78/1991
s. 7(1).

S. 171(4)(b)
amended by
No. 13/1990
s. 19(a).

S. 171(4)(ba)
inserted by
No. 78/1991
s. 7(2).

Local Government Act 1989
Act No. 11/1989

- place of, or on account of, those rates or charges or interest), whether under an agreement with the owner or for any other reason; or
- (ii) he or she holds a residence right in a retirement village (as defined in the **Retirement Villages Act 1986**); or
- (iii) he or she made a valid application in respect of the land under section 298(1A) of the **Local Government Act 1958**, or continued to have a valid application under section 298(1AC) of that Act, in the 12 months immediately before the commencement of this section;
- (c) a person may make only one application for each rating period;
- (d) an application must be in the form approved by the Minister and must be made on or before 30 April in the financial year in respect of the rate or charge for which the waiver is sought, but the Treasurer may approve late applications or extend the closing date for applications, either generally or specifically¹⁰;
- (e) the Council must, on receipt of an application which complies with this sub-section, waive the amount which is in accordance with the Order under paragraph (a);
- (f) subject to the Minister's approval, a Council which waives an amount in respect of rateable land or a part of rateable land under this sub-section may decide to treat the person who was granted the waiver as having
- S. 171(4)(d) substituted by No. 13/1990 s. 19(b), amended by No. 99/1994 s. 3(2)(e).
- S. 171(4)(f) amended by No. 13/1990 s. 19(c)(i)(ii).

Local Government Act 1989
Act No. 11/1989

s. 172

made a continuing application for a waiver in respect of the rateable land or part, unless the person advises the Council that a waiver is no longer sought.

(5) An Order under sub-section (4)(a) must not require a Council to waive an amount in respect of a person which exceeds the amount paid to the Council by the Government of Victoria in respect of that person.

S. 171(5A)
inserted by
No. 78/1991
s. 7(3).

(5A) The Council may also waive an amount of rate or charge or interest payable by a person if the person has a legally enforceable right to recover that amount (whether directly or indirectly) from an eligible recipient who would be eligible to apply for a waiver of that amount under sub-section (4) if that eligible recipient was liable to the Council for that amount.

S. 171(5B)
inserted by
No. 78/1991
s. 7(3).

(5B) The Council may only waive the amount under sub-section (5A) on the application of the eligible recipient.

(6) A person who—

(a) gives to a Council any information which is false or misleading in any material particular in respect of an application under this section; or

(b) fails to notify a Council of any change in circumstances which is relevant to an application or to a waiver granted under this section—

is guilty of an offence.

Penalty: 10 penalty units.

172. Council may charge interest on unpaid rates and charges

-
- (1) A Council may require a person to pay interest on any amounts of rates and charges—
- (a) which that person is liable to pay; and
 - (b) which have not been paid by the date specified under section 167 for their payment (or, in the case of late notices, by the date specified under section 158(4B)).
- (2) The interest—
- (a) is to be calculated at the rate fixed under section 2 of the **Penalty Interest Rates Act 1983** that applied on the first day of July immediately before the due date for the payment; and
 - (b) becomes payable—
 - (i) if the payment was payable in instalments only, on and from the date on which the missed instalment was due; or
 - (ii) if the payment was payable either in instalments or in a lump sum and the first instalment was paid by the date it was due, on and from the date on which the relevant subsequent missed instalment was due; or
 - (iii) if the payment was payable either in instalments or in a lump sum and the first instalment was not paid by the date it was due, on and from the date on which the rate or charge was declared; and
 - (c) continues to be payable until the payment or the recovery of the rates or charges.

S. 172(1)(b) amended by No. 22/1992 s. 15(d), substituted by No. 27/1997 s. 13(1).

S. 172(2) amended by No. 78/1991 s. 8(1), substituted by No. 27/1997 s. 13(2).

Local Government Act 1989
Act No. 11/1989

s. 173

S. 172(2A)
inserted by
No. 78/1991
s. 8(2),
substituted by
No. 27/1997
s. 13(2).

S. 172(2B)(2C)
inserted by
No. 78/1991
s. 8(2),
repealed by
No. 27/1997
s. 13(2).

(2A) The Council may continue to require a person to pay interest in accordance with this section after it obtains a court order requiring the payment of the rates and charges payable (but only until the payment or the recovery of the rates or charges).

* * * * *

(3) A Council may exempt any person from paying the whole or part of any interest either generally or specifically.

(4) A Council may recover interest due to it on rates and charges in the same way as it may recover the rates or charges.

173. *Land becoming or ceasing to be rateable land*

S. 173(1)
amended by
No. 99/1994
s. 3(2)(f).

(1) If land becomes rateable land after 1 July in any financial year, the rate or charge which is payable on that land for the financial year is the amount which is proportionate to the part of that financial year remaining after the land becomes rateable land¹¹.

(2) If land ceases to be rateable land during a financial year for which a rate or charge has been levied on it, a Council must—

(a) if any payment of the rate or charge has been made, refund to the current owner of the land an amount proportionate to the part of that financial year remaining after the land ceases to be rateable land; or

(b) if none of the rate or charge has been paid, require the person who is required to pay the rate or charge to only pay an amount

Local Government Act 1989
Act No. 11/1989

proportionate to the part of that financial year
before the land ceases to be rateable land.

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S. 174
repealed by
No. 76/1997
s. 16.

**174A. *Land which ceases to be urban farm land or
residential use land***

S. 174A
inserted by
No. 13/1990
s. 20.

If rateable land ceases to be urban farm land or
residential use land the following provisions
apply—

- (a) the person who is liable to pay the rates and charges on that land immediately after it ceases to be urban farm land or residential use land must pay to the relevant Council the sum of money specified in paragraph (b);
- (b) the sum payable is the difference between—
 - (i) the rates and charges and any amount in lieu of rates or charges which were paid or payable for the land for the period since the rateable land became urban farm land or residential use land or the period of 5 years (whichever is the lesser period); and
 - (ii) the rates and charges and any amount in lieu of rates and charges which would have been payable for the land for the relevant period under sub-paragraph (i) if the rateable land had not been urban farm land or residential use land during that period;
- (c) the Council may exempt any person from paying the whole or part of the sum of money specified in paragraph (b).

175. *Person acquiring rateable land*

S. 175(1)
amended by
No. 34/1996
s. 23(1).

- (1) A person who becomes the owner of rateable land must pay—
- (a) any rate or charge on the land which is current; and
 - (b) any arrears of rates or charges (including any interest on those rates or charges) on the land which are due and payable.

S. 175(1A)
inserted by
No. 34/1996
s. 23(2).

- (1A) If the previous owner of the rateable land had been paying any rate or charge by instalments at the time the ownership of the land changed, the person who becomes the owner of the land may continue the payment of that rate or charge by instalments.

S. 175(1B)
inserted by
No. 34/1996
s. 23(2).

- (1B) The person who becomes the owner of rateable land may also pay a rate or charge by instalments if the previous owner could have paid it by instalments and the person becomes the owner of the land before the date the first instalment falls due.

S. 175(1C)
inserted by
No. 34/1996
s. 23(2).

- (1C) In all other cases, the person who becomes the owner of rateable land must pay any amount due under sub-section (1)—
- (a) by the date it was due to have been paid by the previous owner of the land; or
 - (b) if that date has already passed, immediately after the person becomes the owner of the land.

S. 175(1D)
inserted by
No. 34/1996
s. 23(2).

- (1D) Sub-sections (1A) and (1B)—
- (a) do not apply to instalment payments relating to rates or charges that are in arrears; and
 - (b) are not to be read as enabling a new owner to obtain the benefit of any concessional rate or

charge that the new owner is not entitled to in her, his or its own right.

- (2) If there is any inconsistency between—
- (a) the amount claimed by a Council or any person to be arrears under sub-section (1)(b) in respect of a specific period; and
 - (b) the amount appearing on a certificate issued under section 229 as the arrears in respect of that period—

S. 175(2)
amended by
No. 13/1990
s. 21.

the Council to whom the arrears are payable may recover an amount which is not more than the amount appearing on the certificate and interest which has accrued on the amount appearing on the certificate since the issue of the certificate.

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S. 176
repealed by
No. 22/1992
s. 16.

177. Council may require occupier to pay rent

- (1) If any rate or charge is due and unpaid in relation to land, the Council may send a notice to the person who appears from the rate records of the Council to be liable to pay the rate or charge.
- (2) The notice must state—
 - (a) that after 7 days from the date the notice is sent, the occupier of the land may be required by notice sent to that person to pay to the Council the rent then due or further rent as it falls due by that person for the land; and
 - (b) that the rent must be paid to the Council until the amount of the rate or charge has been paid.

- (3) A payment of rent by a person under this section is a discharge of the debt for that rent and must be treated as payment of rent for the purposes of any tenancy law.
- (4) If a person fails to pay any or all of the rent due under this section, the Council may recover the unpaid amount as a debt due to it by that person.

178. *Occupier who pays rates or charges*

- (1) An occupier of any rateable land who makes any payment of a rate or charge on the land which is made under section 180 is entitled to deduct the amount from the occupier's rent.
- (2) Sub-section (1) does not apply if the occupier has agreed to pay any rate or charge on that land.

179. *Invalidity of any rate or charge*

- (1) The invalidity of the whole or any part of a rate or charge is not a defence in any proceedings involving a claim for recovery of the rate or charge unless the rate or charge has been quashed in any other proceedings.
- (2) A rate or charge is not invalid only by reason of it being declared after 31 August¹².

S. 179(2)
amended by
No. 99/1994
s. 3(2)(g).

180. *Unpaid rate or charge*

- (1) If a rate or charge (including any instalment or any part of a rate or charge) remains unpaid after it is due and payable, the Council may recover it in the Magistrates' Court or by suing for debt.
- (2) If any rate or charge is recovered from an owner of rateable land and an agreement with the owner of the land states that the occupier of the land must pay any rate or charge, the owner may recover the rate or charge from the occupier in the same

S. 180(1)
amended by
Nos 57/1989
s. 5(4),
27/1997 s. 14.

manner in which the owner may recover rent owing to that owner.

- (3) An occupier who pays any rate or charge under this section need not pay more than the amount of rent owed by the occupier at the time of the demand or the payment.
- (4) Sub-section (3) does not apply—
 - (a) if the occupier has agreed to pay any rate or charge; or
 - (b) if, after the Council requests that the occupier disclose the rent and the name and address of the person to whom it is payable, the occupier does not do so.
- (5) For the purposes of this section, the occupier has the burden of proof of showing that—
 - (a) the occupier had not agreed to pay any rate or charge; and
 - (b) the amount of any rate or charge to be paid on any land by that occupier is more than the rent owed by the occupier for the land.

181. Council may sell land to recover unpaid rates or charges

- (1) This section applies if—
 - (a) any amount due to a Council for, or in respect of, rates or charges (including enforcement costs and interest) in respect of any rateable land is more than 3 years overdue; and
 - (b) no current arrangement exists for the payment of the amount to the Council; and
 - (c) the Council has a Court order requiring the payment of the amount (or part of the amount).

S. 181
amended by
Nos 13/1990
s. 22, 78/1991
s. 9(a)(b),
91/1994
s. 36(6),
substituted by
No. 27/1997
s. 15.

- (2) The Council may sell the land, or cause the land to be transferred to itself, for an amount equal to or more than the estimated value of the land as set out in a written valuation of the land by a valuer that was made not more than 6 months before the date of the sale or transfer.
 - (3) In sub-section (2), "**valuer**" means a person who holds the qualifications or experience specified under section 13DA(1A) of the **Valuation of Land Act 1960**.
 - (4) For the purposes of sub-section (1)(b), an arrangement is not current if any term of the arrangement is not being complied with.
 - (5) Before selling the land, or causing it to be transferred, the Council must—
 - (a) if it appears from the Register kept under the **Transfer of Land Act 1958** or from any memorial in the office of the Registrar-General that a person has an estate or interest in the land, serve on that person a notice requiring the payment of the amount referred to in sub-section (1) accompanied by a copy of this section; and
 - (b) ensure that public notice of its intention to conduct the sale, or carry out the transfer, is given; and
 - (c) if the land is to be sold by auction, notify in writing any person who must be served with a notice under paragraph (a) of when and where the auction will be held.
 - (6) The Council must comply—
 - (a) with sub-sections (5)(a) and (b) at least 4 weeks before the date of the sale or transfer; and
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- (b) with sub-section (5)(c) at least 14 days before the date of the auction.
- (7) The Council may recover the following amounts from the proceeds of a sale of land (or if the land is transferred, may offset from the transfer amount the following amounts)—
- (a) all expenses incurred in connection with the sale or transfer;
 - (b) the amount referred to in sub-section (1) and any enforcement expenses and interest associated with that amount;
 - (c) any other amount due to it for, or in respect of, rates or charges (including enforcement costs and interest) in respect of the land.
- (8) If any amount remains after the Council has recovered (or offset) everything it is permitted to recover (or offset) under sub-section (7), it must then—
- (a) use that remaining amount to discharge, in their order of priority, any mortgages and other charges in respect of the land, whether registered or not, that it has notice of; and
 - (b) pay any amount remaining to each person who appears to have an estate or interest in the land—
 - (i) in accordance with that person's estate or interest; or
 - (ii) if 2 or more people appear to have an estate or interest but it is not possible to determine from the Register or memorials how their estates or interests stand in relation to each other, in equal shares.

Local Government Act 1989
Act No. 11/1989

- (9) If any person who is entitled to an amount under sub-section (8) cannot be found after reasonable efforts have been made to find her, him or it, the Council may use the amount for its general purposes.
- (10) If no person appears to have an estate or interest in land that has been sold or transferred under this section, the Council may use for its general purposes any amount that remains after it has recovered (or offset) everything it is permitted to recover (or offset) under sub-section (7), and paid everything it is required to pay under sub-section (8)(a).
- (11) If land that is sold or transferred under this section is land under the **Transfer of Land Act 1958**, the Registrar of Titles—
- (a) must register a transfer of land under this section if the transfer is in a form approved by her or him; and
 - (b) must cancel any mortgages or charges registered as encumbrances on the land when registering the transfer of land; and
 - (c) may dispense with the production of the certificate of title for the purpose of registering the transfer.
- (12) The registration of the transfer vests in the transferee all the estate and interest in the land.

Pt 8 Div. 3
(Heading)
amended by
No. 34/1996
s. 22(1),
substituted by
No. 52/1998
s. 311(Sch. 1
item 55.4).

Division 3—Reviews and Appeals

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183. Review of differential rating by Victorian Civil and Administrative Tribunal

- (1) An owner or occupier of land whose interests are affected by a decision of the Council to classify or to not classify that land as land of a particular type or class for differential rating purposes may apply to the Victorian Civil and Administrative Tribunal for review of the decision.
- (2) An application for review must be made within 30 days after the day on which the owner or occupier receives written notice of the decision.
- (3) The provisions of Part III of the **Valuation of Land Act 1960** apply to a review under this section with any necessary modifications.

S. 182 repealed by No. 34/1996 s. 22(2).

S. 183 substituted by No. 78/1991 s. 10, amended by Nos 91/1994 s. 27(a)-(d), 34/1996 s. 33(c), substituted by No. 52/1998 s. 311(Sch. 1 item 55.5).

184. Appeal to County Court

- (1) A person who is aggrieved—
 - (a) by a rate or charge imposed by a Council under this or any other Act; or
 - (b) by anything included or excluded from such a rate or charge—

may appeal to the County Court for a review of the rate or charge.
- (1A) This section does not apply to a matter in respect of which an objection or appeal may be made under Part III of the **Valuation of Land Act 1960** or under section 183.
- (1B) The person must lodge the appeal with the Court within 60 days after first receiving written notice of the rate or charge.

S. 184(1) amended by Nos 78/1991 s. 11(a), 99/1994 s. 3(2)(h)(i), 34/1996 s. 24(a), substituted by No. 76/1997 s. 17.

S. 184(1A) inserted by No. 76/1997 s. 17.

S. 184(1B) inserted by No. 76/1997 s. 17.

Local Government Act 1989
Act No. 11/1989

(2) The person may only appeal on one or more of the following grounds of appeal—

S. 184(2)(a) amended by No. 22/1992 s. 15(e).

(a) in the case of a rate (other than a special rate under section 221), that the land in respect of which the rate was declared was not rateable land;

S. 184(2)(b) repealed by No. 78/1991 s. 11(b).

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(c) that the rate or charge assessment was calculated incorrectly;

(d) that the person levied with the rate or charge was not liable to be rated.

(3) The County Court may make rules with respect to—

(a) the procedure for applying to the Court; and

(b) proceedings for hearing the application; and

(c) orders, including orders as to costs.

S. 184(4) repealed by No. 34/1996 s. 24(b).

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185. *Application to Victorian Civil and Administrative Tribunal*

S. 185(1) substituted by No. 52/1998 s. 311(Sch. 1 item 55.6).

(1) A person may apply to the Victorian Civil and Administrative Tribunal for review of a decision of a Council imposing a special rate or special charge on that person.

(2) The person must apply—

S. 185(2)(a) amended by No. 34/1996 s. 24(c).

(a) within 30 days after the date of issue of a notice to the person of the special rate or special charge; and

Local Government Act 1989
Act No. 11/1989

- (b) on the ground that—
- (i) the works and projects or the period of maintenance for the purposes of which the special rate or special charge was imposed are not or will not provide a special benefit to that person; or
 - (ii) the basis of distribution of the rate or charge amongst those persons who are liable to pay it is unreasonable; or
 - (iii) if the planning scheme for the area contains any relevant policies or specific objectives, the works and projects proposed for the construction of a road or for the drainage of any land are inconsistent with those policies or objectives; or
 - (iv) if the planning scheme for the area does not contain any relevant policies or specific objectives, the works and projects proposed for the construction of a road or for the drainage of any land are unnecessary, unreasonable, excessive, insufficient, unsuitable or costly, having regard to the locality or environment and to the probable use of the road or drainage of the land.

S. 185(2)(b)(ii)
amended by
No. 13/1990
s. 31(h).

- (3) On a review, the Tribunal may, by order—
- (a) vary the special rate or special charge declared by the Council in relation to its application to the applicant; or
 - (b) set aside the special rate or special charge if satisfied that the ground in sub-section (2)(b)(ii), (iii) or (iv) is established; or
 - (c) dismiss the application and confirm the special rate or special charge.

S. 185(3)
substituted by
No. 52/1998
s. 311(Sch.
item 55.7).

Local Government Act 1989
Act No. 11/1989

s. 185AB

S. 185(4)
substituted by
No. 52/1998
s. 311(Sch.
item 55.7).

- (4) If the Tribunal sets aside a special rate or special charge made in a particular year, the Council may declare and levy a new special rate or special charge for that year even if the year has ended.

S. 185AA
inserted by
No. 52/1998
s. 311(Sch.
item 55.8).

185AA. *Application for declaration*

- (1) A person may apply to the Victorian Civil and Administrative Tribunal for a declaration concerning the validity of a decision referred to in section 185(1).
- (2) On an application under sub-section (1) the Tribunal may make any declaration it thinks appropriate in the circumstances.
- (3) The Tribunal's power to make a declaration under this section is exercisable only by a presidential member of the Tribunal.

S. 185AB
inserted by
No. 52/1998
s. 311(Sch.
item 55.8).

185AB. *Matters Tribunal must take into account*

In determining an application for review or for a declaration under section 185 or 185A, the Tribunal must—

- (a) take into account any relevant planning scheme; and
- (b) where appropriate, have regard to any planning scheme or amendment adopted by a planning authority under the **Planning and Environment Act 1987** but not, as at the date the application is determined, approved by the Minister.
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**PART 8A—MINISTER MAY LIMIT INCOME FROM RATES
AND CHARGES**

Pt 8A
(Heading and
ss 185A–
185C)
inserted by
No. 33/1995
s. 3.

185A. Definition

In this Part—

"general income" means the amount declared by a Council under section 158 to be the amount which the Council intends to raise by general rates, municipal charges, service rates and service charges.

S. 185A
inserted by
No. 33/1995
s. 3.

185B. Minister may give directions concerning rates and charges

S. 185B
inserted by
No. 33/1995
s. 3.

- (1) The Minister may, by Order published in the Government Gazette, direct that a Council's general income in respect of a financial year—
 - (a) is not to exceed the Council's general income in respect of a specified previous financial year; or
 - (b) is not to exceed a specified percentage of the Council's general income in respect of a specified previous financial year.
- (2) The Minister may specify a percentage of more than, or less than, 100% under sub-section (1)(b).
- (3) The Minister may specify in the Order that it is to apply to all Councils or to one or more particular Councils (or classes of Councils) or to all Councils other than one or more particular Councils (or classes of Councils).

- (4) An Order has no effect—
- (a) with respect to the 1995–1996 financial year unless it is published in the Government Gazette before 30 June 1995;
 - (b) with respect to any other financial year unless it is published in the Government Gazette at least 1 month before the start of that financial year.
- (5) Sub-section (4) also applies to any Order that amends a previous Order made under this section unless—
- (a) the amendment is to correct a typographical error or a mathematical miscalculation (or anything stemming from a mathematical miscalculation) or any error that is apparent on the face of the previous Order; or
 - (b) the amendment has the sole effect of removing or reducing a restriction placed, or to be placed, on one or more Councils by an Order made under this section.
- (6) If a provision in an Order is inconsistent with a provision in a previous Order, the provision of the later Order prevails.
- (7) For the purpose of giving effect to a direction—
- (a) an Order may specify how changes in the number of rateable properties in a municipal district between 2 relevant periods are to be taken into account;
 - (b) if the boundaries of a municipal district have changed, or the Council responsible for a municipal district has been restructured or reconstituted, an Order may specify what the general income of the Council is to be taken as having been—

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- (i) in the financial year in which the change or restructuring occurred;
 - (ii) in any subsequent financial year in respect of which the Council did not make a declaration under section 158 or was deemed to have made a declaration;
 - (c) if a Council did not make a declaration under section 158 during a financial year, an Order may specify what the general income of the Council is to be taken as having been in that financial year.
- (8) If an Order applies to a number of Councils that have been restructured or reconstituted, or whose boundaries have changed, the Order may specify how the general income of those Councils is to be calculated for—
- (a) the financial year in which the restructuring or reconstitution or boundary change occurred; or
 - (b) any subsequent financial year in respect of which the Council did not make a declaration under section 158 or was deemed to have made a declaration.
- (9) For the purposes of this section, the general income of a Council for the 1996–1997 financial year is the general income of the Council for that year multiplied by 1.33.

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S. 185B(10)
repealed by
No. 34/1996
s. 25.

185C. Councils must comply with Minister's direction

S. 185C
inserted by
No. 33/1995
s. 3.

- (1) A Council must comply with any direction under section 185B that applies to it.
- (2) If a Council fails to comply with such a direction—
 - (a) the failure does not affect the validity of any rates or charges levied in respect of the financial year in respect of which the failure occurred; but
 - (b) any rate or charge that contributes to general income and that is declared with respect to the following financial year is invalid for all purposes unless—
 - (i) before it is declared the Council gives the Minister all the information the Minister requires regarding it and the proposal to declare it; and
 - (ii) the Minister approves its making in writing; and
 - (iii) it complies with any conditions specified by the Minister in granting that approval.

S. 185C(3)
repealed by
No. 34/1996
s. 25.

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- (4) A Council must give the Minister any information that the Minister requires to enable him or her to determine whether the Council has complied with a direction under section 185B or a condition under sub-section (2) and must do so in the form and within the time specified by the Minister.

**PART 9—SPECIFIC FUNCTIONS, POWERS AND
RESTRICTIONS**

Division 1—General Provisions

186. *Restriction on power to enter into contracts*

S. 186
amended by
Nos 22/1992
s. 17(a)(b),
43/1993
s. 15(1)(2),
125/1993
s. 29(1)(2),
substituted by
No. 40/1994
s. 6.

- (1) Before a Council enters into a contract for the purchase of goods or services, or for the carrying out of works, to the value of \$100 000 (or such higher amount as may be fixed by Order in Council) or more, it must—
- (a) give public notice of the purpose of the contract and invite tenders from any person wishing to undertake the contract; or
 - (b) give public notice of the purpose of the contract or the project to which the contract relates and invite expressions of interest from any person interested in undertaking the contract or all, or any part of, the project.
- (2) If a Council invites expressions of interest—
- (a) it must register those expressions of interest; and
 - (b) when it is ready to enter into the contract, it must invite tenders from some or all of those who registered their interest in undertaking the contract (or the part of the project to which the contract relates).

S. 186(1)
amended by
No. 59/1999
s. 6.

- (3) The public notice, tenders and expressions of interest must be in the prescribed form (if any) and must contain any details that are prescribed.
- (4) Nothing in this section requires a Council to accept the lowest tender or to accept any tender.
- (5) This section does not apply if—
 - (a) the Council resolves that the contract must be entered into because of an emergency; or
 - (b) the contract is entered into with a Council acting as the agent for a group of Councils and the Council has otherwise complied with this Act; or
 - (c) the contract is entered into in accordance with arrangements approved by the Minister for the purposes of this sub-section; or
 - (d) the contract is a type of contract that has been exempted from this section by the regulations.

S. 186(5)(d) amended by Nos 27/1997 s. 16, 59/1999 s. 5(c).

S. 186(5)(e) inserted by No. 27/1997 s. 16, repealed by No. 59/1999 s. 5(b).

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- (6) Whenever practicable, a Council must give effective and substantial preference to contracts for the purchase of goods, machinery or material manufactured or produced in Australia or New Zealand.

S. 187 substituted by No. 13/1990 s. 23.

187. Acquisition and compensation

- (1) A Council may purchase or compulsorily acquire any land which is or may be required by the Council for or in connection with, or as incidental

to, the performance of its functions or the exercise of its powers.

- (2) The **Land Acquisition and Compensation Act 1986** applies to this Act and for that purpose—
- (a) the **Local Government Act 1989** is the special Act; and
 - (b) the Council is the Authority.

187A. *Creation of easements*

If any right in the nature of an easement or purporting to be an easement or an irrevocable licence is or has been acquired by a Council whether before or after the commencement of the **Local Government Act 1958**, the right is deemed for all purposes to be and to have been an easement even if there is no land vested in the Council which is benefited by the right.

S. 187A
inserted by
No. 43/1993
s. 16(1).

188. *Power to accept gifts*

A Council's powers in relation to property include the power—

- (a) to accept any devise of real property or any donation, gift or bequest; and
- (b) to agree to carry out any lawful condition to the devise, donation, gift or bequest.

189. *Restriction on power to sell land*

- (1) Except where section 181 or 191 applies, if a Council sells or exchanges any land it must comply with this section.
- (2) Before selling or exchanging the land the Council must—
 - (a) ensure that public notice of intention to do so is given at least 4 weeks prior to selling or exchanging the land; and

Local Government Act 1989
Act No. 11/1989

s. 190

S. 189(2)(b)
amended by
No. 91/1994
s. 36(6).

(b) obtain from a person who holds the qualifications or experience specified under section 13DA(1A) of the **Valuation of Land Act 1960** a valuation of the land which is made not more than 6 months prior to the sale or exchange.

(3) A person has a right to make a submission under section 223 on the proposed sale or exchange.

S. 189(4)
inserted by
No. 125/1993
s. 23.

(4) Sub-section (3) does not apply to the sale of land that formed part of a road that has been discontinued as the result of a Council exercising its powers under clause 3 of Schedule 10.

190. *Restriction on power to lease land*

(1) A Council's power to lease any land to any person is limited to leases for a term of 50 years or less.

(2) Subject to any other Act, if a Council leases any land to any person subject to any exceptions, reservations, covenants and conditions, it must comply with this section.

(3) If the lease is to be—

(a) for 1 year or more and—

(i) the rent for any period of the lease is \$50 000 or more a year; or

(ii) the current market rental value of the land is \$50 000 or more a year; or

(b) for 10 years or more; or

(c) a building or improving lease—

the Council must at least 4 weeks before the lease is made publish a public notice of the proposed lease.

(4) A person has a right to make a submission under section 223 on the proposed lease.

191. *Transfer, exchange or lease of land without consideration*

- (1) A Council's powers to transfer, exchange or lease any land include the power to do so with or without consideration to—
 - (a) the Crown; or
 - (b) a Minister; or
 - (c) any public body; or
 - (d) the trustees appointed under any Act to be held on trust for public or municipal purposes; or
 - (e) a public hospital within the meaning of the **Health Services Act 1988** or other hospital carried on by an association or society otherwise than for profit or gain to the members of the association or society.
- (2) Any transfer, exchange or lease under this section is valid in law and equity.
- (3) Sections 189 and 190 do not apply to any transfer, exchange or lease under this section.

S. 191(1)(e)
amended by
No. 34/1996
s. 33(d).

192. *Use of land for another purpose*

- (1) If a Council has acquired any land for a particular purpose the Council may use the land or part of the land for another purpose if the Council is satisfied that—
 - (a) the land or part of the land is not required by the Council for the purpose for which it was acquired; or
 - (b) it is no longer necessary or desirable to use the land or part of the land for the purpose for which it was acquired.

- (2) A person has a right to make a submission under section 223 on the use of any land for another purpose.

193. *Entrepreneurial powers*

- (1) For the purpose of performing any function or exercising any power conferred on a Council by or under this Act or any other Act a Council may—
- (a) participate in the formation and operation of a corporation, trust, partnership or other body; and
 - (b) subscribe for or otherwise acquire and dispose of shares in or debentures or other securities of, a corporation; and
 - (c) become a member of a company limited by guarantee; and
 - (d) subscribe for or otherwise acquire and dispose of units in a trust; and
 - (e) acquire and dispose of an interest in a partnership or other body; and
 - (f) enter into partnership or into any arrangement for sharing of profits, union of interest, co-operation, joint venture, reciprocal concession or otherwise, with any person or corporation carrying on or engaged in, or about to carry on or engage in, any business or transaction capable of being conducted so as to directly or indirectly benefit the Council.
- (2) If by virtue of any participation, subscription or acquisition under sub-section (1), a Council has the right to appoint some person to be a director of or hold office in or under the corporation, trust, partnership or other body the Council may appoint
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a Councillor, member of Council staff or other person to that office.

- (3) For the purposes of sub-section (1)(c) or (1)(d) a Council may nominate a person to hold the shareholding or unit holding on behalf of the Council and the person nominated is to be treated as being the shareholder or unit holder of the shares or units.
- (4) For the purposes of sub-section (1), a Council may obtain temporary financial accommodation by way of overdraft (in addition to anything the Council may do under Part 7).
- (5) Before a Council does anything under sub-section (1) or (4) it must obtain the approval of the Minister and the Treasurer which may be either general or specific.
- (5A) Despite sub-section (5), a Council may enter into an arrangement to jointly tender or contract with another Council without the approval of the Minister and the Treasurer.
- (6) The Minister may request a Council to provide any additional information.
- (7) The Minister's approval may be given on any condition that the Minister thinks fit, including a condition that a poll of voters be held in respect of a decision of the Council to do anything referred to in sub-section (1) or (4).
- (8) Part 6 of Schedule 3 applies to any poll of voters under this section as if—
 - (a) for clause 16(2) of that Schedule there were substituted: "(2) A request for a poll must be made by the Minister to the Council within 21 days of the relevant public notice being given."; and

S. 193(5A)
inserted by
No. 34/1996
s. 26.

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- (b) For clause 17(1)(c)(i) and 17(1)(c)(ii) of that Schedule there were substituted "the Minister;"
- S. 193(9) amended by No. 13/1990 s. 24(a).
- (9) The Minister may in respect of a municipal enterprise—
- (a) exempt a Council from complying with any requirement or restriction on its powers under any other section of this Act; or
- (b) require a Council to comply with that requirement or restriction as varied by the Minister; or
- S. 193(9)(c) amended by No. 13/1990 s. 24(b)(c).
- (c) on the application of a Council and with the approval of the Treasurer amend his or her approval where the Council has amended its proposal; or
- S. 193(9)(d) inserted by No. 13/1990 s. 24(c).
- (d) if a Council does not hold a controlling interest in a corporation, trust, partnership or other body under sub-section (1)(a), exempt the corporation, trust, partnership or other body from the application of sub-section (11).
- (10) Section 34 of the **Freedom of Information Act 1982** applies to information given to the Minister under this section as if in that section a reference to information acquired by an agency or a Minister from a business, commercial or financial undertaking were a reference to information acquired by the Minister from a Council under this section.
- (11) If a Council participates in the formation of a corporation, trust, partnership or other body under sub-section (1)(a), the accounts and records of the corporation, trust, partnership or body are subject to audit and inspection under Part 6 as if they were accounts and records of the Council.
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194. Power to compound

A Council may compound with a person—

- (a) who has entered into a contract with the Council; or
- (b) by whom an action or proceeding has been brought or is threatened; or
- (c) against whom an action or proceeding has been brought or is contemplated by the Council.

195. Assistance to a member of Council staff

A Council's powers include the power to—

- (a) enter into a contract for the sale, purchase or lease of a dwelling-house to a member of Council staff; or
- (b) provide a loan or other assistance to enable a member of Council staff to purchase a dwelling-house—

for use as the residence of the member of Council staff.

196. Regional libraries¹³

- (1) This section applies if a Council enters into an agreement with a public body to form a regional library to service the area specified in the agreement.

S. 196(1)
substituted by
No. 99/1994
s. 12(1).

- (1A) For the purposes of this section, a reference to a public body includes a reference to a regional library.

S. 196(1A)
inserted by
No. 99/1994
s. 12(1).

- (2) The agreement has no effect unless it is approved by the Minister by notice published in the Government Gazette.

S. 196(2)
substituted by
No. 99/1994
s. 12(1).

Local Government Act 1989
Act No. 11/1989

s. 196

S. 196(3)
substituted by
No. 99/1994
s. 12(1).

(3) On the date the agreement takes effect, the regional library that is formed by the agreement becomes a regional library to which sub-section (4) applies.

S. 196(4)
amended by
No. 99/1994
s. 12(2).

(4) A regional library—

- (a) is a body corporate with perpetual succession; and
- (b) must have a common seal; and
- (c) may sue or be sued in its corporate name; and
- (d) is capable of acquiring, holding, dealing with or disposing of property for the purpose of performing any function or power specified in the agreement; and
- (e) is capable of doing and suffering all acts and things which bodies corporate may by law do and suffer and which are necessary or expedient for performing any function or power specified in the agreement.

S. 196(5)
amended by
No. 99/1994
s. 12(2).

(5) The common seal of a regional library must—

S. 196(5)(a)
amended by
No. 99/1994
s. 12(2).

(a) bear the title of the regional library and any other word, letter, sign or device which the regional corporation determines should be included; and

S. 196(5)(b)
amended by
No. 99/1994
s. 12(2).

(b) be kept at the office of the regional library; and

S. 196(5)(c)
amended by
No. 99/1994
s. 12(2).

(c) be used only by resolution of the regional library.

Local Government Act 1989
Act No. 11/1989

s. 196

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|---|---|
| <p>(6) All courts, judges and persons acting judicially must take judicial notice of the imprint of the seal of a regional library on any document and must presume that the document was properly sealed until the contrary is proved.</p> | <p>S. 196(6)
amended by
No. 99/1994
s. 12(2).</p> |
| <p>(7) The following provisions apply to a regional library as if it were a Council and as if the members of its governing body were Councillors—</p> <ul style="list-style-type: none">(a) sections 75–81;(b) Division 2 of Part 4 (except section 84);(c) Division 3 of Part 4 (except section 98);(d) Parts 5 and 6 (other than sections 126(1)(aa), (ac), (c) and (d), 127B and 128);(e) sections 138, 144 (except sub-sections (2)(a), (b) and (c)), 144A, 144B, 146, 150 and 153A;(f) sections 186 and 189–194;(g) Part 11 (except sections 221, 222(1) to the extent that it applies to voters' rolls, 225, 226, 227, 227AA, 229 and 230). | <p>S. 196(7)
substituted by
No. 99/1994
s. 12(3).</p> <p>S. 196(7)(d)
substituted by
No. 27/1997
s. 17.</p> <p>S. 196(7)(e)
substituted by
No. 23/2000
s. 5(a).</p> <p>S. 196(7)(g)
substituted by
No. 23/2000
s. 5(b).</p> |
| <p>(8) If an agreement requires the approval of the Minister to any proposed amendment of the agreement, then an amendment has no effect unless it is approved by the Minister by notice published in the Government Gazette.</p> | <p>S. 196(8)
inserted by
No. 99/1994
s. 12(4).</p> |
| <p>(9) If an agreement does not specify the date on which it is to come into effect, it comes into effect on the date on which notice of the Minister's approval is published in the Government Gazette.</p> | <p>S. 196(9)
inserted by
No. 99/1994
s. 12(4).</p> |
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S. 196(10)
inserted by
No. 99/1994
s. 12(4).

- (10) The parties to an agreement to which this section applies are jointly and severally liable for the debts of the regional library formed under the agreement unless the agreement specifies otherwise.

S. 197
repealed by
No. 125/1993
s. 30,
new s. 197
inserted by
No. 99/1994
s. 13.

197. *Submissions on regional library agreements*

- (1) A person has the right to make a submission under section 223 on any proposal by a Council to enter into an agreement referred to in section 196.
- (2) A person has the right to make a submission under section 223 on any proposal by a regional library to amend such an agreement.

S. 197A
inserted by
No. 99/1994
s. 13.

197A. *Restrictions on the power of a regional library to borrow*

A regional library must not borrow money (or obtain any financial accommodation that has the same effect as borrowing money) unless in any particular case—

- (a) it has the approval of the Treasurer; and
- (b) the amount borrowed (or obtained by way of financial accommodation)—
- (i) is secured over the assets and income of the regional library; and
- (ii) was included in the last budget or revised budget of the regional library (unless it is only used to re-finance an existing loan).

S. 197B
inserted by
No. 99/1994
s. 13.

197B. *Restriction on power of regional library to delegate its powers*

- (1) Despite section 196(4)(e), a regional library may only delegate a power, duty or function to a

member of its staff or a special committee and must not delegate—

- (a) its power of delegation;
 - (b) the power to approve any expenditure not provided for in its last budget or revised budget;
 - (c) any of its powers, duties or functions under section 223;
 - (d) any other prescribed power, duty or function.
- (2) A regional library must keep a register of all delegations made by it.

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S. 197C inserted by No. 99/1994 s. 13, repealed by No. 33/1995 s. 4(2)(c).

197D. Corporate plan

Section 153A applies to a regional library as if it was a Council and as if—

- (a) the reference to "12 months of the commencement of section 14 of the **Local Government (Financial) Act 1992**" was a reference to "6 months of the date the regional library becomes a body corporate"; and
- (b) the reference to "for the next 3 years" in subsection (1) was a reference to "for the current and next 2 financial years".

S. 197D inserted by No. 99/1994 s. 13.

197E. Offence to fail to comply with annual report and corporate plan provisions

A regional library must comply with the obligations imposed on it by sections 126 and 153A (as applied by sections 196(7) and 197D).

S. 197E inserted by No. 99/1994 s. 13.

Local Government Act 1989
Act No. 11/1989

s. 197F

Penalty: 50 penalty units.

S. 197F
inserted by
No. 99/1994
s. 13.

197F. *Restriction on power to make local laws*

Despite section 196(7)(d), a regional library may only make a local law if the proposed local law has been ratified by all the member Councils of the library.

S. 197G
inserted by
No. 99/1994
s. 13.

197G. *Winding up of regional libraries*

- (1) A regional library may be wound up—
 - (a) voluntarily, in the way specified in section 491 of the Corporations Law; or
 - (b) by order of the Minister.
- (2) A winding up order by the Minister must appoint a liquidator or liquidators and must fix the remuneration to be paid to him, her or them.
- (3) Subject to this Act, the provisions of the Corporations Law relating to the voluntary winding up of companies apply, so far as they are applicable and with any prescribed modifications, to and in relation to the winding up of a regional library under either sub-section (1)(a) or (b).
- (4) For the purposes of this section—
 - (a) a reference in the Corporations Law to a company is to be read as a reference to a regional library;
 - (b) a reference in the Corporations Law to the Commission is to be read as a reference to the Minister;
 - (c) a reference in the Corporations Law to the Gazette is to be read as a reference to the Government Gazette;
 - (d) a reference in the Corporations Law to the directors of a company is to be read as a

reference to the members of the governing body of the regional library.

- (5) On the completion of a winding up, the liquidator or liquidators must publish a notice in the Government Gazette stating that the winding up has been completed and stating the date when the regional library is dissolved.

198. *Sewers and drains vested in the Council*

- (1) The following are vested in the Council and are under the management and control of the Council—
- (a) public sewers and drains within the municipal district;
 - (b) sewers and drains in and under roads in the municipal district;
 - (c) Works and materials relating to (a) and (b).
- (2) This section does not apply to any sewers and drains vested in another Council or a Minister, the Crown or any public body.

199. *Concentration or diversion of drainage*

- (1) Before a Council executes in or upon any road any work which will concentrate or divert the drainage flowing on the road and discharge it or permit it to flow on, into or through any land, the Council must comply with this section.
- (2) The Council must give notice of the proposed work to the owner and occupier of any land likely to be affected by the concentration or diversion of the drainage.
- (3) A person has a right to make a submission under section 223 on any proposed work to concentrate or divert drainage.

200. *Drainage of land*

- (1) A Council may give the owner or occupier of any building or land a notice requiring that person to carry out any work for the drainage of a building or of surface or storm water on any land.
- (2) If the owner or occupier of the building or land does not carry out the work to the satisfaction of the Council, the Council may carry out the work.
- (3) If the Council carries out the work the owner or occupier must repay the cost of carrying out the work to the Council.
- (4) A person has a right to make a submission under section 223 on any notice under this section.

201. *Approved schemes*

S. 201(1)
amended by
Nos 81/1989
s. 3(Sch. item
30.3),
125/1993
s. 37(1)(a).

- (1) A Council may construct, operate, control, manage or maintain any works or undertakings which form the whole or part of a scheme declared to be an approved scheme under section 216 of the **Water Act 1989**.
- (2) In carrying out its functions under sub-section (1) the Council may exercise any power conferred on the Council under this Act.

Division 2—Provisions Relating to Roads and Public Highways and Traffic Regulation

202. *Crown has absolute property*

The Crown has absolute property in all land reserved as a road under the **Crown Land (Reserves) Act 1978** or proclaimed as a road under the **Land Act 1958**, whether before or after the commencement of this section.

S. 203
substituted by
No. 125/1993
s. 22.

203. *Public highways to vest in Councils*

- (1) A public highway vests in fee simple in the Council of the municipal district in which it is

located on the date section 22 of the **Local Government (Miscellaneous Amendments) Act 1993** comes into operation (if it is not already vested in the Council), or on it subsequently becoming a public highway.

- (2) The public highway vests in the Council free of all mortgages, charges, leases and sub-leases.
- (3) Sub-section (1) does not apply to—
 - (a) declared roads within the meaning of the **Transport Act 1983**; and
 - (b) a road that becomes a public highway under clause 2(2) of Schedule 5 of the **Transport Act 1983** if it is agreed between the Council and the Roads Corporation that the road should vest in the Roads Corporation; and
 - (c) roads on Crown land; and
 - (d) roads vested in a Minister or in any public authority (other than a Council).

204. Council may declare a road to be a public highway or to be open to the public

S. 204
substituted by
No. 125/1993
s. 22.

- (1) A Council may, by notice published in the Government Gazette, declare a road in its municipal district to be a public highway for the purposes of this Act.
- (2) A Council may, by resolution, declare a road that is reasonably required for public use to be open to public traffic.
- (3) A road does not become a public highway by virtue of a Council resolution made under sub-section (2).

205. Councils to have the care and management of certain roads

S. 205
substituted by
No. 125/1993
s. 22.

- (1) A Council has the care and management of—

- (a) all public highways vested in the Council; and
 - (b) all roads that are the subject of a declaration under section 204(2); and
 - (c) all public highways on Crown land and roads vested in a Minister (other than declared roads within the meaning of the **Transport Act 1983** and public highways and roads vested in a public authority); and
 - (d) all roads that the Council has agreed to have the care and management of.
- (2) A Council that has the care and management of a road—
- (a) must ensure that if the road is required for public traffic, it is kept open for public use (subject to the exercise of any powers that it has to the contrary under Schedules 10 and 11); and
 - (b) may carry out work on the road; and
 - (c) is not obliged to do any particular work on the road, and in particular, is not obliged to carry out any surface or drainage work on an unmade road.

S. 206
substituted by
No. 125/1993
s. 22.

206. Power of Councils over roads

- (1) The powers of a Council in relation to roads in its municipal district include the powers set out in Schedule 10.
- (2) Except as provided in section 207B(1), the exercise of a power under clause 2, 3 or 8(1)(a) of Schedule 10 does not in itself vest the land in a Council.

207. Powers of Councils over traffic

The powers of a Council in relation to traffic in its municipal district include the powers set out in Schedule 11.

S. 207 amended by Nos 13/1990 s. 25(a)(b), 48/1991 s. 69, substituted by No. 125/1993 s. 22.

207A. Submissions under section 223

A person may make a submission under section 223 on the proposed exercise of any power under—

S. 207A inserted by No. 125/1993 s. 22.

- (a) clauses 1(b), 2, 3, 7 and 8(1)(a) of Schedule 10;
- (b) clauses 9, 10(1)(c), 11 and 12 of Schedule 11;
- (c) sections 204(1) and (2).

207B. Certain land used, or to be used, for roads to vest in Council

- (1) The following land vests in fee simple in the Council (if it is not already vested in the Council) in whose municipal district the land is situated on the date the relevant notice required by Schedule 10 is published in the Government Gazette—
 - (a) land acquired for a road deviation under clause 2 of Schedule 10;
 - (b) land which is a road, or part of a road, which is discontinued as a result of the exercise of a power under clause 2, 3, 7 or 8(1)(a) of Schedule 10.
- (2) However, sub-section (1) does not apply if the land is Crown land.

S. 207B inserted by No. 125/1993 s. 22.

S. 207B(2) substituted by No. 99/1994 s. 16(1).

Local Government Act 1989
Act No. 11/1989

s. 207C

S. 207B(2A)
inserted by
No. 99/1994
s. 16(1).

- (2A) Despite sub-section (2), if a road on Crown land is discontinued under clause 2 of Schedule 10 and the land on to which the road is to be deviated is not Crown land, the land on which the discontinued road was situated vests in fee simple in the Council in whose municipal district it is situated on the date the notice required by Schedule 10 is published in the Government Gazette.
- (3) On the date the relevant notice is published—
- (a) the land vests free of all encumbrances other than those referred to in section 207C; and
 - (b) the land is brought under the operation of the **Transfer of Land Act 1958**, if it is not already under the operation of that Act.
- (4) The **Subdivision Act 1988** does not apply to the discontinuance of a road, or a part of a road, under clause 2, 3, 7 or 8(1)(a) of Schedule 10.

S. 207C
inserted by
No. 125/1993
s. 22.

207C. *Sewers, pipes, wires etc. of public authorities not affected*

- (1) Section 207B does not affect any right, power or interest held by a public authority in a road in connection with any sewers, drains, pipes, wires or cables under the control of the authority in or near the road.
- (2) The Registrar of Titles may record as an encumbrance on the relevant folio of the Register any such right, power or interest.
- (3) If a Council seeks the consent of a public authority to the extinguishment of any such right, power or interest, the authority must not unreasonably withhold its consent.

207D. Registration of titles of land affected by action concerning roads

S. 207D
inserted by
No. 125/1993
s. 22.

- (1) This section applies if—
- (a) land vests in a Council under section 207B;
or
 - (b) a Council takes any action under clause 2, 3, 7 or 8(1)(a) of Schedule 10 or clause 11 of Schedule 11 that affects the title to any land—

and either section 35 of the **Subdivision Act 1988** does not apply to the land or else there is no present intention to dispose of the land.

- (2) The Council must, if required by the Registrar, give the Registrar a notice of any action referred to in sub-section (1)(b) or a transfer of land—
- (a) that is in a form approved by the Registrar;
and
 - (b) that contains all the information required by the Registrar for the purposes of sub-section (3); and
 - (c) that states whether or not it has given notice under section 223 in relation to the proposed action.
- (3) On being given that notice or transfer, the Registrar may do anything that is necessary to give effect in the Register under the **Transfer of Land Act 1958** to the vesting or the action taken by the Council.
- (4) Without limiting the power given to him or her by sub-section (3), the Registrar may—
- (a) register the transfer of land; and

- (b) if the transfer is not accompanied by a certificate of title, register it in the same way as if it had been accompanied by a certificate of title in the name of the Council as proprietor; and
 - (c) alter folios of the Register, plans of subdivision and any other documents and give notice to people affected by any such alteration if the Council has not already given notice under section 223 that it will consider submissions concerning its intention to exercise a power given to it by Schedule 10 or 11; and
 - (d) require a person to produce any instrument or document other than a certificate of title; and
 - (e) dispense with the production of any document.
- (5) Section 54 of the **Transfer of Land Act 1958** does not apply to any land to which this section applies.

S. 207E
inserted by
No. 125/1993
s. 22.

207E. Alterations to titles if land exchanged

- (1) This section only applies if a Council agrees to exchange any land it acquires under Schedule 10 with other land owned by it.
- (2) The registered proprietor, or the mortgagee in possession, of the land may apply to the Registrar of Titles to have the folio of the Register under the **Transfer of Land Act 1958** amended to—
 - (a) include the land obtained from the Council; and
 - (b) exclude the land acquired by the Council from the folio of the Register.

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- (3) The Registrar must make the necessary amendments to the Register if the application—
 - (a) is in a form approved by the Registrar; and
 - (b) contains all the information required by the Registrar; and
 - (c) is accompanied by the written consent to the application of the proprietor of any mortgage, charge, lease or sub-lease that the land is subject to (if any).
 - (4) On the Registrar completing the necessary amendments—
 - (a) the land acquired by the Council is freed of any mortgage, charge, lease or sub-lease (if it is not already free of those encumbrances); and
 - (b) the land obtained from the Council becomes subject to any mortgage, charge, lease or sub-lease that the other land was subject to and is to be regarded as if it had always been part of the land described in the folio of the Register.
 - (5) The **Subdivision Act 1988** does not apply to land to which this section applies.

207F. *Right of Council to recover for damage to road from person responsible*

S. 207F
inserted by
No. 125/1993
s. 22.

- (1) This section applies if a Council incurs extraordinary expenses in repairing a road that has been damaged as a result of the passage of extraordinary traffic or excessive weight along the road.
- (2) The Council may recover damages in any court of competent jurisdiction from any person who was responsible for causing the traffic or weight to pass along the road.

Local Government Act 1989
Act No. 11/1989

s. 208

S. 207F(3)
inserted by
No. 107/1995
s. 123.

(3) Nothing in this section enables a Council to recover damages from—

(a) the Link corporation within the meaning of the **Melbourne City Link Act 1995**, in respect of damage to a road arising because of the operation or effect of the Link road within the meaning of that Act; or

S. 207F(3)(aa)
inserted by
No. 50/1998
s. 50.

(aa) the Extension corporation within the meaning of the **Melbourne City Link Act 1995**, in respect of damage to a road arising because of the operation or effect of the Extension road within the meaning of that Act; or

(b) the Roads Corporation or any other highway authority in respect of damage to a road arising because of the operation or effect of a freeway or declared road within the meaning of the **Transport Act 1983**.

208. *Transport Act 1983 and Road Safety Act 1986*

S. 208(1)
amended by
No. 44/1989
s. 42(1).

(1) A Council must not exercise its powers under this Division inconsistently with the functions and powers of the Roads Corporation under the **Transport Act 1983** and the **Road Safety Act 1986** and the regulations under those Acts.

(2) If a Council is delegated a power under the **Transport Act 1983**, the **Road Safety Act 1986** or the regulations under those Acts, the Council must exercise that power in accordance with the Act or regulations under which the delegation is made.

Division 3—Best Value Principles

Pt 9 Div. 3
(Heading and
ss 208A–
208G)
inserted by
No. 40/1994
s. 3,
amended by
Nos 99/1994
ss 17, 18(1)(2),
33/1995 s. 6,
34/1996 ss 27,
33(e), 27/1997
ss 18–20,
76/1997 s. 18,
substituted as
Pt 9 Div. 3
(Heading and
ss 208A–
208J) by No.
59/1999 s. 4.
S. 208A
substituted by
No. 59/1999
s. 4.

208A. *Best Value Principles to be followed*

A Council must comply with the Best Value Principles.

208B. *Best Value Principles*

The Best Value Principles are—

- (a) all services provided by a Council must meet the quality and cost standards required by section 208D;
- (b) subject to section 6(1)(c), all services provided by a Council must be responsive to the needs of its community;
- (c) each service provided by a Council must be accessible to those members of the community for whom the service is intended;
- (d) a Council must achieve continuous improvement in the provision of services for its community;
- (e) a Council must develop a program of regular consultation with its community in relation to the services it provides;

S. 208B
substituted by
No. 59/1999
s. 4.

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- (f) a Council must report regularly to its community on its achievements in relation to the principles set out in paragraphs (a), (b), (c), (d) and (e).

S. 208BA
repealed by
No. 59/1999
s. 4.

* * * * *

S. 208C
substituted by
No. 59/1999
s. 4.

208C. *Factors that may be looked at in applying the Principles*

In applying the Best Value Principles, a Council may take into account, among other factors—

- (a) the need to review services against the best on offer in both the public and private sectors; and
- (b) an assessment of value for money in service delivery; and
- (c) community expectations and values; and
- (d) the balance of affordability and accessibility of services to the community; and
- (e) opportunities for local employment growth or retention; and
- (f) the value of potential partnerships with other Councils and State and the Commonwealth governments; and
- (g) potential environmental advantages for the Council's municipal district.

S. 208D
substituted by
No. 59/1999
s. 4.

208D. *Quality and cost standards*

- (1) A Council must develop quality and cost standards for the provision of any service it provides for its community.

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- (2) A quality or cost standard must set out the performance outcomes determined by the Council in relation to each service.
 - (3) In developing quality and cost standards a Council must take into account the factors listed in sections 208C(a), (b), (c), (d) and (e).
 - (4) A Council may develop different quality and cost standards for different classes of services.

208E. *When the Best Value Principles are to be implemented*

S. 208E
substituted by
No. 59/1999
s. 4.

- (1) A Council must, on or before 31 December 2000, develop a program for the application of the Best Value Principles.
- (2) A Council must ensure that the program required by sub-section (1) is available to the public.
- (3) A Council must apply the Best Value Principles to all of the services it provides on or before 31 December 2005.
- (4) Despite sub-section (3), if a Council was providing a service on the commencement of the **Local Government (Best Value Principles) Act 1999** and the service was provided under an agreement between the Council and another person, body or group of people, the Council need not comply with the Best Value Principles in respect of the provision of that service until the expiry of the agreement.

208F. *Standards to be publicly available*

S. 208F
substituted by
No. 59/1999
s. 4.

A Council must ensure that any quality or cost standards it adopts are available for inspection by the public.

s. 208G

S. 208G
substituted by
No. 59/1999
s. 4.

208G. *Report on Best Value Principles compliance*

At least once every year a Council must report to its community on what it has done to ensure that it has given effect to the Best Value Principles.

S. 208H
substituted by
No. 59/1999
s. 4.

208H. *Ministerial Codes*

- (1) The Minister may publish in the Government Gazette one or more Codes in relation to how Councils are to give effect to the Best Value Principles.
- (2) Without limiting the matters a Code may deal with, a Code may—
 - (a) specify how often the Best Value Principles are to be applied to a service;
 - (b) specify the minimum details that quality and cost standards must contain;
 - (c) specify what records are to be kept in relation to the application of the Best Value Principles;
 - (d) specify maximum periods for agreements entered into in accordance with the Best Value Principles.
- (3) A Council must comply with any obligation imposed by such a Code that applies to the Council.
- (4) Any agreement or arrangement entered into by a Council in contravention of sub-section (3) is not void only because of that contravention.

S. 208I
substituted by
No. 59/1999
s. 4.

208I. *Ministerial guidelines*

- (1) The Minister may publish in the Government Gazette guidelines for Councils in relation to the Best Value Principles.

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- (2) If a Council deals with a matter in accordance with an applicable guideline, it is to be taken to have complied with the Best Value Principles in respect of that matter.

208J. Minister must consult

S. 208J
inserted by
No. 59/1999
s. 4.

- (1) Before publishing a Code under section 208H or a guideline under section 208I, the Minister must consult with any local government body that the Minister thinks it appropriate to consult with.
- (2) In this section "**local government body**" means—
- (a) a Council;
 - (b) an organisation that the Minister considers represents local government interests and that the Minister has declared, by notice published in the Government Gazette, to be a local government body.
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**PART 10—INQUIRIES, REVIEWS AND SUSPENSION OF
COUNCILS**

Division 1—Inquiries and Suspension of Councillors

209. *Minister may appoint Commissioner and establish inquiry*

- (1) The Minister may appoint a person as a Commissioner—
- (a) to conduct an inquiry into matters relating to the affairs of a Council; and
 - (b) to report in writing to the Minister on those matters—

and may at any time revoke that person's appointment.

- (2) The Commissioner—
- (a) is to be appointed for the period specified in the instrument of appointment; and
 - (b) is eligible for re-appointment; and
 - (c) may resign by a written notice of resignation addressed to the Minister; and
 - (d) if the Commissioner is not employed under the **Public Sector Management and Employment Act 1998** or by any Council, is entitled to be paid the remuneration and allowances which are fixed by the Minister.

S. 209(2)(d)
amended by
Nos 76/1997
s. 24(b),
46/1998
s 7(Sch. 1).

S. 209(3)
amended by
No. 46/1998
s. 7(Sch. 1).

- (3) The Commissioner, with the approval of the Minister, may make use of the services of any employees in the Public Service.

210. Protection of Commissioner

A Commissioner, in the exercise of the Commissioner's functions, powers or duties under this Act, has the same protection and immunity as a judge of the Supreme Court.

211. Rules of evidence do not apply

A Commissioner—

- (a) must thoroughly investigate the matters into which the Commissioner is appointed to inquire; and
- (b) in that investigation, need not have regard to legal procedures and is not bound by the rules of evidence; and
- (c) may inform himself or herself on any matter in any manner which the Commissioner thinks fit.

212. Witnesses may be represented

- (1) A witness before a Commissioner, with the Commissioner's approval, may be represented by another person.
- (2) A person representing a witness may—
 - (a) examine any witnesses; and
 - (b) address the Commissioner on behalf of the witness being represented.
- (3) A Commissioner may make an order—
 - (a) for the payment of the expenses of a witness; or
 - (b) for the payment of costs by a Council.

213. Access of Commissioner to places, documents etc.

- (1) A Commissioner or a person authorised by a Commissioner—

- (a) has complete access to any buildings, places, goods, books or documents; and
 - (b) may make extracts from or take copies of the books or documents—
for the purposes of the inquiry.
- (2) A Commissioner, except in carrying out the Commissioner's functions, powers or duties, must not communicate to any person any information which the Commissioner acquired in carrying out the Commissioner's functions, powers or duties.
 - (3) A person authorised under sub-section (1) must not communicate to any person other than the Commissioner or a person authorised by the Commissioner any information which the person acquired in the carrying out of any duty under this section.
 - (4) A person must not obstruct or hinder a Commissioner or person authorised under sub-section (1), in the carrying out of a function, power or duty under sub-section (1).

214. Powers of Commissioner

- (1) For the purposes of conducting an inquiry, a Commissioner has in respect of summoning and examining persons and requiring the production of documents the powers which a Board appointed by the Governor in Council has under the **Evidence Act 1958**.
 - (2) Sections 14, 15 and 16 of the **Evidence Act 1958** apply to those powers of the Commissioner with any necessary adaptations.
 - (3) A Commissioner may make an order that all of the costs of the inquiry are to be paid by the Council.
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215. *Some proceedings of inquiry may be in private*

A Commissioner may hold any (but not all) of the proceedings on an inquiry in private, if the Commissioner considers that the public interest requires they be held in private.

216. *Publishing report of Commissioner or proceedings*

- (1) A person is not liable to any action or proceedings for publishing in good faith for the information of the public—
 - (a) a copy, fair extract or fair abstract of a report of a Commissioner; or
 - (b) a fair and accurate report of proceedings before a Commissioner which were held in public.
- (2) A publication is to be taken to be in good faith for the information of the public if a person makes it without any ill-will or other improper motive towards the person defamed by the publication.

217. *Notice to Council*

The Minister must give notice to a Council of the reasons for and the subject of an inquiry into that Council.

218. *Outcome of inquiry*

- (1) If the Minister has received the report of a Commissioner of an inquiry into a Council and considers that—
 - (a) the matter should be referred to the Council; or
 - (b) any action should and may be taken to rectify, mitigate or alter the effects of a Council's action or omission which was a subject of the inquiry; or

- (c) a Council's action or omission which was a subject of the inquiry was a common practice which should be stopped or changed; or
- (d) a Council's action or omission occurred on the basis of or in accordance with a local law of the Council, which should be reconsidered; or
- (e) the Council should give reasons for an action or omission by it; or
- (f) any other steps should be taken—

the Minister may report to the Mayor of the Council and make any recommendations which the Minister thinks fit.

- (2) The Minister may request the Mayor to notify the Minister, within a specified period, of any steps taken or proposed to give effect to the recommendations of the Minister.
- (3) If—
 - (a) the Minister is not satisfied with the steps taken or proposed; or
 - (b) no steps have been taken—sub-section (4) applies.
- (4) Until the Minister is satisfied with the steps taken to give effect to the Minister's recommendation—
 - (a) the Treasurer may by order in writing refuse to pay part or all of any money payable or which will become payable to the Council out of the Consolidated Fund or for fees, fines or penalties; or
 - (b) the Minister may authorise any person or may himself or herself take steps to give effect to the recommendation, and in doing so, may enter upon any land and do anything

else the Minister considers necessary to carry out those steps.

- (5) This section—
- (a) must be construed in addition to the powers of the Governor in Council, Treasurer and Minister; and
 - (b) does not prejudice any proceeding or remedy against or liability of the Council.

219. *Suspension of Councillors*

- (1) The Minister may recommend to the Governor in Council that all of the Councillors of a Council be suspended, if the Minister is satisfied on reasonable grounds that the Council has failed in a serious or ongoing respect—
- (a) to provide for the good government of its municipal district in relation to its functions; or
 - (b) to perform a function which it is required to perform; or
 - (c) to form or maintain a quorum; or
 - (d) to comply with any law.
- (2) The Governor in Council may by Order in Council do any or all of the following—
- (a) suspend all of the councillors of the Council;
 - (b) appoint an administrator for the Council;
 - (c) appoint a person to fill a vacancy in the office of administrator;
 - (d) appoint a temporary administrator in the place of the administrator to act in the administrator's absence or incapacity to act.

- (3) The following provisions apply to the appointment of an administrator of a Council—
- (a) the administrator constitutes the Council and subject to any conditions of that person's appointment, must perform all the functions, powers and duties of the Council, which must be treated as if they were performed by the Council;
 - (b) the administrator's appointment and anything done by the administrator is not invalid only by reason of a defect in relation to the appointment;
 - (c) the administrator is entitled to be paid the remuneration and allowances and is employed on the conditions which are fixed by the Minister and the remuneration and allowances are to be paid out of the municipal fund;
 - (d) the administrator—
 - (i) must not, without the Minister's consent, directly or indirectly engage in any paid employment outside the duties of the office of administrator; and
 - (ii) may resign by a written notice of resignation addressed to the Governor in Council;
 - (e) the office of the administrator becomes vacant if the administrator—
 - (i) becomes bankrupt; or
 - (ii) dies; or
 - (iii) is removed or resigns from office; or
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- (iv) is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence; or
- (v) becomes incapable of performing the duties of the office.
- (3A) If provision is made in any Act, regulation, rule, by-law, local law, instrument or document for the Mayor, a Councillor or the Chairperson or a member of a committee of the Council to be a member of, or to be represented on, a board, Council, committee, commission or other body, or to be a trustee, or to be a member or director of a company, that provision has effect during the period of administration as if it provided for the administrator, or some other person appointed by the administrator, to be that member, representative, trustee or director.
- (4) The Order in Council takes effect from the date specified in the Order in Council.
- (5) The Order in Council—
- (a) must be laid before both Houses of Parliament—
- (i) if Parliament is then sitting, within 7 days after its making; or
- (ii) if Parliament is not then sitting, within 7 days after the next meeting of Parliament; and
- (b) may be disallowed by a resolution of either House of Parliament within 7 days after it has been laid before each House.
- (6) If the Order in Council is disallowed—
- (a) the Governor in Council must by Order in Council fix a day on which—

S. 219(3A)
inserted by
No. 125/1993
s. 31.

Local Government Act 1989
Act No. 11/1989

- (i) the administrator must go out of office;
and
- (ii) the suspended Councillors must resume
office; and
- (b) the disallowance does not affect anything
done under the disallowed Order in Council.
- (7) The Order in Council under sub-section (2)
expires 1 year after the date of its publication.
- (8) The suspended Councillors are not Councillors of
the Council during the period of suspension.
- (9) After the Order in Council expires—
 - (a) the Governor in Council must reinstate the
Councillors whose terms have not expired to
their offices and must fix a date for any by-
election for a vacancy in the office of a
Councillor whose term has expired and the
administrator then goes out of office; or
 - (b) the Minister must fix a date for the holding
of a general election for the Council; or
 - (c) a Bill to dismiss the Council must be
introduced into Parliament.
- (10) An election under sub-section (9)(b) must be held
in accordance with the procedures for a by-
election.
- (11) If the election is held, on the public declaration of
the election result the administrator goes out of
office.
- (12) The Chief Executive Officer must summon a
meeting of the Council within 14 days after the
public declaration of the election result.

S. 219(11)
amended by
No. 76/1997
s. 13(c).

S. 219(12)
amended by
Nos 125/1993
s. 14(l),
76/1997
s. 13(c).

Division 2—Periodic Review of Electoral Representation by Council

220. Council must undertake review

- (1) If the municipal district of a Council is divided into wards, at least once every 6 years the Council must undertake a review to decide—

S. 220(1)
substituted by
No. 76/1997
s. 19(1).

- (a) whether the number of voters represented by each Councillor is within 10% of the number derived from the following calculation—

$$\frac{V}{C}$$

where—

V is the number of people entitled to vote in the municipal district;

C is the number of Councillors; and

- (b) whether the existing boundaries of the wards of the municipal district are a fair and equitable division of the municipal district into wards.

- (1A) In the case of the Melbourne City Council or any Council that is the subject of an order made under section 220Q(na), a reference in sub-section (1)(a) to a Councillor or Councillors is to be read as only including Councillors representing a ward.

S. 220(1A)
inserted by
No. 76/1997
s. 19(1).

- (2) After the review is completed—
- (a) if the Council decides that an alteration of the boundaries of the wards is desirable, it must apply to the Minister; or
- (b) if the Council decides that an alteration is not desirable it must notify the Minister and give public notice of the decision.

Local Government Act 1989
Act No. 11/1989

s. 220

S. 220(2A)
inserted by
No. 76/1997
s. 19(2).

(2A) The Council must include in the notice required by sub-section (2)(b) its reasons for its decision.

S. 220(2B)
inserted by
No. 76/1997
s. 19(2).

(2B) The Council must give the Minister any other information that the Minister asks for in relation to a review.

S. 220(3)
amended by
No. 43/1993
s. 4(a).

(3) A person has a right to make a submission under section 223 on the review before the review is completed.

PART 10A—LOCAL GOVERNMENT PANELS

Pt 10A
(Heading and
ss 220A–
220E) inserted
by No.
43/1993 s. 3,
substituted by
No. 27/1997
s. 21.

220A. Local government panels

The Minister may establish one or more local government panels—

- (a) to conduct a review of any matter relating to local government restructuring;
- (b) to advise her or him on any other matter.

S. 220A
substituted by
No. 27/1997
s. 21.

220B. Membership of panels

- (1) A local government panel may consist of up to 5 people.
- (2) The Minister may appoint one of the members of a local government panel to be the chairperson of the panel.

S. 220B
substituted by
No. 27/1997
s. 21.

220C. Conditions of appointment

- (1) A member of a local government panel holds office on the terms and conditions determined by the Minister.

S. 220C
substituted by
No. 27/1997
s. 21.

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S. 220C(2)
repealed by
No. 46/1998
s. 7(Sch. 1).

220D. Panel proceedings

Subject to any direction of the Minister, a local government panel may regulate its own proceedings.

S. 220D
substituted by
No. 27/1997
s. 21.

Local Government Act 1989
Act No. 11/1989

s. 220E

S. 220E
substituted by
No. 27/1997
s. 21.

220E. *Improper use of information*

A person who is, or has been, a member of a local government panel must not make improper use of any information acquired as a member of the panel to gain, or to attempt to gain, directly or indirectly, a pecuniary or other advantage for himself or herself or for any other person.

Penalty: 20 penalty units.

**PART 10B—LOCAL GOVERNMENT RESTRUCTURING
REVIEWS**

Pt 10B
(Heading and
ss 220F–
220O)
inserted by
No. 43/1993
s. 3,
amended by
No. 125/1993
s. 14(l),
substituted as
Pt 10B
(Heading and
ss 220F–220I)
by No.
27/1997 s. 21.

220F. *Terms of review must be publicised*

S. 220F
substituted by
No. 27/1997
s. 21.

- (1) This section applies if the Minister establishes a local government panel to conduct a review of any matter relating to local government restructuring.
- (2) The Minister must publish a notice in a newspaper generally circulating in any relevant municipal district or neighbourhood of the terms of reference of the review.

220G. *Conduct of the review*

S. 220G
substituted by
No. 27/1997
s. 21.

A local government panel may conduct a review of any matter relating to local government restructuring in any way it thinks appropriate and may have regard to any matter that it considers to be relevant.

220H. *Legal proceedings excluded*

S. 220H
substituted by
No. 27/1997
s. 21.

No proceedings—

- (a) seeking the grant of any relief or remedy in the nature of certiorari, prohibition, mandamus or quo warranto, or the grant of a declaration or an injunction; or

(b) seeking any order under the **Administrative Law Act 1978**—

(whether on the ground of absence of jurisdiction or any other ground) may be brought against any local government panel, or any member of a local government panel, the Minister, or any other person in respect of any review under this Part, or any proceedings relating to such a review or any other act, matter or thing incidental to the conduct of such a review.

S. 220I substituted by No. 27/1997 s. 21.

220I. Supreme Court—limitation of jurisdiction

It is the intention of section 220H to alter or vary section 85 of the **Constitution Act 1975**.

Ss 220J–220O repealed by No. 27/1997 s. 21.

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PART 10C—RESTRUCTURING ORDERS

Pt 10C
(Heading and
ss 220P–
220T) inserted
by No.
43/1993 s. 3.

220P. Operation of this Part

The Minister must not recommend to the Governor in Council that an Order in Council be made in relation to a matter under section 220Q(a), (b), (d), (e) or (f) unless the Minister—

S. 220P
inserted by
No. 43/1993
s. 3,
substituted by
No. 27/1997
s. 22.

- (a) established a local government panel to conduct a review of the matter; and
- (b) has considered the report of the panel on the matter.

220Q. Power to make Orders

The Governor in Council may on the recommendation of the Minister make an Order in Council to do any one or more of the following—

S. 220Q
inserted by
No. 43/1993
s. 3.

- (a) alter the boundaries of a municipal district by adding or removing an area to or from an existing municipal district or an outlying district;
- (b) constitute a new municipal district by amalgamating existing municipal districts;
- (c) declare an existing boundary of a municipal district;
- (d) re-constitute an existing Council;
- (e) constitute a new Council;
- (f) abolish an existing Council;
- (g) constitute a Council as a Shire, Rural City or City;

S. 220Q(l)
amended by
No. 76/1995
s. 12.

- (h) give a name to, or alter the name of, a Council;
- (i) divide a municipal district into wards;
- (j) re-constitute a municipal district as an un-subdivided municipal district;
- (k) alter the boundaries of the wards of a municipal district by adding or removing an area to or from an existing ward;
- (l) alter the number of wards into which a municipal district is divided;

S. 220Q(na)
inserted by
No. 33/1995
s. 19(3),
substituted by
No. 76/1997
s. 20.

- (m) give a name to, or alter the name of, a ward of a municipal district;
- (n) alter the number of Councillors assigned to a Council or each ward;
- (na) re-constitute a Council so that it consists of Councillors elected to represent individual wards and Councillors elected to represent the municipal district as a whole;

S. 220Q(nb)
inserted by
No. 76/1997
s. 20.

- (nb) re-constitute such a Council (other than the Melbourne City Council) so that it consists only of Councillors elected to represent individual wards or only of Councillors elected to represent the municipal district as a whole;
- (o) provide for the interim administration of a new or re-constituted Council until an election is held.

220R. *Matters which may be included in Order*

S. 220R
inserted by
No. 43/1993
s. 3.

- (1) The Governor in Council may by Order in Council provide for any matter necessary or convenient to give effect to this Part or to any other Order in Council under this Part and to enable the effective implementation of any restructuring.
- (2) Without limiting the generality of sub-section (1), an Order in Council may provide for—
 - (a) any property, income, assets, rights, liabilities, expenses or other matters to be apportioned, settled, transferred, adjusted or determined;
 - (b) the appointment, transfer, redundancy or classification of Council staff and any matters relating to the remuneration and emoluments of such staff including superannuation and long service leave;
 - (c) the appointment, conditions of appointment and the powers and functions of any persons appointed to administer a new or re-constituted Council until an election is held;
 - (d) existing Councillors to go out of office and the election of new Councillors to be elected in the numbers, for the wards and the terms specified in the Order;
 - (e) the holding of elections having regard to the provisions of this Act and the regulations dealing with enrolment for and voting at Council elections and the election of Councillors, with such modifications as may be specified in the Order;
 - (f) the application, continuation, amendment or revocation of existing local laws;

- (g) transitional provisions in relation to any act, matter or thing done or required to be done by or in relation to any Council affected by the Order in Council.
- (3) If an Order in Council provides for the appointment of persons to administer a new or re-constituted Council until an election is held, those persons by virtue of this Act—
 - (a) are deemed to be the Councillors of the Council and together to constitute the Council as Councillors; and
 - (b) have and may exercise and discharge the responsibilities, liabilities, rights, powers, authorities, duties and functions conferred or imposed upon—
 - (i) a Council or a former Council by or under any Act;
 - (ii) Councillors generally or upon the Councillors of a former Council by or under any Act;
 - (iii) the persons so appointed by the Order in Council.

S. 220S
inserted by
No. 43/1993
s. 3.

220S. *General provisions relating to Orders*

- (1) An Order in Council made under this Part—
 - (a) must specify a day or days upon which the Order in Council comes into operation;
 - (b) upon being published in the Government Gazette has the like force and effect as if it were expressly enacted in this Act;
 - (c) may be amended or revoked by another Order in Council;

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- (d) has full force and effect despite any non-compliance with any of the matters required by this Act as preliminary to the making of the Order.
- (2) An Order in Council made under this Part may—
- (a) apply generally or be limited in its application by reference to specified matters or things;
 - (b) apply differently according to different factors or subject to specified exceptions;
 - (c) leave any matter or things to be from time to time determined, applied, dispensed with or regulated by a person or body specified in the Order;
 - (d) confer powers or impose duties in connection with the Order on a person or body specified in the Order;
 - (e) apply, adopt or incorporate, with or without modification, the provisions of any Act or of any regulations made under any Act;
 - (f) contain provisions of a savings and transitional nature consequent on the making of the Order, including providing for the construction of references in any instrument or in any other document of any kind;
 - (g) provide that during a transitional period specified in the Order the provisions of the **Local Government Act 1989** specified in the Order apply as varied or modified by the Order;
 - (h) modify the application of the **Valuation of Land Act 1960** by providing that existing valuations are to be used until a date specified in the Order;
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- (i) modify the application of section 3(2) of the **Local Government (Consequential Provisions) Act 1989**;
 - (j) provide for the manner in which or conditions subject to which any contracts or leases may be entered into by or with a Council during any period specified in the Order and specify any penalty (including a surcharge under section 133) which is to apply in respect of any non-compliance.
- (3) Without limiting the generality of sub-section (2)(g), an Order in Council may provide for—
- (a) the non-application of sections 5(3) and 91(1) during a transitional period specified in the Order;
 - (b) the fixing or alteration of the entitlement date for the purposes of any election;
 - (c) the non-application of sections 71, 74 and 75 to persons appointed to administer a new or re-constituted Council;
 - (d) the alteration of the date under section 150 by which a Council must adopt its first budget;
 - (e) the period within which a corporate plan in accordance with section 153A must be prepared;
 - (f) the non-application of all or any of the requirements of section 157 as specified in the Order during a transitional period specified in the Order;
 - (g) the alteration of the date under section 158 by which the Council must declare its rates and charges.
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220T. Panel review not needed for minor boundary changes

The Minister may, without complying with section 220P, recommend that an Order in Council be made to give effect to minor boundary changes if she or he certifies to the Governor in Council that—

- (a) the proposed changes are of a minor nature only; and
- (b) any Council whose municipal district is affected by the proposed changes has approved of the proposed changes; and
- (c) public notice of the proposed changes has been given in the municipal district or districts affected by the proposed changes.

S. 220T
inserted by
No. 43/1993
s. 3,
substituted by
No. 27/1997
s. 23.

PART 11—GENERAL

221. *Service charges on non-rateable land*

- (1) A Council may impose in relation to any land in its municipal district which is not rateable land an annual service charge for any of the following services which the Council provides or which the Council is prepared and able to provide—
 - (a) the provision of a water supply;
 - (b) the collection and disposal of refuse;
 - (c) the provision of sewage services;
 - (d) any other prescribed service.
- (2) The service charge under this section may be imposed on the basis of any criteria specified by the Council.
- (3) A Council may declare in relation to any land in its municipal district which is not rateable land and is not Crown land a special rate or charge in respect of street construction.
- (4) The provisions of Part 8 which relate to special rates and charges apply to a special rate or charge under sub-section (3) with any necessary adaptations.
- (5) A special rate or charge under sub-section (3) may be declared and levied together with a special rate or charge under section 163.
- (6) If a private street (within the meaning of section 575(1) of the **Local Government Act 1958**) is constructed wholly or partly at the cost of the owners or occupiers of any land which abuts or fronts the street, the Council may not at any future time recover any further costs in respect of the construction of a component of the private street if

that component has been previously constructed to the satisfaction of the Council from the owners or occupiers of the land under this section as a special rate or special charge.

222. *Right of inspection*

S. 222
amended by
No. 22/1992
s. 18.

- (1) A Council must ensure that the voters' roll and the documents containing prescribed matters of the Council are at all reasonable times open for inspection.
- (2) Any person is entitled upon payment of the relevant fee to—
 - (a) inspect any documents containing prescribed matters; and
 - (b) take copies of the documents containing prescribed matters.
- (3) A Council may fix reasonable fees for the inspection and copying of documents containing prescribed matters.
- (4) A Council does not incur any liability in respect of any information provided in good faith under this section for inspection or copying in addition to any information contained in the documents containing prescribed matters.

223. *Right to make submission*

- (1) The following provisions apply if a person is given a right to make a submission under this section (whether under this or any other Act) to the Council—
 - (a) the Council must publish a public notice stating that submissions in respect of the matter specified in the public notice will be considered in accordance with this section;

- (b) the Council or where the Council so determines a committee of the Council must consider any written submission which is received by the Council within 14 days after the publication of the public notice stating that submissions will be considered in accordance with this section;
- (c) any person who has made a written submission to the Council and requested that he or she be heard in support of the written submission is entitled to appear in person or by a person acting on his or her behalf before a meeting of the Council or the committee;
- (d) the Council must—
 - (i) fix the day, time and place of the meeting referred to in paragraph (c); and
 - (ii) give reasonable notice of the day, time and place of that meeting to every person who has lodged a separate submission and in the case of a submission lodged on behalf of a number of persons, to the person specified in the submission as the person to whom notice is to be given;
- (e) the Council must take into consideration all the submissions made under this section and after it has made a decision must notify in writing every person who has lodged a separate submission and in the case of a submission lodged on behalf of a number of persons, notify in writing 1 of those persons, of the decision and the reasons for the decision.

S. 223(1)(d)(ii)
amended by
No. 125/1993
s. 37(1)(b).

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- (2) If a proposal by the Council involves the exercise of powers at the same time under more than one section giving a right to make a submission and written submissions are received under more than 1 of those sections the submission procedure may be carried out in respect of all the written submissions at the same time.
- (3) Despite section 98, a Council may authorise the appropriate members of Council staff to carry out administrative procedures necessary to enable the Council to carry out its functions under this section.

S. 223(3)
inserted by
No. 13/1990
s. 26.

223A. Appointment of inspectors of municipal administration

S. 223A
inserted by
No. 27/1997
s. 24.

- (1) The Minister may appoint any person who has, in the opinion of the Minister, appropriate skills or knowledge to be an inspector of municipal administration.
- (2) The Minister—
- (a) may make an appointment either generally or specifically; and
 - (b) may impose conditions on an appointment.
- (3) An inspector is not, in respect of her or his office as an inspector, subject to the **Public Sector Management and Employment Act 1998**.
- (4) A person who is appointed as an inspector and who is not subject to the **Public Sector Management and Employment Act 1998** is entitled to be paid the amounts, and on the terms, fixed by the Minister.

S. 223A(3)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 223A(4)
amended by
No. 46/1998
s. 7(Sch. 1).

223B. Powers of inspectors of municipal administration

- (1) An inspector of municipal administration may examine or investigate—

S. 223B
inserted by
No. 27/1997
s. 24.

- (a) any matter relating to a Council's operations or to Council elections or electoral matters; and
 - (b) any possible breaches of this Act.
- (2) An inspector may, by notice in writing, require a person to—
- (a) produce any document (whether or not specifically identified in the notice) in the person's custody or control that relates to any matter that the inspector may examine or investigate; and
 - (b) give all reasonable assistance in connection with an examination or investigation; and
 - (c) appear before the inspector for examination on oath and to answer questions.
- (3) An inspector may administer an oath.
- (4) An inspector may take possession of any document produced under sub-section (1) for so long as she or he considers necessary.
- (5) However, while an inspector retains possession of such a document, she or he must permit any person who would be entitled to inspect the document if it were not in the inspector's possession to inspect the document at any reasonable time.
- (6) A person appearing before an inspector is entitled to be represented by another person.

224. *Authorised officers*

- (1) A Council may appoint any person other than a Councillor to be an authorised officer for the purposes of the administration and enforcement of any Act, regulations or local laws which relate to the functions and powers of the Council.

S. 224(1)
amended by
No. 125/1993
s. 26(2).

Local Government Act 1989
Act No. 11/1989

s. 224

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- (1A) A Council must maintain a register that shows the names of all people appointed by it to be authorised officers.
- (2) The Council must issue an identity card to each authorised officer.
- (3) An identity card must—
- (a) contain a photograph of the authorised officer; and
 - (b) contain the signature of the authorised officer; and
 - (c) be signed by a member of Council staff appointed for the purpose.
- (3A) If a Council appoints a police officer to be an authorised officer under sub-section (1), for the purposes of this section the police officer's certificate of identity is deemed to be an identity card issued under section 224(2) and is deemed to comply with section 224(3).
- (4) An authorised officer must produce his or her identity card upon being requested to do so.
- (5) An action taken or thing done by an authorised person is not invalidated by the failure of an authorised officer to produce his or her identity card.
- (6) For the purposes of this section, an authorised officer may demand the name and address of a person who has committed, or who the authorised officer reasonably suspects has committed or is about to commit, an offence against any Act, regulation or local law in respect of which he or she is appointed.

S. 224(1A)
inserted by
No. 125/1993
s. 26(3).

S. 224(3A)
inserted by
No. 99/1994
s. 19.

S. 224(6)
amended by
No. 125/1993
s. 26(4).

Local Government Act 1989
Act No. 11/1989

s. 224A

S. 224(6A)
inserted by
No. 125/1993
s. 26(5).

(6A) In making such a demand, the authorised officer must inform the person of the grounds on which the demand is made in sufficient detail to enable the person to understand the nature of the offence or suspected offence.

Penalty: 10 penalty units.

(7) An authorised officer may enter any land or building in the municipal district at any reasonable time to carry out and enforce this or any other Act or any regulation or local law.

(8) A person is guilty of an offence if he or she—

- (a) refuses to give his or her name and address upon demand by an authorised officer; or
- (b) obstructs or hinders an authorised officer while performing his or her duty; or
- (c) falsely represents himself or herself to be an authorised officer.

Penalty: 10 penalty units.

S. 224A
inserted by
No. 99/1994
s. 20.

224A. *Police may act as authorised officers to enforce certain local laws*

- (1) This section applies if a provision of a local law of a Council regulates the use, possession or consumption of alcohol.
 - (2) The Council may publish a notice in the Government Gazette identifying the provision of the local law and stating that any police officer may enforce that provision.
 - (3) If the Council publishes such a notice, any police officer may enforce the provision as if he or she was appointed to be an authorised officer under section 224 with respect to the provision.
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- (4) For the purposes of sub-section (3), a police officer's certificate of identity is deemed to be an identity card issued under section 224(2) and is deemed to comply with section 224(3).

225. *When Council or other person can carry out required work*

- (1) If a person fails to carry out any work which he or she is required to carry out by a Council under any Act, regulation or local law—
- (a) any other person may with the approval of the Council cause the work to be carried out; or
 - (b) the Council may carry out the work.
- (2) Any other person who carries out the work may recover the cost of carrying out the work from the person who failed to do it.
- (3) If the Council carries out the work the Council may recover the cost of carrying out the work from the person who failed to do it.

226. *Right of owner to carry out required work on occupied land*

- (1) If the owner of any land is required to carry out any work by a Council under any Act, regulation or local law the owner may give a written notice to the occupier of the land—
- (a) stating particulars of the work to be carried out; and
 - (b) requiring the occupier to permit the owner and any other person to enter the land and carry out the work.
- (2) If the occupier of the land does not comply with a notice within 7 days of being given the notice the

owner of the land may apply to a magistrates' court for an order.

- (3) The magistrates' court may make an order requiring the occupier of the land to permit the owner and any other person to enter the land and carry out the work.
- (4) The occupier of the land must comply with the order.

Penalty: 10 penalty units.

- (5) While the occupier of the land fails to comply with the order the owner of the land is excused from any penalty for failing to carry out the work.

227. Recovery of money owed to Council by former owner or occupier

If a former owner or occupier of any building or land in respect of which that person owes money (other than rates or charges or money for personal services carried out by the Council) to a Council does not pay the money, the Council may require the payment of all or part of the money from the present owner or occupier of the building or land.

S. 227AA
inserted by
No. 20/1996
s. 23.

227AA. Recovery of costs and fees under Housing Act 1983

A Council may recover from the owner of a house subject to a declaration under section 64 of the **Housing Act 1983**, section 56 of the **Housing Act 1958**, or section 8 of the **Slum Reclamation and Housing Act 1938**—

- (a) the reasonable cost of inspecting the house for the purpose of ascertaining whether it complies with the regulations as defined in section 62 of the **Housing Act 1983** or for the purpose of determining whether the Council should exercise its powers under section 68A of the **Housing Act 1983**;

- (b) any fees or expenses incurred by the Council in connection with the registration, or the cancellation of the registration, of a charge under section 67(2) of the **Housing Act 1983** or in connection with the lodging of a notice under clause 6(2) of Schedule 6 to the **Housing Act 1983** that a declaration (as defined in section 62 of that Act) has ceased to operate.

227A. Council may charge interest on unpaid money

S. 227A
inserted by
No. 22/1992
s. 19.

- (1) A Council may require a person to pay interest on any amount of money (other than rates and charges)—
- (a) which that person owes to the Council; and
- (b) which has not been paid by the due date.
- (2) The interest—
- (a) is to be calculated at the rate set from time to time for the purposes of this section by the Council; and
- (b) becomes payable—
- (i) on and from the date on which the money became due; or
- (ii) in the case of a court order requiring payment of the money, on and from the date of the court order; and
- (c) continues to be payable until the payment or recovery of the money.
- (3) The interest rate specified by the Council must not be more than the rate fixed under section 2 of the **Penalty Interest Rates Act 1983**.

S. 227A(3)
substituted by
No. 23/2000
s. 6.

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S. 227A(4)
repealed by
No. 23/2000
s. 6.

- (5) If the Council sets a new interest rate, the new rate takes effect on the date set by the Council and applies from that date to all money (other than interest) owing to the Council on that date.

S. 228
substituted by
No. 13/1990
s. 27.

228. *Indemnity provision*

S. 228(1)
amended by
Nos 43/1993
s. 4(b)(c),
46/1998
s. 7(Sch. 1),
54/1998
s. 22(a)(b).

- (1) The Crown must indemnify and keep indemnified the Minister and the Secretary to the Department of Infrastructure and any member of a local government panel against all actions or claims (whether arising during or after the term of office or employment of the Minister or Secretary to the Department of Infrastructure or member of the panel) in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of any function or power conferred on the Minister or Secretary to the Department of Infrastructure or member of the panel by or under this Act.
- (2) Part II of the **Crown Proceedings Act 1958** applies in respect of any proceedings to which sub-section (1) applies.

229. *Land information certificate*

S. 229(1)
amended by
No. 13/1990
s. 28.

- (1) A person may apply to a Council for a certificate specifying the prescribed information in relation to matters affecting any land in the municipal district.
- (2) An application for a certificate must be—
- (a) in the prescribed form; and
 - (b) sent to the Chief Executive Officer together with the prescribed fee.

S. 229(2)(b)
amended by
No. 125/1993
s. 14(l).

- (3) In addition to the prescribed information a Council may provide in the certificate any other information concerning the land as the Council considers in its absolute discretion to be relevant.
- (4) A Council does not incur any liability in respect of any information provided in addition to the prescribed information in good faith.
- (5) A certificate is conclusive proof as at the date it is given of the prescribed information stated in the certificate.

230. Notice in relation to disposition of land

- (1) A prescribed person must, in relation to the disposition of any land, give notice—
 - (a) in a prescribed form containing prescribed particulars; and
 - (b) to prescribed persons; and
 - (c) within a prescribed period.
- (2) A person is guilty of an offence if he or she contravenes this section without having a reasonable excuse.

Penalty: 10 penalty units.

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S. 231
repealed by
No. 125/1993
s. 14(m).

232. Proceedings

- (1) The Secretary to the Department of Infrastructure, a Council or a person authorised by the Council either generally or in a particular case may institute proceedings in the corporate name of the Council for—
 - (a) the recovery of any rates, charges, fees or other money due to the Council under any Act, regulation or local law; or

S. 232(1)
amended by
Nos 13/1990
s. 29(a),
46/1998
s. 7(Sch. 1).

S. 232(2)
amended by
No. 125/1993
s. 14(n).

S. 232(3)
inserted by
No. 13/1990
s. 29(b).

- (b) the enforcement of any provision of any Act, regulation or local law for which the Council is responsible; or
 - (c) the recovery of any penalty or surcharge in relation to any offence under any Act, regulation or local law the enforcement of which is the responsibility of the Council; or
 - (d) any other purpose specified by the Council.
- (2) A Chief Executive Officer or person authorised by the Council either generally or in a particular case may represent the Council in all respects as though he or she was the party concerned in any proceedings in which the Council is a party or has an interest.
- (3) Proceedings for a summary offence under this Act may be commenced within the period of 3 years after the commission of the alleged offence.

233. *Service on a Council*

Any document required to be served on or given to a Council may be served on or given to the Council by—

- (a) delivering the document to a member of Council staff at the Council office; or
- (b) sending the document by post to the Council's postal address.

234. *Service on a person*

- (1) Any document required to be served on or given to a person (other than a Council) under this Act, the regulations or any local law may be served on or given to the person by—
- (a) delivering the document to the person; or

- (b) leaving the document at his or her usual or last known place of residence or business with a person apparently not less than 16 years of age and apparently residing or employed at that place; or
- (c) sending the document by post addressed to the person at his or her last known place of residence or business.
- (2) If a document is required to be served on or given to the owner or occupier of any land and his or her name is not known the document may be addressed to "the owner" or "the occupier".
- (3) The document may be put up on a conspicuous position on the land if the name and address of the owner are not known and there is no occupier of the land.
- (4) If a document required to be served on or given to an owner or occupier of any land by a Council is properly served on or given to the owner or occupier of the land the document is binding on every subsequent owner or occupier of the land.

S. 234(1)(b)
amended by
No. 78/1991
s. 13(e).

235. *Evidence of service*

A statutory declaration by a person who has served or given a document in accordance with this Act stating the manner, place, date and time the document was served or given is evidence of the document having been served or given.

236. *Power of delegation*

- (1) The Minister may by instrument of delegation delegate to an officer or employee of the Department any power, duty or function of the Minister other than this power of delegation.

Local Government Act 1989
Act No. 11/1989

s. 237

S. 236(2)
amended by
No. 46/1998
s. 7(Sch. 1).

- (2) The Secretary to the Department of Infrastructure may by instrument of delegation delegate to an officer or employee of the Department any power, duty or function of the Secretary to the Department of Infrastructure other than this power of delegation.

237. Council records and information

S. 237(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (1) If a member of the police force is investigating any matter relating to a Council and it appears to the Secretary to the Department of Infrastructure that he or she should have access to Council records the Secretary to the Department of Infrastructure may in writing authorise the inspection of the records.
- (2) If any money is provided to a Council by the State or a Minister or government department, the Minister administering this Act may require the Council to provide the other Minister with any information relating to the expenditure or use of that money.
- (3) Any person who refuses to permit the inspection of the records under sub-section (1) or to provide information required by the Minister is guilty of an offence.

Penalty: 10 penalty units.

238. Obstructing Council

Any person who obstructs a Council or a member of Council staff in the performance of anything the Council or the member is empowered to do by any Act, regulation or local law is guilty of an offence.

Penalty: 10 penalty units.

239. Persons who are liable for offences

- (1) A person who aids, abets, counsels or procures or is in any way knowingly concerned in the

commission of an offence against this Act or any regulation or local law made under this Act is guilty of that offence and liable to the penalty for that offence.

- (2) If 2 or more persons are responsible for the same offence against this Act or any regulation or local law made under this Act each of those persons is liable to the penalty provided for that offence and the liability of each of them is independent of the liability of any other person.
- (3) If a body corporate is guilty of an offence against this Act or any regulation or local law any person who is concerned in or takes part in the management of that body corporate is also guilty of that offence and liable to the penalty for that offence.
- (4) It is a defence to a charge against a person who is concerned in or takes part in the management of a body corporate if that person proves that—
 - (a) the offence was committed by the body corporate without the consent or knowledge of that person; and
 - (b) that person exercised due diligence to prevent the commission of the offence.

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S. 239(5)
repealed by
No. 13/1990
s. 30.

240. Penalties

- (1) A person who is guilty of an offence against this Act for which a specific penalty is not provided is liable to a penalty not exceeding 20 penalty units.
- (2) Unless expressly provided to the contrary any penalty recovered for an offence against this Act

or any regulation or local law made under this Act must be paid into the municipal fund of—

- (a) the Council which recovered the penalty; or
- (b) the Council on whose behalf the penalty was recovered.

241. *Evidence of ownership*

The following is evidence that a person is the owner or occupier of any land in any proceedings for an offence against this Act or any regulation or local law made under this Act—

- (a) evidence that the person proceeded against is liable to be rated in respect of the land;
- (b) evidence by the certificate of the Registrar of Titles or an Assistant Registrar of Titles authenticated by the seal of the Office of Titles that any person is the registered proprietor of an estate in fee-simple or of a leasehold estate held of the Crown in the land;
- (c) evidence by the certificate of the Registrar-General or a Deputy Registrar-General authenticated by the seal of the Registrar-General that any person appears from the memorial of any deed, conveyance or instrument to be the last registered owner of the land.

S. 242
amended by
No. 78/1991
s. 12(a).

242. *Evidentiary provisions*

- (1) Until evidence is given to the contrary proof is not required as to any of the following—
 - (a) the constitution of a Council;
 - (b) the election of Councillors as Councillors of a Council;

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- (c) the size, location or boundaries of a municipal district;
 - (d) the size, location or boundaries of a ward;
 - (e) the fact that a place is located within a municipal district;
 - (f) the appointment of any person as a member of a committee or as a member of Council staff;
 - (g) the appointment of a member of Council staff to do an act or for a particular purpose;
 - (h) the authority to bring any proceedings;
 - (i) the making of a resolution by a Council;
 - (j) the making of a local law;
 - (k) that a document purporting to be issued by a Council was issued by the Council;
 - (l) the declaration of any rate or charge;
 - (m) the validity of the contents of any Council records or minutes;
 - (n) the correctness of the markings on a voters' roll used in an election or a copy or extract certified by the returning officer of that voters' roll indicating the names of voters who did not vote at the election.
- (2) A certificate certifying any matter relating to the contents of any document kept by a Council and purporting to be signed by the Chief Executive Officer is admissible in any proceedings as evidence of the matters appearing in the certificate.
- (3) All courts, judges and people acting judicially must take judicial notice of such a signature and
- S. 242(2)**
inserted by
No. 78/1991
s. 12(b),
amended by
No. 125/1993
s. 14(o).
- S. 242(3)**
inserted by
No. 78/1991
s. 12(b).

must presume that the certificate was properly signed until the contrary is proved.

S. 242A
inserted by
No. 50/1998
s. 51.

242A. *Supreme Court—limitation of jurisdiction*

It is the intention of section 207F(3)(aa) to alter or vary section 85 of the **Constitution Act 1975**.

243. *Regulations*

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act including, but not limited to, the matters and things specified in Schedule 12.
- (2) A power conferred by this Act to make regulations may be exercised—
 - (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
 - (b) so as to make, as respects the cases in relation to which it is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.
- (3) Regulations made under this Act may be made—
 - (a) so as to apply—
 - (i) at all times or at a specified time; or

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- (ii) throughout the whole of the State or in a specified part of the State; or
 - (iii) as specified in both sub-paragraphs (i) and (ii); and
 - (b) so as to require a matter affected by the regulations to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or body or a specified class of persons or bodies; and
 - (c) so as to apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
 - (iii) as formulated, issued, prescribed or published from time to time; and
 - (d) so as to leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by any government department, Council or public authority or any officer thereof; and
 - (e) so as to confer powers or impose duties in connection with the regulations on any government department, Council or public authority or any officer thereof; and
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- (f) so as to apply, adopt or incorporate, with or without modification, the provisions of any Act or of any regulations made under any Act as in force at a particular time; and
 - (g) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified; and
 - (h) so as to impose a penalty not exceeding 20 penalty units or 6 months imprisonment for a contravention of the regulations.
- (4) If under sub-section (3)(c)(iii) a regulation has applied, adopted or incorporated any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published from time to time and that document, code, standard, rule, specification or method is at any time amended, until the Minister causes notice to be published in the Government Gazette of that amendment, the document, code, standard, rule, specification or method is to be taken to have not been so amended.
- (5) A power conferred by this Act to make regulations providing for the imposition of fees may be exercised by providing for all or any of the following matters—
- (a) specific fees;
 - (b) maximum or minimum fees;
 - (c) maximum and minimum fees;
 - (d) scales of fees according to the value of goods or services provided for the fees;

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- (e) the payment of fees either generally or under specified conditions or in specified circumstances;
 - (f) the reduction, waiver or refund, in whole or in part, of the fees.
- (6) If under sub-section (5)(f) regulations provide for a reduction, waiver or refund, in whole or in part, of a fee, the reduction, waiver or refund may be expressed to apply either generally or specifically—
- (a) in respect of certain matters or transactions or classes of matters or transactions; or
 - (b) in respect of certain documents or classes of documents; or
 - (c) when an event happens; or
 - (d) in respect of certain persons or classes of persons; or
 - (e) in respect of any combination of matters, transactions, documents, events or persons—
- and may be expressed to apply subject to specified conditions or in the discretion of any specified person or body.
- (7) A fee that may be imposed by regulation is not limited to an amount that is related to the cost of providing a service.
- (8) Regulations made under item 1, 3, 4, 5, 5B, 6 or 7 of Schedule 12 may make provision for any act, matter or thing necessary to give effect to the regulations and are valid notwithstanding any inconsistency with any provisions of Schedules 2 and 3.

S. 243(8)
amended by
No. 15/1992
s. 14.

Local Government Act 1989
Act No. 11/1989

s. 243

S. 243(9)
amended by
No. 34/1996
s. 33(f).

- (9) Regulations made under this Act may be disallowed in whole or in part by resolution of either House of the Parliament in accordance with the requirements of section 23(2) of the **Subordinate Legislation Act 1994** which disallowance is deemed disallowance by Parliament for the purposes of that Act.
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**PART 12—PROVISIONS APPLYING TO THE MELTON
SHIRE COUNCIL**

Pt 12
(Heading and
ss 244–264)
inserted by
No. 86/1998
s. 26.

Division 1—Definitions

244. Definitions

In this Part—

"Commissioners" means people appointed to administer the Council;

"Council" means the Melton Shire Council.

S. 244
inserted by
No. 86/1998
s. 26.

Division 2—The holding of the first Poll

245. Minister may fix date for poll

- (1) The Minister may, by notice published in the Government Gazette, fix a date for the holding of a poll to determine the views of the voters of Melton as to whether the Council should continue to be administered by Commissioners.
- (2) If the Minister fixes a date for the holding of such a poll, the notice fixing the date must also set out the question or proposition that is to be put at the poll.

S. 245
inserted by
No. 86/1998
s. 26.

246. What is needed for poll to be carried

A poll under this Division is carried if—

- (a) the number of valid votes recorded is not less than half of the number of voters on the voters' roll; and
- (b) a majority of the valid votes recorded are in favour of the Council continuing to be administered by Commissioners.

S. 246
inserted by
No. 86/1998
s. 26.

S. 247
inserted by
No. 86/1998
s. 26.

247. Commissioners to continue if poll carried

- (1) If a poll under this Division is carried—
 - (a) the Governor in Council may continue to appoint Commissioners;
 - (b) any order made under Part 10C that applied to the Council immediately before the poll was carried continues to apply to the Council, except to the extent that it is inconsistent with any provision of this Part;
 - (c) a Commissioner is to be appointed for a term of up to 3 years;
 - (d) if the office of a Commissioner becomes vacant, the person appointed to fill the vacancy is to be appointed for the balance of the former Commissioner's term of office;
 - (e) a Commissioner may be reappointed on the expiry of her or his term of office.
- (2) Subject to this section, the Commissioners—
 - (a) are deemed to be the Councillors of the Council and together to constitute the Council as Councillors; and
 - (b) have and may exercise and discharge the responsibilities, liabilities, rights, powers, authorities, duties and functions conferred or imposed on—
 - (i) the Council by or under any Act;
 - (ii) Councillors generally or on the Councillors of the Council by or under any Act.

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- (3) While the Council continues to be administered by the Commissioners—
- (a) the following provisions do not apply to the Council—sections 10 and 28 to 30, Divisions 4, 5 and 6 of Part 3, sections 63, 67, 68, 68A, 69 to 75, 219 and 242(1)(b);
 - (b) sections 66, 76 to 81, 85 to 87, 90, 92, 114, 126, 133, 134, 193, clause 15(3) of Schedule 2 and clause 20(h) of Schedule 12 apply as if a reference to a Councillor in those sections was a reference to a Commissioner;
 - (c) section 84(1) is to be read as if a reference to "The Mayor or at least 3 Councillors" was a reference to a single Commissioner;
 - (d) section 90(2) is to be read as if it did not contain a reference to section 71(1);
 - (e) sections 153B(4B) and (4C) and 208G(3B) and (3C) are to be read as if a reference to "2 Councillors" was a reference to the Chairperson of the Commissioners;
 - (f) section 220 is to be read as if—
 - (i) C was defined as the number of Councillors the Council will have after its next general election; and
 - (ii) a reference to "each Councillor" was a reference to one of those Councillors;
 - (g) a reference to the Mayor of the Council in any Act (other than this Act), regulation, rule, by-law, local law, instrument or document is deemed to a reference to the Chairperson of the Commissioners;
-

S. 247(3)(h)
amended by
No. 55/2000
s. 4(a).

(h) any reference (other than in Division 3) to an obligation to hold an election in respect of the Council or a Councillor has no effect;

S. 247(3)(i)
inserted by
No. 55/2000
s. 4(b).

(i) section 248(2) is to be read as if the reference to Division 5 of Part 3 in paragraph (a) of this sub-section did not exist.

Pt 12 Div. 3
(Heading and
ss 248–255)
inserted by
No. 86/1998
s. 26,
substituted by
No. 55/2000
s. 3.

Division 3—Elections

S. 248
substituted by
No. 55/2000
s. 3.

248. *General election to be held*

- (1) A general election of Councillors for the Council must be held on 13 October 2001.
- (2) The Council is deemed to have decided to hold triennial elections and to have complied with section 35(2).
- (3) The costs of the election are to be borne by the Council.

S. 249
substituted by
No. 55/2000
s. 3.

249. *Meeting to be called after election*

The Chief Executive Officer must summon a meeting of the Council within 14 days after the day the returning officer for the election publicly declares the result of the election.

S. 250
substituted by
No. 55/2000
s. 3.

250. *Commissioners to go out of office*

The Commissioners go out of office when the meeting of the Council required by section 249 starts.

Local Government Act 1989
Act No. 11/1989

s. 251

251. Future elections

Section 36(2) applies as if the election required by section 248 had been held under section 36(1).

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S. 251
substituted by
No. 55/2000
s. 3.

Ss 252–255
repealed by
No. 55/2000
s. 3.

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Pt 12 Div. 4
(Heading and
ss 256–263)
inserted by
No. 86/1998
s. 26,
repealed by
No. 55/2000

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Pt 12 Div. 5
(Heading and
s. 264)
inserted by
No. 86/1998
s. 26,
repealed by
No. 55/2000
s. 3.

SCHEDULES

SCHEDULE 1

FUNCTIONS OF COUNCILS

Section 8

The functions of Councils include the following:

- 1. *General public services including—***
 - (1) Fire prevention and protection;
 - (2) Local emergency and safety services;
 - (3) Animal control, protection and conservation;
 - (4) Animal impounding;
 - (5) Plant control;
 - (6) Tip establishment and operation;
 - (7) Litter control;
 - (8) Collection and disposal of refuse;
 - 2. *Health, education, welfare and other community services including—***
 - (1) Services for children and families;
 - (2) Health inspection services;
 - (3) Public conveniences;
 - (4) Prevention and abatement of nuisances;
 - (5) Child care and development services and youth services;
 - (6) Aged, disabled and disadvantaged persons services;
 - (7) Migrants services;
 - (8) Cemeteries;
 - 3. *Planning and land use including—***
 - (1) Building control;
 - (2) Housing and other accommodation;
 - 4. *Property services including—***
-

Local Government Act 1989
Act No. 11/1989

Sch. 1

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- (1) Water, drainage, sewerage, gas and electricity;
 - (2) Land development schemes;
 - (3) Street maintenance and cleaning;

5. *Recreational and cultural services including—*

- (1) Halls and public buildings;
- (2) Sport, recreation, leisure and arts;
- (3) Parks, gardens and reserves;
- (4) Libraries and museums;
- (5) Historic buildings and places;
- (6) Public entertainment;

6. *Roads including—*

- (1) Bridges;
- (2) Footpaths, bicycle paths and nature strips;
- (3) Traffic control and signs;
- (4) Lighting and drainage of roads;

7. *Any other functions relating to the peace, order and good government of the municipal district including—*

- (1) Parking;
- (2) Transport;
- (3) Aerodromes;
- (4) Tourism;
- (5) Information;
- (6) Encouragement of employment opportunities;
- (7) Encouragement of commerce, industry and agriculture;
- (8) Environment control, protection and conservation;
- (9) Municipal enterprises (trading or entrepreneurial);
- (10) Municipal administration;

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**Sch. 1 cl. 7(11)
repealed by
No. 60/1995
s. 28(2).**

Sch. 1

Local Government Act 1989
Act No. 11/1989

SCHEDULE 2

PROVISIONS WITH RESPECT TO THE HOLDING OF AN
ELECTION

Section 41

1. *Returning officer and staff*

- (1) An election must be held before a returning officer.
- (2) The returning officer is to be—
 - (a) the Chief Executive Officer; or
 - (b) a member of Council staff appointed in writing by the Chief Executive Officer to be the returning officer; or
 - (c) if the Council has appointed the Victorian Electoral Commissioner, the Australian Electoral Commission or another Council to conduct the election, a person appointed in writing by that Commissioner, Commission or Council to be the returning officer.
- (3) The returning officer must appoint in writing at least one deputy returning officer.
- (4) A deputy returning officer is an authorised person for the purposes of this Act.
- (5) If the returning officer dies, resigns or becomes incapable of acting, a deputy returning officer nominated for the purpose of this sub-section in his or her instrument of appointment is to be the returning officer.
- (6) The returning officer may by instrument of delegation delegate to any deputy returning officer or authorised person any power or duty of the returning officer other than this power of delegation.

Sch. 2 cl. 1(2)
amended by
No. 125/1993
s. 14(p),
substituted by
No. 99/1994
s. 21,
amended by
No. 103/1995
s. 20(a)(b).

Sch. 2
cl. 1(2)(c)
amended by
No. 24/1999
s. 49(a)(i)(ii).

Sch. 2 cl. 1(3)
substituted by
No. 99/1994
s. 21.

Local Government Act 1989
Act No. 11/1989

- (7) The returning officer may appoint—
 - (a) authorised persons to exercise the powers or duties delegated to them; and
 - (b) interpreters for the purposes of an election.
- (8) A person who is a candidate at the election or a Councillor of the Council in respect of which the election is to be held cannot be appointed or act as a returning officer, authorised person or interpreter at the election or otherwise assist in the conduct of the election.

2. Declaration before carrying out duties

Sch. 2 cl. 2(1)
amended by
No. 54/1998
s. 3(1)(e).

- (1) The returning officer must before acting as the returning officer for the first time in respect of a Council make a declaration in writing containing the details required by the regulations.

Sch. 2 cl. 2(2)
amended by
No. 54/1998
s. 3(1)(e).

- (2) Any person appointed to be an authorised person or interpreter at an election must make a declaration in writing containing the details required by the regulations before carrying out any duties at that election.

3. Notice of election

- (1) Not less than 40 days nor more than 60 days before an election, the returning officer must give public notice of the election.

Sch. 2 cl. 3(2)
amended by
Nos 15/1992
s. 15, 76/1995
s. 13(a),
54/1998
ss 11, 13(1).

- (2) The public notice must specify that notice of candidature will be received at the place specified in the public notice by the returning officer during the period beginning on the day that the certified voters' roll becomes available and ending at 4 p.m. on the 31st day before election day.

4. Returning officer to give election advice

The returning officer may give any advice to members of the public relating to the conduct of an election that the returning officer considers appropriate.

Local Government Act 1989
Act No. 11/1989

Sch. 2

5. Notice of candidature

- (1) A candidate for election must—
- (a) complete a notice of candidature containing the details required by the regulations; and **Sch. 2**
cl. 5(1)(a)
substituted by
No. 54/1998
s. 3(1)(f).
 - (b) sign the notice of candidature; and
 - (c) make a declaration in writing containing the details required by the regulations; and **Sch. 2**
cl. 5(1)(c)
amended by
No. 54/1998
s. 3(1)(e).
 - (d) pay the prescribed fee in cash or by bank cheque.
- (2) A candidate must be named in a notice of candidature by specifying—
- (a) the surname and the christian or given name, or one or more of the christian or given names and the address under which the candidate is or is entitled to be enrolled on the voters' roll; or **Sch. 2**
cl. 5(2)(a)
amended by
No. 15/1992
s. 5(3).
 - (b) in the case of a by-election where the candidate is not enrolled on the voters' roll—the surname and the christian or given name, or one or more of the christian or given names and the address under which the candidate is entitled to be enrolled.
- (3) If a candidate has changed his or her name from that which appears on the voters' roll, the candidate must attach evidence of the change of name to the notice of candidature.
- (4) The candidate's name is to appear on the ballot-paper in the form specified in the notice under sub-clause (2).
- (5) For the purposes of sub-clause (4) a christian or given name may be specified by—
- (a) an initial standing for that name; or
 - (b) a commonly accepted variation of that name, including an abbreviation or an alternative form of that name; or **Sch. 2**
cl. 5(5)(b)
amended by
No. 15/1992
s. 16.

Local Government Act 1989
Act No. 11/1989

Sch. 2

Sch. 2
cl. 5(5)(c)
inserted by
No. 15/1992
s. 16.
Sch. 2 cl. 5(6)
inserted by
No. 15/1992
s. 16.

(c) a commonly used other name specific to the candidate by which the candidate is usually identified.

(6) A name cannot be specified on a ballot-paper under sub-clause (5)(c) unless the candidate produces evidence to the satisfaction of the returning officer that the proposed name is a commonly used other name specific to the candidate by which the candidate is usually identified.

Sch. 2 cl. 5(7)
inserted by
No. 15/1992
s. 16.

(7) A title or other designation cannot be included with, or as part of, the name of a candidate on a ballot-paper.

6. *Validity of candidature*

Sch. 2 cl. 6(2)
amended by
No. 99/1994
s. 22.

- (1) A person is not eligible to be a candidate for election if—
 - (a) the notice of candidature is not properly completed; or
 - (b) the prescribed fee has not been paid.
 - (2) The returning officer can only reject a notice of candidature if clause 5 has not been complied with or if sub-clause (4), (5) or (6) applies.
 - (3) If the returning officer is satisfied that clause 5 has been complied with, the returning officer cannot reject the notice of candidature because of—
 - (a) any possible defect or error in the qualification of the candidate; or
 - (b) any formal defect or error.
 - (4) The returning officer must reject a notice of candidature submitted by a Councillor of the Council holding the election who does not go out of office on the day of the election.
 - (5) If a person has submitted a notice of candidature for election for 2 or more wards the returning officer must reject any notice of candidature other than the first notice of candidature received by the returning officer.
 - (6) If a person has submitted a notice of candidature for more than 1 election in the same ward on the same day the returning officer must reject any notice of candidature other than the first notice of candidature received by the returning officer.
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Local Government Act 1989
Act No. 11/1989

Sch. 2

(6A) In the case of a Council holding elections for both wards and the municipal district as a whole, if a person has submitted a notice of candidature for election for both a ward and the municipal district as a whole, the returning officer must reject any notice of candidature other than the first notice of candidature received by the returning officer.

Sch. 2 cl.
6(6A) inserted
by No.
33/1995
s. 19(4),
amended by
No. 54/1998
s. 12.

(7) The returning officer must return any rejected notice of candidature to the person who submitted it.

7. *Withdrawal of notice of candidature*

(1) A candidate may withdraw a notice of candidature before 4 p.m. on the 31st day before election day.

Sch. 2 cl. 7(1)
amended by
Nos 76/1995
s. 13(a),
54/1998
s. 13(1).

(2) A notice of withdrawal must contain the details required by the regulations and must be signed by the candidate.

Sch. 2 cl. 7(2)
substituted by
No. 54/1998
s. 3(1)(g).

(3) The returning officer must keep the notice of candidature.

(4) The returning officer must refund the prescribed fee to the candidate.

8. *Retirement of a candidate*

(1) A candidate may retire before a declaration of an election is made or, if an election is to be held, before the day of the election, only in accordance with this clause.

Sch. 2 cl. 8
repealed by
No. 15/1992
s. 17(a), new
Sch. 2 cl. 8
inserted by
No. 43/1993
s. 17.

(1A) A candidate may retire before the day of an election if the retirement will result in an uncontested election.

Sch. 2 cl.
8(1A) inserted
by No.
76/1995
s. 14(a).

(2) To retire in any other circumstance, a candidate must obtain an order from the Magistrates' Court that one of the following applies to the candidate—

Sch. 2 cl. 8(2)
amended by
No. 76/1995
s. 14(b)(i).

(a) he or she is not qualified to be a candidate as required by section 28(1);

(b) he or she is disqualified by section 29(1) or 29(2);

Local Government Act 1989
Act No. 11/1989

Sch. 2

Sch. 2
cl. 8(2)(c)
repealed by
No. 76/1995
s. 14(b)(ii).

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Sch. 2 cl. 8(3)
amended by
No. 76/1995
s. 14(c).

(3) The candidate must give the returning office a notice of retirement signed by the candidate and, if applicable, a copy of the order obtained under sub-clause (2).

Sch. 2 cl. 8(4)
amended by
No. 76/1995
s. 14(d).

(4) The retirement takes effect upon the returning officer receiving the notice of retirement and, if applicable, the copy of the order.

Sch. 2 cl.
8(4A) inserted
by No.
76/1995
s. 14(e).

(4A) If practicable, the returning officer must give public notice of a retirement before the day of the election.

Sch. 2 cl. 8(5)
amended by
No. 76/1995
s. 14(f)(i).

(5) The following provisions apply upon the retirement of a candidate who has obtained an order under sub-clause (2)—

Sch. 2
cl. 8(5)(a)
repealed by
No. 76/1995
s. 14(f)(ii).

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(b) if a candidate retires after the ballot-papers have been printed the returning officer must take all practicable steps to remove the name of the retiring candidate from the ballot-papers;

(c) if the returning officer receives a completed ballot-paper on which the name of the retiring candidate has not been removed, the name of the retiring candidate and any figure next to the name are to be treated as removed and the ballot-paper is to be given effect to in the voter's order of preference in respect of the remaining candidates;

Local Government Act 1989
Act No. 11/1989

Sch. 2

(d) if a candidate retires after 4 p.m. on the Monday before the day of the election, the returning officer may permit the remaining candidates to remove the name of the retiring candidate from their how-to-vote cards in a manner approved by the returning officer.

(6) The returning officer must keep the notice of candidature.

9. *Death of a candidate*

Sch. 2 cl. 9 substituted by No. 15/1992 s. 17(b).

(1) If a candidate dies before 4 p.m. on the 31st day before election day, the notice of candidature becomes void.

Sch. 2 cl. 9(1) amended by Nos 76/1995 s. 13(a), 54/1998 s. 13(1).

(2) If a candidate dies after 4 p.m. on the 31st day before election day the election fails and the returning officer must give public notice that the election has failed.

Sch. 2 cl. 9(2) amended by Nos 76/1995 s. 13(b), 54/1998 s. 13(1).

(3) The returning officer must keep the notice of candidature.

(4) The returning officer must—

(a) if sub-section (1) applies, return the prescribed fee to the candidate's personal representative; or

(b) if sub-section (2) applies, return the prescribed fee to the candidate's personal representative and to the other candidates.

10. *Filling of vacancies*

(1) If—

(a) the number of candidates; or

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Sch. 2 cl. 10(1)(b) repealed by No. 15/1992 s. 17(c).

Local Government Act 1989
Act No. 11/1989

Sch. 2

Sch. 2
cl. 10(1)(c)
amended by
No. 76/1995
s. 15.

(c) the withdrawal or retirement of a candidate—

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

(2) If the returning officer declares the candidate or candidates to be elected under sub-clause (1)(a), the declaration must be made—

Sch. 2
cl. 10(2)(a)
amended by
Nos 76/1995
s. 13(c),
54/1998
s. 13(1).

(a) in the case of a by-election, immediately after 4 p.m. on the 31st day before election day; or

(b) in the case of any other election, on election day.

(3) If there are no candidates for an election the election fails and the returning officer must give public notice that the election has failed.

Sch. 2 cl. 10(4)
amended by
Nos 76/1995
s. 13(c),
54/1998
s. 13(1).

(4) A vacancy caused if there is no candidate or the number of candidates is less than the number of vacancies is to be treated as an extraordinary vacancy occurring on the 31st day before election day.

Sch. 2 cl. 10(5)
repealed by
No. 15/1992
s. 17(d).

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(6) If the number of candidates exceeds the number of vacancies to be filled, an election must be held.

(7) The returning officer must give notice of—

(a) an extraordinary vacancy under sub-clause (4); and

(b) an election under sub-clause (6).

11. *Inspection of notices of candidature*

Any person may inspect notices of candidature at the Council office during ordinary office hours.

Local Government Act 1989
Act No. 11/1989

Sch. 2

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Sch. 2 cl. 12
amended by
No. 15/1992
ss 18, 20,
repealed by
No. 76/1995
s. 16(1).

Sch. 2 cl. 13
amended by
No. 15/1992
s. 19(a)(b),
repealed by
No. 76/1995
s. 16(1).

14. *Ballot-papers*

- (1) Ballot-papers for an election must contain the details required by the regulations.

- (2) The returning officer must as soon as practicable after 4 p.m. on the 31st day before election day hold a ballot by lot to determine the order in which the name of each candidate is to appear on the ballot-paper.

- (3) A candidate or a person authorised in writing by a candidate may be present at a ballot by lot.

- (4) If in the opinion of the returning officer a similarity in the names of 2 or more candidates is likely to cause confusion, the returning officer may arrange for the names of the candidates to be printed with a description or addition to distinguish them from each other.

- (5) Despite sub-clause (4), a ballot-paper must not contain any reference to the allegiance of a candidate to any political party or other cause or to the fact that a candidate has no such allegiance.

- (6) Sub-clause (5) does not apply to the name of a candidate.

Sch. 2 cl. 14(1)
substituted by
No. 54/1998
s. 3(1)(h).

Sch. 2 cl. 14(2)
amended by
Nos 76/1995
s. 13(c),
54/1998
s. 13(1).

Sch. 2 cl. 14(5)
inserted by
No. 54/1998
s. 14.

Sch. 2 cl. 14(6)
inserted by
No. 54/1998
s. 14.

Local Government Act 1989
Act No. 11/1989

Sch. 2

15. Scrutineers

Sch. 2 cl. 15(1)
substituted by
No. 76/1995
s. 16(2)(a).

(1) A candidate may appoint 1 or more scrutineers.

Sch. 2 cl. 15(2)
substituted by
No. 15/1992
s. 21(a),
repealed by
No. 76/1995
s. 16(2)(a).

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Sch. 2
cl. 15(2A)
inserted by
No. 15/1992
s. 21(a),
substituted by
No. 54/1998
s. 3(1)(i).

(2A) The appointment of a scrutineer must be made in writing containing the details required by the regulations and must be delivered to the returning officer.

Sch. 2
cl. 15(2B)
inserted by
No. 15/1992
s. 21(a).

(2B) A separate form must be used for each appointment of a scrutineer.

(3) A person cannot be appointed as a scrutineer if he or she is—

Sch. 2
cl. 15(3)(c)
amended by
Nos 15/1992
s. 21(b),
54/1998 s. 15.

- (a) a Councillor of the Council; or
- (b) a candidate at the election; or
- (c) a candidate at any other election conducted simultaneously with that election in relation to the same Council; or

Sch. 2
cl. 15(3)(d)
inserted by
No. 54/1998
s. 15,
amended by
No. 24/1999
s. 49(b)(i)(ii).

- (d) a person appointed by the Victorian Electoral Commissioner, the Australian Electoral Commission or another Council to be involved in the conduct of the election if that Commissioner, Commission or Council has been appointed to conduct the election.

Local Government Act 1989
Act No. 11/1989

Sch. 2

(4) Before a scrutineer can act as a scrutineer she or he must make a written declaration containing the details required by the regulations.

Sch. 2 cl. 15(4) substituted by No. 54/1998 s. 3(1)(j).

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Sch. 2 cl. 15(5)–(9) repealed by No. 76/1995 s. 16(2)(b).

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Sch. 2 cl. 16 repealed by No. 76/1995 s. 16(1).

17. *Power to keep the peace*

(1) The returning officer and any person authorised by the returning officer for the purpose have the following powers—

(a) to maintain and enforce order and keep the peace at any election or polling place;

(b) without any warrant to cause any person who—

(i) obstructs the approaches to any polling place or polling booth; or

(ii) behaves in a disorderly manner; or

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Sch. 2 cl. 17(1)(b)(iii) repealed by No. 76/1995 s. 16(1).

to be removed;

(c) without warrant to cause any person reasonably suspected of committing an offence against this Act to be arrested.

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Sch. 2 cl. 17(2)(3) repealed by No. 76/1995 s. 16(1).

Sch. 2
cls 18–22
repealed by
No. 76/1995
s. 16(1).

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23. Declaration of result

- (1) The returning officer must as soon as practicable on or after election day publicly declare the result of the election by giving the name or names of the candidate or candidates elected.
- (2) The returning officer must as soon as practicable after publicly declaring the result—
 - (a) give public notice of—
 - (i) the name or names of the Councillor or Councillors elected; and
 - (ii) the order in which the Councillors were elected; and
 - (b) advise the Minister of the result.

24. Refund of deposit

The prescribed fee paid for or on behalf of a candidate must be repaid to the candidate on the certificate of the returning officer if—

- (a) the candidate is declared elected; or
- (b) the total number of first preference votes in the candidate's favour is at least equal to 4% of the total number of first preference votes in favour of all the candidates in the election.

25. Death or incapacity of an elected candidate before the declaration of the result

- (1) The death or incapacity of an elected candidate after the close of voting but before the declaration of the result does not affect the declaration of the election of any other elected candidates.
- (2) The vacancy arising as a result of the death or incapacity of the elected candidate is to be treated as an extraordinary vacancy occurring on the day on which the candidate would have been declared elected.

Local Government Act 1989
Act No. 11/1989

Sch. 2

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Sch. 2 cl. 26
repealed by
No. 76/1995
s. 16(1).

SCHEDULE 3

**PROVISIONS WITH RESPECT TO VOTING AND THE
COUNTING OF VOTES AND POLLS OF VOTERS**

Section 42

PART 1—VOTING

1. *Marking of ballot-papers*

- (1) A person must mark his or her vote on the ballot-paper in the prescribed manner.
- (2) A ballot-paper can only be rejected if it is not marked as prescribed.
- (3) Except as otherwise expressly provided, a ballot-paper is to be given effect to according to the voter's intention so far as the voter's intention is clear.

2. *Disadvantaged voters*

- (1) This clause applies to any voter who—
 - (a) is wholly or partially blind; or
 - (b) is unable to read or write; or
 - (c) has severe difficulty in reading or writing; or
 - (d) is not sufficiently familiar with the English language to vote without assistance and an interpreter is not available.
- (2) After receiving a ballot-paper, the voter may request—
 - (a) a person nominated by the voter; or
 - (b) an authorised person—
to assist the voter to mark the ballot-paper or to mark the ballot-paper as the voter instructs.

- (2A) The voter may also request—
 - (a) a person nominated by the voter; or

Sch. 3 cl.
2(2A) inserted
by No.
54/1998
s. 16.

Local Government Act 1989
Act No. 11/1989

Sch. 3

(b) an authorised person—

to complete any certificate or declaration that must accompany a postal vote or to sign such a certificate or declaration on the voter's behalf.

- (3) If the voter makes the request at a polling booth, an authorised person must be present when the ballot-paper is marked and at the request of the voter may inspect the ballot-paper before it is placed in the ballot-box.
- (4) The voter may indicate the manner in which he or she wants to mark his or her vote by presenting a statement in writing.
- (5) If sub-clause (3) applies, the person assisting the voter must without allowing the manner in which the ballot-paper has been marked to be disclosed, deposit it in the ballot-box and leave the polling booth.

Sch. 3 cl. 2(3)
amended by
No. 76/1995
s. 16(3)(a).

Sch. 3 cl. 2(5)
amended by
Nos 76/1995
s. 16(3)(b),
34/1996
s. 33(g).

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Sch. 3 cls 3, 4
repealed by
No. 76/1995
s. 16(4).

PART 2—GENERAL PROVISIONS

5. *Place where votes to be counted*

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Sch. 3 cl. 5(1)
amended by
No. 15/1992
s. 22,
repealed by
No. 76/1995
s. 16(4).

- (2) The returning officer must advise each candidate before election day where the count is to be made.

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Sch. 3 cls 6–8
repealed by
No. 76/1995
s. 16(4).

PART 3—RESULT WHERE ONLY ONE COUNCILLOR IS TO BE ELECTED

Local Government Act 1989
Act No. 11/1989

9. Only two candidates

If only 1 Councillor is to be elected and there are only 2 candidates the result is to be determined as follows—

- (a) the candidate who has received the greater number of first preference votes is to be declared elected by the returning officer;
- (b) if the 2 candidates have received an equal number of votes the result is to be determined by lot by the returning officer.

10. More than two candidates

If only 1 Councillor is to be elected and there are more than 2 candidates the result is to be determined as follows—

- (a) the candidate who has received the greatest number of first preference votes if that number constitutes an absolute majority of votes is to be declared elected by the returning officer;
- (b) "**Absolute majority of votes**" means a number of votes greater than one-half of the total number of ballot-papers (excluding ballot-papers which are rejected) and if necessary includes the vote by lot;
- (c) if no candidate has received an absolute majority of votes, the returning officer upon receipt of the several sealed parcels from any authorised person and with the assistance of any authorised persons and in the presence and subject to the inspection of any 1 scrutineer, if present, appointed by each candidate but of no other person, must—
 - (i) open all the sealed parcels containing used ballot-papers; and
 - (ii) arrange such ballot-papers together with the allowed postal ballot-papers, if any, by placing in a separate parcel all those on which a first preference is indicated for the same candidate and preference votes are also duly given for all the remaining candidates, omitting ballot-papers which are rejected; and
 - (iii) declare the candidate who has received the fewest first preference votes a defeated candidate; and

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- (iv) distribute the ballot-papers counted to the defeated candidate amongst the non-defeated candidates next in order of the voters' preference; and
 - (v) after the distribution again ascertain the total number of votes given to each non-defeated candidate;
- (d) the candidate who has then received the greatest number of votes if that number constitutes an absolute majority of votes is to be declared elected by the returning officer;
 - (e) if no candidate then has an absolute majority of votes the process of declaring the candidate who has the fewest votes a defeated candidate and distributing the ballot-papers counted to the defeated candidate amongst the non-defeated candidates next in order of the voters' preference is to be repeated until 1 candidate has received an absolute majority of votes and is declared elected by the returning officer;
 - (f) if on any count 2 or more candidates have an equal number of votes and 1 of them has to be declared a defeated candidate the result is to be determined by lot by the returning officer;
 - (g) if on the final count 2 candidates have received an equal number of votes the result is to be determined by lot by the returning officer.

PART 4—RESULT WHERE TWO OR MORE COUNCILLORS ARE TO BE ELECTED

11. *Two or more Councillors to be elected*

- (1) If 2 or more Councillors are to be elected the result is to be determined as set out in this Part.
- (2) In this Part—

"absolute majority of votes" means a number of votes greater than one-half of the total number of ballot-papers (excluding ballot-papers which are rejected) and if necessary includes the vote by lot;

"continuing candidate" means a candidate not already elected or excluded from the count.

Local Government Act 1989
Act No. 11/1989

- (3) The first vacancy is to be filled in the manner specified in Part 3 of this Schedule for determining the result where 1 Councillor is to be elected and there are more than 2 candidates.
- (4) For the purposes of sub-clause (3), a reference in Part 3 of this Schedule to a "defeated candidate" or a "non-defeated candidate" is to be construed as a reference to an "excluded candidate" or a "continuing candidate" as the case may be.
- (5) The second vacancy is to be filled as follows—
- (a) the returning officer with the assistance of any authorised persons and in the presence and subject to the inspection of any 1 scrutineer, if present, appointed by each candidate but of no other person, must—
 - (i) re-arrange all the ballot papers (other than the ballot-papers which are rejected) under the names of the respective candidates for which a first preference is indicated; and
 - (ii) place the ballot-papers on which a first preference is indicated for the elected candidate in the parcel of the continuing candidate next in order of the voter's preference; and
 - (iii) determine the total number of votes given to each continuing candidate;
 - (b) the candidate who has received the greatest number of votes if that number constitutes an absolute majority of votes is to be declared duly elected by the returning officer;
 - (c) if no candidate has an absolute majority of votes the returning officer must—
 - (i) declare the candidate who has received the fewest votes an excluded candidate; and
 - (ii) distribute the ballot-papers counted to the excluded candidate amongst the continuing candidates next in order of the voters' preference; and
 - (iii) determine the total number of votes given to each continuing candidate;
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Local Government Act 1989
Act No. 11/1989

Sch. 3

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- (d) the candidate who then has received the greatest number of votes if that number constitutes an absolute majority of votes is to be declared duly elected by the returning officer;
 - (e) if no candidate then has an absolute majority of votes the process of declaring the candidate who has the fewest votes an excluded candidate and distributing the ballot-papers counted to the excluded candidate amongst the continuing candidates next in order of the voter's preference is to be repeated until 1 candidate has received an absolute majority of votes and is declared elected by the returning officer.
- (6) The third and every subsequent vacancy is to be filled in the manner specified in sub-clause (5) with every ballot-paper on which a first preference is indicated for an elected candidate being placed in the parcel of the continuing candidate next in order of the voter's preference.
 - (7) If on any count 2 or more candidates have an equal number of votes and 1 of them has to be declared an excluded candidate the returning officer must determine by lot which is to be declared an excluded candidate.
 - (8) If on the final count 2 candidates have received an equal number of votes the result is to be determined by lot by the returning officer.

Local Government Act 1989
Act No. 11/1989

Sch. 3

**PART 4A—METHOD TO BE USED FOR DISTRICT-WIDE ELECTIONS
FOR SPECIFIED COUNCILS**

Sch. 3 Pt 4A
(Heading)
inserted by
No. 33/1995
s. 22,
amended by
No. 76/1997
s. 4(2),
substituted by
No. 54/1998
s. 18(a).
Sch. 3 Pt. 4A
(cl. 11A)
inserted by
No. 33/1995
s. 22.

Sch. 3 cl. 11A
inserted by
No. 33/1995
s. 22.,
amended by
No. 76/1997
s. 4(3)
(ILA s. 39B(3)).

Sch. 3
cl. 11A(1)
amended by
No. 54/1998
s. 18(b).

Sch. 3
cl. 11A(2)
inserted by
No. 76/1997
s. 4(3).

11A. *Application of Part*

- (1) This Part applies to the City of Melbourne at any election in respect of the municipal district as a whole.
- (2) This Part also applies if an Order made under section 220Q(na) re-constituting a Council specifies that it is to apply to the election of Councillors to represent the municipal district of the Council as a whole.

11B. *2 or more Councillors to be elected*

- (1) The result is to be determined as set out in this clause.
- (2) In this clause—
 - "continuing candidate"** means a candidate not already elected or excluded from the count;
 - "quota"** means the number determined by dividing the number of first preference votes by 1 more than the number of candidates required to be elected and by increasing the quotient so obtained (disregarding any remainder) by 1;
 - "surplus votes"** means the number, if any, of votes in excess of the quota of each elected candidate.

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- (3) A reference to votes of or obtained or received by a candidate includes votes obtained or received by the candidate on any transfer.
- (4) The returning officer upon receipt of the several sealed parcels from any authorised person and with the assistance of any authorised persons and in the presence and subject to the inspection of any 1 scrutineer, if present, appointed by each candidate but of no other person must—
- (a) open all the sealed parcels containing used ballot-papers; and
 - (b) arrange the ballot-papers together with the allowed postal ballot-papers, if any, by placing in a separate parcel all those on which a first preference is indicated for the same candidate and preference votes are also duly given for all the remaining candidates, omitting ballot-papers which are rejected; and
 - (c) ascertain—
 - (i) the number of first preference votes given for each candidate; and
 - (ii) the total number of first preference votes.
- (5) A quota is to be determined.
- (6) Any candidate who has received a number of first preference votes equal to or greater than the quota is to be declared duly elected by the returning officer.
- (7) Unless all the vacancies have been filled, the surplus votes of each elected candidate are to be transferred to the continuing candidates as follows—
- (a) the number of surplus votes of the elected candidate is to be divided by the number of first preference votes received by the elected candidate and the resulting fraction is the transfer value;
 - (b) the total number of ballot-papers of the elected candidate that express the first preference vote for the elected candidate and the next available preference for a particular continuing candidate is to be multiplied by the transfer value;
 - (c) the number obtained under paragraph (b) (disregarding any fraction) is to be added to the number of first preference votes of the continuing
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Local Government Act 1989
Act No. 11/1989

candidate and all those ballot-papers are to be transferred to the continuing candidate.

- (8) Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any transfer under sub-clause (7) is to be declared duly elected by the returning officer.
- (9) Unless all the vacancies have been filled, the surplus votes, if any, of any candidate elected under sub-clause (8) or elected subsequently under this sub-clause are to be transferred to the continuing candidates in accordance with sub-clause (7) and any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of the transfer is to be declared duly elected by the returning officer.
- (10) If a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer of the surplus votes of a particular elected candidate under sub-clause (7) or (9), no votes of any other candidate are to be transferred to the continuing candidate.
- (11) For the purposes of the application of sub-clause (7) in relation to a transfer of the surplus votes of an elected candidate under sub-clause (9) or (14), each ballot-paper of the elected candidate obtained by the elected candidate on a transfer is to be dealt with as if—
 - (a) any vote it expressed for the elected candidate were a first preference vote; and
 - (b) the name of any other candidate previously elected or excluded had not been on the ballot-paper; and
 - (c) the numbers indicating subsequent preferences had been altered accordingly.
- (12) If, after the counting of first preference votes or the transfer of any surplus votes of elected candidates, no candidate has, or less than the number of candidates required to be elected have, received a number of votes equal to the quota, the candidate who has the fewest votes is to be excluded and all that candidate's votes are to be transferred to the continuing candidates as follows—
 - (a) the total number of ballot-papers of the excluded candidate that express the first preference vote for the excluded candidate and the next available preference for a particular continuing candidate are to be

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- transferred at a transfer value of 1 for each ballot-paper and added to the number of votes of the continuing candidate and all those ballot-papers are to be transferred to the continuing candidate;
- (b) the total number, if any, of other votes obtained by the excluded candidate on transfers are to be transferred from the excluded candidate beginning with the highest transfer value and ending with the ballot papers received at the lowest transfer value, as follows—
- (i) the total number of ballot papers received by the excluded candidate at a particular transfer value and expressing the next available preference for a particular continuing candidate is to be multiplied by that transfer value; and
 - (ii) the number so obtained (disregarding any fraction) is to be added to the number of votes of the continuing candidate; and
 - (iii) all those ballot papers are to be transferred to the continuing candidate.
- (13) Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of a transfer of votes of an excluded candidate under sub-clause (12) or (16) is to be declared duly elected by the returning officer.
- (14) Subject to sub-clause (15), unless all the vacancies have been filled, the surplus votes, if any, of a candidate elected under sub-clause (13) are to be transferred in accordance with sub-clause (7).
- (15) If a candidate elected under sub-clause (13) is elected before all the votes of the excluded candidate have been transferred, the surplus votes, if any, of the elected candidate are not to be transferred until the remaining votes of the excluded candidate have been transferred in accordance with sub-clause (12) to continuing candidates.
- (16) Subject to sub-clause (18), if after the transfer of all the votes of an excluded candidate no continuing candidate has received a number of votes greater than the quota—
- (a) the continuing candidate who has the fewest votes must be excluded; and

Local Government Act 1989
Act No. 11/1989

- (b) that candidate's votes must be transferred in accordance with sub-clause (12).
- (17) If a candidate is elected as a result of a transfer of ballot papers under clauses 12 and 16, no other ballot papers of an excluded candidate are to be transferred to the candidate so elected.
- (18) In respect of the last vacancy for which 2 continuing candidates remain, the continuing candidate who has the larger number of votes is to be elected notwithstanding that that number is below the quota and if those candidates have an equal number of votes the result is to be determined by lot.
- (19) Despite any other provision of this clause, if the number of continuing candidates is equal to the number of remaining unfilled vacancies, those candidates are to be declared duly elected by the returning officer.
- (20) Subject to sub-clauses (21), (22) and (23), if after any count or transfer, 2 or more candidates have surplus votes the order of any transfers of the surplus votes of those candidates is to be in accordance with the relative size of the surpluses, the largest surplus being transferred first.
- (21) Subject to sub-clause (23), if after any count or transfer, 2 or more candidates have equal surpluses, the order of any transfers of the surplus votes of those candidates is to be in accordance with the relative numbers of votes of those candidates at the last count or transfer at which each of those candidates had a different number of votes, the surplus of the candidate with the largest number of votes at that count or transfer being transferred first.
- (22) For the purposes of sub-clause (21), if there has been no count or transfer the returning officer must determine the order in which the surpluses are to be dealt with.
- (23) If after any count or transfer, a candidate obtains surplus votes, those surplus votes are not to be transferred before the transfer of any surplus votes obtained by any other candidate on an earlier count or transfer.
- (24) If the candidate who has the fewest votes is required to be excluded and 2 or more candidates each have the fewest votes, whichever of those candidates had the fewest votes at the last count or transfer at which each of those candidates had a different number of votes is to be excluded.
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- (25) For the purposes of sub-clause (24), if there has been no count or transfer, the returning officer must determine which candidate is to be excluded.
- (26) If a candidate is elected by reason that—
- (a) the number of first preference votes received by the candidate; or
 - (b) the aggregate of first preference votes received by the candidate and all other votes obtained by the candidate on transfers—
- is equal to the quota, all the ballot-papers expressing those votes are to be set aside as finally dealt with.
- (27) For the purposes of this clause each of the following constitutes a separate transfer—
- (a) a transfer under sub-clause (7), (9) or (14) of all the surplus votes of an elected candidate;
 - (b) a transfer in accordance with sub-clause (12)(a) of all first preference votes of an excluded candidate;
 - (c) a transfer in accordance with sub-clause (12)(b) of all the votes of an excluded candidate that were transferred to that candidate from a particular candidate.

PART 5—MISCELLANEOUS PROVISIONS

12. *Adjournment of count*

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Sch. 3 cl. 12(1)
repealed by
No. 15/1992
s. 23.

- (2) The returning officer may from time to time adjourn the count of votes.
- (3) If the count of votes is adjourned the returning officer must advise the scrutineers and the authorised persons of the adjournment.

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Sch. 3
cl. 12(4)–(6)
repealed by
No. 76/1995
s. 16(4).

13. Recount of votes

- (1) At any time before a candidate has been declared elected, the returning officer—
- (a) may if he or she thinks fit; or
 - (b) must on the request in writing of any candidate or the candidate's scrutineer—

open any sealed parcel containing ballot-papers and recount the ballot-papers.

Sch. 3
cl. 13(1A)
inserted by
No. 54/1998
s. 17.

- (1A) The returning officer may only exercise the power conferred on her or him by sub-clause (1)(a) once in relation to any parcel of ballot-papers.

Sch. 3
cl. 13(1B)
inserted by
No. 54/1998
s. 17.

- (1B) If the returning officer has complied with a request under sub-clause (1)(b) in relation to a parcel of ballot-papers, sub-clause (1)(b) ceases to apply to that parcel of ballot-papers, regardless of who makes any subsequent request.

- (2) In conducting a recount the returning officer—
- (a) has the same powers as the authorised person in determining the number of votes for each candidate; and
 - (b) may reverse any decision in relation to the allowance and admission or disallowance and rejection of any ballot-paper.
- (3) A candidate is not entitled to be present at a recount.
- (4) A candidate may appoint one or more scrutineers for the recount but only one can be present at any time.
- (5) Clause 15 of Schedule 2 applies to the scrutineers as if they had been appointed under that clause.

14. Safe custody of ballot-papers

- (1) The returning officer must—
- (a) keep a record of the number of ballot-papers that has been printed; and
 - (b) reconcile that number with the number of ballot-papers which have been issued, spoilt or left unused.

Local Government Act 1989
Act No. 11/1989

Sch. 3

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Sch. 3
cl. 14(2)(3)
repealed by
No. 76/1995
s. 16(4).

- (4) The returning officer must—
 - (a) certify the record kept under sub-clause (1) as being true and correct; and
 - (b) submit the record to the Council as soon as is practicable after election day.

15. Disposal of ballot-papers

- (1) As soon as practicable after the completion of the count of votes or in the case of the voters' roll the scrutiny of the voters' roll, the returning officer must—
 - (a) enclose in one or more separate packets—
 - (i) the parcels of used ballot-papers; and
 - (ii) the parcels of spoilt ballot-papers; and
 - (iii) the parcels of ballot-papers set aside; and
 - (iv) all parcels, copies of voters' rolls, books or other papers used in connection with the election; and
 - (b) secure the packets; and
 - (c) write on the packet—
 - (i) a description of the contents; and
 - (ii) the name of the ward; and
 - (iii) the date of polling; and
 - (d) sign the writing on the packet.
- (2) The returning officer must deliver the parcels to the Chief Executive Officer.
- (3) The Chief Executive Officer must keep the parcels safely and secretly for 3 years.

Sch. 3 cl. 15(2)
amended by
No. 125/1993
s. 14(q).

Sch. 3 cl. 15(3)
amended by
No. 125/1993
s. 14(q).

Local Government Act 1989
Act No. 11/1989

Sch. 3

Sch. 3 cl. 15(4)
amended by
No. 125/1993
s. 14(q).

- (4) After 3 years the Chief Executive Officer must cause the parcels to be destroyed in his or her presence or in the presence of an authorised person.

Sch. 3 cl. 15(5)
amended by
No. 125/1993
s. 14(q).

- (5) The Chief Executive Officer may permit a sealed packet or sealed parcel to be opened only as specifically provided by or under this Act.

PART 6—PROVISIONS RELATING TO POLLS OF VOTERS

16. *Request for a poll*

- (1) A Council must cause a poll to be conducted if it has received a request for a poll which complies with sub-clause (2).
- (2) A request for a poll must be—
- (a) signed by not less than one-tenth of the voters on the voters' roll of the Council; and
 - (b) in the prescribed form; and
 - (c) accompanied by the prescribed fee; and
 - (d) lodged within 30 days of the relevant public notice being given.
- (3) If the request complies with sub-clause (2) the Council must give public notice of—

Sch. 3
cl. 16(3)(a)
substituted by
No. 76/1997
s. 12(3)(a).

- (a) the date on which the poll is to be held, or if all voting at the poll is to be by means of postal voting, the last date on which postal ballots may be validly received;
- (b) any further conditions or requirements to be complied with in the conduct of the poll and the declaration of the result.

17. *Conduct of the poll*

- (1) The following provisions apply to a poll conducted under this Part—
- (a) ballot-papers to be used in the poll must contain the details required by the regulations;

Sch. 3
cl. 17(1)(a)
substituted by
No. 54/1998
s. 3(1)(k).

Local Government Act 1989
Act No. 11/1989

Sch. 3

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| (b) the poll must be held on a Saturday and must start at 8 a.m. and close at 6 p.m. (unless all voting at the poll is to be by means of postal voting); | Sch. 3
cl. 17(1)(b)
substituted by
No. 76/1997
s. 12(3)(b). |
| (ba) a voter is only entitled to one vote at a poll; | Sch. 3
cl. 17(1)(ba)
inserted by
No. 43/1993
s. 18. |
| (c) a scrutineer may by an instrument in writing addressed to the Chief Executive Officer be appointed by—
(i) 3 or more persons who have signed the request for the poll; and
(ii) 3 or more persons who have made a declaration in writing addressed to the Chief Executive Officer that they are in favour of the decision or proposed decision; | Sch. 3
cl. 17(1)(c)
amended by
No. 125/1993
s. 14(q).

Sch. 3
cl. 17(1)(c)(ii)
amended by
Nos 13/1990
s. 6(2),
125/1993
s. 14(q). |
| (d) not later than 7 days after the poll has been held the returning officer must notify the Council of—
(i) the number of voters on the voters' roll; and
(ii) the number of voters on the voters' roll who voted for the decision or proposed decision; and
(iii) the number of voters on the voters' roll who voted against the decision or proposed decision; |

Sch. 3
cl. 17(1)(d)(ii)
amended by
No. 13/1990
s. 6(2).

Sch. 3
cl. 17(1)(d)(iii)
amended by
No. 13/1990
s. 6(2). |
| (e) the provisions of this Act (other than sections 40, 40A, 40B, 44, 45 and 46) and the regulations dealing with enrolment for and voting at council elections and the election of councillors so far as they are not abrogated by this Part apply with the alterations and adaptations which are necessary to polls under this Part; | Sch. 3
cl. 17(1)(e)
amended by
No. 76/1997
s. 13(d). |
| (f) a poll is carried if— | |
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Local Government Act 1989
Act No. 11/1989

Sch. 3
cl. 17(1)(f)(ii)
amended by
No. 13/1990
s. 6(2).

(i) the number of valid votes recorded is not less than one-third of the number of voters on the voters' roll; and

(ii) a majority of the valid votes recorded are against the decision or proposed decision of the Council;

Sch. 3
cl. 17(1)(g)
amended by
No. 13/1990
s. 6(2).

(g) if a poll is carried a Council must not proceed with its decision or proposed decision;

Sch. 3
cl. 17(1)(h)
amended by
No. 13/1990
s. 6(2).

(h) if a poll is not carried the Council may proceed with its decision or proposed decision;

(i) the Council must give public notice of the result of the poll.

SCHEDULE 3A—PROVISIONS WITH RESPECT TO FILLING
EXTRAORDINARY VACANCIES

Sch. 3A
inserted by
No. 54/1998
s. 19.

PART 1—PRELIMINARY MATTERS

1. *Definitions*

In this Schedule—

"**eligible candidate**" means a person who—

- (a) was a candidate at the relevant election; and
- (b) did not withdraw or retire from, and was not elected at, that election; and
- (c) is still eligible to be elected as a Councillor;

"**relevant election**" means the election at which the vacating Councillor was elected;

"**vacating Councillor**" means the person whose departure created the extraordinary vacancy (even if that person never became a Councillor).

2. *Invitation to participate*

- (1) Within 14 days of an extraordinary vacancy occurring, the returning officer—
 - (a) must publish a public notice inviting eligible candidates to participate in a countback of votes; and
 - (b) must write to each eligible candidate whose current address is known inviting the candidate to participate in a countback of votes.
- (2) A person who wishes to participate in a countback of votes must give the returning officer a signed notice that—
 - (a) states that wish; and
 - (b) declares that she or he is an eligible candidate; and
 - (c) contains any other details required by the regulations—

before 4 p.m. on the 14th day after the date of the notice or written invitation.

3. *Filling of multiple vacancies*

Local Government Act 1989
Act No. 11/1989

- (1) If there is more than one extraordinary vacancy to be filled at any time, the extraordinary vacancy that occurred first is to be filled first.
- (2) If, in the opinion of the returning officer, it is impossible to determine which vacancy occurred first, the vacating Councillor who was elected first (either at the same election or in point of time) is deemed to have left her or his office before the other vacating Councillor or Councillors.
- (3) If it is still not possible to determine which vacancy occurred first despite sub-clause (2), the returning officer must determine by lot which extraordinary vacancy is to be filled first.
- (4) The returning officer may comply with clauses 2(1) and (2) in respect of an extraordinary vacancy even while she or he or another returning officer is complying with those sub-clauses in respect of another extraordinary vacancy.

4. Procedure if no eligible candidates wish to participate in countback

- (1) If no eligible candidate gives the returning officer the notice required by clause 2(3) within the time required by that clause, a by-election must be held to fill the extraordinary vacancy.
- (2) Despite clause 3(1), by-elections to fill 2 or more extraordinary vacancies may be held at the same time.

5. Procedure if there is only 1 eligible candidate

If only one eligible candidate gives the returning officer the notice required by clause 2(3) within the time required by that clause, the returning officer must declare that candidate to be elected.

6. Procedure if there is more than one eligible candidate

- (1) If more than one eligible candidate gives the returning officer the notice required by clause 2(3) within the time required by that clause, the returning officer must—
 - (a) fix a place, date and time for a countback of votes in accordance with Part 2 of this Schedule; and
 - (b) notify in writing each participating eligible candidate of the place, date and time; and
 - (c) give public notice of the fact that a countback of votes will occur, the names and addresses of the

participating eligible candidates and the place, date and time at or on which the countback will occur.

- (2) The date fixed for the countback must be the date that is, in the opinion of the returning officer, the first date on which it will be practicable to conduct a countback in accordance with this Act.

7. *Other procedural matters*

- (1) An eligible candidate who has given the notice required by clause 2(3) may withdraw the notice before 4 p.m. on the day before the date fixed for the countback of votes.
- (2) A notice of withdrawal must contain the details required by the regulations and must be signed by the candidate.
- (3) If an eligible candidate who has given the notice required by clause 2(3) dies before the countback of votes is completed, the notice becomes void.

8. *Other matters*

Clauses 15, 17 and 25(2) of Schedule 2 and clauses 12 and 13 of Schedule 3 apply to a countback of votes.

PART 2—COUNTBACK PROCEDURE

9. *Countback may be conducted using existing electronic database*

- (1) This clause applies if a copy of all valid ballot-papers cast at a relevant election exists in an electronic form.
- (2) The returning officer may conduct a countback of votes by using the electronic form of the ballot-papers if she or he certifies in writing that she or he is satisfied, after conducting any tests that she or he considers to be appropriate, that the electronic form of the ballot-papers is an accurate copy of all the valid ballot-papers that were cast at the relevant election.

10. *Retrieval and opening of parcels of ballot-papers*

- (1) This clause applies if neither clause 9(1) nor (2) applies.
- (2) The returning officer must ask the Chief Executive Officer for the parcels of valid ballot-papers that were given to the Chief Executive Officer after the relevant election.
- (3) The Chief Executive Officer must comply with the request as soon as it is reasonably practicable to do so.

Local Government Act 1989
Act No. 11/1989

- (4) The returning officer must open the parcels of ballot-papers at the place and time, and on the date, fixed for the countback of votes under clause 6.
- (5) If any validly appointed scrutineers are present for the countback and have indicated that they wish to observe the opening of the parcels, the parcels must be opened in the presence of those scrutineers.

11. *Relevant ballot-papers to be ascertained*

The following ballot-papers must be brought together—

- (a) if the vacating Councillor obtained a quota on first preferences, all the ballot-papers on which those preferences are marked; or
- (b) if the vacating Councillor was elected after a transfer or transfers of ballot-papers—
 - (i) all the ballot-papers counted to the vacating Councillor at the time that she or he was elected; and
 - (ii) if the vacating Councillor was declared elected under clause 11B(19) of Schedule 3 following the exclusion of a candidate, all of the ballot-papers that—
 - (A) were not transferred to her or him from that candidate or those candidates because it was unnecessary; and
 - (B) showed a next available preference for the vacating Councillor.

12. *Votes to be transferred from vacating Councillor to eligible candidates*

- (1) Those ballot-papers must then be transferred to the participating eligible candidates in accordance with the next available preference shown on the ballot-papers, at their respective transfer values, beginning with the ballot-papers with the highest transfer value and ending with the ballot-papers with the lowest transfer value, and must be transferred as follows—
 - (a) the total number of ballot-papers of a particular transfer value that show the next available preference for a particular participating eligible candidate must be multiplied by that transfer value; and

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- (b) the number obtained under paragraph (a) (disregarding any fraction) must be credited as votes to that candidate; and
 - (c) all those ballot-papers must be transferred to that candidate.
- (2) The transfer value of a ballot-paper is—
- (a) in the case of a ballot-paper received by the vacating Councillor as a first preference—1;
 - (b) in the case of a ballot-paper received by the vacating Councillor after the count of first preferences, but before the transfer at which she or he was elected—the transfer value at which it was received by the vacating Councillor;
 - (c) in the case of a ballot-paper received by the vacating Councillor at the transfer at which she or he was elected—the number obtained by dividing the number of votes by which the vacating Councillor, immediately before that transfer, was short of the quota, by the number of ballot-papers transferred to the vacating Councillor at that transfer;
 - (d) in the case of a ballot-paper specified in clause 11(b)(ii)—the transfer value at which the ballot-paper would have been transferred to the vacating Councillor if a transfer had been necessary.
- (3) For the purposes of this clause—
- (a) a preference expressed for one of the following people is to be disregarded—
 - (i) the vacating Councillor; or
 - (ii) a person elected at the relevant election or at a countback of votes; or
 - (iii) a person who is not participating in the countback of votes; and
 - (b) a preference that has been disregarded is to be taken to be substituted for the next available preference on the ballot-paper that is not for a person listed in paragraph (a)(i), (ii) or (iii); and
 - (c) a first preference for a participating eligible candidate who was excluded at the relevant election that appears
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Local Government Act 1989
Act No. 11/1989

on a ballot-paper that was transferred to the vacating Councillor is to be counted for that candidate.

13. *Countback to be stopped if absolute majority obtained*

- (1) After the transfers required by clause 12 have been completed, if a participating eligible candidate has an absolute majority the returning officer must declare that candidate to be elected.
- (2) For the purposes of this clause, a candidate has an absolute majority if the number of votes credited to that candidate is more than 50% of the total number of votes credited to all the participating eligible candidates after the transfers.

14. *Next stage (if necessary)*

- (1) If no participating eligible candidate has an absolute majority of votes, the participating eligible candidate with the fewest votes must be excluded.
 - (2) The excluded candidate's ballot-papers must be transferred to the continuing participating eligible candidates in accordance with the preferences shown on those ballot-papers, at their respective transfer values, beginning with the ballot-papers with the highest transfer value and ending with those with the lowest transfer value, as follows—
 - (a) the total number of ballot-papers received by the excluded candidate at a particular transfer value and expressing the next available preference for a particular continuing eligible candidate must be multiplied by that transfer value; and
 - (b) the number obtained under paragraph (a) (disregarding any fraction) must be added to the number of votes of that continuing candidate; and
 - (c) all those ballot-papers must be transferred to that continuing candidate.
 - (3) The transfer value of a ballot-paper for the purposes of this clause is the same as the transfer value set out in clause 12(2).
 - (4) After doing this in respect of each continuing participating eligible candidate, if a candidate has an absolute majority the returning officer must declare that candidate to be elected.
 - (5) For the purposes of this clause, a candidate has an absolute majority if the number of votes credited to that candidate is more than 50% of the total number of votes credited to all
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the continuing participating eligible candidates after the transfers and additions required by sub-clause (2).

15. *Process if vote equal*

- (1) If—
 - (a) a participating eligible candidate must be excluded; and
 - (b) 2 or more of the continuing participating eligible candidates having the fewest votes have an equal number of votes after the process referred to in clause 13 or clause 14—

the candidate who had the fewest votes at the last count or transfer at which they had an unequal number of votes is to be excluded.

- (2) If there is no stage at which the 2 or more continuing participating eligible candidates had an unequal number of votes, the returning officer must decide by lot which candidate is to be excluded.

16. *Final stage (if necessary)*

- (1) If no participating eligible candidate has an absolute majority of votes the process described in clause 14 must be repeated until—
 - (a) a participating eligible candidate receives an absolute majority within the meaning of clause 14(5); or
 - (b) there are only 2 continuing participating eligible candidates, neither of whom has an absolute majority of votes.
- (2) If sub-clause (1)(b) applies, the returning officer must declare to be elected the candidate who had the most votes at the last count or transfer at which the 2 candidates had an unequal number of votes.
- (3) If there is no stage at which the 2 candidates had an unequal number of votes, the returning officer must decide by lot which candidate is to be elected.

17. *Declaration of result*

- (1) As soon as possible after the election of a candidate, the returning officer must publicly declare that candidate to be elected.

Local Government Act 1989
Act No. 11/1989

- (2) The returning officer must as soon as is practicable after making such a declaration—
 - (a) give public notice of the name of the person elected; and
 - (b) advise the Minister of the result.

18. *Ballot-papers to be returned*

- (1) This clause applies if the returning officer was given parcels of ballot-papers under clause 10.
- (2) Clause 15 of Schedule 3 (other than clauses 15(1)(a)(ii) and (iii) and (c)(ii)) applies as if a reference in that clause to the count of votes was a reference to a countback of votes.
- (3) A reference to 3 years in clause 15 is to be construed to be construed as a reference to 3 years after the Chief Executive Officer first received the parcels under that clause.

19. *Replacement of a Councillor elected at a countback*

- (1) In this clause—

"first vacating Councillor" means a vacating Councillor who was elected at a general election;

"later vacating Councillor" means a vacating Councillor who was elected to the office held by the first vacating Councillor as a result of a countback of votes under this Schedule (even if she or he is not the immediate successor of the first vacating Councillor).
 - (2) If an extraordinary vacancy is caused by the departure of a later vacating Councillor, a reference in this Part (other than in sub-clause (1)) to "vacating Councillor" is to be read as a reference to the first vacating Councillor.
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SCHEDULE 4

PROVISIONS RELATING TO MUNICIPAL ELECTORAL
TRIBUNALS

Section 44

1. *Constitution*

A Tribunal is to be constituted by—

- (a) a magistrate or acting magistrate appointed by the Attorney-General; and
- (b) a person with knowledge of local government election procedures appointed by the Attorney-General on the recommendation of the Minister.

Sch. 4 cl. 1(a)
substituted by
No. 34/1996
s. 28(1)(a).

Sch. 4 cl. 1(b)
amended by
No. 34/1996
s. 28(1)(b).

2. *Terms and conditions*

- (1) Each member of a Tribunal—
 - (a) holds office on the terms and conditions specified in the instrument of appointment; and
 - (b) is entitled to be paid remuneration and travelling and other allowances as are specified; and
 - (c) is not in respect of the office of member subject to the **Public Sector Management and Employment Act 1998**.
- (2) A member of a Tribunal may resign by writing signed by the member and delivered to the Minister.
- (3) The Minister may remove a member of a Tribunal from office.

Sch. 4
cl. 2(1)(c)
amended by
Nos 76/1997
s. 24(c),
46/1998
s. 7(Sch. 1).

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Sch. 4 cl. 2(4)
repealed by
No. 42/1995
s. 224(Sch. 2
item 23).

Sch. 4 cl. 2(5)
inserted by
No. 34/1996
s. 28(1)(c).

- (5) The appointment as a member of the Tribunal of a person who, at the time of his or her appointment, held the office of magistrate under section 7 of the **Magistrates' Court Act 1989** or acting magistrate under section 9 of that Act ceases at the time the person ceases to hold office as a magistrate or acting magistrate (unless the appointment has already ceased).

3. Procedure of a Tribunal

- (1) A Tribunal—
- (a) must, in hearing any matter, act according to equity and good conscience without regard to technicalities or legal forms; and
 - (b) is bound by the rules of natural justice; and
 - (c) is not required to conduct any proceedings in a formal manner.
- (2) All proceedings before a Tribunal must be open to the public.
- (3) A Tribunal may adjourn any proceedings to any time and place.
- (4) Except as provided in this Act and any regulations, the procedure of a Tribunal is in its discretion.

4. Evidence

- (1) A Tribunal is not bound by rules or practice as to evidence but may inform itself in relation to any matter in any manner it thinks fit.
- (2) Evidence before a Tribunal—
- (a) may be given orally or in writing or partly orally and partly in writing; and
 - (b) may be given on oath or affirmation.
- (3) A member of a Tribunal may administer an oath or take an affirmation or declaration.
- (4) Evidence given before a Tribunal must not be used in any civil or criminal proceedings other than proceedings for an offence against this Act or perjury.
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- (5) A Tribunal may of its own motion or on the application of any party to the proceedings before it issues to any person a summons to appear before the Tribunal to give evidence or to produce any documents specified in the summons.

5. *Appearance before a Tribunal*

A party to any proceedings before a Tribunal may be represented before the Tribunal by any person authorised by that party.

6. *Protection of members, legal practitioners, persons and witnesses*

- (1) A member of a Tribunal has in the performance of duties as a member the same protection and immunity as a judge of the Supreme Court.
- (2) A legal practitioner or other person appearing before a Tribunal on behalf of a party has the same protection and immunity as a legal practitioner has in appearing for a party in proceedings in the Supreme Court.
- (3) A person summoned to attend or appearing before a Tribunal as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the Supreme Court.

Sch. 4 cl. 6(2)
amended by
No. 35/1996
s. 453(Sch. 1
item 52(a)(b)).

7. *Failure of witnesses to attend*

A witness served with a summons to appear as a witness before a Tribunal must not without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report from day to day unless excused or released from further attendance by the Tribunal.

Penalty: 10 penalty units or imprisonment for three months.

8. *Refusal to be sworn or to answer questions*

A person appearing as a witness before a Tribunal must not without reasonable excuse—

- (a) refuse or fail to comply with a requirement to take an oath or make an affirmation or declaration; or
- (b) refuse or fail to answer a question that the person is required to answer by a member of the Tribunal; or

Local Government Act 1989
Act No. 11/1989

- (c) refuse or fail to produce a document that the person was required to produce by a summons.

Penalty: 10 penalty units or imprisonment for three months.

9. Contempt of a Tribunal

A person must not—

- (a) insult a member of a Tribunal in or in relation to the exercise of the powers or functions of a member; or
- (b) repeatedly interrupt the proceedings of a Tribunal; or
- (c) create a disturbance or take part in creating or continuing a disturbance in or near a place where a Tribunal is sitting; or
- (d) do any other act or thing that would if a Tribunal were a Court of record constitute a contempt of that Court.

Penalty: 10 penalty units or imprisonment for three months.

10. Costs

A Tribunal may make any order as to costs as it thinks just.

11. Enforcement of costs order

- (1) Costs awarded to a party are a debt due to that party and are recoverable in the Magistrates' Court.
- (2) The party in whose favour an order as to costs is made may enforce the order by filing a copy of the order in the Magistrates' Court in accordance with the **Magistrates' Court Act 1989** and paying the prescribed filing fee.
- (3) A copy of a determination of the Tribunal signed by a member of the Tribunal is evidence of the order as to costs.
- (4) A copy of the order filed under sub-clause (2) is deemed to be an order of the Magistrates' Court and may be enforced accordingly.

Sch. 4 cl. 11
inserted by
No. 43/1993
s. 19.

SCHEDULE 5

Sch. 5
substituted by
No. 15/1992
s. 24(1).

HOW-TO-VOTE CARDS

Section 56

1. *Registration of how-to-vote cards*

- (1) Any person may apply to the returning officer within 4 working days after the 31st day before polling day for an election, for the registration of a form or sample of a how-to-vote card proposed to be displayed, handed out, distributed or otherwise made available to persons on polling day for that election.

Sch. 5 cl. 1(1)
amended by
Nos 76/1995
s. 13(d),
54/1998
ss 3(1)(l),
13(2).

- (1A) The application must be made in writing and must contain the details required by the regulations.

Sch. 5 cl.
1(1A) inserted
by No.
54/1998
s. 3(1)(m).

- (2) The returning officer must within 8 working days after the 31st day before polling day for the election—

Sch. 5 cl. 1(2)
amended by
Nos 125/1993
s. 37(1)(c),
76/1995
s. 13(d),
54/1998
s. 13(2).

- (a) register; or
(b) refuse to register; or
(c) request the variation of—

the form or sample of the how-to-vote card submitted for registration.

2. *Matters to be considered*

- (1) In determining whether to register, refuse to register or request the variation of a form or sample of a how-to-vote card, the returning officer must have regard to the prescribed matters.
- (2) The returning officer must refuse to register or must request the variation of a form or sample of how-to-vote card if—
- (a) the form or sample of how-to-vote card does not contain an indication of the order of voting preference for all the candidates listed on it or a statement that a figure must be placed against the name of each such candidate; or
- (b) a discrete portion of the form or sample of how-to-vote card represents or purports to represent a ballot paper in which—

Local Government Act 1989
Act No. 11/1989

- (i) the candidates are identified by names other than those appearing on the ballot-paper; or
 - (ii) titles or other designations are attached to the names of the candidates.
- (3) The returning officer must refuse to register a form or sample of how-to-vote card which the returning officer is satisfied is likely to mislead or deceive a voter in relation to the casting of the vote of the voter or contains offensive or obscene material.

3. Procedure for variation

- (1) If having regard to the matters specified in clause 2(1) or 2(2) the returning officer is of the opinion that registration must be refused but that the applicant might be prepared to vary the application in such a way that the returning officer would register the form or sample, the returning officer must—
- (a) give the applicant notice in writing of the changes necessary to the form or sample; and
 - (b) permit the applicant until 4 p.m. on the Monday immediately prior to the polling day for the election to lodge a written request for variation or to proceed with the original application.
- (2) If notice is given under sub-clause (1) in relation to an application, the returning officer is not required to give further consideration to the application unless and until a request is lodged with the returning officer under sub-clause (3).
- (3) If notice is given under sub-clause (1) in relation to an application, the applicant may lodge with the returning officer a written request, signed by the applicant, to—
- (a) vary the application in the manner specified in the notice; or
 - (b) proceed with the application in the form in which it was lodged—

and the returning officer must comply with the request.

4. Endorsement

If a form or sample of a how-to-vote card is registered, the applicant for the registration must ensure that any how-to-

vote card to which the registration relates is endorsed in the prescribed manner.

5. Amendment of form or sample

- (1) An applicant for the registration of a form or sample of how-to-vote card which has been registered or who has received a notice under clause 3 may before 4 p.m. on the Monday immediately prior to polling day in the election apply to the returning officer for the amendment of the registered or varied form or sample if the amendment is immaterial or insignificant.
- (2) The returning officer must approve an application for an amendment if he or she is satisfied that one of the grounds specified in sub-clause (1) applies.

6. Cards to be available for inspection

- (1) As soon as practicable after registering a form or sample of a how-to-vote card, the returning officer must—
 - (a) make a copy available for inspection at the returning officer's office; and
 - (b) cause a copy to be made available for inspection at any other prescribed places.
- (2) On receipt of copies of a how-to-vote card as proposed to be handed out, distributed or otherwise made available the returning officer must—
 - (a) make a copy available for inspection at the returning officer's office; and
 - (b) cause a copy to be made available for inspection at any other prescribed places.

7. Reviews

- (1) A person whose interests are affected by the relevant decision may apply to the Victorian Civil and Administrative Tribunal for review of a decision of a returning officer—
 - (a) to register; or
 - (b) to refuse to register; or
 - (c) to request the variation of; or
 - (d) to approve an amendment to; or
 - (e) to refuse to approve an amendment to—a form or sample of how-to-vote card.

**Sch. 5 cl. 7
substituted by
No. 52/1998
s. 311(Sch. 1
item 55.9).**

- (2) An application for review may be made at any time up to 5 p.m. on the Tuesday before polling day for the election in respect of which the card is proposed to be used.

8. *Distribution of printed electoral material*

- (1) A person must not on polling day, within 400 metres of the entrance of or within the building used as a polling place display, hand out, distribute or otherwise make available to any person or authorise the displaying, handing out, distribution or otherwise making available to any person of any printed electoral material other than a how-to-vote card which or a form or sample of which has been registered by the returning officer and that is endorsed in the prescribed manner.

Penalty: 10 penalty units or imprisonment for a period not exceeding 6 months, or both.

- (2) A person must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed a how-to-vote card which has not been registered by the returning officer and which contains a representation or purported representation of an endorsement in the prescribed manner.

Penalty: 10 penalty units or imprisonment for a period not exceeding 6 months, or both.

- (3) Sub-clause (2) does not apply in respect of the form or sample of how-to-vote card printed or published solely for the purpose of being submitted to the returning officer for registration.
- (4) In a prosecution of any person for handing out a how-to-vote card under sub-clause (1) or (2), it is a defence if the person proves that that person did not know, and could not reasonably be expected to have known, that the card was not a how-to-vote card a form or sample of which was registered by the returning officer.
- (5) Sub-clause (1) does not apply to—
- (a) the display, handing out, distribution or otherwise making available of a newspaper by or on behalf of a newsagent, newspaper seller or distributor if the display, handing out, distribution, sale or making available is in the course of the newsagent's,

newspaper seller's or distributor's employment or business; or

- (b) the display, handing out, distribution or otherwise making available of any printed electoral material in any room or building used as a campaign room or an office by a candidate in the election to which the material relates or by the political party which has endorsed that candidate in that election; or
- (c) printed electoral material in the form of any poster or notice which is affixed or attached to any vehicle, building, hoarding or structure.

9. Power to request handing over of how-to-vote cards

- (1) The person in charge of a polling place or a person authorised by the person in charge to act on that person's behalf under this clause may on polling day request a person reasonably suspected by the first-mentioned person of contravening clause 8(1) or 8(2)—
 - (a) to produce for inspection to that first-mentioned person any how-to-vote cards in the possession of that other person; and
 - (b) to hand over to the first-mentioned person all such cards other than how-to-vote cards endorsed in the prescribed manner.
- (2) A person must comply with a request under sub-clause (1).
Penalty: 10 penalty units.
- (3) If a person refuses to comply with a request, a member of the police force or a returning officer may seize any card in the person's possession which are not endorsed in the prescribed manner.

Sch. 5 cl. 9(1)
amended by
No. 43/1993
s. 20.

SCHEDULE 6

**PROVISIONS WITH RESPECT TO EQUAL EMPLOYMENT
OPPORTUNITY**

Section 96

PART 1—DEFINITIONS

1. Definitions

In this Schedule—

"designated group" means a class of persons with a common characteristic or attribute which is declared by Order in Council of the Governor in Council to be a designated group;

"discrimination" means an act or omission that contravenes a provision of Part 3, 5 or 6 of the **Equal Opportunity Act 1995**;

"employment matters" includes—

- (a) recruitment procedure and selection procedure for appointment or engagement of persons as members of Council staff; and
- (b) promotion and transfer of members of Council staff; and
- (c) training and staff development for members of Council staff; and
- (d) remuneration and conditions of service of members of Council staff;

"equal employment opportunity program" means a program which is designed to eliminate discrimination against and promote equal opportunity for women and persons in designated groups in relation to employment matters;

Sch. 6 cl. 1
def. of
"discrimina-
tion"
substituted by
No. 42/1995
s. 223(Sch. 1
item 3).

"trade union" means—

- (a) an association of employees which is a recognised association under Part V of the **Industrial Relations Act 1979**; or
- (b) an organisation of employees—
 - (i) which is registered under the Industrial Relations Act 1988 of the Commonwealth as amended and in force for the time being; or
 - (ii) which is approved by the Governor in Council as a trade union for the purposes of this Act.

Sch. 6 cl. 1
def. of
"trade union"
amended by
No. 13/1990
s. 31(i).

PART 2—EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS

2. *Equal employment opportunity programs*

A Council with 40 or more members of Council staff must commence the development and implementation of an equal employment opportunity program on the day on which section 96 comes into operation.

3. *Contents of equal employment opportunity program*

Without limiting the generality of the definition of "equal employment opportunity program" in clause 1, the equal employment opportunity program must provide for action to be taken—

- (a) to inform members of Council staff of the contents of the equal employment opportunity program and of the results of any monitoring and evaluation of the equal employment opportunity program under paragraph (i); and
- (b) to confer responsibility for the development and implementation of the equal employment opportunity program (including a continuous review of the equal employment opportunity program) on a person having sufficient authority and status within the management of the Council to enable the person properly to develop and implement the equal employment opportunity program; and
- (c) to establish an equal employment opportunity consultative committee comprising representatives of—

Local Government Act 1989
Act No. 11/1989

- (i) trade unions having members employed by the Council; and
- (ii) management of the Council; and
- (iii) if the representatives referred to in subparagraph (i) or (ii) so determine, persons with expertise in areas which are relevant to the development and implementation of the equal employment opportunity program—

to advise the person responsible for the development and implementation of the equal employment opportunity program on the development and implementation of the equal employment opportunity program and on any other related matters; and

- (d) to consult with each trade union which has members who are affected by the proposal for the development and implementation of the equal employment opportunity program; and
 - (e) to consult with members of Council staff in the development and implementation of the equal employment opportunity program, especially with members of Council staff who are women or persons in designated groups; and
 - (f) for the collection and recording of statistics and related information concerning employment matters in the Council, including the number, classification and types of jobs of—
 - (i) members of Council staff of either sex; and
 - (ii) members of Council staff in designated groups; and
 - (g) to consider policies and examine practices of the Council in relation to employment matters to identify—
 - (i) any policies or practices that discriminate against women or persons in designated groups; and
 - (ii) any patterns (whether ascertained statistically or otherwise) of lack of equality of opportunity in respect of women and persons in designated groups; and
 - (h) to set—
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- (i) the particular objectives to be achieved by the equal employment opportunity program; and
 - (ii) the quantitative and other indicators against which the effectiveness of the equal employment opportunity program is to be assessed; and
- (i) to monitor and evaluate the implementation of the equal employment opportunity program and to assess—
- (i) the achievement of those objectives; and
 - (ii) the effectiveness of the equal employment opportunity program by comparing statistics and information collected and recorded under paragraph (f) with the indicators against which the effectiveness of the equal employment opportunity program is to be assessed.

4. *Regard to be had to equal employment opportunity program*

A Council must take any action necessary to give effect to its equal employment opportunity program and any person who exercises powers in relation to employment matters on behalf of the Council must have regard to the equal employment opportunity program in exercising those powers.

5. *Council may use special tests and qualifications*

Despite anything to the contrary in this Act, a Council may determine and use special tests and qualifications to enhance recruitment and promotion of persons in any designated group.

6. *Exemptions from this Part*

- (1) On application by a Council, the Governor in Council may by Order in Council grant an exemption from the requirements of this Part to the Council in relation to a specific designated group.
 - (2) The exemption is valid for the period of time specified in the Order in Council containing it.
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Local Government Act 1989
Act No. 11/1989

Sch. 6

Sch. 7
amended by
Nos 13/1990
s. 13(c),
22/1992
ss 4(1), 7(2)(a),
repealed by
No. 125/1993
s. 11(1).

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SCHEDULE 8

Section 123

PROVISIONS WITH RESPECT TO LOCAL LAWS

Without derogating from any other principles the following apply to local laws:

1. A local law must—
 - (a) accord with the letter and intent of the enabling Act;
 - (b) in the case of a principal local law, clearly set out as part of its text—
 - (i) the objectives of the local law; and
 - (ii) the precise provision authorising the local law;
 - (c) be directed towards those objectives and not go beyond them;
 - (d) adopt the means of achieving those objectives which appear likely to involve the least burden or the greatest advantage on the community;
 - (e) wherever appropriate, set performance standards rather than prescribe detailed requirements as to the manner in which those standards shall be achieved;
 - (f) be expressed plainly and unambiguously, consistently with the language of the enabling Act and in accordance with modern standards of drafting applying in the State of Victoria.
2. A local law must not—
 - (a) exceed the powers conferred by the Act under which the local law purports to be made;
 - (b) without clear and express authority in the enabling Act—
 - (i) have any retrospective effect;
 - (ii) impose any tax or fee, or any fine, imprisonment or other penalty;
 - (iii) purport to shift the onus of proof to a person accused of an offence;
 - (iv) provide for any further delegation of powers delegated by the Act;

- (c) be inconsistent with the principles, objectives or intent of the enabling Act;
- (d) make unusual or unexpected use of the powers conferred by the Act under which the local law is made having regard to the general objectives, intention or principles of that Act;
- (e) embody principles of major substance or controversy or contain any matter which principles or matter should properly be dealt with by an Act and not by subordinate legislation;
- (f) unduly trespass on rights and liberties of the person previously established by law;
- (g) unduly make rights and liberties of the person dependent upon administrative and not upon judicial decisions;
- (h) be inconsistent with principles of justice and fairness;
- (i) duplicate, overlap or conflict with other statutory rules or legislation;
- (j) restrict competition unless it can be demonstrated that—
 - (i) the benefits of the restriction to the community as a whole outweigh the costs; and
 - (ii) the objectives of the local law can only be achieved by restricting competition.

Sch. 8 cl. 2(j)
inserted by
No. 54/1998
s. 20(1).

Sch. 8A
inserted by
No. 22/1992
s. 20,
amended by
No. 33/1995
s. 4(2)(e),
repealed by
No. 34/1996
s. 29.¹⁴

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SCHEDULE 9

PROVISIONS RELATING TO SECURITIES

Section 142

1. *Protection of security holders*

If a Council grants a security in compliance with this Act the security is good and valid as against the Council in favour of the security holder without fraud and in good faith.

2. *Priority of security holders*

- (1) Security holders in different loans secured by a charge over the same income or assets have priority as to principal and interest according to the priority of the granting of the security.
- (2) Security holders in the same loan rank equally as between themselves.

3. *No claim against Consolidated Fund*

A security holder does not have any claim against the Consolidated Fund.

4. *Appointment of receivers*

- (1) This clause applies if a Council defaults in the payment of any principal money or interest secured by a security.
- (2) On the petition of the security holder the Supreme Court may appoint up to 3 receivers of the relevant income of the Council.
- (3) A receiver is deemed to be an officer of the Supreme Court.
- (4) A receiver is entitled to remuneration as is fixed by the Supreme Court.
- (5) A receiver must act under the direction of the Supreme Court.
- (6) The Supreme Court may remove a receiver.
- (7) The Supreme Court may appoint a receiver in the place of a receiver who has been removed or dies.

5. *Powers of receivers*

Local Government Act 1989
Act No. 11/1989

- (1) A receiver is entitled to receive the relevant rates and charges payable to the Council.
- (2) For the purposes of this clause a receiver has the powers which a Council has with respect to rates and charges under Part 8.

6. *Application of money*

A receiver holds all the money received by the receiver after payment of costs and expenses and his or her remuneration for the benefit of the security holders according to their respective priorities and the balance for the Council.

SCHEDULE 10

POWERS OF COUNCILS OVER ROADS

1. *Power to construct and maintain roads*

A Council may—

- (a) make, maintain and repair roads; and
- (b) fix and alter the level of roads.

2. *Power to deviate roads*

(1) A Council may deviate a road through private land, Crown land or land held by licensees under the **Land Act 1958** (whether or not the land is subject to any rights of way).

(2) However, in the case of a proposed deviation—

- (a) through Crown land; or
- (b) which would result in the vesting of land in a Council under section 207B(2A)—

this power may only be exercised after the Council has obtained the consent of the Minister administering the **Land Act 1958**.

(3) Before starting any work to give effect to a deviation, the Council must publish a notice in the Government Gazette describing the deviation.

3. *Power to discontinue roads*

A Council may, in addition to any power given to it by sections 43 and 44 of the **Planning and Environment Act 1987**—

- (a) discontinue a road, or part of a road, by a notice published in the Government Gazette; and
- (b) sell the land from that road (if it is not Crown land), transfer the land to the Crown or itself or retain the land.

4. *Power to take road making materials*

(1) A Council may enter and take from—

- (a) any waterway; or

Sch. 10
amended by
No. 81/1989
s. 3(Sch.
item 30.4),
substituted by
No. 125/1993
s. 24.

Sch. 10 cl. 2(2)
substituted by
No. 99/1994
s. 16(2).

Local Government Act 1989
Act No. 11/1989

- (b) any Crown land reserved under the **Crown Land (Reserves) Act 1978** for the supply of sand, gravel, stone or other materials—

any materials necessary for making or maintaining anything which the Council under this Act may make or maintain.

- (2) Before a Council may exercise this power, it must give at least 14 days notice in writing of its intention to exercise the power—
- (a) to the Secretary of the Department of Conservation and Natural Resources; and
- (b) to the owner and occupier of any land referred to in sub-clause (1).

Sch. 10
cl. 4(2)(b)
amended by
No. 34/1996
s. 33(h).

- (3) The Council must also advise the owner and occupier of that land in writing of anything it has done on, or to, the land in the exercise of any power given to it by sub-clause (1).

5. *Power to name roads, erect signs and require premises to be numbered*

- (1) A Council may—
- (a) approve, assign or change the name of a road; and
- (b) erect signs on a road; and
- (c) approve, assign and change the number of a road and any premises next to a road; and
- (d) require people to number their premises and to renew those numbers.

Sch. 10 cl. 5(2)
substituted by
Nos 27/1997
s. 27, 7/1998
s. 23.

- (2) The Council, in exercising a power under paragraph (a) of sub-clause (1) must act in accordance with the guidelines in force for the time being under the **Geographic Place Names Act 1998** and must advise the Registrar under that Act of the action it has taken under that paragraph.

6. *Power to establish survey marks*

A Council may cause standard survey marks to be established in roads.

7. *Power to fix road alignment*

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- (1) A Council may fix the alignment of a road by a notice published in the Government Gazette.
 - (2) If the road is vested in the Crown, or a body representing the Crown, the Council may only exercise this power after it has obtained the approval of the Surveyor-General after he or she has consulted the Surveyor and Chief Draughtsman in the Office of Titles.
 - (3) In the case of any other road, the Council may only exercise this power after it has obtained the approval of the Surveyor and Chief Draughtsman in the Office of Titles.

8. Power to narrow or widen roads

- (1) A Council may—
 - (a) narrow or widen a road; and
 - (b) allow a person to make minor repairs or alterations to a building between the old alignment and the new alignment.
- (2) In relation to the establishment of permanent marks, the exercise of the power conferred by sub-clause (1)(a) is subject to the **Survey Co-ordination Act 1958**.
- (3) Before starting any work to give effect to the narrowing or widening of a road, the Council must publish a notice in the Government Gazette describing the narrowing or widening.

9. Power to provide for temporary roads

A Council may provide temporary roads.

10. Powers concerning fences, gates and by-passes

A Council may—

- (a) permit the erection and maintenance of gates and fences on or near roads;
- (b) permit the construction of by-passes for unfenced roads and for this purpose to require—
 - (i) the removal of any gate;
 - (ii) the erection of notices giving warning of the by-pass;
 - (iii) the maintenance of the by-pass and notices;
- (c) revoke the permission given under paragraphs (a) and (b) and require the removal of the gates, fences, notices and by-passes.

11. Power concerning holes and other dangers

A Council may—

- (a) fill any hole or excavation in or near a road;
- (b) remove any cause of possible damage to a road, or of danger to anyone or anything using the road;
- (c) erect or restore any fence near any hole or excavation that is near a road;
- (d) require a person to do any of the things listed in paragraphs (a), (b) and (c).

12. Powers concerning crossings over footpaths and channels

A Council may—

- (a) make a bridge or crossing over any footpath or channel next to a road to enable a person using the road to have access to land on the other side of the footpath or channel;
 - (b) maintain, repair or reconstruct the bridge or crossing;
 - (c) permit a person to do anything the Council may do under paragraph (a) or (b);
 - (d) require a person to do anything the Council may do under paragraph (a) or (b).
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SCHEDULE 11

POWERS OF COUNCILS OVER TRAFFIC

Sch. 11
amended by
No. 44/1989
s. 42(2)(a)–(c),
substituted by
No. 125/1993
s. 24.

1. *Powers concerning parking*

Sch. 11 cl. 1
amended by
No. 33/1995
s. 11(a)(b).

- (1) A Council may fix, rescind or vary—
- (a) the days, hours and periods of time for which, and the conditions on which, vehicles may stand in a parking area in any highway or other parking area; and
 - (b) fees for any vehicles standing in a parking area and the manner of payment of those fees; and
 - (c) the fee for residents of any area which the Council sets aside as an area in which a resident parking scheme is to operate that allows a vehicle to stand in a parking area in any road in the area regardless of the fixed parking periods for that area.
- (2) In this clause "**highway**" and "**parking area**" have the meanings they have in the **Road Safety Act 1986** (or any regulations made under that Act).

2. *Power to issue special parking permits*

A Council may issue a special parking permit to any disabled person to enable him or her to leave a vehicle standing on different conditions from those fixed under any part of clause 1.

3. *Power to remove unregistered or abandoned vehicles*

Sch. 11 cl. 3
amended by
No. 33/1995
s. 11(c)(d).

- (1) A Council may—
- (a) move or impound any unregistered vehicle or vehicle considered by it to be abandoned (and anything in, on or attached to, the vehicle);
 - (b) keep the vehicle in the place to which it has been moved or any other place;
 - (c) return the vehicle to its owner on payment of a fee; and
 - (d) sell, destroy or give away the vehicle (and anything in, on or attached to, the vehicle) if the owner of the

vehicle has not paid the fee within 7 days of the Council impounding the vehicle.

- (2) The Council, and anyone who obtains the vehicle from the Council under sub-clause (1)(d), is not liable to the owner of the vehicle or any other person in respect of any action taken under that sub-clause.
- (3) The fee set for the purposes of sub-clause (1)(c) must not exceed an amount that reasonably represents the cost to the Council of impounding, moving, keeping and releasing the vehicle (including any relevant overhead and other indirect costs).

Sch. 11 cl. 4
amended by
No. 33/1995
s. 11(e).

4. *Power to move obstructing vehicles*

A Council may move or impound any vehicle that is causing an unlawful obstruction, or that is unlawfully parked or left standing in an area designated by the Minister, and may charge the owner of the vehicle a fee of up to the amount of the fee set for the purposes of clause 3(1)(c).

5. *Power to move other obstructions*

A Council may—

- (a) move any thing that encroaches or obstructs the free use of a road or that reduces the breadth, or confines the limits, of a road (including any thing placed on the road under clause 10 or 11);
- (b) require any person responsible for, or in control of, the thing to move it.

6. *Power to restrict traffic near a construction site*

For the purposes of enabling works to be carried out on or over a road, or land next to a road, a Council may—

- (a) fence off and occupy part of the road;
- (b) erect a structure or temporary crossing for vehicles on, or over, the road;
- (c) permit a person to do anything the Council may do under paragraph (a) or (b).

7. *Power to close road on seasonal basis*

A Council may close a road, or part of a road, for a particular period during the year.

8. Power to erect and remove works and structures

- (1) A Council may erect and remove any works or structures—
 - (a) to protect passengers, pedestrians and drivers on a road; or
 - (b) to regulate traffic on a road.
- (2) If the exercise of this power would require the consent of the Roads Corporation if it were done under a regulation made under the **Road Safety Act 1986** in respect of a major traffic control item, the Council must first obtain such consent before it exercises the power.

9. Power to place obstructions or barriers on a road permanently

- (1) A Council may block or restrict the passage or access of vehicles on a road by placing and maintaining any permanent barrier or other obstruction on the road.
- (2) A Council must not exercise this power unless it has considered a report from the Roads Corporation concerning the exercise of the power.
- (3) The exercise of this power is subject to any direction of the Minister.
- (4) This clause does not apply to a declared road within the meaning of the **Transport Act 1983**, unless the Council has the consent of the Roads Corporation.

10. Power to place obstructions or barriers on a road temporarily

- (1) A Council may block or restrict the passage or access of vehicles on a road by placing and maintaining any temporary barrier or other obstruction on the road—
 - (a) for as long as is necessary to prevent any injury to any person or damage to any property (including damage to the road itself); or
 - (b) for as long as is necessary for a procession, public ceremony or function; or
 - (c) for a genuine traffic diversion experiment.
 - (2) A Council must not exercise the power given to it under sub-clause (1)(c) unless it has considered a report from the Roads Corporation concerning the exercise of the power.
 - (3) This clause does not apply to a declared road within the meaning of the **Transport Act 1983**, unless the Council has the consent of the Roads Corporation.
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11. Powers concerning shopping malls

A Council may declare a road, or a part of a road, to be a shopping mall and may prohibit or restrict the entry of motor vehicles into any such mall.

12. Power to restrict use of road by vehicles of a certain size etc.

- (1) A Council may prohibit or restrict the use of a road by any motor vehicle of, or over, a certain size or weight.
- (2) Despite anything to the contrary in section 223, if in the opinion of the Council the use of a road by motor vehicles of, or over, a certain weight poses an immediate risk of danger to people or damage to property (including damage to the road itself), the Council may exercise a power under this clause before it makes a final decision on the exercise of the power.

13. Power to determine speed limits

A Council may determine speed limits for vehicles on a road.

14. Power to prohibit traffic on unsafe roads

A Council may prohibit or restrict traffic on a road that it considers is unsafe for that traffic.

Sch. 11A
inserted by
No. 43/1993
s. 5,
amended by
Nos 33/1995
s. 10(a)–(c),
34/1996
s. 33(i),
repealed by
No. 27/1997
s. 26(2).¹⁵

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SCHEDULE 12

REGULATIONS

Section 243

1. Any matter relating to enrolment and the preparation of voters' rolls.
2. Providing for exemptions from and the enforcement of compulsory voting.
3. Providing for a system of pre-poll voting including the empowering of a returning officer to issue guidelines relating to electoral material in relation to pre-poll voting. **Sch. 12 cl. 3 amended by No. 15/1992 s. 25(1)(a).**
4. Providing for a system of postal voting.
5. Enabling an election to be held by postal voting or by attendance voting. **Sch. 12 cl. 5 amended by No. 54/1998 s. 21.**
- 5A. Providing for unenrolled voters to lodge a vote at an election. **Sch. 12 cl. 5A inserted by No. 15/1992 s. 25(1)(b).**
- 5B. Any matter relating to the holding of a poll of voters. **Sch. 12 cl. 5B inserted by No. 15/1992 s. 25(1)(b).**
6. Enabling the use of electronic equipment for elections and the counting of votes.
7. Providing for mobile polling booths.
8. Prescribing the matters to be taken into account by the returning officer in determining whether to register, refuse to register or request the variation of a form or sample of a how-to-vote card, including—
 - (a) the colour of the paper or other material for the card; and
 - (b) the colour for the print on the card; and
 - (c) its content or overall appearance; and
 - (d) anything written or drawn or otherwise appearing on the form or sample; and

Local Government Act 1989
Act No. 11/1989

Sch. 12

- (e) whether the card contains offensive or obscene material; and
- (f) whether the card sufficiently identifies the political party, person, organisation or group on behalf of which or whom it is to be distributed.

- 9. Prescribing the matters in respect of which a Council must keep accounts and records.
- 10. Prescribing the manner and form in which the accounts and records must be kept.
- 11. Prescribing the entries to be made in accounts and records.

**Sch. 12 cl.
11A inserted
by No.
40/1994
s. 7(a),
repealed by
No. 59/1999
s. 5(d).**

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**Sch. 12 cl.
11B inserted
by No.
99/1994 s. 23.**

- 11B. Prescribing how the cost of a benefit, allowance or item of remuneration is to be calculated for the purposes of the definition of "total remuneration" in section 3(1).
- 12. Providing for the establishment of loan funds, reserve funds and other prescribed funds.
- 13. Providing for the handling or disposal of unclaimed money.
- 14. Providing for the dismissal or the reduction in status of members of Council staff.
- 15. Prescribing rights of appeal against dismissal or reduction in status.
- 16. Providing for the payment of long service leave and other benefits to members of Council staff.
- 17. Providing for termination and redundancy of members of Council staff, payments on termination and redundancy and appeals relating to termination and redundancy.
- 18. Prescribing fees and deposits for the purposes of this Act.
- 19. Prescribing forms for the purposes of this Act.

Local Government Act 1989
Act No. 11/1989

Sch. 12

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20. Any matter relating to Division 3 of Part 9 including—
- (a) exempting a service or a class of service from the application of the Division;
 - (b) requiring Councils to report on any matter under the Division and specifying the form and contents of the reports.
21. Exempting classes of contract from section 186.

Sch. 12 cl. 20
inserted by
No. 40/1994
s. 7(b),
substituted by
No. 59/1999
s. 7.

Sch. 12 cl. 21
inserted by
No. 40/1994
s. 7(b).



NOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 16 November 1988

Legislative Council: 11 April 1989

The long title for the Bill for this Act was "A Bill to reform the law relating to Local Government in Victoria."

The **Local Government Act 1989** was assented to on 9 May 1989 and came into operation as follows:

Sections 1–96, 98, 99, 111–124, 186–206, 208–220, 222–228, 231–243, Schedules 1–6, 8, 10–12 on 1 November 1989: Government Gazette 1 November 1989 page 2798; section 101 on 1 March 1991; sections 97, 100, 102–110, Schedule 7 on 1 October 1991; sections 125–185, 207, 221, 229, 230, Schedule 9 on 1 October 1992: Government Gazette 4 July 1990 page 2022.

Local Government Act 1989
Act No. 11/1989

Notes

2. Table of Amendments

This Version incorporates amendments made to the **Local Government Act 1989** by Acts and subordinate instruments.

Transport (Amendment) Act 1989, No. 44/1989

Assent Date: 6.6.89
Commencement Date: S. 42(1) on 1.11.89: s. 2(4); s. 42(2) on 1.11.89: s. 2(5)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Water (Consequential Amendments) Act 1989, No. 81/1989

Assent Date: 5.12.89
Commencement Date: 1.11.90: Government Gazette 15.8.90 p. 2473
Current State: All of Act in operation

Local Government (Amendment) Act 1990, No. 13/1990

Assent Date: 8.5.90
Commencement Date: Ss 1, 2, 6, 31, 39(2), 40–42, 44–46 on 8.5.90: s. 2(2)(a); ss 23, 37, 38, 39(1)(3) on 9.5.89: s. 2(2)(b); ss 3–5, 7–22, 24–30, 32–36, 43 on 8.5.90: Special Gazette (No. 20) 8.5.90 p. 1
Current State: All of Act in operation

Subdivision (Miscellaneous Amendments) Act 1991, No. 48/1991

Assent Date: 25.6.91
Commencement Date: S. 69 on 25.6.91: s. 2(4)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government (Rating) Act 1991, No. 78/1991 (as amended by No. 22/1992)

Assent Date: 3.12.91
Commencement Date: Ss 19, 26 on 1.11.89: s. 2(1); s. 25 on 1.10.92: s. 2(2); s. 28(1) on 9.5.89: s. 2(3); s. 28(2) on 8.5.90: s. 2(4); rest of Act on 3.12.91: s. 2(5)
Current State: All of Act in operation

Local Government (Elections) Act 1992, No. 15/1992

Local Government Act 1989
Act No. 11/1989

Assent Date: 2.6.92
Commencement Date: Ss 1, 2, 5–7, 9–25 on 3.6.92: Government Gazette 3.6.92 p. 1306; ss 3, 4 on 20.5.93: Government Gazette 20.5.93 p. 1188—see **Interpretation of Legislation Act 1984**; s. 8 on 25.5.95: Government Gazette 25.5.95 p. 1216
Current State: All of Act in operation

Local Government (Financial) Act 1992, No. 22/1992

Assent Date: 16.6.92
Commencement Date: All of Act (*except* ss 3, 19, 20) on 16.6.92: s. 2(1); s. 19 on 1.10.92: s. 2(3); s. 20 on 1.10.92: s. 2(4); s. 3 on 1.10.93: Government Gazette 9.9.93 p. 2496
Current State: All of Act in operation

Caravan Parks and Movable Dwellings (Amendment) Act 1993, No. 23/1993

Assent Date: 25.5.93
Commencement Date: Ss 1, 2 on 25.5.93: s. 2(1); rest of Act on 1.11.93: Government Gazette 23.9.93 p. 2601
Current State: All of Act in operation

Local Government (General Amendment) Act 1993, No. 43/1993

Assent Date: 1.6.93
Commencement Date: Ss 1–6, 8, 10, 11, 13, 15–20, 22, 24, 26 on 1.6.93: s. 2(1); s. 12 on 1.10.93: s. 2(3); ss 23, 25 on 2.9.93: Government Gazette 2.9.93 p. 2454; ss 14, 21 on 1.10.93: Government Gazette 23.9.93 p. 2602; s. 7 on 31.3.94: Government Gazette 31.3.94 p. 771; s. 9 on 25.5.95: Government Gazette 25.5.95 p. 1216
Current State: All of Act in operation

City of Melbourne Act 1993, No. 98/1993

Assent Date: 18.11.93
Commencement Date: S. 12 on 28.9.93: s. 2(2); rest of Act on 18.11.93: s. 2(1)
Current State: All of Act in operation

Local Government (Miscellaneous Amendments) Act 1993, No. 125/1993

Assent Date: 7.12.93
Commencement Date: S. 37(2) on 3.12.91: s. 2(2); s. 37(3) on 1.6.93: s. 2(3); rest of Act (*except* ss 4(2), 6, 9) on 7.12.93: s. 2(4); ss 4(2), 6, 9 on 1.10.95: s. 2(1)
Current State: All of Act in operation

Financial Management Act 1994, No. 18/1994 (as amended by No. 75/1994)

Assent Date: 10.5.94
Commencement Date: Pt 1 (ss 1–8), ss 60, 61 on 10.5.94: s. 2(1); rest of Act on 1.7.94: s. 2(2)
Current State: All of Act in operation

Local Government (Competitive Tendering) Act 1994, No. 40/1994

Local Government Act 1989

Act No. 11/1989

Notes

Assent Date: 7.6.94
Commencement Date: Ss 1, 2 on 7.6.94: s. 2(1); rest of Act (*except* s. 6) on 1.10.94: s. 2(4); s. 6 on 1.10.94: s. 2(3)
Current State: All of Act in operation

Valuation of Land (Amendment) Act 1994, No. 91/1994

Assent Date: 6.12.94
Commencement Date: Pt 1 (ss 1, 2), ss 5–9, 38, 39 on 6.12.94: s. 2(1); ss 3, 36, 37 on 1.1.95: s. 2(2); ss 4, 35 on 1.10.94: s. 2(3); Pt 3 (ss 10–34) on 23.1.95: Government Gazette 19.1.95 p. 121
Current State: All of Act in operation

Crown Lands Acts (Amendment) Act 1994, No. 96/1994

Assent Date: 13.12.94
Commencement Date: Pt 1 (ss 1, 2) on 13.12.94: s. 2(1); rest of Act on 26.1.95: Government Gazette 26.1.95 p. 163
Current State: All of Act in operation

Local Government (Amendment) Act 1994, No. 99/1994

Assent Date: 13.12.94
Commencement Date: All of Act (*except* ss 7, 25) on 13.12.94: s. 2(1); s. 7 on 1.1.96: s. 2(3); s. 25 on 1.1.96: s. 2(4)
Current State: All of Act in operation

Constitution (Court of Appeal) Act 1994, No. 109/1994

Assent Date: 20.12.94
Commencement Date: Pt 1 (ss 1, 2) on 20.12.94: s. 2(1); rest of Act on 7.6.95: Special Gazette (No. 41) 23.5.95 p. 1
Current State: All of Act in operation

Local Government (Further Amendment) Act 1995, No. 33/1995

Assent Date: 6.6.95
Commencement Date: All of Act (*except* ss 4, 5) on 6.6.95: s. 2(1); ss 4, 5 on 1.7.95: s. 2(2)
Current State: All of Act in operation

Equal Opportunity Act 1995, No. 42/1995

Assent Date: 14.6.95
Commencement Date: S. 224 on 5.10.95: Government Gazette 28.9.95 p. 2731; s. 223(Sch. 1 item 3), Sch. 2 item 23 on 1.1.96: Government Gazette 21.12.95 p. 3571
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Trade Measurement (Administration) Act 1995, No. 60/1995

Local Government Act 1989
Act No. 11/1989

Assent Date: 20.6.95
Commencement Date: S. 28(2) on 1.1.96: Government Gazette 7.12.95 p. 3381
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government (Elections) Act 1995, No. 76/1995

Assent Date: 14.11.95
Commencement Date: 14.11.95
Current State: All of Act in operation

The Constitution Act Amendment (Amendment) Act 1995, No. 103/1995

Assent Date: 5.12.95
Commencement Date: 5.12.95
Current State: All of Act in operation

Melbourne City Link Act 1995, No. 107/1995

Assent Date: 12.12.95
Commencement Date: S. 123 on 14.12.95: Special Gazette (No. 120) 14.12.95 p. 3
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Housing (Amendment) Act 1996, No. 20/1996

Assent Date: 2.7.96
Commencement Date: 28.5.96: s. 2
Current State: All of Act in operation

Local Government (Amendment) Act 1996, No. 34/1996 (as amended by No. 76/1997)

Assent Date: 29.10.96
Commencement Date: All of Act (*except* ss 6(2), 8, 13, 14, 30(2)) on 29.10.96: s. 2(1); s. 13 on 20.4.98: Government Gazette 9.4.98 p. 778; ss 6(2), 8, 14, 30(2) on 1.7.98: s. 2(3)
Current State: All of Act in operation

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 item 52) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Shop Trading Reform Act 1996, No. 38/1996

Assent Date: 6.11.96
Commencement Date: S. 13 on 26.11.96: Government Gazette 21.11.96 p. 2971
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government (Further Amendment) Act 1997, No. 27/1997

Local Government Act 1989
Act No. 11/1989

Notes

Assent Date: 27.5.97
Commencement Date: All of Act (except s. 18) on 27.5.97: s. 2(1); s. 18 on 1.7.97: s. 2(2)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government (Miscellaneous Amendment) Act 1997, No. 76/1997

Assent Date: 25.11.97
Commencement Date: All of Act (except ss 5(1), 6, 15, 18) on 25.11.97: s. 2(1); ss 5(1), 6 on 12.12.97: Government Gazette 11.12.97 p. 3364; ss 15, 18 on 31.3.98: Government Gazette 11.12.97 p. 3365
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Audit (Amendment) Act 1997, No. 93/1997

Assent Date: 16.12.97
Commencement Date: S. 28(Sch. item 18) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Geographic Place Names Act 1998, No. 7/1998

Assent Date: 21.4.98
Commencement Date: S. 23 on 31.12.98: s. 2(3)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Victorian Plantations Corporation (Amendment) Act 1998, No. 35/1998

Assent Date: 19.5.98
Commencement Date: S. 17 on 26.6.98: Government Gazette 25.6.98 p. 1561
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Melbourne City Link (Exhibition Street Extension) Act 1998, No. 50/1998

Assent Date: 2.6.98
Commencement Date: 2.6.98: s. 2
Current State: All of Act in operation

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Local Government Act 1989
Act No. 11/1989

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 items 55.1–55.9) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government (Amendment) Act 1998, No. 54/1998

Assent Date: 13.10.98
Commencement Date: 13.10.98
Current State: All of Act in operation

Local Government (Governance and Melton) Act 1998, No. 86/1998

Assent Date: 17.11.98
Commencement Date: Pt 3 (s. 26) on 17.11.98: s. 2(1)
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Rail Corporations (Further Amendment) Act 1998, No. 98/1998

Assent Date: 24.11.98
Commencement Date: S. 47 on 29.4.99: Government Gazette 29.4.99 p. 967
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government (Melbourne City Council Rates) Act 1999, No. 23/1999

Assent Date: 25.5.99
Commencement Date: 25.5.99
Current State: All of Act in operation

The Constitution Act Amendment (Amendment) Act 1999, No. 24/1999

Assent Date: 25.5.99
Commencement Date: 8.6.99: s. 2
Current State: All of Act in operation

Audit (Amendment) Act 1999, No. 53/1999

Assent Date: 14.12.99
Commencement Date: S. 26(Sch. item 15) on 1.1.2000: Government Gazette 23.12.99 p. 2764
Current State: This information relates only to the provision/s amending the **Local Government Act 1989**

Local Government (Best Value Principles) Act 1999, No. 59/1999

Assent Date: 21.12.99
Commencement Date: 22.12.99: s. 2
Current State: All of Act in operation

Local Government (Governance) Act 2000, No. 23/2000

Local Government Act 1989
Act No. 11/1989

Notes

Assent Date: 16.5.00
Commencement Date: 17.5.00: s. 2
Current State: All of Act in operation

**Local Government (Restoration of Local Democracy to Melton) Act 2000,
No. 55/2000**

Assent Date: 31.10.00
Commencement Date: Ss 3, 4 on 1.11.00: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Local Government Act 1989**

3. Explanatory Details

¹ S. 3(1) def. of "financial year": Section 4 of the **Local Government (Amendment) Act 1994**, No. 99/1994 (as amended by No. 33/1995) reads as follows:

4. Transitional provisions concerning the alteration of the financial year

- (1) For the purposes of the **Local Government Act 1989** and this and any other related Act, the period starting on 1 October 1994 and ending on 30 June 1995 is a financial year and is the 1994–1995 financial year.
 - (2) Any direct or indirect reference in any Act, subordinate instrument, deed, contract, notice, order or other document to the 1994–1995 financial year of a Council or to the 1994–1995 financial year under the **Local Government Act 1989** is to be read as a reference to the period starting on 1 October 1994 and ending on 30 June 1995.
 - (3) A Council does not have to change its budget or proposed budget in respect of the 1994–1995 financial year to take account of the shortening of that year.
 - (4) Neither this section nor the changes made by section 3 affect the validity of any rates or charges notice issued in respect of the 1994–1995 financial year, and a Council may issue or continue to issue rates or charges notices in respect of that year as if sub-sections (1) and (2) and section 3 were not in operation.
 - (5) Despite anything to the contrary in the **Local Government Act 1989**, in respect of the 1994–1995 financial year, rates and charges (other than special rates and special charges) levied in respect of that year by a Council must be paid—
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Local Government Act 1989
Act No. 11/1989

- (a) in a lump sum on or before 11 April 1995; or
 - (b) by 4 approximately equal instalments paid on or before 31 December 1994, 28 February 1995, 31 May 1995 and 31 August 1995; or
 - (c) in any other manner specified by the Council in the rates or charges notice.
- (6) Despite anything to the contrary in the **Local Government Act 1989**, in respect of the 1995–1996 financial year—
- (a) a Council must comply with section 158(1) of that Act by 30 November 1995;
 - (b) rates and charges (other than special rates and special charges) levied in respect of that year by a Council must be paid—
 - (i) in a lump sum on or before 10 April 1996; or
 - (ii) by 4 approximately equal instalments paid on or before 31 December 1995, 28 February 1996, 31 May 1996 and 31 August 1996; or
 - (iii) in any other manner specified by the Council in the rates or charges notice.
- (7) Despite anything to the contrary in the **Local Government Act 1989**, in respect of the 1996–1997 financial year—
- (a) a Council must comply with section 158(1) of that Act by 30 November 1996;
 - (b) rates and charges (other than special rates and special charges) levied in respect of that year by a Council must be paid—
 - (i) in a lump sum on or before 10 April 1997; or
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Local Government Act 1989
Act No. 11/1989

- (ii) by 3 approximately equal instalments paid on or before 31 December 1996, 28 February 1997 and 31 May 1997; or
- (iii) in any other manner specified by the Council in the rates or charges notice.

² S. 5A: Section 24 of the **Local Government (Amendment) Act 1994**, No. 99/1994 reads as follows:

24. Validation of name changes under former Act

Any Order in Council that was made, or that purports to have been made, under the **Local Government Act 1958** to change the name of a municipal council is deemed to have been validly made.

³ S. 21(3A): Section 6(2) of the **Local Government (Amendment) Act 1994**, No. 99/1994 reads as follows:

6. Exclusion of people of unsound mind from voters' rolls

- (2) The first list supplied by the Electoral Commissioner to the Chief Executive Officer under section 21(3A) of the **Local Government Act 1989** must contain the names of persons—
 - (a) who have been removed from the roll of electors for the Legislative Assembly under section 48(2)(d) of the **Constitution Act 1975** since 3 May 1993; and
 - (b) whose last recorded address was in the municipal district.

⁴ S. 35: Section 6(3) of the **Local Government (Amendment) Act 1990**, No. 13/1990 reads as follows:

6. Triennial elections

- (3) A decision of a Council to hold triennial elections under section 35 of the **Local Government Act 1989** as in force immediately before the

Local Government Act 1989
Act No. 11/1989

commencement of section 6(1) continues in force
as if this Act had not been enacted.

⁵ S. 95A: Section 10(3) of the **Local Government (Amendment) Act 1994**, No. 99/1994 reads as follows:

10. Senior officer positions to be advertised

- (3) For the purposes of sections 94(6) and (7) and 95A(5) of the **Local Government Act 1989**, in calculating the length of time a person has filled a position, no time spent by the person in the position before this section came into operation is to be taken into account.

⁶ Pt 6: Section 7 of the **Local Government (Further Amendment) Act 1995**, No. 33/1995 reads as follows:

7. Transitional arrangements concerning audit arrangements

- (1) Despite anything to the contrary in the **Local Government Act 1989** or in any agreement to which a Council is a party, any appointment of a person or a firm to act as the auditor of—
- (a) a Council; or
 - (b) a corporation, all the shares in which are owned by or on behalf of one or more Councils, whether directly or indirectly; or
 - (c) a trustee of a trust of which a Council is the principal beneficiary or of which several Councils are the principal beneficiaries; or
 - (d) a regional library under section 196 of the **Local Government Act 1989**—

ceases to have effect with respect to the 1995–1996 financial year and any year after that year.

- (2) Despite anything to the contrary in the **Local Government Act 1989**, a person or body listed in

Local Government Act 1989
Act No. 11/1989

sub-section (1)(a) to (d) may appoint a person or firm to act as his, her or its auditor for the 1994–1995 financial year only.

- (3) Despite clause 4 of Schedule 8A of the **Local Government Act 1989**, any appointment made before the commencement of this Act by a person or body listed in sub-section (1)(a) to (d) of a person or firm to act as his, her or its auditor for the 1994–1995 financial year only is deemed to have been validly made.
- (4) The amendments made by sections 4 and 5 only apply with respect to the 1995–1996 financial year and beyond and do not apply with respect to the 1994–1995 financial year or to anything relating to the 1994–1995 financial year.
- (5) Anything relating to the 1994–1995 financial year is to be dealt with on the basis of the **Local Government Act 1989** as in force immediately before 1 July 1995.

⁷ Ss 128–131:

S. 128 substituted by No. 22/1992 s. 6, amended by No. 33/1995 s. 4(2)(d), repealed by No. 34/1996 s. 29.

S. 129 substituted by No. 22/1992 s. 7(1), amended by No. 99/1994 s. 15, repealed by No. 33/1995 s. 4(2)(c).

S. 129A inserted by No. 22/1992 s. 7(1), amended by No. 40/1994 s. 5(b), repealed by No. 33/1995 s. 4(2)(c).

S. 129B inserted by No. 22/1992 s. 7(1), repealed by No. 33/1995 s. 4(2)(c).

S. 130 amended by No. 13/1990 s. 15(a)(b), substituted by No. 22/1992 s. 4(2), repealed by No. 27/1997 s. 25.

S. 131 repealed by No. 27/1997 s. 25.

⁸ S. 150(3): See note 1.

⁹ S. 158(1): See note 1.

¹⁰ S. 171(4)(d): See note 1.

Local Government Act 1989
Act No. 11/1989

¹¹ S. 173(1): See note 1.

¹² S. 179(2): See note 1.

¹³ S. 196: Section 14 of the **Local Government (Amendment) Act 1994**, No. 99/1994 reads as follows:

14. *Transitional provisions concerning existing regional corporations*

- (1) The agreement governing the operation of the Peninsula Library Service, notice of which was published in the Government Gazette on 19 December 1990, cannot be amended without the approval of the Minister.
- (2) The agreement by which the Narre Warren Landfill Gas Regional Corporation was formed ceases to have any effect on 1 January 1996.
- (3) The Minister may order that the Narre Warren Landfill Gas Regional Corporation be wound up at any time before 1 January 1996.
- (4) Subject to this section, the **Local Government Act 1989** applies to the Narre Warren Landfill Gas Regional Corporation as if it were a regional library.

¹⁴ Sch. 8A (*repealed*): See note 6.

¹⁵ Sch. 11A (*repealed*): Section 26(1) of the **Local Government (Further Amendment) Act 1997**, No. 27/1997 reads as follows:

26. *Provisions relating to the abolition of the Local Government Board*

- (1) The members of the Local Government Board cease to hold office.