Local Government Legislation Amendment
(Miscellaneous) Bill 2012

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Local Government Legislation Amendment (Miscellaneous) Bill 2012

A Bill for an Act to amend the Local Government Act 1989, the City of Melbourne Act 2001 and the Victorian Civil and Administrative Tribunal Act 1998 and for other purposes.

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The purposes of this Act are—

(a) to amend the Local Government Act 1989—

(i) to further provide for public reporting of election campaign donations; and

(ii) to clarify procedures for Councillors and members of special committees to disclose conflicts of interest; and
(iii) to amend voting procedures for Councillors and members of special committees; and

(iv) to provide for the appointment of a probity auditor in relation to the handling by a Council of a complaint relating to the conduct of the Chief Executive Officer; and

(v) to amend the powers of Councils to declare differential rates and to require the consideration of Ministerial guidelines; and

(vi) to amend the method by which interest is charged on unpaid rates and charges; and

(vii) to make further amendments to clarify the operation of that Act; and

(b) to make minor amendments to the City of Melbourne Act 2001 relating to the electoral provisions; and

(c) to amend the Victorian Civil and Administrative Tribunal Act 1998 to more clearly set out obligations to bear costs in certain proceedings and to make other amendments.

2 Commencement

(1) This Act (except sections 20, 22 and 23) comes into operation on the day after the day on which this Act receives the Royal Assent.

(2) Subject to subsection (3), sections 20, 22 and 23 come into operation on a day or days to be proclaimed.
(3) If a provision referred to in subsection (2) does not come into operation before 1 July 2013, it comes into operation on that day.
PART 2—AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1989

3 Definitions

(1) In section 3(1) of the Local Government Act 1989 insert the following definitions—

"assembly of Councillors" (however titled) means a meeting of an advisory committee of the Council, if at least one Councillor is present, or a planned or scheduled meeting of at least half of the Councillors and one member of Council staff which considers matters that are intended or likely to be—

(a) the subject of a decision of the Council; or

(b) subject to the exercise of a function, duty or power of the Council that has been delegated to a person or committee—

but does not include a meeting of the Council, a special committee of the Council, an audit committee established under section 139, a club, association, peak body, political party or other organisation;

special committee means—

(a) a committee established by a Council under section 86;

(b) a committee that exercises a power, or performs a duty or function, of the Council that has been delegated to that committee under any Act;".
(2) After section 3(5) of the Local Government Act 1989 insert—

"(6) For the purposes of subsection (5), resolution of the Council means—

(a) a resolution made at an ordinary meeting or special meeting;
(b) a resolution made at a meeting of a special committee;
(c) the exercise of a power, duty or function delegated to a member of Council staff under section 98—

but does not include any business transacted at an assembly of Councillors.".

4 Occupier ratepayers may apply to be enrolled

In section 15(3) of the Local Government Act 1989, after "that rateable property" insert "only".

5 Disqualifications

In section 29(2)(ab) of the Local Government Act 1989 omit "57,".

6 Distribution of printed electoral material

After section 56(4) of the Local Government Act 1989 insert—

"(5) Subsection (1) does not apply to the distribution or otherwise making available of any printed electoral material during the hours of voting to any property within 400 metres of the entrance of a voting centre that is an early voting centre.".

7 Repeal of section 57—False or defamatory statements

Section 57 of the Local Government Act 1989 is repealed.
8 Injunction

In section 57A(1) of the **Local Government Act 1989**, for "55, 55A or 57" substitute "55 or 55A".

9 Responsibilities of Chief Executive Officer

After section 62A(1) of the **Local Government Act 1989** insert—

"(2) The Chief Executive Officer must ensure that, within 14 days after the period specified in section 62(1), a summary of each election campaign donation return given to the Chief Executive Officer under section 62 is made available on the Internet website of the Council.

(2A) If an election campaign donation return is given after the period specified in section 62(1), the Chief Executive Officer must ensure that a summary of the return is made available on the Internet website of the Council.

(2B) A summary of an election campaign donation return must include the following information in respect of the candidate who gave the election campaign donation return—

(a) the name of the candidate;

(b) if a gift is included in the return, the name of the person who made the gift and the total value of the gift received from that person.

(2C) The Chief Executive Officer must ensure that a summary of an election campaign donation return is made available on the Internet website of the Council until the entitlement date for the next general election.".
Part 2—Amendments to the Local Government Act 1989

10 Definitions

In section 76AA of the Local Government Act 1989, the definition of *assembly of Councillors* is repealed.

11 Disclosure of conflict of interest

After section 79(2) of the Local Government Act 1989 insert—

"(3) For the purposes of section 79(2)(a)(i), if a Councillor or member of a special committee has a conflict of interest in two or more matters which are to be considered or discussed consecutively at a meeting of the Council or the special committee, the Councillor or member may make a full disclosure of each of those interests immediately before the first matter is considered at the meeting."

12 Certain situations where Councillor taken to not have a conflict of interest

(1) For section 79C(1)(d) of the Local Government Act 1989 substitute—

"(d) the adoption of a policy under section 75B in relation to the reimbursement of expenses;"

(2) For section 79C(2)(a) of the Local Government Act 1989 substitute—

"(a) the Council previously approved the matter and the proposed funding for the matter for inclusion in the budget or revised budget; and"

(3) For section 79C(2)(b) of the Local Government Act 1989 substitute—

"(b) the Councillor disclosed the nature of the conflict of interest under section 79 when the decision in respect of the matter and the
part 2—amendments to the local government act 1989

(proposed funding for the matter was previously considered and made."

(4) After section 79c(2) of the local government act 1989 insert—

"(3) If a council plan to be approved by a council includes a matter in respect of which a councillor has a conflict of interest, the councillor is taken to not have a conflict of interest for the purposes of approving the council plan if—

(a) the council previously approved the matter for inclusion in the council plan; and

(b) the councillor disclosed the nature of the conflict of interest under section 79 when the decision in respect of the matter was previously considered and made.

(4) If a councillor with a conflict of interest referred to in subsection (2) or (3) notifies the mayor or chairperson prior to the consideration of the budget, revised budget or council plan of the conflict of interest, the mayor or chairperson must allow a prior motion to be put that the matter or funding be considered for inclusion in the budget, revised budget or council plan."

13 consequential amendment to section 80b

in section 80b(3) of the local government act 1989—

(a) at the end of paragraph (c) for "staff." substitute "staff;"

(b) after paragraph (c) insert—

"(d) a decision to request the appointment of a probity auditor under division 4."
Part 2—Amendments to the Local Government Act 1989

14 Call of the Council

In section 85(6) of the Local Government Act 1989—

(a) for "continuing to be" substitute "remaining";

(b) for "remaining" substitute "continuing to be".

15 Repeal of section 86(7)—Special committees of the Council

Section 86(7) of the Local Government Act 1989 is repealed.

16 Voting

(1) Section 90(1)(b) of the Local Government Act 1989 is repealed.

(2) For section 90(1)(d) of the Local Government Act 1989 substitute—

"(d) the question is determined in the affirmative by a majority of the Councillors or members of the special committee present at a meeting at the time the vote is taken voting in favour of the question;".

(3) For section 90(1)(e) of the Local Government Act 1989 substitute—

"(e) except where subsection (2) applies, if the number of votes in favour of the question is half the number of Councillors or members of the special committee present at the meeting at the time the vote is taken, the Chairperson has a second vote.".

17 Repeal of section 101(2)—Long service leave

Section 101(2) of the Local Government Act 1989 is repealed.
Part 2—Amendments to the Local Government Act 1989

18 New Division 4 inserted into Part 4—Complaints

After section 102 of the Local Government Act 1989 insert—

"Division 4—Complaints"

103 Purpose of this Division

The purpose of this Division is to ensure proper oversight of processes used by a Council in dealing with a complaint about the conduct of the Chief Executive Officer.

104 Definitions

In this Division—

complaint means—

(a) a written complaint by the complainant to the Council about the conduct of the Chief Executive Officer; or

(b) a written complaint by the complainant about the conduct of the Chief Executive Officer to a person or body authorised under any Act to consider conduct of that kind; or

(c) an application to a court or tribunal by the complainant to initiate any proceedings in respect of the conduct of the Chief Executive Officer;

complainant means a person referred to in paragraph (a), (b) or (c) of the definition of conduct;

conduct means any action or behaviour of the Chief Executive Officer of a Council involving bullying,
victimisation or harassment, including sexual harassment, of—

(a) a Councillor of that Council; or
(b) a member of Council staff of that Council; or
(c) any other person in the course of the Chief Executive Officer performing his or her role as the Chief Executive Officer of that Council;

probity means the integrity of processes used by the Council in dealing with a complaint, including processes to ensure that so far as it is reasonably practicable and within the responsibility of the Council—

(a) any relevant statutory procedures have been complied with;
(b) any order made by a court or tribunal in any proceedings relating to the complaint has been given effect to;
(c) natural justice has been afforded;
(d) the privacy of personal information has been protected;
(e) confidentiality under section 77 has been maintained;

probity auditor means a person appointed by the Secretary under section 107.

Chief Executive Officer must advise of complaint

If the Chief Executive Officer becomes aware of a complaint, the Chief Executive Officer must—
(a) immediately advise the Mayor about the complaint; and

(b) at the next meeting of the Council, advise the Council about the complaint when the meeting is closed to members of the public.

106 Request to appoint a probity auditor

(1) The Chief Executive Officer may, at any time after complying with section 105(a), request the Secretary to appoint a probity auditor in relation to the complaint.

(2) If the Chief Executive Officer makes a request under subsection (1), the Chief Executive Officer must immediately advise the Mayor that he or she has done so.

(3) If the Mayor has not received any advice under subsection (2), the Mayor may request the Secretary to appoint a probity auditor in relation to the complaint.

107 Secretary may appoint a probity auditor

(1) If after receiving a request under section 106 in relation to a complaint, the Secretary considers that the appointment of a probity auditor could assist in ensuring probity in dealing with the complaint, the Secretary may appoint a person whom the Secretary considers has suitable qualifications to be a probity auditor in relation to that complaint.

(2) If the Secretary appoints a probity auditor, the Secretary must immediately advise the Mayor and the Chief Executive Officer about the appointment.
Part 2—Amendments to the Local Government Act 1989

(3) If the Chief Executive Officer is advised that a probity auditor has been appointed, the Chief Executive Officer must, at the next meeting of the Council, advise the Council about the appointment when the meeting is closed to members of the public.

108 Duties and powers of probity auditor

(1) The primary duty of a probity auditor is to assist the Council to ensure probity in dealing with the complaint and to provide a written report in accordance with section 109 when the probity audit is concluded.

(2) The probity auditor may provide the Council with advice on probity matters in dealing with the complaint if the probity auditor considers that the advice could assist the Council.

(3) The probity auditor may require a Councillor or a member of Council staff to produce a document, provide information or give reasonable assistance if the probity auditor considers that it will assist the probity auditor to perform his or her duties.

(4) If a Councillor or a member of Council staff unreasonably refuses to comply with a requirement under subsection (3), the probity auditor must report the failure to the Council, the Mayor, the Chief Executive Officer and the Secretary.

109 Report by probity auditor

(1) After the conclusion of the probity audit, the probity auditor must prepare a written report—

(a) describing the processes used by the Council in dealing with the complaint;
(b) containing a summary of the activities undertaken by the probity auditor in the course of conducting the probity audit;

(c) including a statement of opinion by the probity auditor as to whether or not the Council has observed due probity in dealing with the complaint.

(2) The probity auditor may specify that all or part of the probity report is, and must continue to be, confidential information for the purposes of section 77 as if—

(a) it had been designated as confidential information in accordance with section 77(2)(c); and

(b) section 77(2) and (3) did not otherwise apply.

(3) The probity auditor must provide a copy of the report to the Council, the Mayor, the Chief Executive Officer and the Secretary.

110 Provisions applying to probity auditor

(1) A probity auditor is not, in respect of his or her office as a probity auditor, subject to the Public Administration Act 2004.

(2) A probity auditor is entitled to be paid by the Council the amounts, and on the terms, fixed by the Secretary.

(3) A probity auditor is not personally liable for anything done or omitted to be done in good faith—

(a) in the performance of a duty or the exercise of a power under this Division; or
(b) in the reasonable belief that the act or omission was in the performance of a duty or the exercise of a power under this Division.

(4) Any liability resulting from an act or omission that would, but for subsection (3), attach to a probity auditor attaches instead to the Council.”.

19 Public notice

In section 129(3)(b) of the Local Government Act 1989, for "14 days" substitute "28 days".

20 Audit committee

In section 139(4A) of the Local Government Act 1989, for "76D and 79" substitute "76D, 79 and 81".

21 Differential rates

(1) For section 161(1) of the Local Government Act 1989 substitute—

"(1) A Council may raise any general rates by the application of a differential rate if it uses the capital improved value system of valuing land.".

(2) In section 161(2)(a) of the Local Government Act 1989 omit "must be consistent with the equitable and efficient carrying out of the Council's functions and".

(3) After section 161(2) of the Local Government Act 1989 insert—

"(2A) A Council must have regard to any Ministerial guidelines made under subsection (2B) before declaring a differential rate for any land."
(2B) The Minister may, by notice published in the Government Gazette, make guidelines for or with respect to—
(a) the objectives of differential rating;
(b) suitable uses of differential rating powers;
(c) the types or classes of land that are appropriate for differential rating.

(4) In section 161(3) of the Local Government Act 1989, after "are available" insert "on its Internet website and".

(5) Before section 161(3)(b) of the Local Government Act 1989 insert—
"(a) the definition of the types or classes of land which are subject to the rate;"

(6) In section 161(3)(b) of the Local Government Act 1989 omit "and the criteria on the basis of which that rate was declared".

(7) In section 161(3)(c) of the Local Government Act 1989, for "to land in each category of differential rating" substitute "to each type or class of land".

(8) After section 161(3) of the Local Government Act 1989 insert—
"(4) On the recommendation of the Minister, the Governor in Council may by Order in Council prohibit any Council from making a declaration of a differential rate in respect of a type or class of land, if the Minister considers that the declaration would be inconsistent with any guidelines made under subsection (2B).".
22 Council may charge interest on unpaid rates and charges

For section 172(2)(b)(iii) of the Local Government Act 1989 substitute—

"(iii) if the payment was payable either in instalments or in a lump sum, and neither the first instalment nor the lump sum were paid by the dates the first instalment or the lump sum were due, on and from the date on which each missed instalment was due; and".

23 Review of differential rating by VCAT

For section 183(2) of the Local Government Act 1989 substitute—

"(2) An application for review must be made within 60 days after the day on which the owner or occupier receives the first notice under section 158(3) following the decision.".

24 Regional libraries

In section 196(7)(b) of the Local Government Act 1989, for "section 84" substitute "sections 84 and 89".

25 Library Plan

For section 197D(c) of the Local Government Act 1989 substitute—

"(c) for subsection (1) there were substituted—

"(1) A regional library must prepare and approve a Library Plan within 6 months after the date the regional library becomes a body corporate and by 30 June following a general election conducted under section 31(1).".".
26 New section inserted

After section 197D of the Local Government Act 1989 insert—

"197E Attendance at meetings of the governing body of a regional library

(1) A member of the governing body of a regional library may participate in a meeting of the governing body by electronic means of communication, if permitted under a local law made by the regional library which complies with subsection (2).

(2) A local law made for the purposes of subsection (1) must—

(a) specify how many members must attend the meeting in person; and

(b) provide for the application of section 79 to the meeting with any necessary modifications."

27 Dissolution of Councillor Conduct Panel

(1) For clause 12(1)(b) of Schedule 5 to the Local Government Act 1989 substitute—

"(b) where the Panel gives notice of the Panel's decision—

(i) 28 days after the Panel has given a statement of reasons under section 81M to the persons specified in section 81M(3); or

(ii) if an application for review of the decision is made under section 81Q, the conclusion of that review by VCAT;"

(2) In clause 12(1)(c) of Schedule 5 to the Local Government Act 1989, after "VCAT" insert "under section 81D".
28 Power to remove unregistered or abandoned vehicles

(1) In clause 3(1)(d) of Schedule 11 to the Local Government Act 1989, for "7 days" substitute "14 days".

(2) After clause 3(1) of Schedule 11 to the Local Government Act 1989 insert—

"(1A) Before exercising the power conferred by subclause (1)(d), the Council must take reasonable steps to notify the owner of the vehicle that the vehicle has been impounded and may be sold, destroyed or given away unless the specified fee is paid within 14 days.".

(3) After clause 3(3) of Schedule 11 to the Local Government Act 1989 insert—

"(4) For the purposes of subclause (1), a Council may consider that a vehicle has been abandoned if the vehicle has not been moved for 2 months.".
Part 3—Amendments to the City of Melbourne Act 2001

PART 3—AMENDMENTS TO THE CITY OF MELBOURNE ACT 2001

29 Entitlements

In section 9(1)(c) of the City of Melbourne Act 2001, for "appointment" substitute "enrolment".

30 Compulsory voting

For section 19(6) of the City of Melbourne Act 2001 substitute—

"(6) In this section—

infringement means an offence against this section;

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.

(7) A prosecution officer may serve or cause to be served an infringement notice on any person or corporation if the prosecution officer has reason to believe that the person
or corporation has committed an infringement.

(8) An offence referred to in subsection (7) for which an infringement notice may be served is an infringement offence within the meaning of the *Infringements Act 2006* and the penalty for that offence is the prescribed penalty in respect of that offence.

(9) In addition to the details required under section 13 of the *Infringements Act 2006*, the details of the election to which the alleged infringement relates must be included in an infringement notice served under subsection (7), including—

(a) the name of the Council; and

(b) the date of the election; and

(c) the name of the ward (if applicable).".
PART 4—AMENDMENTS TO THE VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL ACT 1998

31 Constitution of Tribunal

In clause 46E of Schedule 1 to the Victorian Civil and Administrative Tribunal Act 1998, after "senior member" (wherever occurring) insert "or presidential member".

32 Clause 46F of Schedule 1 substituted

For clause 46F of Schedule 1 to the Victorian Civil and Administrative Tribunal Act 1998 substitute—

"46F Costs

(1) Despite section 109, the Council must bear the costs of the proceedings if—

(a) the Council is a party to a proceeding referred to VCAT under section 81J(1)(b) of the Local Government Act 1989; or

(b) the Council applies to VCAT for review under section 81Q(2) of the Local Government Act 1989.

(2) The Council is not required to bear the costs of the proceedings under subclause (1) if VCAT otherwise orders.".
PART 5—REPEAL OF AMENDING ACT

33 Repeal of amending Act

This Act is repealed on 1 July 2014.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the Interpretation of Legislation Act 1984).